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Vol. 50 No. 61

federal register

Friday
March 29, 1985

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SECOND CLASS NEWSPAPER

3-29-85
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Pages 12513-12760

Federal Register

Friday
March 29, 1985

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Alcohol, Tobacco and Firearms Bureau

Air Pollution Control
Environmental Protection Agency

Archives and Records
National Archives and Records Service

Aviation Safety
Federal Aviation Administration

Crop Insurance
Federal Crop Insurance Corporation

Employee Benefit Plans
Pension Benefit Guaranty Corporation

Endangered and Threatened Species
Fish and Wildlife Service

Flood Insurance
Federal Emergency Management Agency

Government Procurement
General Services Administration

Income Taxes
Internal Revenue Service

Indians
Indian Affairs Bureau

Marine Safety
Coast Guard

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

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

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

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Presidential Documents

Title 3—

The President

Notice of March 28, 1985

Continuation of Emergency Regarding Export Control Regulations

On March 30, 1984, by Executive Order No. 12470, I declared a national emergency to deal with an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979. Because the Export Administration Act has not been replaced by the Congress, the national emergency declared on March 30, 1984, must continue in effect beyond March 30, 1985. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency in order to deal with the threat posed by the unrestricted access of foreign parties to United States commercial goods, technology, and technical data and by certain boycott practices of foreign nations. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
March 28, 1985.

[FR Doc. 85-7771
Filed 3-28-85; 11:02 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Friday, March 29, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1984–85 marketing policy for Valencia oranges grown in Arizona and designated part of California. The marketing policy was submitted by the Valencia Orange Administrative Committee which functions under the marketing order covering California-Arizona Valencia oranges. The marketing policy contains information on crop and market prospects for the 1984–85 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1984–85 California-Arizona Valencia orange crop will be considered if received by May 15, 1985.

ADDRESS: Interested persons are invited to submit written statements in duplicate to: Docket Clerk, Room 2069–S, F&V, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Such submissions should reference the date and page number 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: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975. Growers and handlers of Valencia oranges may obtain a copy of the committee's recommended marketing policy directly from the Valencia Orange Administrative Committee. Copies are also available from Mr. Doyle.

SUPPLEMENTARY INFORMATION: Pursuant to § 908.50 of the marketing order covering Valencia oranges grown in Arizona and designated part of California, the Valencia Orange Administrative Committee, hereinafter referred to as the "committee", is required to submit a marketing policy to the Secretary prior to recommending regulations for a season. The order authorizes volume and size regulations applicable to fresh shipments of Valencia oranges to domestic markets including Canada. Export shipments of oranges and oranges utilized in the production of processed orange products are not regulated under the order.

The committee has adopted a marketing policy for the 1984–85 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of Valencia oranges that can be shipped each week to domestic outlets without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In its 1984–85 marketing policy, the committee projected the California-Arizona Valencia orange crop at 49,700 cars (1,000 cartons at 37½ pounds net weight each). Last year's production was recorded at 32,660 cars. The production area is divided into three districts. The current estimates by district (with last years' production in parentheses) are as follows: District 1—17,500 cars (12,366); District 2—28,500 cars (16,957); and District 3—3,700 cars (3,319).

It is expected that orange sizes will be smaller than last year on the average. Fruit quality is expected to be excellent.

The committee estimates that shipments to domestic fresh market outlets, including Canada, will account for 21,500 cars. Last year a total of 17,111 cars were shipped to domestic markets. Fresh export shipments are expected to total 9,000 cars compared to 9,350 cars last year. Processing and other disposition is now forecast at 19,200 cars compared to 6,199 cars last year.

Limited shipments of Valencia oranges began in January. Shipments are expected to finish in early November. The committee has adopted a schedule of estimated weekly shipments for the 1984–85 season.

When the marketing policy was developed, indications were that Florida round orange production would be about 13 percent less than last year due to a freeze that occurred in January. In Texas, there has been severe freeze damage two years in a row, and virtually no commercial orange production is expected in 1984–85. Production of apples is estimated at 195.8 million bushels in 1984–85 compared to 199.4 million bushels in 1983–84. Winter pear production is estimated at 8.1 million bushels in 1984–85 compared to 9.7 million bushels last year. General economic conditions are expected to be favorable during 1984–85.

In addition, the committee plans to continue two actions to promote flexibility in marketing order operations: (1) Recommending weekly volume regulations to cover two consecutive one-week periods and (2) recommending open movement for a prorate district when 85 percent of the crop in that district has been shipped. Both of those actions were initiated during the 1983–84 season.

Section 908.50(a) of the marketing order states that:

"Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of

oranges. "In formulating its marketing policy the committee should give due consideration to the onset and duration of prorate and size regulation. In the event that it becomes advisable substantially to modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph."

Based upon information now available, season average equivalent fresh on-tree grower returns for California-Arizona Valencia oranges (under Marketing Order No. 908) are likely to approach but not exceed the projected season average equivalent parity price for such oranges.

As additional information on this price relationship becomes available, it will be reviewed by the Department of Agriculture in the light of program requirements and the provisions of the Agricultural Marketing Agreement Act of 1937.

In order to provide for public input in regulatory actions, the Department will accept written views and information pertinent to the proposed marketing policy and the need for, or level of, regulation for the 1984–85 season.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 908

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

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

Dated: March 27, 1985.

Thomas R. Clark,

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

[FR Doc. 85-7707 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 509]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period March 31–April 6, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period March 31–April 6, 1985.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 26, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the lemon demand pattern continues to improve on larger sizes, but remains easy on smaller sizes of fruit.

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

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

Section 910.809 is added as follows:

§ 910.809 Lemon Regulation 509.

The quantity of lemons grown in California and Arizona which may be handled during the period March 31, 1985, through April 6, 1985, is established at 275,000 cartons.

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

Dated: March 27, 1985.

Thomas R. Clark,

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

[FR Doc. 85-7712 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-17-AD; Amdt. 39-5021]

Airworthiness Directives; Piper Models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20 and PA-22 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Piper Models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20 and PA-22 series airplanes which requires the installation of fuel tank quick drain valves. Numerous accidents have occurred involving engine stoppage or malfunction in which water in the fuel system was found to be a contributing factor. The installation of quick drain valves in these airplanes in place of the existing drain plugs will facilitate the complete drainage of water and other contaminants from the fuel tanks during preflight.

DATES: *Effective date:* May 4, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Spares Letter No. SP-6 dated February 5, 1960, applicable to this AD may be obtained from Customer Service Piper Aircraft Corporation, 3000 Medulla Road, Lakeland, Florida 33803; Telephone (813) 646-2911. A copy of this information is also contained in the Rules Docket, FAA, Office of the

Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. O'Neill, FAA, ANE-174, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the fuel tank sump drain plugs with quick drain valves on Piper Models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-16, PA-17, PA-18, PA-18A, PA-20 and PA-22 series airplanes was published in the **Federal Register** on August 7, 1984 (49 FR 31433 and 31434). The proposal resulted from service and accident reports involving various Piper single-engine high wing airplanes. These reports indicated that the present fuel draining provisions do not ensure that water and other contaminants drain properly from the fuel tank through the feed lines down to the fuel system strainer bowl for proper single point draining in the normal ground attitude. The FAA concluded that the operators were not removing the presently provided fuel tank sump drain plugs and draining these sumps as should be done. The FAA also determined that elimination of water from the fuel system would be improved by installation of quick drains in the fuel tank sumps and the daily drainage of these sumps, in addition to draining of the in-line strainer bowl(s).

The manufacturer has made available a wing fuel tank quick drain installation kit for Piper Model PA-22 series airplanes which can also be installed on the earlier high wing aircraft, i.e., Model PA-11, PA-16, PA-18, PA-18A, and PA-20 series aircraft that incorporates a ¼ inch diameter tapered pipe fitting in the wing fuel tanks. Piper Models J-4, J-5, J-5C, PA-12 and PA-14 series airplanes have ⅜ inch diameter tapered pipe fittings in the wing fuel tanks.

Piper Model J-3, J-4, PA-15, PA-16, and PA-17 series airplanes are equipped with a fuselage fuel tank incorporating a ⅜ inch diameter tapered pipe plug in which a quick drain valve would be installed. On airplanes having fuselage tanks a clear plastic tube would be fitted to the quick drain valve and routed overboard to prevent fuel spillage in the cockpit area. Additionally, installation of a fuel sump drainage placard would be required.

Interested persons were afforded an opportunity to comment on the proposal and four responses were received. One commentor concurred with the proposal.

The remaining three commentors were J-3 "Cub" operators who objected to the AD or commented on the facts supporting the AD in the following respects.

Generally, these commentors consider the accumulation of water in the fuel system to be more closely related to failure of the operators to follow the recommended fuel draining procedures in the owners manual than to any deficiencies in the fuel draining system. One operator believes that the inaccessibility of the present strainer bowl may be a factor and suggested lowering of the present drain to the bottom of the cowl to facilitate access from outside the airplane.

Two operators considered the proposed quick drain system a fire hazard. Since the fuel tank is just forward of the instrument panel on the Model J-3 series, any drain valve leak external to the drain tube will cause accumulation of fuel under the cockpit floor. Also, when the cabin heater is in operation, it is feared that hot air may impinge on or near the spilled fuel.

The FAA has reviewed these objections and remains convinced that the AD should be published without any revisions. Although some of the fuel contamination accidents may have been due to poor maintenance or operating procedures, the number of accidents and incidents on record is large and indicates that irrespective of cause, an unsafe condition warranting corrective action exists. Installing a quick drain to directly remove water from the lowest point in the tank will substantially increase the amount of water that can be eliminated from the fuel system and reduce the number of future accidents. Daily use of the quick drain will be encouraged because of improved accessibility.

Leakage of fuel within the fuselage would be detected in time to prevent large accumulations of fuel, even in summer when flying with the doors open, because of fuel stains and post-flight observations. The cabin heater air would not be an ignition source. Under cold ambient conditions, in which the cockpit is closed, a fuel leak smell would be detected much earlier.

The manufacturer has provided the FAA information on current part numbers and equivalent AN Standard part numbers for some components and fittings required to be installed by the proposal. The incorporation of this information will correct an error in the proposal and make it easier for the field to procure parts for compliance. The manufacturer also recommended that airplane models requiring identical modifications be grouped together in one paragraph to reduce the length and complexity of the AD. These non-substantive changes have been incorporated in the adopted AD. Sketches provided by the manufacturer illustrating the modification have also been added.

Also, an instructional placard required by the proposal is being reworded to more clearly reflect the required action. Accordingly, the AD is being adopted without any substantive change.

The FAA has determined that this regulation involves approximately 43,000 airplanes. The average cost per airplane is estimated to be $46. Very few small entities operate this type of aircraft and those small entities that are impacted by this AD only operate a few aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for the action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, §39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Piper: Applies to all Models of J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20 and PA-22 series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD or at the next annual inspection, whichever occurs first, unless fuel tank quick drain valves have previously been installed except that the placard described in paragraph (e) must be installed in these airplanes.

To prevent engine stoppage or malfunction due to the accumulation of water or other contaminants in the fuel system, accomplish the following:

(a) For Models J-3, J-4 (S/N 4-1 through 4-1377, 4-1379 through 4-1384), PA-15, and PA-17 series airplanes with fuselage fuel tanks and 3/8 National Pipe Thread (NPT) drain boss:

(1) Drain fuel tank.

(2) Remove fuel tank drain plug, Piper Part Number 70151, from the lower aft portion of the fuel tank.

(3) Install elbow, Piper Part Number 458-883, (AN915-3D) reducer/adapter Piper Part Number 453-618, (AN912-3D) and drain valve, Piper Part Number 22179-00 or FAA approved equivalents per Figure 1 of this AD.

(4) Install clear plastic tube ¼ inch I.D. × ⅜ inch O.D. (Available from Piper Aircraft Corporation as P/N 189543 in one foot length increments.) The tubing shall be long enough to extend from the drain valve to a minimum of 1 inch below the lower fuselage skin.

(5) Add appropriate clamp to the tube at the drain valve and secure plastic tube to the existing fuel feed line and/or adjacent airplane structure.

(6) Route the tube clear of the rudder pedals or pilots feet and drill a ⅝ inch hole in the fuselage bottom skin near the centerline if the engine has two exhaust tailpipes or on the side opposite the engine exhaust tailpipe if it has only one.

(7) Install ⅝ inch I.D. grommet (AN931-6-10 or equivalent) in the lower fuselage skin where the clear plastic drain tube exits the fuselage.

(8) Add fuel, check for leaks and assure that the fuel drains clear of the airplane.

(b) For Model PA-16 series airplanes which have a wing tank with a ¼ NPT drain boss and fuselage tank with a ⅜ NPT drain boss, install quick drain valves, Piper P/Ns 22179-00 and 491-806 or FAA approved equivalents in accordance with the following procedure:

(1) Install fuselage quick drain Piper P/N 22179-00 by repeating the procedure set forth in paragraph (a) steps (1) through (8).

(2) Drain wing fuel tank.

(3) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(4) Remove the fuel tank drain plug, Piper Part Number 70151.

(5) Install reducer adapter Piper P/N 453-616 (AN912-1D) and fuel drain valve 491-806 or FAA equivalent per Figure 2 of this AD.

(6) Add a ¾ inch diameter hole in the inspection cover at the quick drain location.

(7) Add fuel, check for leaks, check for proper quick drain operation and install inspection cover.

(c) For Models J-4 (S/N 4-1378, 4-1385 and up), J-5, PA-12 and PA-14 series airplanes with wing tanks incorporating a ⅜ NPT drain boss inside the wing, install drain valve, Piper P/N 491-806 or FAA approved equivalent in accordance with the following procedure:

(1) Drain fuel tank.

(2) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plug.

(4) Install special Piper adapter, Piper P/N 453-618 (AN912-3D) and fuel drain valve P/N 491-806 or FAA approved equivalents per Figure 2 of this AD.

(5) Add ¾ inch diameter hole in the inspection cover at the quick drain location.

(6) Add fuel, check for leaks, check for proper operation of the quick drain valves and install inspection cover.

(d) For Models PA-11, PA-16, PA-18, PA-18A, PA-20 and PA-22 series airplanes which have wing fuel tanks incorporating a ¼ NPT drain boss, install drain valve Piper P/N 491-806 on FAA approved equivalent in accordance with the following procedures:

(1) Drain fuel tank.

(2) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plug.

(4) Install reducer/adapter Piper P/N 453-616 (AN912-1D) and fuel drain valve P/N 491-806 or FAA approved equivalents per Figure 2 of this AD.

(5) Add a ¾ inch diameter hole in the inspection cover at the quick drain location.

(6) Add fuel, check for leaks, check for proper operation of the quick drain valve and install inspection cover.

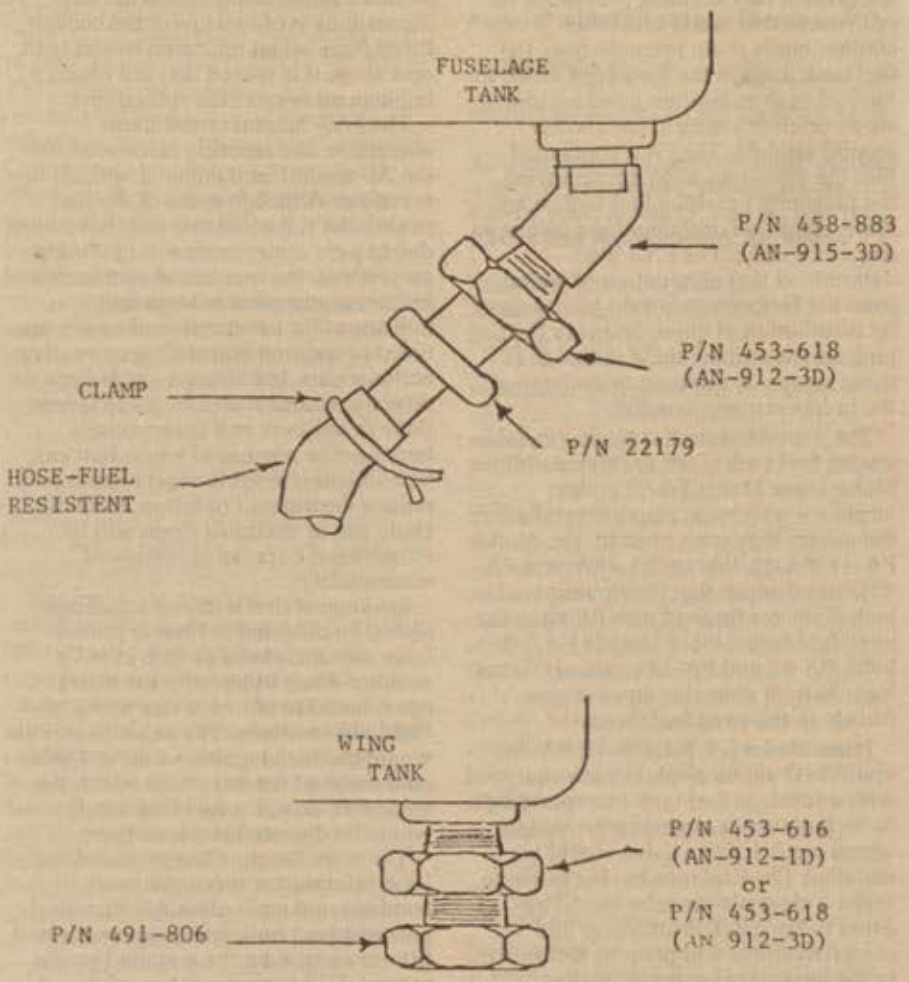
Note.—Drain Valve, Piper P/N 491-806, is designated for use with sample cup, Piper P/N 67728-00. Piper Service Spares Letter SP-6 dated February 5, 1960, pertains to this subject.

(e) For all aircraft models affected by this AD, after complying with paragraphs (a) through (d) above, install a permanent placard in the cockpit in a location visible to the pilot, using letters ⅛ inch minimum height. The placard must read as follows:

"DRAIN ALL FUEL SUMPS BEFORE FIRST FLIGHT OF EACH DAY"

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent method of compliance with this AD may be used when approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.



(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);

§ 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

This amendment becomes effective on April 4, 1985.

Issued in Kansas City, Missouri, on March 20, 1985.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 85-7460 Filed 3-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-53]

Designation of Transition Area; Dumas, AR

Correction

In FR Doc. 85-6453 appearing on page 10939 in the issue of Tuesday, March 19, 1985, make the following correction: In the heading, the Airspace Docket Number should appear as set forth above.

BILLING CODE 1505-01-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-9]

Salt Lake City, Wendover, & Delta, UT; Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published descriptions of the Salt Lake City, Wendover, and Delta, Utah, transition areas. Several restricted areas and an airway referred to in the description of these three transition areas have been renumbered or redescribed. This action does not increase the size of the transition areas, but makes only editorial changes in the descriptions.

DATES: Effective Date: 0901 G.m.t., June 7, 1985. Comments must be received on or before May 24, 1985.

ADDRESSES: Send Comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration Docket No. 85-ANM-9, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration Docket No. 85-ANM-9, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves editorial changes to the descriptions of the Salt Lake City, Wendover, and Delta, Utah, transition areas, and, thus, 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 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make editorial changes to the published descriptions of the Salt Lake City, Wendover, and Delta, Utah, transition areas. Airspace docket 85-ANM-11 (50 FR 4966) renumbered several restricted areas and redescribed an airway contained in the descriptions of these three transition areas. This action does not enlarge the size of the transition areas but makes only editorial changes in the descriptions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Since this amendment is only editorial or corrective in nature, and imposes no additional regulatory or economic burden on any person, notice and public procedure hereon are unnecessary.

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, 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

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:

Salt Lake City, Utah [Amended]

Replace "R-6402" with "R-6402A, R-6402B, and R-6406B".

Wendover, Utah [Amended]

Replace "V-253" with "a line extending from latitude 40° 47'07.7" N., longitude 113°51'10.9" W.; north to latitude 41°17'22.7" N., longitude 113°55'06.5" W.;".

Delta, Utah [Amended]

Replace "R-6402" with "R-6402A and R-6405".

(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 11.69)

Issued in Seattle, Washington, on March 11, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-7461 Filed 3-28-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6652]

Suspension of Community Eligibility Under the National Flood Insurance Program; New Shoreham, RI, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this

rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Rhode Island: Washington	New Shoreham, town of	440036B	Oct. 16, 1975, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Jan 3, 1975 and Oct. 1, 1983	Apr. 3, 1985.
Region II					
New Jersey: Essex	North Caldwell, township of	3401909	May 2, 1975, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	June 7, 1974 and June 11, 1976.	Do.
New York:					
Oneida	Kirkland, town of	3605318	Dec. 17, 1974, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Aug. 2, 1976 and May 14, 1978.	Do.
Onondaga	Lafayette, town of	360581B	Sept. 13, 1974, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Aug. 2, 1974 and July 16, 1976.	Do.
Orange	Minisink, town of	360620C	July 2, 1975 Emerg.; July 27, 1979, Reg.; Apr. 3, 1985, Susp.	Apr. 12, 1974 and July 9, 1976.	Do.
Madison	Sullivan, town of	360488B	July 16, 1975, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Oct. 8, 1976	Do.
Region V					
Indiana: Allen	Fort Wayne, city of	18003	May 24, 1974, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Feb. 15, 1974 and Jan. 30, 1976.	Do.
Ohio:					
Champaign	Unincorporated areas	3900558	May 12, 1976, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Dec. 23, 1977	Do.
Hamilton	Harrison, city of	390020C	July 7, 1975, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Feb. 15, 1974, May 21, 1976 and Dec. 24, 1976	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region VI					
Texas: Tarrant	Euless, city of	480593B	Aug. 20, 1974, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	March 22, 1974 and Dec. 17, 1976.	Do.
Region VII					
Missouri:					
Butler	Unincorporated areas	290044B	April 26, 1984 Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Sept. 1, 1985	Do.
Warren	Unincorporated areas	290443B	June 1, 1984, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Sept. 1, 1983	Do.
Nebraska: Gage	Barneston, village of	310090B	Sept. 21, 1976, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Sept. 6, 1974 and Nov. 21, 1975.	Do.
Region X					
Oregon: Linn and Benton	Albany, city of	410137C	July 2, 1974, Emerg.; Apr. 3, 1985, Reg.; Apr. 3, 1985, Susp.	Feb. 22, 1974, Feb. 11, 1977 and Apr. 4, 1978.	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 [title XIII of the Housing and Urban Development Act of 1968]; effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: March 22, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–7473, Filed 3–28–85; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Final staff guidelines and analysis of public comments.

SUMMARY: The Federal Trade Commission publishes the final staff guidelines for State exemption petitions from the Funeral Rule. The Guidelines describe: (1) The material that a State should submit to the Commission in its exemption application, (2) the procedures that are required by current Commission rules for considering exemption applications, and (3) the specific procedures staff will recommend that the Commission use in granting, denying or revoking exemptions under the Funeral Rule. The Guidelines have not been officially approved or adopted by the Commission and are not binding on the Commission. Moreover, the Guidelines neither amend nor modify the Funeral Rule. Rather, the purpose of the Guidelines is to give States and other interested parties as much advance guidance as possible regarding how the exemption proceedings will be handled by the staff.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave, 202/376–2805, Lewis Rose, 202/376–2863, or Raouf M. Abdullah, 202/376–2891, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: This notice consists of two parts. Part I contains an analysis of the public comments staff received when the proposed Guidelines were published for comment. Part II contains the actual staff Guidelines.

I. Analysis of Public Comments

A. Introduction

On March 15, 1984, draft procedural Guidelines for handling State exemption requests were published in the **Federal Register** for a 30 day public comment period.[1] The Guidelines were prepared by staff in an effort to assist States in preparing requests for exemptions under § 453.9 of the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, [the "Rule" or "Funeral Rule"], 16 CFR Part 453 [1984].

Section 453.9 of the Funeral Rule implements section 19(d) of the FTC Improvements Act of 1980, 15 U.S.C. 57a note 13 [1983]. Section 453.9 provides that:

> If, upon application to the Commission by an appropriate state agency, the Commission determines that:
>
> (a) There is a state requirement in effect which applies to any transaction to which [the Funeral Rule] applies; and
>
> (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the [Funeral Rule]:
>
> then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.

The effect of an exemption is that the Federal Rule is not in effect in that State. The Guidelines explain the procedures that staff will follow in handling requests for exemptions.

In response to the request for comments on the proposed Guidelines, staff received comments from the following interested parties: the Continental Association of Funeral and Memorial Societies, Inc., Washington, D.C.;[2] the Colonial Funeral Home, Inc., New York, New York;[3] the Pennsylvania Association of Memorial Societies, Harrisburg, Pennsylvania;[4] the Conference of Funeral Service Examining Boards, Washington, Indiana;[5] and the New York State Funeral Directors Association, Inc.; New York, New York.[6]

Staff appreciates the efforts of the commenters. Staff has carefully analyzed and considered all the comments. Each of the comments has provided helpful insights as to the nature of the substantive and procedural problems that may arise in State exemption proceedings. On the basis of its analysis, however, staff believes that no changes in the Guidelines, as initially published, are necessary at this time. But, as discussed below, the fact that these suggestions are not incorporated

[1] 49 FR 9743 [Mar. 15, 1984] (hereinafter "Guidelines"). The public comment period ended on April 14, 1984.

[2] Public Document XXIV–4 (hereinafter "Continental").

[3] Public Document XXIV–1 (hereinafter "Colonial").

[4] Public Document XXIV–2 (hereinafter "PAMS").

[5] Public Document XXIV–5 (hereinafter "CFSEB").

[6] Public Document XXIV–3 (hereinafter "NYSFDA").

into the final Guidelines does not mean that some of the procedural suggestions will not be utilized in appropriate circumstances. Similarly, the Commission remains free to impose procedures different from or in addition to those listed in the staff Guidelines. Staff's analysis of the comments regarding each provision of the Guidelines appears in Section B, below. The complete Guidelines appear in Part II, *infra*.

B. Analysis

1. Consultation With Staff

The Guidelines state that staff will be available to consult informally with State officials on both substantive and procedural questions.[7] This provision simply reflects the existing practice to provide informal staff advice to parties regarding the Commission's processes. The staff is also, of course, available to meet with other interested individuals who are not parties to the proceeding.

Two parties commented on this provision of the Guidelines. They did not object to such consultations, provided staff made the consultations subject to public notice and as long as the meeting were open to the public.[8] The comments suggested that if such consultations were conducted over the telephone or through correspondence, then phone logs and copies of the correspondence should be made publicly available.

After an exemption proceeding has begun, staff intends to place written comments regarding the proceeding on the record. At that time, staff will also place on the public record any factual information received orally on which it relies in making its recommendation. Moreover, under the procedures that the Commission indicated it would follow in the Statement of Basis and Purpose for the Funeral Rule,[9] exemption proceedings will be subject to the restrictions on *ex parte* communications applicable to a section 18 rulemaking proceeding "adapted in such form as may be appropriate to the cirsumstances of the particular proceeding."[10] The restrictions on *ex parte* communications in a section 18 rulemaking proceeding are set forth in 16 CFR 1.18(c). In brief, they require that a communication on the merits to a Commissioner from a person outside the Commission be placed on the record of the proceeding, and that a communication on the merits to a Commissioner from the rulemaking staff be disclosed on the record to the extent it contains any fact not already on the record.

However, further formalizing the process by requiring prior public notice or open meetings for all consultations would make the process less useful. It would also impose unnecessary expense, delay and logistical constraints on an otherwise informal process.[11]

Staff believes that the informal consultation process will encourage States to seek preliminary guidance so that possible deficiencies in State regulations can be spotted and resolved quickly, thereby avoiding unnecessary delay and expense to all parties. Consequently, this section of the Guidelines remains unchanged.

2. Criteria for Determination

The Guidelines note that the Commission will not set forth a rigid formula for evaluating petitions, but rather make case-by-case determinations on the basis of a number of factors,[12] including:

> [S]uch things as the means available to the State to enforce its provisions, the existence of any private rights of action by an aggrieved consumer, the scope and format of the required price disclosures to funeral consumers and the extent to which consumers are being protected from the unfair or deceptive acts or practices defined in the Rule.[13]

Continental and PAMS suggested that a specific formula or substantive criteria be established to determine whether a State's law provides an overall level of protection which is as great as, or greater than, the protection afforded by the Funeral Rule. In the absence of such a formula or criteria, they suggested that only conditional exemptions should be granted.[14]

However, in the Statement of Basis and Purpose for the Funeral Rule, the Commission stated that it would examine petitions "on a case-by-case basis . . ." and noted that it would consider several factors in evaluating exemption petitions.[15] Because the Guidelines reflect and incorporate this expressed intent, it would be inappropriate to modify the Guidelines to include a specific formula or substantive criteria.

3. Elements of a Complete Application

a. *What State official must submit the petition?* The Guidelines call for the petition to be submitted by the State agency having primary enforcement responsibility, by the State attorney general, or by the State governor.[16] The comments received from Continental and PAMS suggest that the Guidelines should specify that the governor *and* attorney general of a State should be required to file the application for an exemption.[17] Both comments specifically note that under the criteria in the Guidelines, a State licensing board which has "primary enforcement responsibility" for that State's funeral industry regulations could submit the application.[18] Continental suggests that unless the licensing board has most of seven of the powers which it has enumerated, it should not be deemed the appropriate State agency to file a petition.[19]

Staff continues to believe that individual States should be allowed the flexibility to determine which official should submit the petition and that the entire process ensures that the views of other relevant State officials will be obtained. For example, the Guidelines state that a complete application must contain a statement from the State attorney general "that state law provides adequate authority to support the regulations, conclusions, interpretations, policies and procedures described in the statements submitted pursuant to items (1) and (2) [below]."[20] The Guidelines also note that staff will solicit the views of the governor of the State applying for the exemption.

b. *What material must be submitted?* The Guidelines explain the supporting materials States should submit as part

[7] See Section A of the Guidelines published with this notice.

[8] CAFMS at 1; PAMS at 1.

[9] Statement of Basis and Purpose for the Funeral Rule, 47 FR 42260, 42287 (Sept. 24, 1984).

[10] 16 CFR 1.26(b) (1984).

[11] In addition, staff notes that it anticipates continuing its practice of consulting informally with *all* interested parties who seek to discuss any aspect of the Rule.

[12] *See* Section B of the Guidelines published with this notice.

[13] *Id. See also* Statement of Basis and Purpose at 42287–88.

[14] Continental at 1; PAMS at 1. *See* text accompanying notes 40–41, *infra*, concerning the comments of Continental and PAMS on the issue of conditional exemptions.

[15] SBP at 42287.

[16] *See* Section C of the Guidelines published with this notice.

[17] Continental at 1; PAMS at 1. PAMS suggests that only governors should be permitted to file the petition, since the governor is the only elected official common to all States and not all States have independently elected attorneys general. PAMS at 1.

[18] Continental at 1; PAMS at 1.

[19] The powers Continental listed include: hiring of enforcement personnel, determination of qualifications for inspectors, direct supervision of the inspection caseload, direct authority to seek injunctive relief in the courts for violations, direct authority to levy fines or seek civil fines in the courts, direct authority to bring criminal prosecutions, and direct authority to revoke and suspend licenses. Continental at 1–2.

[20] *See* section C(3) of the Guidelines published with this notice.

of a complete application. As discussed in the previous section of this memorandum, item (1) and (2) below must be submitted by the State agency having primary enforcement responsibility, by the State attorney general, or by the State governor. In addition to the statement of the State attorney general, discussed above, the material to be submitted includes:

(1) A copy of all relevant State statutes, regulations and cases, and a statement comparing the State law with the Funeral Rule, on a provision-by-provision basis, and explaining how the State law affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Rule, and,

(2) Sufficient information to show the State's willingness and ability to effectively administer and enforce its law.

CFSEB recommended that staff eliminate consideration of the second element of a complete application—the State's "willingness and ability to effectively administer and enforce its law."[21] CFSEB contended that there should be a presumption in favor of the State's willingness and ability to enforce its laws [22] and that the Commission look only to the face of the State's laws or regulations, not at whether the State is willing and able to enforce its law.[23] However, in the SBP, the Commission announced its intent to examine whether the State regulation is "administered and enforced effectively" in the context of reviewing a petition for an exemption.[24] Of course, staff will give appropriate consideration to the intentions expressed by a State in its application regarding its laws and enforcement capabilities.

As CFSEB recognizes, "it would be possible for a state to enact laws and regulations which would conform to the federal requirement, and not back up those requirements with effective 'teeth'." [25] CFSEB also notes that an examination of a State's enforcement mechanisms is relevant to the consideration of that State's petition, and thus consideration of a petition should not focus solely on the face of the State law.[26] Consequently, staff believes that the willingness and ability of a State to enforce its laws and regulations is an important factor in determining whether that State affords consumers "an overall level of protection which is as great as, or greater than" that afforded by the Rule.[27] Moreover, § 435.9 of the Rule states than an exemption continues only "for as long as the State administers and enforces effectively the State requirement." The Commission therefore could commence a revocation proceeding if a State was not effectively administering its law. Accordingly, staff believes that the Commission should consider this factor in deciding whether to initially grant the exemption.

In examining information regarding a State's willingness and ability to enforce its laws, CFSEB also cautioned staff against relying too heavily on past performance history in States where the relevant laws and regulations have been recently enacted.[28] Staff acknowledges in the Guidelines that some States might not have extensive experience in enforcing those laws, yet others "may have a significant history of enforcing laws comparable to the Rule, in which case enforcement data might be highly relevant." [29] However, while the State's past history of enforcement may not be particularly significant in some cases, in others it may be one factor that the Commission would want to consider, especially where the State indicates that it intends to continue enforcement as in the past. The Guidelines take all these factors into account by requiring only sufficient information to show the States' willingness and ability to enforce its law effectively. Thus, they allow States initially to submit whatever material they believe relevant to this issue. Staff, however, could request additional data if, after reviewing the State's submissions, staff felt this was warranted under the circumstances. Thus, this approach will allow the amount of past enforcement data submitted to be tailored to the individual circumstances. This point is emphasized in the Guidelines.[30]

Another commenter questioned whether the attorney general's statement, which must be submitted with the exemption petition, is sufficient to ensure that a State licensing board will enforce the law or that it will have the resources to assure adequate protection.[31] Staff believes that the State attorney general can provide adequate assurances that State law does, in fact, provide comparable protection to the Rule, as explained in the State's application. In addition, as stated in the Guidelines, staff will specifically solicit the views of the State governor and attorney general to ensure that the Commission is made aware of the complete views of both these officials.[32]

c. *Standard of Review.* Continental commented that exemptions should not be granted to States with laws or regulations that do not provide a level of protection to consumers that is equal to or greater than *every provision* of the Funeral Rule.[33] Continental suggests a standard of review that would require absolute equivalency between the State requirement and the Funeral Rule. This appears to be inconsistent with both the Rule and statute, which allow exemptions to be granted where the "state requirement affords an *overall level* of protection to consumers which is as great as, or greater than, the protection afforded by this rule . . . ." [34]

4. Procedures for Public Participation

The Guidelines state that staff will solicit public comment on proposed exemptions and will recommend that the Commission schedule oral hearings when there are significant factual issues which can be adequately presented only through an oral hearing. Continental commented that the procedures outlined therein comprised "the most *limited* form of public participation in a process that is *already* too closed and too subjective",[35] and suggested that an

[21] CFSEB at 1–4.
[22] *Id.* at 1–2.
[23] *Id.* at 2.
[24] Statement of Basis and Purpose at 42287.
[25] CFSEB at 3.
[26] *Id.* at 4.
[27] Recently, the Commission reiterated its intention to consider this factor when reviewing a petition for an exemption from another trade regulation rule. *See* Statement of Basis and Purpose for the Credit Practices Rule, 49 FR 7740, 7783 (Mar. 1, 1984). *See also supra* note 13 and accompanying text.
[28] CFSEB at 3–4.
[29] *See* Section C(2) of the Guidelines published with this notice.
[30] *Id.*
[31] Continental at 2. *But see* Colonial at 1. "The final guidelines . . . should recognize [the] progressive trend of State law and give [State licensing] boards a prominent role to play in the consideration given exemption petitions." *Id. See supra* text accompanying note 20.
[32] PAMS suggested that if the views of the governor and State attorney general were to be solicited, then the views of consumer groups such as Common Cause, AARP and State memorial societies should also be specifically solicited. PAMS at 2. Staff notes that the purpose of soliciting the views of the governor and attorney general is to clarify the consumer protection capabilities of the State agency charged with responsibility for enforcement of the laws. Staff would, however, welcome the comments of other interested parties outside State government who could add additional perspective to the record. Such parties will have an opportunity to comment when the complete application is placed on the public record and public comments are requested in the **Federal Register**.
[33] Continental at 2–3.
[34] 16 CFR 453.9(b) (1984) (emphasis added). FTC Improvements Act of 1980, 94 Stat. 393, section 19(d), 15 U.S.C. 57a note 13 (1983).
[35] Continental at 2.

oral hearing be held before the Commission on all petitions before they are granted. Further, Continental recommended that an evidentiary hearing be held to determine the facts whenever a factual issue is raised in the written comments.[36]

The exact procedures to be used in any exemption proceeding, of course, will be specified by the Commission. But absent extraordinary circumstances, staff continues to believe that evidentiary hearings and rebuttal comment periods should be scheduled only where necessary for a full and fair presentation of significant issues.

PAMS addressed the public participation procedures, suggesting that in addition to a public notice in the **Federal Register** soliciting comments on the proposed exemption, notice should be published in the legal journal of the State affected.[37] PAMS recommended that material placed on the Commission's public record also be made publicly available within the State requesting the exemption.[38] Finally, Colonial stated that the final guidelines should give State "consumer/industry advisory boards" a prominent role in the exemption process.[39] Staff believes that these are useful suggestions, but that it is not necessary to specify in the Guidelines all the means that might be used to ensure full public discussion of proposed exemptions.

5. Grant of Exemption: Notice and Reporting Requirements

a. *Conditional exemptions.* Continental suggested that in the absence of specific standards for evaluating petitions, only limited conditional exemptions for periods of under two years should be granted.[40] As previously discussed, the Commission stated in the Statement Basis and Purpose for the Funeral Rule that it would consider many factors in assessing petitions, and make determinations on a case-by-case basis. Staff believes that this process will provide the Commission with sufficient information to decide requests for petitions non-conditionally in most instances.[41] The purpose of including the conditional exemption procedures in the Guidelines was to indicate to States that in truly extraordinary circumstances, staff may consider recommending conditional exemptions. Participants in the exemption process may, of course, request that any particular exemption be granted only on a conditional basis.

b. *Reporting requirements.* The Guidelines state that staff will recommend that exempt States be required to submit reports to keep the Commission informed as to the status of enforcement activities and changes in State law. Two comments were received that addressed the Guidelines' proposed reporting process following the grant of an exemption. Both PAMS and CFSEB agreed with staff that reporting by a State was necessary to keep the Commission apprised of the status of the State's laws and regulations.[42] However, PAMS commented that simple notice of changes in laws, regulations, policies or procedure would be insufficient unless there is some indication from the staff of the "quality" expected in these notices.[43] CFSEB commented that in examining such reports, staff should not use an "objective" standard of review, *e.g.*, the number of licenses revoked, but rather that each individual State report be assessed on its own merits.[44] CFSEB further suggested that the Commission employ a presumption in favor of the exempt State regarding ongoing enforcement, and therefore not analyze reports for the *quality* of enforcement activity absent probable cause to believe that a State is not enforcing its laws.[45]

Staff intends to review the reports submitted by exempt States to determine whether any changes in law, policy or procedure would significantly affect whether *that* particular State's law continues to provide an overall level of protection which is as great as, or greater than, the protection afforded by the Rule. As suggested by the Guidelines, staff will be interested in the overall level of compliance with the State law and rules, not simply the number of enforcement or corrective actions taken. Staff will examine all relevant data and not rely on rigid tests or standards in examining the reports.

c. *Other issues.* Two interested parties submitted comments suggesting that after staff recommends to the Commission that a particular State's petition be granted, funeral providers in the State could comply with the State law instead of the Funeral Rule.[46] Staff disagrees. Under the proposal, staff's recommendation would then be equivalent to granting of an exemption. However, staff recommendations are non-binding on the Commission, which will reach its own conclusions. Only the Commission is empowered to determine that a State should be exempt from the provisions of the Funeral Rule. Thus, a staff recommendation that the Commission grant a State's petition for an exemption should not be taken as a signal to funeral providers in that State that they need only comply with the applicable laws of that State.[47]

II. The Guidelines

Below, the Guidelines, as originally published on March 15, 1984, (49 FR 9743) are reproduced.

A. Consultation with Staff

Commission staff will be available to consult informally with State officials on both procedural and substantive questions that may arise concerning requests for exemptions. State officials should be aware, however, that the Commission may not have ruled on some issues that may arise and under such circumstances, staff may be unable to provide definitive guidance on how the Commission will decide such issues. Also, staff advice will not be binding on the Commission.

B. Criteria for Determination

These guidelines are not intended to set forth substantive criteria for determining whether a State's law provides an overall level of protection which is as great as, or greater than, the protection which is as great as, or greater than, the protection afforded by the Funeral Rule. Rather, the Commission will make a case-by-case determination of the overall level of protection afforded by the State law and whether the State law is administered and enforced effectively. No rigid formula can be set forth for guiding the Commission in this determination.

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[36] *Id.*

[37] PAMS at 2. In reference to this section, PAMS also suggested that the phrase "any person" be more clearly explained. *Id.* Staff feels that this term does not lend itself to ambiguity and that it need not be further defined.

[38] *Id.*

[39] Colonial at 1.

[40] Continental at 3.

[41] *See supra* notes 12-15 and accompanying text concerning the comments of Continental and PAMS that specific criteria should be used in evaluating petitions.

[42] PAMS at 2; CFSEB at 4.

[43] PAMS at 2.

[44] CFSEB At 5.

[45] *Id.* at 5-6. Staff believes that both Section 19(b) of the FTC Improvements Act of 1980 and § 453.9 of the Funeral Rule contemplate some form of periodic substantive review to determine that exempt States continue to administer and enforce effectively the State requirements.

[46] NYSFDA at 1; Colonial at 2.

[47] *Cf.* 15 U.S.C. 57a[g][3]. The FTC Act specifically states that the mere pendency of a proceeding under section 18[g] of the Act respecting an exemption from a Commission rule shall not stay the applicability of that rule. *Id.* While this statutory provision does not govern exemption proceedings under § 453.9 of the Funeral Rule, staff believes that it would be equally improper to deem a recommendation by staff that the Commission grant an exemption as a stay of the Rule insofar as it applies to the applicant.

Factors which the Commission may consider include such things as the means available to the State to enforce its provisions, the existence of any private rights of action by an aggrieved consumer, the scope and format of required price and other disclosures and the extent to which consumers are being protected from the unfair or deceptive acts or practices defined in the Rule.

C. Elements of a Complete Application

States should submit the following information and material as part of a complete application for an exemption. Items (1) and (2) may be submitted by the State agency having primary enforcement responsibility for the law which is the subject of the exemption application, by the State attorney general, or by the State governor.

(1) The application should include a copy of all relevant State statutes, regulations and court cases, and a statement comparing the State law with the Funeral Rule, on a provision-by-provision basis, and explaining how the State law applies to the same transactions as the Rule and affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Rule. For each provision of the Funeral Rule, this statement should cite any corresponding provisions of State law and discuss the extent to which State law provides protection comparable to that provision of the Rule. The overall objective of the statement should be to explain how State law provides an overall level of protection which is as great as, or greater than, that afforded by the Rule.

(2) The application should provide sufficient information to show the State's willingness and ability to effectively administer and enforce its law. In preparing its recommendation to the Commission, staff will consider the following information to be relevant to this determination.

(a) The fiscal arrangements and funding of the State agency (or agencies) which are, or will be, enforcing the State law, or other information showing that the State agency has adequate funding to properly enforce the law.

(b) The number and qualifications of persons engaged in the enforcement and administration of the State law, or other information indicating that the State has adequate qualified personnel to administer and enforce the law. In describing the qualifications of personnel, States need not provide detailed resumes, but should indicate the general background and training of the personnel, *e.g.*, whether they are attorneys, accountants, trained investigators, etc.

(c) The State's enforcement procedures and policies, current or planned.

(d) The State's past history of enforcement of any statutes or regulations governing funeral practices which are comparable to the Rule.

(e) The level of compliance with any State statutes or regulations governing funeral practices which are comparable to the Rule, insofar as this information is relevant to the State's enforcement history.

Staff recognized that some of the information described in items (a)–(e) may not be relevant or available in certain States and that each State application must be tailored to the individual circumstances of that State. Past enforcement data, for example, may differ from State to State. Some States may have made extensive changes in their law or enforcement policies just prior to filing an exemption, in which case past enforcement data would be less relevant. Other States may have a significant history of enforcing laws comparable to the Rule, in which case enforcement data might be highly relevant. Thus, these guidelines allow States some flexibility in preparing their applications. However, once staff has reviewed a State's submission, staff may request additional information which it believes to be relevant.

(3) A complete application for an exemption must also include a statement from the State attorney general that State law provides adequate authority to support the regulations, conclusions, interpretations, policies and procedures described in the statements submitted pursuant to items (1) and (2) above. Where appropriate, this statement may include citations to the specific statutes, regulations, and judicial decisions which demonstrate adequate authority. The statement should also discuss any pending legal challenges to the statutes, regulations, conclusions, interpretations, policies and procedures described in the statements submitted pursuant to items (1) and (2).

D. Procedures for Public Participation

As stated in the Funeral Rule Statement of Basis and Purpose (47 FR at 42287), the Commission will follow the procedures of § 1.16 of the Commission's Rules of Practice in considering requests for State exemptions. This section states that any person to whom a rule would otherwise apply may petition the Commission for an exemption from such rule and that the procedures for determining such a petition shall be those of Subpart C of the Commission's rules.

Subpart C of the Commission's Rules of Practice, 16 CFR 1.21–1.26, requires the Commission, in general, to publish notice of a proposed exemption in the **Federal Register**, and to allow a period of time for interested parties to submit written comments concerning the application.[48] The rules also provide that an oral hearing on a proposed exemption may be held within the discretion of the Commission.[49]

Once a complete application for an exemption, as described above, has been received, staff will recommend that the Commission place this material on the public record, publish a notice in the **Federal Register** and allow a period of time for interested persons to submit written comments. During the comment period, staff will specifically solicit the views of the State governor and attorney general to ensure that the Commission becomes aware of the complete views of both of these officials. While the Commission's rules provide that oral hearings may be held within the discretion of the Commission, staff anticipates that in most instances a period for written comments may well be sufficient for a full and fair presentation of significant issues and that there will be no need to schedule oral hearings or additional comment periods.

Staff plan to recommend that the Commission schedule an oral evidentiary hearing only if there are significant factual issues which can only be adequately presented through an oral hearing. Staff anticipates that this will usually be true only where cross-examination is necessary to fully and fairly present significant factual issues. Staff does not believe that oral evidentiary hearings should be held routinely or simply to allow parties to state opinions and facts which could be presented through written comments, and will recommend against evidentiary hearings under such circumstances.[50]

Staff believes that oral presentations before the Commission generally should not be allowed, absent unusual and compelling circumstances. Under most circumstances, interested parties will be

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[48] 16 CFR 1.26(b) (1984). Public notice and comment may be omitted if the Commission for good cause finds that notice and public procedure are impractical, unnecessary or contrary to the public interest and incorporates such finding and a brief statement of the reasons therefor in its final decision. 16 CFR 1.26(b) (1984).

[49] 16 CFR 1.26(c) (1984).

[50] Staff will recommend that any evidentiary hearings which are scheduled be strictly limited to specific factual issues designated by the Commission.

able to present their views and evidence fully and fairly during the written comment period and any oral evidentiary hearings or rebuttal comment periods that are scheduled. However, oral presentations may be allowed in limited instances, within the discretion of the Commission.

Subpart C of the Commission's Rules does not mention the scheduling of rebuttal comment periods; however, the scheduling of such comment periods is within the discretion of the Commission. Staff plans to recommend that a period for rebuttal comments be scheduled only if this is necessary for a full and fair presentation of significant issues.

Interested parties may request that the Commission schedule an oral hearing or a period for rebuttal comments. (The Commission may also schedule such proceedings on its own initiative, absent a request by interested parties.) Such requests should give specific reasons for scheduling such proceedings and should discuss the criteria which will guide the staff recommendation, discussed above. Staff anticipates that the need for oral hearings will generally be determined after the initial comment period. The need for a rebuttal comment period could also be determined at that time.[51] The **Federal Register** notice announcing an exemption proceeding will give specific details regarding how interested parties may file requests for oral hearing and rebuttal comment period.[52]

E. Grant of Exemption: Notice and Reporting Requirements

Section 1.26(d) of the Commission's Rules of Practice [53] provides that after the Commission has considered all relevant matters, including those presented by interested persons in the proceeding, the Commission will publish notice of its decision in the **Federal Register.**

If the Commission grants an exemption, the exemption will continue only for so long as the State effectively administers and enforces its law. To ensure that the conditions for an exemption continue to be met, staff plans to recommend that the Commission condition State exemptions on a requirement that the State provide notice of any changes in its law, policies or procedures which would significantly affect whether the State law provides an overall level of protection to consumers which is as great, as, or greater than, the protection afforded by the Rule or whether the State is effectively enforcing its law.

Staff also plans to recommend that the Commission require an exempt State to submit such reports regarding its enforcement activities as are necessary or desirable to ensure that the State is effectively enforcing and administering its law. Staff anticipates that the Commission will decide, at the time of granting an exemption, the nature and frequency of any such reports which may be necessary or desirable. Staff may also recommend that the Commission change the reporting requirements at a later date, if circumstances warrant, or recommend that the Commission request additional information from a State if the Commission determines that this is needed. Staff anticipates that reporting requirements may vary from State to State if the Commission determines that there are significant differences among States which would warrant differing reporting requirements.

Under extraordinary circumstances, staff may recommend that the Commission grant a conditional exemption, subject to Commission review after a prescribed period of time. If such a recommendation were adopted by the Commission, the State involved would be required to reapply for an exemption at the end of the prescribed period, by updating its original application and submitting evidence demonstrating effective enforcement activity during the period. The Commission would review this material, after scheduling a period for written comments, and possibly oral hearings and a period for rebuttal comments. The Commission would then determine whether to approve the State's exemption application; at that point the conditional exemption would expire. Such a conditional exemption may be recommended for a State that (1) has adopted a statute or rules adequate to satisfy the exemption criteria, and (2) has presented evidence that it is willing and able to enforce the statute or rules, but (3) has little or no history of effective enforcement of funeral statutes or rules similar to the Rule.

F. Denial of Exemption

Staff may recommend that, if the Commission believes that an exemption should be denied, after considering the evidence submitted during the public proceeding, the State be given a chance to revise or supplement its application, before the Commission makes a final decision. Thus, under some circumstances, staff will recommend that the Commission give a State an opportunity to submit additional data or arguments to supplement its application or to make changes in its law, policies or procedures in order to meet the requirements for an exemption. This would occur after the public comments had been received and considered.

Factors which staff considers relevant in deciding whether to grant such an opportunity include the nature and extent of any revisions or supplements that may be necessary, the time period needed to implement such revision and the State's intent with regard to implementing the revision. If the necessary revisions can be made fairly quickly and easily, staff will generally recommend that a period for revision be granted. On the other hand, where the time period needed by the State to implement the revisions is extensive or where there is doubt about whether the revisions can or will be made, staff will generally recommend against such a period. Of course, even if an exemption is denied, a State can always submit a new exemption application if and when revisions have been made.

During any such period of time granted a State to make revisions, the Commission's rule shall remain in effect in such state, until the Commission publishes a notice in the **Federal Register** stating that it has granted an exemption.

If the Commission decides to deny an exemption, after considering all relevant material, and after allowing the State such opportunity for revisions as the Commission decides is desirable, if any, § 1.26(d) of the Commission's Rules requires the Commission to publish notice of its decision in the **Federal Register**, along with a concise statement of its reasons.

G. Revocation of Exemptions

If staff has reason to believe that an exemption which has been granted may no longer be warranted, staff will recommend that the Commission initiate proceedings to revoke the exemption.[54] Interested persons may also file a petition stating reasonable grounds for revoking an exemption, as provided by 16 CFR 1.25.

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[51] If, at the time staff receives an exemption application, staff anticipates that a rebuttal period will be necessary, it will recommend at that time that one be scheduled. In many instances, however, it will not be clear whether a rebuttal comment period is necessary until after the initial written comments have been received.

[52] States could also include requests for such proceedings with their exemption application, citing specific reasons why they would be necessary.

[53] 16 CFR 1.26(d) (1984).

[54] Subpart C of the Commission's Rules of Practice deals with revocation proceedings only by stating that procedures for the amendment or repeal of a rule are the same as for the issuance thereof. 16 CFR 1.25 (1984).

Before recommending that the Commission initiate procedures to revoke an exemption, staff will notify the State of the alleged facts or conduct that staff believes may warrant revocation and will afford the State a reasonable period of time to reply to the allegations or make any changes the State may decide to make.

Staff anticipates that procedures for revocation proceedings will be similar to those used for granting or denying exemptions. Public notice and a period of time for interested parties to submit written comments are generally required by § 1.26(b) of the Commission's Rules of Practice,[55] and oral hearings may be held within the discretion of the Commission. Staff plans to recommend that oral hearings and rebuttal comment periods only be scheduled where necessary for a full and fair presentation of significant issues.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7483 Filed 3-28-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R-85-965; FR-1415]

Withdrawal of Final Rule for the TMAP Program

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

ACTION: Withdrawal of final rule.

SUMMARY: The Temporary Mortgage Assistance Payments (TMAP) program is authorized by section 341 of the Housing and Community Development Act of 1980 (Pub. L. 96-399, 94 Stat. 1614), amending section 230 of the National Housing Act (12 U.S.C. 1715u). HUD published a proposed rule to implement the program on April 2, 1982 (47 FR 14495). On August 2, 1982, the Department published a final rule in the **Federal Register** (47 FR 33252). However, that final rule contained no date certain as the effective date. Since implementation of that rule was judicially enjoined (*Ferrell* v. *Pierce*, 560 F. Supp. 1344, N.D. Ill., 1983; aff'd 743 F.2nd 454, 7th Cir., 1984), the Department has not made that rule effective. A revised final rule is under consideration by HUD. However, to avoid confusion in this period since the injunction and before publication of a revised final rule, HUD is withdrawing the final rule that was never made effective.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 24 of the Code of Federal Regulations, in which all HUD final regulations are codified, is published annually based on all rules published in the **Federal Register** by April 1 of that year. The 1983 and 1984 editions have carried the language of the August 1982 rule with a note that it was not effective until an effective date was published in the **Federal Register**. The August 1982 final rule is being withdrawn at this time to ensure that it does not appear in the 1984 edition of the Code of Federal Regulations.

The Department hereby withdraws the final rule entitled "Mutual Mortgage Insurance and Rehabilitation Loans; Temporary Mortgage Assistance Payments and Assignments to HUD" published on August 2, 1982 (47 FR 33252).

Authority: 42 U.S.C. 3535(d).

Dated: March 25, 1985.

Shirley McVay Wiseman,

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

[FR Doc. 7356 Filed 3-28-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 16, 20 and 23

Estates of Indians of the Five Civilized Tribes; Financial Assistance and Social Services Program; and Indian Child Welfare Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule that amends existing Estates of Indians of the Five Civilized Tribes regulations to reflect the consolidation of the Muskogee Field Office of the Solicitor with the Tulsa Regional Office of the Solicitor.

The Bureau is also amending existing Financial Assistance and Social Services Program regulations to implement changes as directed by the congressional directive in the Fiscal Year 1983 Appropriations Conference Report No. 97-978, dated December 17, 1982. The report states on page 20 that: "The managers direct the Bureau to move expeditiously to implement changes in the general assistance program to bring payments into conformance with State payments in those States where the standard of need exceeds actual payments. The regulations shall provide flexibility for the Bureau to adjust payments as such payments may be adjusted by the States." This practice by some State public welfare agencies has been employed over the years to accommodate State budgetary constraints, and is commonly referred to as a "Rateable Reduction".

Other revisions of Financial Assistance and Social Services Program regulations are being amended to clarify the definition of basic need items, "near reservation", and to emphasize the Bureau's responsibility to administer general assistance programs only in localities where such programs will not duplicate existing general assistance programs.

Amendments, additions and corrections are also being made in the Indian Child Welfare Act regulations to: (1) Define the term "multi-service Indian center"; (2) provide address corrections for the Bureau's Minneapolis Area Office and Sacramento Area Office; (3) include a new section to assure timely filing of vouchers for legal fees; (4) include multi-service Indian centers as eligible grant applicants; (5) allow multi-service Indian centers to be eligible to apply for grants to serve designated "near reservation" areas; (6) correct a printing error appearing in the existing regulations; (7) add "date of birth" to the list of identifying data required of State courts when notifying the Bureau of final decrees or adoptive orders for any Indian child; and (8) make other changes to coincide with the revisions outlined above.

EFFECTIVE DATE: April 29, 1985.

FOR FURTHER INFORMATION CONTACT: Eddie F. Brown, DSW, Chief, Division of Social Services, Bureau of Indian

[55] Public notice and written comment need not be provided if the Commission for good cause finds that notice and public procedure are impractical, unnecessary or contrary to the public interest and incorporates such finding and a brief statement of the reasons therefor in its final decision. 16 CFR 1.26(b) (1984).

Affairs, telephone number: (202) 343–6434.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

25 CFR Part 16 is amended to inform the public that the Muskogee Field Office of the Solicitor has been combined with the Tulsa Regional Office of the Solicitor.

25 CFR Part 20 is being amended primarily to institute application of a "rateable reduction" in the Bureau of Indian Affairs' general assistance program.

With the enactment of the 1981 Omnibus Budget Reconciliation Act, which made many changes in the Aid to Families with Dependent Children (AFDC) program, many States increased the standard of need and imposed a rateable reduction on actual payment levels to maximize available funding in the Federal/State matching formula. (An American Public Welfare Association report issued December 28, 1982, indicated that 21 of the 50 States had increased their standards of need.) This situation created some marked differences between the standards of need and the actual levels of payment, which brought the issue to the attention of the Congress. The Bureau has had a long-standing policy (since 1944) of making general assistance payments at 100 percent of the established standard of need in the State wherein the recipient resides. As the procedure in states where the level of payment is less than the standard of need varies as to the application of available net income, the Bureau will follow the respective state procedures with regard to net income in actual payment level and the standard of need.

25 CFR Part 23 is amended primarily to implement changes in the Indian Child Welfare Act grant program.

Proposed regulations amending Parts 16, 20 and 23 were published on January 11, 1984 (49 FR 1361), and a correction was published on January 19, 1984 (49 FR 2267).

The comment period on the proposed rule was extended to close on February 21, 1984. Comments were reviewed and considered, and changes were adopted or not adopted as indicated below.

A. Changes Made Due to Comments Received.

In response to a comment from an urban Indian organization, § 23.2(n) has been changed to correct ambiguous language in the proposed rule. In the correction, the restriction pertaining to the composition of a multi-service Indian center's clientele is made to apply solely to those centers locate within an officially designated "near" reservation service area.

B. Comments not Adopted.

(1) Fifty-four (54) commenters objected to the changes in § 20.1 (s) and (w), Definitions, on the grounds that the changes would result in reduced general assistance benefits to eligible Indian recipients residing in certain States. The changes have been retained in the final rule due to the specific nature of the congressional report as cited in the Summary section above. In that report, the Bureau was expressly directed to ". . . implement changes in the general assistance program to bring payments into conformance with State payments in those States where the standard of need exceeds actual payments."

(2) One commenter contended that because decisions of congressional committees do not have force of law, the Bureau should refuse, in the absence of a statutory requirement, to implement the congressional directive as issued in the Appropriations Conference report.

The Department of the Interior receives direction from the Congress through conference reports. Such reports provide guidance and recommendations which, historically, the Bureau of Indian Affairs has sought to address. In this instance, the change being implemented is indicative of congressional intent regarding the expenditure of funds appropriated for the Bureau of Indian Affairs' social services activity. Failure to comply with the committee's recommendation to implement the changes provided for in these regulations could affect the level of future appropriations.

(3) Other comments were received which objected to the proposed deletion of the word "comparable" from § 20.21(c). The deletion serves to further define general assistance as a *secondary* source of assistance for Indian people, and clarifies the Bureau's responsibility to administer general assistance programs only in areas where such programs would not duplicate existing State, county and/or municipal general assistance; therefore, the word "comparable" has been deleted from § 20.21(c) in the final rule.

(4) One commenter objected to the addition of modifying language to § 20.20(a)(3). The addition clarifies the existing policy governing eligibility of Indians who reside in officially designated "near reservation" locations and emphasizes the Bureau's responsibility to serve only Indians in near reservation locations who are natives of the tribe which requested designation of the near reservation service area. Presently included in certain officially designated near reservation locales are a number of metropolitan areas having sizeable Indian populations comprised of members of many different tribes. Administrative limitations and fiscal constraints prohibit the provision of services to large concentrations of non-reservation Indian residents who are not socially, culturally, and economically affiliated with a nearby tribe and reservation. Therefore, in recognition of the limitation imposed by the Bureau's annual appropriation for social services, the amended regulation clarifies the agency's responsibility to serve only those residents of near reservation areas who are members of the tribe which requested designation of the near reservation service area.

(5) A single commenter objected to the Bureau's reliance on State standards of public assistance payments to set BIA general assistance payment levels. The same commenter proposed that the Bureau establish its own single nationwide standard of assistance rather than use the various State standards. This proposal was not adopted because State public assistance standards are the primary congressionally mandated family assistance standards and reflect local conditions affecting the cost of basic needs; accordingly, they are the basis upon which the Bureau regularly requests and receives congressional appropriations to meet need.

C. Withdrawal of Proposed § 23.37 Multi-year Development Grants.

The proposed § 23.37, is being withdrawn from the final rule as the Bureau is reviewing this matter further. Although there were no objections to this proposed rule, the Bureau has found it necessary to extend the scope of this rule because of recent comments from Indian tribes and organizations and recent programmatic assessments of the long-term impact of administering multi-year developmental grants. The Bureau will address this section in a separate document.

The information collection requirements contained in § 23.28 are those necessary to comply with the application requirements of Office of Management and Budget (OMB) Circular No. A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C.

3501 *et seq.* and assigned clearance number 0348–0006. Section 23.24 describes the types of information that would satisfy the application requirements of Circular A–102 for this grant program. The information is being collected to determine Indian Child Welfare Act program compliance and eligibility. Response is required to obtain Indian Child Welfare Act grant funding.

The primary author of this document is Eddie F. Brown, DSW, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343–6434.

This rule document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969.

The Department of the Interior has determined that this document is not a major rule under E.O. 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 sole effect of this revision to 25 CFR 20 will be to require adherence to a "rateable reduction" in general assistance payments to eligible Indians. The revision of 25 CFR 23 will not have significant economic effect on a substantial number of small entities because it only involves minor changes in implementation of the Indian Child Welfare Act grants program. Revision of 25 CFR 16.1(c) is a minor change which is necessitated by the consolidation of the Muskogee Field Office with the Tulsa Regional Office.

List of Subjects

25 CFR Part 16

Estates and Indians—law.

25 CFR Part 20

Administrative Practice and Procedure; Child Welfare; Indians—Social Welfare; Public Assistance Programs.

25 CFR Part 23

Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel; Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs; Cancellation or Assumption; Administrative Provisions; Assistance to State Courts.

For the reasons set forth in the preamble, Parts 16, 20 and 23 of Title 25 of the Code of Federal Regulations are amended as follows:

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

1. The authority for Part 16 reads as follows:

Authority: 5 U.S.C. 301 (Interprets or applies Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137, see 25 U.S.C. 355nt (1970); Act of May 27, 1908, ch. 199, 35 Stat. 312, see 25 U.S.C. 355nt (1970); Act of June 14, 1918, ch. 101, 40 Stat. 606, 25 U.S.C. 355, 375 (1970); Act of Apr. 12, 1926, ch. 115, 44 Stat. 239, see 25 U.S.C. 355nt (1970); Act of June 26, 1936, ch. 831, 49 Stat. 1967, 25 U.S.C. 501–509 (1970); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731, 25 U.S.C. 502 (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 12, 1953, ch. 409, 67 Stat. 558, 25 U.S.C. 375c (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 11, 1955, ch. 786, 69 Stat. 666, see 25 U.S.C. 355nt (1970); Act of Aug. 29, 1967, Pub. L. 90–76, 81 Stat. 177, 25 U.S.C. 786–788 (1970); and Act of May 7, 1970, Pub. L. 91–240, 84 Stat. 203, 25 U.S.C. 375d (1970).

2. Paragraph (c) of § 16.1 is revised to read as follows:

§ 16.1 Definitions.

* * * * *

(c) The term "Field Solicitor" means the Regional Solicitor, Southwest Region, Page Belcher Federal Building, P.O. Box 3156, Tulsa, Oklahoma 74101.

* * * * *

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

3. The authority for Part 20 reads as follows:

Authority: 25 U.S.C. 13, unless otherwise noted.

4. Paragraphs (s) and (w) of § 20.1 are revised to read as follows:

§ 20.1 Definitions.

* * * * *

(s) "Need" means the deficit between resources and money amounts necessary to meet the cost of basic need items and/or special need items of the applicant or recipient as established pursuant to the Social Security Act by the public welfare agency of the State in which the applicant or recipient resides, and which shall be used by the Bureau in determining the amount of financial assistance to be provided to the applicant or recipient residing in that State. However, in any State where the level of payment is less than the standard of need, the Bureau shall use the level of actual payment in determining the amount of financial assistance to be provided to the applicant or recipient residing in that State. * * *

(w) "Resources" means services or income available to an Indian person or family, unless excluded by Federal public assistance or Supplemental Security Income statute from being considered as income for the purpose of determining financial need. However, in any State where the level of payment is less than the standard of need, the State methods with regard to net income shall be applied for determining the amount of payment.

* * * * *

5. Paragraph (a)(3) of § 20.20 is revised to read as follows:

§ 20.20 General.

* * * * *

(a) * * *

(3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area.

* * * * *

6. Paragraph (c) of § 20.21 is revised to read as follows:

§ 20.21 General Assistance.

* * * * *

(c) They reside in areas where general assistance is not available or is not being provided to all residents on the same basis from a State, county, municipality or other local public jurisdiction.

* * * * *

PART 23—INDIAN CHILD WELFARE ACT

7. The authority for Part 23 reads as follows:

Authority: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

8. Paragraph (n) of § 23.2 is redesignated as paragraph (o) and a new paragraph (n) is added to read as follows:

§ 23.2 Definitions.

* * * * *

(n) Multi-service Indian center means an off-reservation social service center having an established social service delivery program; or, if located in an officially designated "near" reservation area, a social service center serving a clientele of varied tribal affiliations, but with no more than one-half of its clientele from the tribe which requested designation of the "near" reservation area.

9. Section 23.4 is amended by removing the first sentence and inserting the following three sentences in its place.

§ 23.4 Information collection.

The information collection requirements contained in Section 23.28 are those necessary to comply with the

application requirements of Office of Management and Budget (OMB) Circular No. A-102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned approval number 0348-0006. Section 23.24 describes the types of information that would satisfy the application requirements of Circular A-102 for this grant program. * * *

10. Paragraphs (b)(2) and (b)(12) of § 23.11 are revised to read as follows:

§ 23.11 Notice.

* * * * *

(b) * * *

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio or Wisconsin, notice should be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, Chamber of Commerce Building—6th Floor, 15 South Fifth Street, Minneapolis, Minnesota 55402. * * *

(12) For proceedings in California or Hawaii, notice should be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

* * * * *

11. A new paragraph (e) is added to § 23.13 to read as follows:

§ 23.13 Payment for appointed counsel in State Indian child custody proceedings.

* * * * *

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under State law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section; or

(3) The voucher is submitted later than ninety (90) days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

* * * * *

12. Paragraphs (a) and (b) of § 23.21 are revised to read as follows:

§ 23.21 Eligibility requirements.

(a) The governing body of any tribe or tribes, or any off-reservation Indian organization, or any multi-service Indian center located off-reservation or in an area designated by the Commissioner as "near" reservation may apply for a grant individually or as a consortium under this part.

(b) Each tribe, off-reservation Indian organization, multi-service Indian center or consortium may submit only one grant application during an application period. The application period during which grant applications will be accepted shall be published as a notice in the **Federal Register.**

* * * * *

13. Paragraphs (a) and (c) of § 23.25 are revised to read as follows:

§ 23.25 Application selection criteria.

(a) The Commissioner or his/her designated representative shall select for grants under this part those proposals which will in his/her judgment best promote the purposes of Title II of the Act. Such selection will be made through a review process in which each application will be scored competitively, taking into consideration the content of the application as required in § 23.24, and the following factors:

* * * * *

(c) Selection for grants under this part for "on or near" reservation programs shall be limited to the governing body of the tribe to be served by the grant, or the governing body of a multi-service Indian center. The governing body of the tribe may make a subgrant or subcontract with another organizational entity, including but not limited to an Indian organization, subject to the provisions of § 23.26.

* * * * *

14. A new paragraph (c) is added to § 23.26 to read as follows:

§ 23.26 Request from tribal governing body or Indian organization.

* * * * *

(c) The Bureau shall make a grant under this part for a multi-service Indian center program located off-reservation or in a designated "near" reservation area when officially requested to do so by the governing body of the multi-service Indian center. The request may be in one of the forms prescribed in paragraph (a) of this section.

15. Paragraphs (a) and (b) of § 23.27 are revised to read as follows:

§ 23.27 Grant approval limitation.

(a) *Area Office preliminary approval.* Authority for preliminary approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off-reservation community or multi-service Indian Center located within that Area Director's administrative jurisdiction.

(b) *Central Office preliminary approval.* Authority for preliminary approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off-reservation communities or Indian organizations, or multi-service Indian centers representing more than one Area Office's administrative jurisdiction, but located within the Commissioner's overall jurisdiction.

* * * * *

16. Paragraph (a)(1) of § 23.81 is revised to read as follows:

§ 23.81 Recordkeeping and information availability.

* * * * *

(a)(1) The name of the child, the birth date of the child, the tribal affiliation of the child and the Indian blood quantum of the child as required by § 301(a) of Pub. L. 95-608 (25 U.S.C. 1951).

* * * * *

(Catalog of Federal Domestic Assistance Program—15.113 Indian—General Assistance; 15.144—Indian Child Welfare—Title II Grants)

Dated: February 25, 1985.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-7573 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7999]

Income Taxes; Taxation of Foreign Investment in United States Real Property Interests

Correction

In FR Doc. 84-33788 beginning on page 50689 in the issue of Monday, December 31, 1984, make the following corrections:

1. On page 50692, in the first column, in the first complete paragraph, in the first line, "§ 1.897-0(o)" should read "§ 1.897-1(o)".

2. On page 50695, in the first column, in § 1.897-1(b)(4)(ii)(A)(*3*), in the fourth line, "not" should read "nor"; in § 1.897-1(b)(4)(ii)(B), in the first line "*Personal Property*" should read "*Personalty*".

3. On page 50696, in the first column, in § 1.897-1(c)(2)(iv), in the fifth line, "regularly on" should read "regularly traded on".

4. On page 50697, in the third column, in § 1.897-1(d)(3)(ii)(A)(*2*), in the twenty-third line, "grain" should read "gain".

5. On page 50699, in the second column, in § 1.897-1(e)(2)(iii) *Example 2*, in the fourth line, "land purchased" should read "land located in the United States that was purchased"; in the

second line from the bottom, "$225.00" should read $225,000".

6. On page 50701, in the first column, in § 1.897-1(h), in the seventeenth line, "987(a)" should read "897(a)".

7. On page 50704, in the third column, in § 1.897-2(c)(2)(ii), in the ninth line, "U.S. property" should read "U.S. real property".

8. On page 50705, in the second column, in § 1.897-2(c)(2)(iii)(D), in the tenth line from the top of the page, "required" should read "acquired".

9. On page 50706, in the first column, in the first line following § 1.897-2(c)(3)(iv), "(a)" should read "(4)".

10. Also on page 50706, in the second column, in § 1.897-(c)(5) *Example (1)*, in lines three, ten and sixteen, "1965" should read "1985".

11. On page 50707, in the first column, in § 1.897-2(e)(1) *Example (2)*, in lines seventeen, eighteen and nineteen, the words "interest for purposes of determining whether US is a U.S. real property" should be removed and inserted in line twenty-five after the word "property".

12. On page 50710, in the first column, in § 1.897-2(g)(1)(ii)(B), in the fifteenth line, "(g)(h)(ii)" should read "(g)(1)(ii)".

13. On page 50713, in the second column, in § 1.897-2(i)(2), in lines eleven, twelve and thirteen, the words "(date that * * * Federal Register)" should be removed and replaced with "April 1, 1985".

14. On page 50717, in the first column, in § 1.897-3(g)(1), lines nine, ten and eleven, the words "(date that * * * Federal Register)" should be removed and replaced with "April 1, 1985".

BILLING CODE 1505-01-M

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26 CFR Parts 1 and 602

[T.D. 8018]

Income Tax in Taxable Years Beginning After December 31, 1953; OMB Control Numbers Under the Paperwork Reduction Act; Information Returns With Respect to Energy Grants and Financing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to information returns with respect to energy grants and financing. Changes to the applicable tax law were made by section 203(b) of the Crude Oil Windfall Profit Tax Act of 1980. The final regulations provide rules to be followed by persons who administer a Federal, State, or local program a principal purpose of which is to provide subsidized energy financing (as defined in section 23(c)(10)) or grants for projects designed to conserve or produce energy.

EFFECTIVE DATE: These final regulations are effective for financing and grants made after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC: LR:T) (202-566-3297).

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1). They are necessary to implement section 203(b) of the Crude Oil Windfall Profit Tax Act of 1980 which added section 6050D, relating to information returns with respect to energy grants and financing, to the Internal Revenue Code of 1954.

These regulations are issued under the authority contained in Code sections 6050D and 7805 (94 Stat. 259, 26 U.S.C. 6050D; 68A Stat. 917, 26 U.S.C. 7805).

On August 2, 1984, the **Federal Register** published proposed regulations (49 FR 30971) to add a new § 1.6050D-1 to the Income Tax Regulations (26 CFR Part 1). One oral comment was received. There were no requests for a public hearing. After consideration of this comment regarding the proposed amendments, the proposed amendments are adopted as revised by this Treasury decision.

Final § 1.6050D-1 provides rules relating to the information that is required to be furnished on Form 6497 (the information return relating to subsidized energy financing and nontaxable grants for projects designed to conserve or produce energy) and Form 1099-G (the information return relating to taxable grants). Because of the comment received, the final regulations provide that information is required only with regard to a taxpayer receiving subsidized financing or a grant with respect to section 38 property (as defined in section 48 and the regulations thereunder) or a dwelling unit which is located in the United States. Forms 6497 and 1099-G are required to be filed with the Internal Revenue Service Center designated in the form's instructions by the last day of February following the calendar year for which the return (reporting payments made during such calendar year) is required.

The final regulations require that returns be filed for each calendar year beginning after December 31, 1983. Forms 6497 and 1099 have been available for filing for prior years. (See Announcement 83-1, 1983-2 I.R.B. 29.) Although these final regulations do not so require, in cases where payers and administrators have adequate records for 1981, 1982, or 1983, the Service requests that they file the appropriate forms for those years.

Executive Order 12291; Regulatory Flexibility Act; and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Furthermore, pursuant to 5 U.S.C. 605(b) the Secretary of the Treasury has certified that this rule will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. 605(b)). The reporting requirements added by this document have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations.

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. A new § 1.6050D-1 is added immediately after § 1.6050B-1 to read as follows:

§ 1.6050D–1 Information returns relating to energy grants and financing.

(a) *Requirement of reporting.* Every person who administers a Federal, State, or local program a principal purpose of which is to provide subsidized energy financing (as defined in section 23(c)(10)(C) and the regulations thereunder) or grants for projects designed to conserve or produce energy shall make an information return for each calendar year beginning after December 31, 1983. That return shall be made on Form 6497 or, in the case of taxable grants, on Form 1099–G. (The latter form is prescribed pursuant to section 6041 as well as section 6050D.) The return shall include the following information:

(1) The name, address, and taxpayer identification number of each taxpayer receiving financing or a grant made under such program during the calendar year with respect to either section 38 property (as defined in section 48 and the regulations thereunder) or a dwelling unit which is located in the United States;

(2) The aggregate amount of financing and grants received by the taxpayer under the program during the calendar year;

(3) In the case of returns for financing or nontaxable grants, the name of the program under which the financing or grants are made; and

(4) Any other information that is required by the form.

For purposes of this section, the term "person" means the officer or employee having control of the program, or the person appropriately designated for purposes of section 6050D and this section.

(b) *Time and place for filing.* Returns required to be made under this section shall be filed with the Internal Revenue Service Center designated in the instructions for Form 6497 or 1099–G by the last day of the first February following the calendar year for which the return (reporting payments made during such calendar year) is required.

PART 602—[AMENDED]

§ 602.101 [Amended]

Par. 2. Paragraph (c) of § 602.101 is amended by inserting in the appropriate place in the table

"§ 1.6050D–1(a) ..... 1545–0232".

This Treasury decision is issued under the authority contained in sections 6050D and 7805 of the Internal Revenue Code of 1954 (94 Stat. 259, 26 U.S.C. 6050D; 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.
Ronald A. Pearlman,
Assistant Secretary of the Treasury.
March 4, 1985.

[FR Doc. 85–7597 Filed 3–28–85; 8:45 am]
BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 9, 47, 70, and 71

[T.D. ATF–201]

Executive Level Reorganization; Change of Titles; Technical Amendments

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

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to Chapter I of Title 27 Code of Federal Regulations (CFR) Parts 4, 9, 47, 70, and 71. It adopts nomenclature changes from T.D. ATF–179 (49 FR 29594) published in the **Federal Register** on July 23, 1984. These technical amendments and conforming changes were requested by the CFR Unit of the Office of the Federal Register to provide uniformity throughout Chapter I of Title 27 Code of Federal Regulations.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Lori Weins, FAA, Wine and Beer Branch, (202) 566–7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms administers regulations published in Chapter I of Title 27 Code of Federal Regulations. These regulations are updated April 1 each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing Title 27 for the anual revision, the CFR Unit of the Office of the Federal Register requested several technical amendments to provide uniformity in Chapter I of Title 27, Code of Federal Regulations. These amendments and changes do not make any substantive regulations changes and are only intended to improve the clarity of Title 27.

Subpart B is redesignated as "Definitions" in order to be consistent throughout Title 27, and § 9.11, "Meaning of terms", has been moved from Subpart A into Subpart B. In addition there have been changes made to Parts 47, 70, and 71 to reflect nomenclature changes made by T.D. ATF–179 (49 FR 29594), July 23, 1984.

Mandatory Compliance Dates

Beginning in 1978, ATF has issued regulations with mandatory compliance dates which were several years in the future at the time of issuance. Some of these mandatory compliance dates are now past. The superseded regulations are published in the CFR without any warning that they now apply only to activities which occurred in the past. The CFR Unit of the Office of the Federal Register has requested ATF to update the mandatory compliance dates for both the new regulations and the superseded regulations. These changes are also incorporated in this technical amendment.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

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

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

(c) Significant adverse affect 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.

Administative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary and impractical to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unneccessary and impractical to subject

this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lori D. Weins, of the FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 70

Administrative practice and procedure, Authority delegations, Claims, Government employees, Law enforcement, Law enforcement officers.

27 CFR Part 71

Administrative practice and procedure, Authority delegations, Freedom of information, Privacy.

Authority and Issuance

This final rule is issued under the authority contained in 27 U.S.C. 205, 22 U.S.C. 2778, 26 U.S.C. 7602, and 5 U.S.C. 301. Accordingly, Title 27, Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

§§ 4.23a, 4.25a and 4.26 [Amended]

1. In the table of sections for 27 CFR Part 4 remove from the headings for §§ 4.23a, 4.25a and 4.26 "(not mandatory before January 1, 1983)".

2. In § 4.23 redesignate the existing paragraph as (a) and add a new paragraph (b) as follows:

§ 4.23 Grape type designations.

(a) * * *

(b) This section does not apply after December 31, 1982.

§ 4.23a [Amended]

3. In § 4.23a remove "(not mandatory before January 1, 1983)" from the heading of the section.

4. In § 4.25 add a new paragraph (c) as follows:

§ 4.25 Appellations of origin.

* * * * *

(c) This section does not apply after December 31, 1982.

§ 4.25a [Amended]

5. In § 4.25a remove "(not mandatory before January 1, 1983)" from the heading of the section.

§ 4.26 [Amended]

6. In § 4.26 remove "(not mandatory before January 1, 1983)" from the heading of the section.

PART 9—[AMENDED]

7. In the table of sections for 27 CFR Part 9 designate Subpart B "Definitions" and move § 9.11 Meaning of terms into Subpart B as follows:

Subpart B—Definitions

Sec.
9.11 Meaning of terms.

8. Designate Subpart B of 27 CFR Part 9 "Definitions" and move § 9.11 into Subpart B as follows:

Subpart B—Definintions

§ 9.11 Meaning of terms.

* * * * *

§ 9.23 [Amended]

9. In § 9.23 remove "(not mandatory before January 1, 1983)" from the heading of the section.

§ 9.29 [Amended]

10. In § 9.29 remove "(not mandatory before January 1, 1983)" from the heading of the section.

PART 47—[AMENDED]

§ 47.45 [Amended]

11. In § 47.45(a) in the last sentence replace ". . . regulatory administrator. . . " with ". . . regional director (compliance) . . .".

PART 70—[AMENDED]

§ 70.23 [Amended]

12. In § 70.23(b)(2) replace ". . . Regulatory Enforcement . . ." with ". . . Compliance Operations . . .".

PART 71—[AMENDED]

§ 71.26 [Amended]

13. In § 71.26(f) replace ". . . Assistant Director (Regulatory Enforcement) . . ." with ". . . Associate Director (Compliance Operations) . . .".

§ 71.41 [Amended]

14. In § 71.41(d)(2)(iv)(A) replace ". . . Assistant Director (Regulatory Enforcement) . . ." with ". . . Associate Director (Compliance Operations) . . .".

Signed: March 21, 1985.

Stephen E. Higgins,

Director.

Approved: March 22, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-7586 Filed 3-28-85; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule, with request for comments.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums, 29 CFR Part 2610, by changing the filing and premium payment due date for certain plans covered by Title IV of the Employee Retirement Income Security Act of 1974. The due date is changed from the last day of the seventh month following the close of the prior plan year to the last day of the second month following the close of the prior plan year. The new due date that applies to plans with 10,000 or more participants for 1985 plan years, however, will be no earlier than the last day of the second full month following publication of this final rule. For plans with 500 or more (but fewer than 10,000) participants, the new due date is effective for plan years beginning on or after January 1, 1986. This amendment is needed to align the PBGC's premium collection procedures with those of other government agencies and the private insurance industry and to give the PBGC fuller use of its premium income during the plan year to which it applies. The effect of this rule is to accelerate the premium due date for approximately eight percent of the plans covered under Title IV of the Act, but the PBGC wishes to consider all viable alternatives. Therefore, the PBGC is inviting comments on this final rule and if, upon consideration of comments received, it determines that an amendment is warranted, this rule will be modified.

DATES: Effective date April 29, 1985. Comments are invited and should be submitted on or before May 28, 1985.

ADDRESSES: Comments should be addressed to the Director, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, Suite 7300, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection in Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6476 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 9, 1985, the Pension Benefit Guaranty Corporation (the PBGC) published in the **Federal Register** (50 FR 1065) a proposed amendment to its regulation on Payment of Premiums, 29 CFR Part 2610. Under the proposed amendment, the premium due date for certain plans covered by the termination insurance program established under Title IV of the Employee Retirement Income Security Act of 1974, as amended (the Act) would be changed. The proposed amendment provided that the premium due date would be accelerated for larger plans from the present due date of the last day of the *seventh* month following the close of the prior plan year to the last day of the *second* month following the close of the prior plan year. As proposed, the change would affect only those covered plans with 500 or more participants and would become effective for these larger plans over a two-year period depending on a plan's size. For plans with 10,000 or more participants, the change would be effective beginning with the 1985 plan year. For plans with 500 to 9,999 participants it would be effective beginning with the 1986 plan year. The change was proposed in response to the recommendation of the Grace Commission (the President's Private Sector Survey on Cost Control) that the PBGC improve its financial position by accelerating the premium due date. The proposed acceleration of the premium due date would make premium payments due nearer the time the insurance coverage begins rather than after more than half of the coverage period has expired.

The PBGC received approximately 50 comments on the proposed amendment. One comment suggested that plans be given the option of using a due date of seven months after the close of the prior plan year, but paying interest to the PBGC from March 1 (for calendar year plans) to the actual payment date. Although this suggestion would recompense the PBGC for the present loss of the time value of its premium monies, to the same extent as the proposed amendment, the PBGC believes that section 4007(b) of the Act does not permit it to impose interest on "unpaid" premiums before the due date prescribed for their payment. Accordingly, this suggestion has not been adopted in this final rule.

A discussion of the other comments on the proposed amendment and the changes made in this final rule follow.

Due Date for 1985 Plan Year

Of the fifty comments received, approximately one-third were supportive of the acceleration of the premium due date; approximately one-sixth offered substantive suggestions without explicitly supporting or opposing the proposed amendment; and approximately two-fifths opposed the accelerated due date for various reasons that will be discussed later in this preamble. The comments, both supportive and opposed, expressed concern over the proposal's becoming effective for the 1985 plan year. As published, the accelerated due date would have been February 28, 1985 for calendar year plans with 10,000 or more participants.

It was not the PBGC's intention to make the change in the premium due date immediately or retroactively effective. Indeed, under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 551–553, the final rule could not become effective less than 30 days after its publication. It was, and is, the intention of the PBGC to give plan administrators a reasonable period after publication of this final rule in which to determine and pay the premiums due.[1] Therefore, this final rule provides that the premium due date for affected plans, *i.e.*, those with 10,000 or more participants, for the plan year beginning in 1985 will be the last day of the second full month following the date of publication of this final rule or, if later, the last day of the second month following the close of the plan's 1984 plan year. The first of these due dates will apply primarily to plans with a calendar year plan year. The alternative due date will apply to plans with a fiscal year plan year that begins after the month in which this final rule is published.

[1] A PBGC news release to that effect was issued on February 8, 1985 (PBGC No. 85–20).

Under this final rule, for plan years beginning on or after January 1, 1986, the accelerated due date for all plans with 500 or more participants will be the last day of the second month following the close of the prior plan year.

Major Reasons for Opposition

Comments that opposed the proposed rule advanced three major arguments against changing the current premium due date. The first of these was that it would be impracticable for calendar year plans to determine participant counts and pay premiums by February 28, 1985. The second argument was that the earlier premium due date would impose considerable administrative burden and expense on plan sponsors, who would have insufficient time to gather participant data. The third argument was that the earlier premium due date should apply to all plans or to none. The first argument was discussed fully above. The second and third are discussed below.

Two-Month Period

Several comments contended that plan sponsors, particularly those with larger plans, could not possibly gather accurate participant data within the proposed two-month period, or could not do so without considerable administrative burden and expense. Some of these comments suggested alternative premium due dates, such as three or four months after the beginning of the plan year, that they believed would be practicable.

A close reading of the comments suggests that the "infeasibility" of counting participants within two months after the end of the plan year is based more on the fact that administrative procedures have been established to provide participant counts seven months after the beginning of the plan year, rather than on the fact that procedures cannot be established to provide participant counts within a two-month period. To accommodate those situations where a two-month deadline is genuinely impracticable, the regulation provides the "safe harbors" discussed below for those sponsors that need to file on an estimated basis.

Apparently the 93rd Congress would have agreed that a two-month deadline for premium payments is reasonable, for the Act initially provided that the premium payments were due within 30 days after the beginning of a plan year (section 4007(a) of the Act), which is more stringent than the current proposal. The PBGC, therefore, continues to accept the recommendation of the Grace Commission (the

President's Private Sector Survey on Cost Control) that "the premium collection be changed * * * to accelerate premium collection to no later than 60 days after the beginning of the plan year." *Task Force Report on Boards/Commissions—Banking*, May 26, 1983, at page 20. The final rule has not been changed in this respect.

A number of the comments that objected to the two-month period as unrealistic focused primarily on the increased paperwork, administrative burden, and expense involved in filing reconciliation statements after premiums have been paid on an estimated basis. The PBGC was not unmindful of the fact that the proposed rule could increase both administrative and paperwork burdens and expense if a reconciliation must be filed. The PBGC sought to ease this burden, to the extent permitted under section 4007 of the Act, by waiving the late payment penalty if the estimated premiums paid were at least 90 percent of that actually due. One comment noted that a plan could be subject to penalties even if it made a good faith effort to complete an accurate participant count before the due date, since there was no absolute assurance that the estimated amount would be at least 90 percent of the actual figure. Other comments contended that, for some plans, particularly multiemployer plans, the difficulties of obtaining accurate estimates could make the proposed "safe harbor" largely illusory. Three comments suggested that the penalty be waived if payment were based on the participant count for the previous plan year. Another comment similarly argued for permitting use of the prior year's participant count but suggested that penalties be waived if the plan's payment were based on 90 percent, rather than 100 percent, of that count. The latter comment also suggested that the test for penalty waiver be applied to the aggregate premiums paid with respect to all plans maintained by one employer. Another comment suggested that the regulation provide that the reconciliation of the estimated premium be made as part of the following plan year's premium payment.

The PBGC has not adopted either of the last two suggestions. The waiver of penalties cannot be based on the plan sponsor's aggregate premium obligation, because it is not administratively feasible for the PBGC to aggregate premiums for comparison purposes. In many cases, the plans of a controlled group of corporations file premium payment forms under various sponsor names and employer identification numbers. The PBGC could identify related sponsors and aggregate their premium payments only if it imposed additional reporting requirements on premium payers.

The suggestion that reconciliation be made a year after the estimated payment was not adopted, because it would, in all likelihood, increase, rather than reduce, the administrative burden of collecting premiums. To avoid interest charges, many plan sponsors that had paid estimated premiums would undoubtedly make their final payments before the following year's premium was due. The PBGC would thus receive final payments in an irregular and unpredictable pattern and would have to match these payments against the premium form filed by the plan in the following year.

The PBGC has, however, determined that an additional "safe harbor" from late payment penalties not only will provide a simpler means of complying with the accelerated due date, but also will ease the administrative burdens for those plans that cannot complete an accurate participant count by the new due date. Thus, this final rule provides, as an addition to the 90 percent test in the proposed rule, that late payment penalties also will be waived if the estimated payment is no less than the amount that would be due based on the current year's premium rate and the participant count used for the previous year's premium payment. The PBGC did not adopt the suggestion that this "safe harbor" be based on 90 percent of the prior year's participant count, rather than 100 percent, because of the additional administrative burden that would be involved in that determination. It should be emphasized that both waiver tests are subject to the requirement that 100 percent of the amount due be paid by the reconciliation due date.

As was noted in the preamble to the proposed amendment and the PBGC's news release, PBGC No. 85–20 (February 8, 1985), interest on premiums that are not paid by the due date cannot be waived, since the PBGC has no authority under section 4007 of the Act to waive interest charges.

Acceleration for Larger Plans Only

The third major ground for opposition was that the premium due date should not be determined by plan size. Several comments suggested that the proposed change is inequitable and arbitrarily discriminates in favor of smaller plans. Another comment stated that section 4007 of the Act does not permit a distinction between large and small plans. The PBGC believes that the Act does not preclude this distinction. Moreover, such "discrimination" is well established in the application of many of ERISA's requirements and has never been considered arbitrary. For example, regulations promulgated by the Department of Labor, in order to effectuate the reporting and disclosure provisions in Title I of the Act, distinguish between plans with fewer than 100 participants and plans with 100 or more (see, *e.g.*, 29 CFR 2520.104–20, 2520.104–41, 2520.104–46). That the line of demarcation is 100 instead of 500, as in this final rule, is irrelevant. Other laws make similar distinctions. For example, the Regulatory Flexibility Act, 5 U.S.C. 601–612, authorizes and even encourages government agencies to consider the size of an entity as a factor that may justify differential treatment in a regulatory scheme. As was stated by the Chief Counsel, Office of Advocacy, U.S. Small Business Administration in a booklet entitled *Better Federal Treatment for Small Entities* (December 1980), "we are intensifying the quest for multi-tiered policies to replace the spurious equality of treating large and small entities in the same way."

In determining the demarcation level, one comment alleged, the PBGC was concerned about the loss of revenue rather than sound insurance principles that would require an accelerated due date for all plans. The PBGC, admittedly, was concerned about the loss of revenue, but that concern had to be balanced against the administrative feasibility of dealing with an accelerated due date for more than 112,000 plans rather than the approximately 8,700 plans that currently have 500 or more participants.

The same concern led to the two-year implementation of the acceleration. The PBGC believed that it should implement the Grace Commission's recommendation as soon as feasible, but found that it simply was not possible to have a procedure in place to administratively handle all plans with 500 or more participants for the 1985 plan year. On the other hand, it is administratively feasible to accelerate the 1985 premium due date for the 508 plans with 10,000 or more participants, and the benefits of doing so are significant, since those plans provide 44 percent of the PBGC's premium income.

One comment suggested that the proposed 500 participant demarcation level be replaced by a corridor of 450 to 550 "to minimize plans crossing and recrossing the 500 threshold." The PBGC has not adopted this suggestion in this final rule. A plan with a participant count that fluctuates above and below

the 500 level with regularity would likely elect to establish a procedure for paying at the accelerated date rather than change due dates frequently. Further, the same need for such a corridor could be urged at the upper and lower corridor levels, if such were included.

Five comments equated the accelerated due date with a premium increase for large plans only and a circumvention of section 4006(a)(1) of ERISA, which requires uniform premiums. The PBGC disagrees with the concept that, under the statutory scheme, an accelerated due date can properly be equated with a premium increase. Almost from its inception, the PBGC has had full authority to establish the premium due date. Under section 4007(a) of the Act, premiums imposed for plan years in progress on the date of enactment, September 2, 1974, were due within 30 days after that date. Premiums for the first plan year beginning on or after September 2, 1974 were due within 30 days after the beginning of the plan year. The Act is silent with respect to premium due dates for later plan years, providing:

> Premiums under this title are payable at the time, and on an estimated, advance, or other basis, *as determined by the [PBGC].* (Emphasis added.)

In contrast, any change in the premium amount is specifically subject to Congressional approval under a fully detailed statutory procedure.

Revenue and Cost Estimates

One comment requested that the PBGC provide information on increased revenue and administrative costs. As noted above, this final rule will accelerate the due date for 8,700 plans by the 1986 plan year. Those 8,700 plans are less than eight percent of the plans covered by the PBGC insurance program but provide about 84 percent of the PBGC's premium revenue. Based on projected figures, the PBGC believes that its income for the fiscal year 1986 will be increased by $4.4 million. The increase for the following year is estimated to be $4.6 million plus $.44 million interest on the previous year's increment. These figures were based on five months' interest at ten percent per annum, and do not include the one-time cash acceleration that will accrue to the PBGC in the years that the accelerated premium due date is implemented. The annual additional cost to the PBGC is estimated at no more than $130,000, based on $5,000 in increased lock-box costs for the receipt of reconciliation filings and $125,000 for additional personnel to handle the increased volume of work such as suspended transactions, statements of account, refund requests, and reconsideration requests.

Multiemployer Plans

Six comments suggested that multiemployer plans be exempted from the proposed rule. Each argued that multiemployer plans, in particular, cannot possibly calculate a reasonably accurate participant count within the proposed two-month period. One commented that, although the proposed rule would affect only eight percent of PBGC-covered plans, it would have a disproportionate effect on multiemployer plans, the majority of which have more than 500 participants. The reasons for distinguishing between larger and smaller plans were discussed previously, and the PBGC believes that there is not a sufficient justification for a distinction based solely on whether a larger plan is a single-employer plan or a multiemployer plan.

Two comments pointed to the fact that there is no deficit in the multiemployer fund, as in the single-employer fund, concluding that there is no justification for accelerating the premium due date for multiemployer plans. Although it is true that there is at present no deficit in the multiemployer fund, there is no guarantee that that situation will continue. Further, these comments ignore the fact that insurance premiums normally are paid at or near the beginning of the period of coverage and that a major purpose of the change in due date is to give the PBGC the use of premium monies during a greater portion of the period of insurance, thus minimizing future premium requirements.

Risk-Related Premium

A number of comments commended the PBGC's efforts to bring its premium collection procedures more in line with those in the private insurance industry and recommended that the PBGC adopt the Grace Commission's recommendation that the PBGC develop a risk-related premium. Other comments disputed that the premium procedures of the PBGC could be brought in line with those in the private insurance for the reason that the PBGC premium is not risk-related. The PBGC is currently considering alternatives to the flat rate premium and exploring the possibility of a risk-related premium, but is not yet in a position to discuss that issue more fully. Any change in the basis on which premiums are assessed would, of course, require Congressional action and could not be adoped unilaterally by the PBGC.

Comments on Rule

Because the prompt promulgation of this rule will help alleviate the single-employer insurance program's deficit, implementation of the accelerated due date for plan years beginning in 1985 is considered important. In an effort to meet time constraints, the PBGC set a 15-day comment period on the proposed amendment, which was published on January 9, 1985 (50 FR 1065). Copies of the amendment were sent directly to the administrators of those plans with 10,000 or more participants, which would be affected by the proposed rule for the plan year beginning in 1985, and their comments were invited. Five comments were received concerning the 15-day comment period, objecting that it did not give sufficient time to identify problems and prepare well-reasoned, studied comments. It also was suggested that many plan sponsors were unaware of the proposed rule or unable to submit timely comments.

The PBGC notes that the public was on notice as early as October 22, 1984 that the PBGC was developing an amendment that would accelerate the premium due date for plans with 500 or more participants. This information was set forth in the PBGC's semiannual Agenda of Regulations Under Development, published in the **Federal Register** on that date (49 FR 42288, 42294), which gave notice that the PBGC intended to publish both the proposed rule and the final rule in January 1985. This regulatory agenda item was reprinted in several pension publications and was the subject of articles in the trade press. In fact, one written comment and a number of oral comments were received before the proposed amendment was actually published in the **Federal Register**.

At present, it is the intention of the PBGC to effectuate this final rule for the present and future years. Nevertheless, because of the limited time for comments and the lack of direct notification to those plans with 500 to 9,999 participants, which will be affected by this rule for the 1986 and later plan years, the PBGC is inviting additional comments at this time. All comments should be in writing and must be submitted during the time period and to the address set forth following the Summary of this rule. The PBGC will seriously consider any comments received and if, upon reconsideration, it determines that further amendment of this rule is warranted, the rule will be modified.

Classification: E.O. 12291 and Regulatory Flexibility Act

The PBGC has determined that this rule is not a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601(2)), the PBGC certifies that this regulation will not have a significant economic effect on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Since this proposed amendment will not change the present rule for plans with fewer than 500 participants, it has no economic effect on small plans. Accordingly, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

OMB Clearance of Information Collection

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) for use through January 31, 1988, OMB control number 1212-0009. The PBGC has requested the approval of any additional paperwork under this proposed amendment and a revised PBGC Form 1. Comments concerning the proposed collection of information under this amendment and the revised form should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Pension Benefit Guaranty Corporation.

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

PART 2610—[AMENDED]

In consideration of the foregoing, Part 2610 of Chaper XXVI of Title 29, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 2610 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4006, 4007, Pub. L. 93-406, 88 Stat. 829, 1004, 1010, 1013, as amended by secs. 403(1), 105, 402(a)(3), 403(b), Pub. L. 96-364, 94 Stat. 1208, 1302, 1264, 1298, 1300 (29 U.S.C. 1302(b)(3), 1306, 1307).

2. Section 2610.2 is amended by revising the entry for "Act" and adding the entry for "Short Plan Year" to read as follows:

§ 2610.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

* * * * *

"Short Plan Year" means a plan year that is less than twelve full months.

3. Paragraphs (a) and (b) of § 2610.3 are revised and a heading for paragraph (c) is added to read as follows:

§ 2610.3 Filing requirement.

(a) *Premium due date.* The plan administrator of each covered plan shall file the form prescribed by this part and any premium payments due, in accordance with the premium declaration instructions accompanying the form. Due dates for new or newly covered plans and plans with short plan years are in paragraphs (a)(7) and (a)(8) of this section. For other plans, the premium form and payments shall be filed no later than the date specified in the applicable paragraph or subparagraph (a)(1) through (a)(6)(ii) as follows:

(1) For plan years beginning before and in progress on September 2, 1974: October 2, 1974;

(2) For plan years beginning on or after September 2, 1974 up to and including plan years beginning on December 31, 1977: 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1978 up to and including plan years beginning on December 31, 1980: seven months after the close of the prior plan year;

(4) For plan years beginning on or after January 1, 1981 up to and including plan years beginning on December 31, 1984: the last day of the seventh month following the close of the prior plan year;

(5) For plan years beginning on or after January 1, 1985 up to and including plan years beginning on December 31, 1985:

(i) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(9) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(9) of this section, the last day of the second full month following March 29, 1985 or, if later, the last of the second month following the close of the prior plan year; and

(6) For plan years beginning on or after January 1, 1986:

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(9) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(9) of this section, the last day of the second month following the close of the prior plan year.

(7) Notwithstanding the provisions of paragraphs (a)(1) through (a)(6) of this section, for any new plan or plan newly covered by section 4021 of the Act, the first premium form and payments due for the first year of coverage shall be filed on or before the latest of—

(i) The last day of the seventh month following the beginning of the plan year;

(ii) 90 days after the date of the plan's adoption;

(iii) 90 days after the date on which the plan became effective for benefit accruals for future service; or

(iv) 90 days after the date on which the plan became covered by section 4021 of the Act.

(8) For any plan that changes its plan year, the premium form and payments for the short plan year are due in accordance with the provision of paragraphs (a)(1) through (a)(6) of this section. Premium forms and payments for the plan year that follows a short plan year shall be filed no later than the date specified in the applicable subparagraph as follows:

(i) For plan years beginning before January 1, 1985—

(A) The last day of the seventh month following the close of the preceding short plan year, or

(B) 30 days after the date on which the amendment to change the plan year was adopted;

(ii) For plan years beginning on or after January 1, 1985 up to and including plan years beginning on December 31, 1985—

(A) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(9) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(9) of this section: The last day of the second

month following the close of the preceding short plan year; and

(iii) For plan years beginning on or after January 1, 1986—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(9) of this section: The last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(9) of this section: the last day of the second month following the close of the preceding short plan year.

(9) For purposes of paragraphs (a)(5), (a)(6), (a)(8), (b)(4) and (b)(5) of this section, the number of participants in a plan year is determined as of the following dates:

(i) If the plan year is the plan's second plan year, the first day of the first plan year; or

(ii) If the plan year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(b) *Reconciliation due date.* The plan administrator of each covered plan shall file the premium reconciliation form prescribed by this part, in accordance with the instructions accompanying the form, no later than the date specified in the applicable paragraph as follows:

(1) For plan years beginning before September 2, 1976: two years and 30 days after the beginning of the plan year;

(2) For plan years beginning on or after September 2, 1976 up to and including plan years beginning on December 31, 1976: One year and 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1977 up to and including plan years beginning on December 31, 1977: seven months after the close of the plan year;

(4) For plan years beginning on or after January 1, 1985 up to and including plan years beginning on December 31, 1985, if the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(9) of this section: the last day of the seventh month following the close of the prior plan year; or

(5) For plan years beginning on or after January 1, 1986, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(9) of this section: The last day of the seventh month following the close of the prior plan year.

(c) *Continuing obligation to file.* * * *

* * * * *

4. Section 2610.3(e)(2) is amended by changing "(d)(1)" to "(e)(1)".

5. Paragraph (a), the introductory text of (b), (c), and (d) of § 2610.5 are revised to read as follows:

§ 2610.5 Premium rate.

(a) *Single-employer plans.* For plans other than multiemployer plans, the premium rate for basic benefits guaranteed under section 4022(a) of the Act is as follows:

(1) For plan years beginning before September 2, 1976: One dollar for each individual who is a participant in the plan at any time during the plan year;

(2) For plan years beginning on or after September 2, 1976 up to and including plan years beginning on December 31, 1977: One dollar for each individual who is a participant in the plan on the last day of the preceding plan year; or

(3) For plan years beginning on or after January 1, 1978: two dollars sixty cents for each individual who is a participant in the plan on the last day of the preceding plan year.

(b) *Multiemployer plans.* For multiemployer plans, the premium rate for basic benefits guaranteed under section 4022(a) or 4022A(a) is as follows:

* * * * *

(c) *Newly covered plans.* For any plan not previously covered by section 4021 of the Act, the plan administrator shall pay the applicable premium under paragraph (a) or (b) of this section for each individual who is a participant in the plan on the date the plan becomes covered by section 4021 of the Act.

(d) *Changes in plan year.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) or (b) of this section for each individual who is a participant in the plan on the last day of the short plan year.

6. Section 2610.6 is revised to read as follows:

§ 2610.6 Form.

The form prescribed by this part for the declaration, payment and reconciliation of premiums is PBGC Form 1.

7. Section 2610.9 is amended by revising the introductory paragraph and paragraph (c), by redesignating (d) as (e), and by adding a new (d) to read as follows:

§ 2610.9 Waivers.

The late payment penalty charges imposed by § 2610.8 will not be assessed in whole or in part—

* * * * *

(c) If the PBGC, on its own motion, waives the application of § 2610.8;

(d) If a plan that is filing pursuant to the provisions of § 2610.3(a)(5)(ii) or (6)(ii)—

(1) Pays at least 90 percent of the premium due for the plan year on or before the due date, or

(2) Pays at least the premium that would be due using the premium rate for the current plan year and the participant count upon which the prior year's premium was based, and

(3) Pays 100 percent of the premium due for the plan year on or before the reconciliation due date prescribed by § 2610.3(b); or

(e) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

Approved, pursuant to 29 U.S.C. 552, as an exercise of the duties of the Secretary of Labor and Chairman of the Board of Directors, Pension Benefit Guaranty Corporation.

Ford B. Ford,

Under Secretary of Labor.

Issued pursuant to a resolution of the Board of Directors approving this regulation and authorizing its chairman to issue same.

Edward R. Mackiewicz,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 85-7675 Filed 3-28-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Suspension of Certain Regulations

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

ACTION: Notice of Suspension; Correction.

SUMMARY: This document corrects a number designation of a paragraph in the Federal Rules at 30 CFR Part 817. The correction pertains to a notice suspending regulations concerning the definition of fragile lands, historic lands and adverse physical impact, under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, which was published on January 3, 1985 (50 FR 257). In three places, the January 3, 1985 notice referenced 30 CFR 817.107(b) when what was intended was a reference to 30 CFR 817.106(b).

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; (202) 343-4264.

Dated: March 25, 1985.

John D. Ward,

Director, Office of Surface Mining.

Accordingly, OSM is making the following changes to FR Doc. 85-62 published at 50 FR 257, January 3, 1985.

1. On line 22 of the third column of 50 FR 257, OSM is correcting "817.107(b)" to read "817.106(b)."

2. On line 15 of the first column of 50 FR 258 OSM is correcting "§ 817.107" to read "§ 817.106."

3. On line 16 of the first column of 50 FR 258, OSM is correcting "30 CFR 617.107(b)" to read "30 CFR 817.106(b)."

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 85-7574 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 295

Use of Motor Vehicles Off Forest Development Roads

AGENCY: Forest Service, USDA.

ACTION: Notice; completion of review of existing regulation.

SUMMARY: The Forest Service hereby gives notice that it has completed its review of its existing Off-Road Vehicle regulations at 36 CFR Part 295 in accordance with Executive Order 12291 and Department of Agriculture regulation DR 1512-1. The review did not identify any need to revise the regulation.

FOR FURTHER INFORMATION CONTACT: Thomas Lennon, Recreation Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20017 (202) 447-2311.

SUPPLEMENTARY INFORMATION: Forest Service regulations governing the use of motor vehicles off forest development roads were promulgated May 10, 1978, at 43 FR 20006. The regulations provide for managing off-road vehicle use within the National Forest System through the land management planning process and guarantee the public an opportunity to participate in planning for the allowance, restriction, or prohibition of specific types of vehicles off forest development roads. In addition, the rule requires the Forest Service to monitor the impact of off-road vehicles and to immediately close any area or trail suffering adverse effects until those effects have been eliminated and measures have been implemented to prevent recurrence of the damage.

As required by E.O. 12291 on Federal regulations, the Forest Service has reviewed these regulations to determine whether they impose a economic or financial burden on the public or create any significant economic impact. The review was conducted by an analysis of correspondence files and interviews with Forest Service managers throughout the National Forest System who administer off-road vehicle use.

Based on our review, we have concluded that the regulations are the minimum necessary to protect the resources of the National Forest System and guarantee the public opportunities to participate in off-road vehicle planning and decisions. The rules are clearly stated, are not complex, and have no identifiable economic impacts on the public.

Therefore, the regulations will remain without change. These regulations will be reviewed again in 5 years as required by E.O. 12291.

Dated: March 21, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85-7535 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2807-6; TN-023]

Approval and Promulgation of Implementation Plans, Tennessee; Approval of Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving several State Implementation Plan (SIP) revisions submitted by the State of Tennessee. These changes in the regulatory part of the Tennessee plan involve: general visible emission standards, definition of "calendar quarter", the method for determining inorganic lead emissions in stack gases, air quality monitoring requirements related to the control of sulfur dioxide emissions, and the specification of the test method for determining particulate emissions from asphalt processing and asphalt roofing. Also, Tennessee has removed the hydrocarbon standard from the list of standards in Table 1 of Chapter 1200-3-3 of their regulations.

DATE: This action will be effective on May 28, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Address written comments to Michael Cooper of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

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

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael Cooper, EPA Region IV, Air Management Branch, at the above address, telephone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On October 17, 1984, Tennessee submitted several regulatory revisions to their State Implementation Plan and EPA is today approving them. These revisions, presented below, were adopted by the Tennessee Air Pollution Control Board and became State-effective on July 29 and August 1, 1984.

- 1200-3-5-.01, Visible Emission, General Standards. Paragraph -.01(5) was added to provide that, unless there are other requirements, any air contaminant source may not exceed 20% opacity (for an aggregate of more than five minutes in any one hour or more than twenty minutes in any 24-hour period). However, there is a special provision for fuel burning installations with fuel burning equipment of input capacity greater than 600 million BTU per hour. These facilities may not exceed 20% opacity (six-minute average) but are allowed an opacity of up to 40% for one six-minute period per hour.
- 1200-3-2-.01, General Definitions. Paragraph-.01-(dddd) was added to define "calendar quarter" to mean "a period of time beginning at the first minute of the first date and ending at midnight of the second date of each of the following intervals: January 1 to March 31, April 1 to June 30, July 1 to

September 30, or October 1 to December 31."

• 1200–3–12–.03, Methods of Sampling and Analysis, Source Sampling and Analysis. Paragraph–.03–(j), Determination of Inorganic Lead Emissions in Stack Gases, was added to specify that lead emissions in stack gases shall be determined by Method 12 as outlined in the April 16, 1982, **Federal Register** (47 FR 16574–16579).

• 1200–3–14, Control of Sulfur Dioxide Emissions. Tennessee has rearranged certain parts of Chapter 1200–3–14. Specifically, the State has taken SO_2 monitoring requirements for process emission sources emitting more than 1000 tons of SO_2 per year since 1972 (previously 1200–3–14–.03–(6) and (7)) and SO_2 monitoring requirements for fuel burning installations having a total rated capacity greater than 1000 million Btu per hour (previously 1200–3–14–.02–(1)–(c)) and combined them into one new paragraph (–.01–(6)). This is basically a rearrangement for housekeeping purposes. In addition, the State has adopted new provisions to allow the owner or operator of these SO_2 sources to petition to terminate ambient air quality monitoring, provided that two years of air quality data has been generated in the area under the influence of the source's emissions. These new provisions are listed in the new paragraph (–.01–(6)) as–.01–(6)–(b)–(1), (2), and (3). They are as follows:

(1) The actual sulfur dioxide emissions from a fuel burning installation do not exceed 20,000 tons per year.

(2) The source is located in an attainment area and does not significantly impact a sulfur dioxide nonattainment area.

(3) Measurements of air quality in the vicinity of the source demonstrate that ambient sulfur dioxide levels do not exceed 75 percent of the Tennessee ambient air quality standards.

• 1200–3–16–.01, New Source Performance Standards, General Provisions. Part –.01–(5)–(g)–5. was revised to include a subpart which specifies that particulate emissions from asphalt processing and asphalt roofing shall be determined by Method 5A as detailed in the August 6, 1982, **Federal Register** (47 FR 34145).

On December 5, 1984, Tennessee submitted a regulatory revision to their SIP which became State-effective on December 5, 1984, and EPA is approving it today. This revision to Chapter 1200–3–3, Ambient Air Quality Standards, Table 1, of the Tennessee regulations deletes the hydrocarbon standard from the list of State ambient air quality standards. This is in response to EPA's previous action in the **Federal Register** of January 5, 1983 (48 FR 628), to revoke the primary and secondary national ambient air quality standards for hydrocarbons, EPA having determined that the standards were technically inadequate and no longer necessary as a national standard.

Final Action

EPA has reviewed these changes in the regulatory part of the Tennessee SIP and is approving them as submitted. This action is taken without prior proposal because the changes are noncontroversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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).)

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Hydrocarbons, Lead, Particulate matter, Sulfur oxides, Incorporation by reference.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: March 26, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart RR—Tennessee

Section 52.2220 is amended by adding paragraph (c)(63) as follows:

§ 52.2220 Identification of plan.

* * * * *

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

* * * * *

(63) Changes in rules 1200–3–5–.01 (to revise general visible emission standards), 1200–3–2–.01 (to add definition of "calendar quarter"), 1200–3–12–.03 (to specify method for determining inorganic lead emissions in stack gases), 1200–3–14 (to revise monitoring requirements related to SO_2 control), and 1200–3–16–.01 (to specify method for determining particulate emissions from asphalt processing and roofing manufacture), submitted on October 17, 1984, and change in rule 1200–3–3 (to delete ambient air quality standard for hydrocarbons), submitted on December 5, 1984, by the Tennessee Department of Health and Environment.

[FR Doc. 85–7546 Filed 3–28–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–9–FRL–2807–7]

Designation of Areas for Air Quality Planning Purposes, Attainment Status Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Under section 107 of the Clean Air Act, EPA is redesignating three areas to attainment in California. These actions were proposed on September 9, 1983 and May 2, 1984 and include the following: reduce the size of the carbon monoxide (CO) nonattainment area in the San Francisco Bay Area Air Basin (SFBAAB) and in Stanislaus County, and reduce the size of the ozone nonattainment area in Santa Barbara County.

DATE: This action is effective April 29, 1985.

ADDRESS: Copies of the public comments and EPA's Technical Support Document are available for public inspections during normal business hours at the EPA Region 9 Office.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Air Programs Branch (A–2–1), Air Management Division, EPA Region 9, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 974–7640.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1981, EPA published a **Federal Register** notice of proposed rulemaking asking for comments on all California designations which had not undergone an opportunity for public input. This proposed action was taken as a result of litigation with the Western Oil and Gas Association (WOGA). EPA is publishing a series of notices which respond to the technical/legal issues raised by the November 12 action. This is the sixth notice in the series and was proposed on September 9, 1983 (48 FR 40746) and May 2, 1984 (49 FR 18744). Two proposal notices were necessary to allow time for public input on CO hotspot modeling in the SFBAAB and Stanislaus County, and to allow the California Air Resources Board (CARB) additional time to comment on reducing the size of the ozone nonattainment area in Santa Barbara County.

Public Comments

The public response to the May 2, 1984 reproposal consists of comments from ARB, WOGA, Bay Area Air Quality Management District (BAAQMD) and the Stanislaus Area Association of Governments (SAAG). WOGA's comments are the most extensive and include a report by Environmental Research & Technology, Inc. (ERT). In their report, titled, *Review of U.S. EPA Region IX Re-Proposal of Air Quality Designation for Selected Areas in California*, May 1984, ERT reviews the CO modeling done in the BAAQMD and Stanislaus County, and the ozone redesignation in Santa Barbara County. The most significant concerns raised in the comments are discussed below. EPA's complete response to the comments is found in our *Public Comment Technical Support Document, California Attainment Status Designations, Fourth Notice of Final Rulemaking* (Sixth Action), November 1984, which accompanies this notice.

WOGA states that ERT found problems with the CO hotspot modeling that make it difficult to draw a CO nonattainment boundary for the San Francisco Bay Area Air Basin (SFBAAB). ERT criticizes the CO modeling and argues that the microscale modeling approach is improperly utilized, that the modeling uses overly conservative input assumptions, and that the modeling should have focused on the periphery of the urban area rather than the center to better determine the nonattainment boundaries.

EPA believes that the microscale CO modeling, air quality data, and U.S. Census urban population information provide a solid technical basis for identifying the San Francisco Bay Area CO nonattainment area. The purpose of the modeling was to estimate 8-hour CO concentrations at points of expected maximum concentration within the urbanized portions of the SFBAAB. The modeling was not intended to determine the extent of the hotspot problem, but to confirm its existence. To model at the points of expected maximum concentration, the staff at the local agency necessarily selected intersections with high traffic volumes and used conservative input assumptions to simulate winter conditions. Using a broader modeling perspective or modeling along the fringe of the urban area, as ERT suggests, would not provide sufficient data by itself to identify the nonattainment area. The area that contains the emission sources that are believed to contribute significantly to the CO violations should also be included in the nonattainment area. In addition, the Bay Area CO nonattainment boundaries proposed by EPA are the same as those requested by the ARB and supported by the BAAQMD.

WOGA indicates that EPA did not use the most recent air quality data in identifying the nonattainment areas for ozone in Santa Barbara County and CO in the SFBAAB. WOGA's assertion is not correct. EPA used the most current data available and included it in the Technical Support Document (Fourth Action), dated January 1984. However, it seems that WOGA and ERT were not aware of the January 1984 Technical Document and the data it contained. This Technical Document was made available for public inspection at the California Air Resources Board, local districts and at EPA.

WOGA argues that until EPA selects a legal description, it is not possible for the public to comment on the San Francisco Bay Area CO nonattainment boundary. WOGA thus requested an opportunity for additional comment on the legal boundary description. EPA, however, is proceeding to final action on its proposals without providing WOGA with an opportunity to file additional comments on the legal boundary description.

In the September 9, 1983 and May 2, 1984 Notices, EPA proposed that the urbanized portions of the SFBAAB retain the nonattainment designation for CO. WOGA's comment is based on a statement in the May 2 Notice of Proposed Rulemaking. The statement reads "EPA is working with the ARB and Bay Area District to develop a legal boundary description of the urbanized area for final rulemaking." The legal description, which was subsequently drafted by EPA, is merely a written representation of the urbanized area maps included in EPA's technical support document for the September 9 Notice. The written description and urbanized area maps are the same with only minor variation. Thus, there are no significant changes from the boundaries of the Bay Area CO nonattainment area set forth in the proposed action that would justify a need for further opportunity for public comment.

EPA proposed that the ozone nonattainment area in Santa Barbara County be reduced from the entire County to the southern coastal area. WOGA believes that the proposed nonattainment area should be further reduced in size by making the area west of Goleta attainment. This recommendation is based on an analysis by ERT in which certain exceedances of the ozone standard are discounted. The discounted exceedance days are those that ERT determined were probably influenced by ozone transported from Los Angeles County. EPA reviewed ERT's report and other data including the Santa Barbara County 1982 Nonattainment Area Plan and concludes that there is a solid technical and legal basis for retaining the nonattainment designation in the *entire* southern portion of the County.

WOGA is arguing that the proposed nonattainment area should be made smaller because of transported ozone from Los Angeles County. This argument is not technically sound because there is a violation at the Goleta monitoring station even considering the transport effects. This violation is acknowledged in ERT's report and confirmed in EPA's technical document. In addition, the highest ozone concentrations on ERT's "non transport" days in 1981–83 range from 0.14 parts per million (ppm) to 0.16 ppm and thus exceed the 0.12 ppm national standard. This suggests that there is a substantial amount of locally generated ozone.

EPA acknowledges that under certain meteorological conditions the local problem is exacerbated by transported ozone and could be further complicated by outer continental shelf (OCS) oil development. The impacts of OCS development on the Santa Barbara County ozone problem are not clearly understood and are being studied in large scale modeling efforts involving EPA, ARB, Santa Barbara County Air Pollution Control District and other local agencies. The results of these studies should be available in 1985.

The ARB methodology for eliminating transport days was used strictly for state implementation plan *planning* purposes in the Santa Barbara County 1982 Nonattainment Area Plan pursuant to Section 110 and Part D of the Clean Air Act. WOGA's use of this same approach for reducing the size of the ozone nonattainment area is not consistent with air quality status designations pursuant to Section 107, which specifies, in part, that areas with violations are to be identified and designated nonattainment. EPA however, recognizes that transported ozone may have an impact on the ability of an area to attain the National Ambient Air Quality Standards. EPA has attempted to account for the effects of ozone transport through policies and regulations that allow areas to consider transport in the development of local control strategies (see "General Preamble", 44 FR 20372, April 1979 and 40 CFR Part 51, § 51.14 (c)(8)).

The Santa Barbara County 1982 Nonattainment Area Plan accounts for transported ozone. In calculating the emission reductions necessary to attain the standard, high ozone concentrations believed to be influenced by transport were not used. Thus, the plan's level of emission reduction and corresponding regulations exclude the effects of transport and focus on local sources within the County.

WOGA reasserts its argument that a nonattainment designation should cover only small areas surrounding air quality monitors that record violations. EPA addressed this comment in a previous final rulemaking action published in the **Federal Register** on September 9, 1983 (48 FR 70772). WOGA challenged the September 9 Final Notice in the Ninth Circuit Court of Appeals [*WOGA* v. *U.S. EPA*, No. 83-7831 (9th Cir. filed November 8, 1983)].

Final Actions

The redesignations being finalized in today's notice are:

1. Redesignate the rural portions of the SFBAAB to attainment for CO. The nonattainment designation is retained in all six U.S. Census defined urbanized areas within the SFBAAB.

2. Redesignate the rural portion of Stanislaus County to attainment for CO. The nonattainment designation is retained in the Modesto urbanized area.

3. Redesignate the northern or Non-Air Quality Maintenance Area (non-AQMA) portion of Santa Barbara County to attainment for ozone. The nonattainment designation is retained in the southern (AQMA) portion of the County.

Regulatory Process

As a result of the actions described above, the requirements contained in Title 1, Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act as amended, no longer apply to the areas redesignated to attainment or unclassified for their respective pollutants.

Under the Clean Air 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 the requirements. (See section 307(b)(2) of the CAA.)

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

Authority: Sections 107(d) and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7407(d) and 7601(a)).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: March 26, 1985.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

1. Section 81.305—California, the attainment status designation tables are amended as follows:

A. The California—Ozone table is amended as follows:

(1) In the South Central Coast Air Basin the designation of the Santa Barbara County non-AQMA is revised.

B. The California—CO table is amended as follows:

(1) The San Francisco Bay Area Air Basin is divided into two areas; the designation of the rural portion is revised.

(2) In the San Joaquin Valley Air Basin (SJVAB) Stanislaus County is divided into two areas; the designation of the rural portion is revised.

§ 81.305 California.

* * * * *

Designated areas	Does not meet primary standards	Cannot be classified or better than national standards
CALIFORNIA—OZONE		
* * * * *		
South Central Coast Air Basin:		
* * * * *		
Santa Barbara County non-AQMA		X
* * * * *		
* * * * *		

Designated areas	Does not meet primary standards	Cannot be classified or better than national standards
CALIFORNIA—CO		
* * * * *		
San Francisco Bay Area Air Basin:		
Urbanized Areas	X	
Rural Areas		X
* * * * *		
San Joaquin Valley Air Basin (SJVAB):		
* * * * *		
Stanislaus County:		
Modesto Urbanized Area	X	
Rural Area		X
* * * * *		
* * * * * *		

[FR Doc. 85-7545 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-473; RM-4663]

FM Broadcast Stations in Central Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 257A to Central Valley, California, in response to a petition filed by Lisa M. Smith. The assignment could provide a first broadcast service for Central Valley.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Central Valley, California) MM Docket No. 84-473, RM-4663.

Adopted: March 6, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 22509, published May 30, 1984, issued in response to a petition filed by Lisa M. Smith ("petitioner"), proposing the assignment of FM Channel 257A to Central Valley, California, as that community's first broadcast service. As requested in the *Notice*, petitioner has expressed her intention to file for the channel, if assigned.

2. A staff study indicates that Channel 257A could be assigned to Central Valley, California, in compliance with the Commission's minimum distance separation requirements. However, it would not provide a 16 kilometer buffer zone for Station KAGO-FM, Channel 258, Klamath Falls, Oregon.[1]

3. In view of the above considerations, we believe the public interest would be served by the assignment of Channel 257A to Central Valley, California, since it could provide a first FM broadcast facility for that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Central Valley, CA	257A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

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

[1] Existing Class C stations with less than a 300 meter antenna height are now permitted a 16 kilometer buffer zone. However, this requirement does not apply to proceedings initiated before March 1, 1984. See BC Dkt. 80-90, 94 F.C.C. 2d 152 (1983), *recons.* 49 FR 10460, published March 20, 1984.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7524 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-507; RM-4696]

FM Broadcast Stations in Coalinga, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Coalinga Broadcasting, Inc., assigns Channel 261A to Coalinga, California, as that community's first FM service.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Coalinga, California) MM Docket No. 84-507, RM-4696.

Adopted: March 13, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 24389, published June 13, 1984, proposing the assignment of FM Channel 261A to Coalinga, California, as that community's first FM service. The *Notice* was adopted in response to a petition filed by Coalinga Broadcasting, Inc. ("petitioner"). Supporting comments were filed by the petitioner reaffirming its intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by the assignment of Channel 261A to Coalinga, California, as that community's first FM channel. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments is amended with regard to the following community:

City	Channel No.
Coalinga, CA	261A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division.

[FR Doc. 85-7523 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-514; RM-4699]

FM Broadcast Stations in Kerman, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 232A to Kerman, California, as that community's first FM service, in response to a petition filed by Thomas Renteria.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Kerman, California), MM Docket No. 84-514, RM-4699.

Adopted: March 11, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24392, published June 13, 1984, proposing the assignment of FM Channel 232A to Kerman, California, as that community's first FM service. The *Notice* was adopted in response to a petition filed by Thomas

Renteria ("petitioner"). Petitioner filed supporting comments reaffirming his intention to apply for the channel, if assigned. No comments in opposition to the proposal were received. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. We believe that the public interest would be served by the assignment of FM Channel 232A to Kerman, California in order to provide a first FM service to that community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Kerman, CA	232A

3. It is further ordered, That this proceeding is terminated.

4. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7521 Filed 3–28–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–510; RM–4683]

FM Broadcast Stations in Blackfoot, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Corry E. Whalton, assigns Class C FM Channel 268 to Blackfoot, Idaho, as that community's second FM channel.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Blackfoot, Idaho), MM Docket No. 84–510, RM–4683.

Adopted: March 13, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 24395, published June 13, 1984, proposing the assignment of Class C FM Channel 268 to Blackfoot, Idaho, as that community's second FM service, at the request of Corry E. Whalton ("petitioner"). Petitioner filed comments in support of the allocation and reaffirmed his intention to apply for the channel, if assigned. The channel assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. In view of the fact the assignment could provide a second FM service to Blackfoot, Idaho, we believe that the public interest would be served by the assignment of Channel 268 to that community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments, is amended with regard to the community listed below:

City	Channel No.
Blackfoot, ID	247,268

3. It is ordered that this proceeding is terminated.

4. For further information concerning the above proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7522 Filed 3–28–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–139G; Amdt. Nos. 172–97, 173–187, 178–84, and 179–38]

Conversion of Individual Exemptions Into Regulations of General Applicability

Correction

In FR Doc. 85–6846 beginning on page 11700 in the issue of Monday, March 25, 1985, make the following corrections:

1. On page 11702, in the third column, in paragraph "4", in the first line and in the section heading "§ 178.100" should read "§ 173.100".

2. On page 11703, in the first column, in paragraph "5" in the first line and in the section heading "178.127" should read "§ 173.127".

3. On page 11703, in the first column, in paragraph "6", in the first line and in the section heading "§ 178.133" should read "§ 173.133".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 40211–4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Interim rule and request for public comment; correction.

SUMMARY: This document corrects an error in an interim rule for the Atlantic Mackerel, Squid, and Butterfish Fisheries published March 15, 1985, at 50 FR 10499. The interim rule provided the initial annual specifications for the 1985–1986 fishing year for the Atlantic mackerel fishery, and the name and address for sending comments was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, ext. 273.

In FR Doc 85–6233, page 10499, under the heading "**ADDRESS**" the following is added: Send comments to Salvatore A. Testaverde, Northeast Regional Office,

NMFS, NOAA, State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on mackerel 1985–1986 Annual Specifications."

Dated: March 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–7587 Filed 3–28–85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 61
Friday, March 29, 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

Federal Crop Insurance Corporation

7 CFR Part 415

[Docket No. 1950S]

Forage Production Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to revise and reissue the Forage Production Crop Insurance Regulations (7 CFR Part 415), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the insurance attachment, end of the insurance period, and the cancellation and termination dates in certain counties; (5) clarifying forage stand age limitations; (6) requiring notice before feeding of insured forage begins, (7) adding definitions for "grass mixture" and "loss ratio"; (8) deleting the terms "established stand" and "year of establishment"; (9) deleting a provision of "unit definition" allowing division of land in the unit; and (10) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this section (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small business, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart v, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

Other than minor changes in language and format, the principle changes in the forage production policy are:

1. Section 1.a.(8)—Add the failure of the irrigation water because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 2.d.(4)—Change to allow flexible limitations on the forage stand. Because of wide variations in climate and other factors, some areas are able to support alfalfa stands for periods longer than 4 years while others may require more frequent rotations.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production History (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience cause them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. Section 7.—Change to allow for varied dates for insurance attachment and end of the insurance period, and to allow greater flexibility of the insurance policy for adaptation to the wide variation of factors, such as time of seeding, length of growing season, climate, and number of cuttings.

6. Section 8.a.(4)—Change to require notice before feeding the insured forage. This will allow additional time for an inspection of the production.

7. Section 8.a.(5)—Delete 30 day notice requirement because the other notice requirements stated in Section 8. and Section 9.a. adequately provide for all situations in which notice is requred to be given for forage production.

8. Section 9.d.—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted.

When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

9. Section 15.c.—Add a clause to cancel the contact if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the canellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

10. Section 15.e.—Change the cancellation date from September 15 to October 31 and the termination date for indebtedness from September 15 to November 30, to coincide with the cancellation date for the majority of the winter wheat producing area. Changing the termination date to November 30 will allow more time between the first premium billing date of September 1 and the termination date.

11. Section 17.—Delete definition of the term "Established Stand" because this term is not in the policy.

12. Section 17.g.—Add a definition for the term "Grass-mixture" to more specifically identify the actual composition of the forage stand.

13. Section 17.l.—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

14. Section 17.o.—Delete the provision allowing unit division. The difficulty of maintaining accurate and adequate records of production by small units requires elimination of this provision.

15. Section 17.—Delete the definition of the term "Year of Establishment" because this term is not in the policy.

16. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal crop insurance for forage production has been expanded into almost all counties where forage production is produced. FCIC services offices will be able to advise a producer if forage production insurance is offered in a county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the Federal Register. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 415

Crop Insurance, Forage production.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Forage Production Crop Insurance Regulations (7 CFR Part 415), effective for the 1986 and succeeding crop years, to read as follows:

PART 415—FORAGE PRODUCTION CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

415.1 Availability of forage production crop insurance.
415.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
415.3 OMB control numbers.
415.4 Creditors.
415.5 Good faith reliance on misrepresentation.
415.6 The contract.
415.7 The application and policy.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 415.1 Availability of forage production crop insurance.

Insurance shall be offered under the provisions of this subpart on forage production in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 415.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for forage production which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 415.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 415) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 415.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 415.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the forage production insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 415.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the forage production crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 415.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the forage production crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a forage production contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D or Part 400—General Administrative Regulations (7 CFR 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Forage Production Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Forage Production—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following losses occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

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

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good forage production farming practices;

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be forage which is planted for harvest as livestock feed, which is grown on insured acreage, and for which we provide a guarantee and premium rate in the actuarial table.

b. The acreage insured for each crop year will be forage planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured forage at the time insurance attaches.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) If forage ground cover is less than 75 percent at the beginning of the insurance period;

(4) If the current age of the forage stand exceeds the limitations shown by the actuarial table unless otherwise approved in writing by us;

(5) Planted to a type or variety or mixture not established as adapted to the area or excluded by the actuarial table;

(6) Grown with another crop; or

(7) Grown for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good forage irrigation practice at the time insurance attaches; and

(2) Any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of forage grown in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any forage grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established in the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the forage production policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches on acreage with an adequate stand:

(1) For the calendar year following the year of seeding on:

(a) February 1 for spring-seeded forage in California;

(b) April 15 for spring-seeded forage in Colorado, Idaho, Oregon, Utah and Washington;

(c) May 22 for spring-seeded forage in New York, North Dakota, Pennsylvania, and Wisconsin;

(d) October 16 for fall-seeded forage in all states except California; or

(e) December 1 for fall-seeded forage in California.

(2) for subsequent years on:

(a) October 16 in all states except California; or

(b) January 1 in California.

b. Insurance ends at the earliest of:

(1) Total destruction of the forage crop;

(2) Removal from the windrow or the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which the majority of the forage is normally harvested:

(a) All states except California..... October 15;
(b) California..... December 31.

8. Notice of damage or loss.

a. In case of damage or probable loss, you must give us written notice if:

(1) During the period before harvest, the forage on any unit is damaged and you decide not to further care for or harvest any part of it;

(2) You want our consent to put the acreage to another use; or

(3) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the forage and given written consent. You must notify us when such acreage is put to another use.

b. If you are going to claim an indemnity on any unit, you must give us notice:

(1) Of probable loss at least 15 days before the beginning of any cutting or immediately, if probable loss is later determined; and

(2) At least 5 days before any feeding of the insured forage begins. The notice before feeding must include the number of acres harvested and tons produced from each unit.

c. You must obtain written consent from us before you destroy any of the forage which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the forage on the unit;

(2) Final harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of forage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of forage to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any production from volunteer plants growing in the forage will be counted as forage on a weight basis.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good forage farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) When forage is harvested as other than air-dry hay, the production to count will be adjusted to the equivalent of air-dry hay.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of forage becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested forage on the basis of field appraisals conducted after the normal time for each cutting for the area.

(6) If you elect to exclude hail and fire as insured causes of loss and the forage is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

F. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of the final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our

form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipments, sale, or other disposition of all forage produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation date	Termination date for indebtedness
All States	Oct. 31	Nov. 30

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by May 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of forage production crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding forage production insurance in the county.

b. "Alfalfa" means a pure stand of alfalfa or a stand of alfalfa and grass in which 60 percent or more of the ground cover is alfalfa.

c. "Alfalfa-grass mixture" means a mixed stand of alfalfa and grass in which alfalfa comprises more than 25 percent but less than 60 percent of the ground cover.

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

e. "Crop year" means the period from the date insurance attaches until harvest is normally completed and will be designated by the calendar year in which the majority of the forage is normally harvested.

f. "Cutting" means the severance of the forage plant from the land for the purpose of livestock feed.

g. "Forage" means Alfalfa, Alfalfa Grass-mixture or Grass-mixture.

h. "Grass-mixture" means a mixed stand of locally recognized forage grasses and alfalfa in which alfalfa comprises less than 25 percent of the ground cover.

i. "Harvest" means the removal from the windrow or field.

j. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

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

l. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

o. "Tenant" means a person who rents land from another person for a share of the forage production or a share of the proceeds therefrom.

p. "Unit" means all insurable acreage of forage in the county on the date insurance attaches:

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

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the forage on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on January 1, 1985.

Approved by:

Merritt W. Sprague,

Manager.

Dated: March 25, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 85-7459 Filed 3-28-85; 8:45 am]

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7 CFR Part 419

[Doc. No. 1946S]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the cancellation and termination dates and filing dates in certain counties; (4) clarifying certain sections of the policy with regard to mechanically seeded acreage and availability of the Late Planting Agreement Option; (5) adding a definition of "Loss ratio;" and (6) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectivness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program in which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

Other than minor changes in language and format, the principal changes in the barley policy are:

1. Section 2.d.(4)—Add a stipulation to the policy language to clarify that the Late Planting Agreement Option is available only for use on spring-planted crops.

2. Section 2.d.(7)—Clarify when the barley may be insured if seeded by airplane or broadcast.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. Section 9.d.—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

7. Section 15.e—Change cancellation and termination dates from August 31 to September 30 for New Mexico except Taos County; Oklahoma and Texas. Also, change only the cancellation date from August 31 to September 30 for several southeastern Colorado counties and Kansas. These changes are made to more closely conform to harvest practice in those areas.

8. Section 16.—Change the filing date for contract changes from May 31 to June 30 preceding the cancellation date for all counties other than those with an April 15 cancellation date. This change is made to coincide with the extension of cancellation dates.

9. Section 17.g.—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

10. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal Crop Insurance for Barley has been expanded into almost all counties where barley is produced. FCIC service offices will be able to advise a producer if barley insurance is offered in a county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 419

Crop insurance, Barley.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1986 and succeeding crop years, to read as follows:

PART 419—BARLEY CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

419.1 Availability of barley crop insurance.
419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
419.3 OMB control numbers.
419.4 Creditors.
419.5 Good faith reliance on misrepresentation.
419.6 The contract.
419.7 The application and policy.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 419.1 Availability of barley crop insurance.

Insurance shall be offered under the provisions of this subpart on barley in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for barley which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 419.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 419) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 419.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 419.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the barley insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 419.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the barley crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 419.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the barley crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a barley contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Barley Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those cause are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good barley farming practices;

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be barley planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided for by the actuarial table. The producton from such mixture will be considered as barley on a weight basis.

b. The acreage insured for each crop year will be barley planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured barley at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to barley, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless (for spring-planted barley only) you agree, in writing, on our form to coverage reduction;

(5) Of volunteer barley;

(6) Planted to a type of variety of barley not established as adapted to the area or excluded by the actuarial table;

(7) On which the seed has not been mechanically incorporated into the soil unless provided for in the actuarial table; or

(8) Planted with another crop except as provided in section 2a.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate faclities and water, at the time of planting, to carry out a good barley irrigation practice; and

(2) Any loss of production caused by failure to carry out a good barley irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of barley in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any barley planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guaranteed, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the barley policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches when the barley is planted except that, in counties with an April 15 cancellation date, insurance on fall-planted barley attaches April 16 following planting if there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which the barley is normally harvested:

(a) Alaska.....September 25;
(b) All other states.....October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the barley on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the barley and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested barley (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the barley on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the barley which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the barley on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of barley on the unit and that any loss of production has been directly caused by one or more of

the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of barley to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act: contains less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; more than 5 percent black barley; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured barley by the price per bushel of U.S. No. 2 barley; and multiplying the

(b) Result by the number of bushels of such barley.

The applicable price for No. 2 barley will be the local market price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

(3) Any harvested production from other volunteer plants growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of barley bcomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested barley may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the barley is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request To Exclude Hail And Fire."

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all barley produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for:

(1) The previous crop year in counties having an April 15 cancellation date;

(2) The year prior to the previous crop year in all other counties.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

(1) If deducted for an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date

both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	Sept. 30	Nov. 30.
New Mexico except Taos County; Oklahoma; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New Jersey; and all states south and east thereof.	Sept. 30	Sept. 30.
Arizona; California; Clark and Nye Counties, Nevada.	Oct. 31	Nov. 30
All other Colorado counties; all other Nevada counties; Taos County, New Mexico and all other States.	Apr. 15	Apr. 15.

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by June 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of barley crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding barley insurance in the country.

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

c. "Crop year" means the period within which the barley is normally grown and will be designated by the calendar year in which the barley is normally harvested.

d. "Harvest" of barley on the unit means combining, threshing, or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

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

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of barley in the county on the date of planting for the crop year:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the barley on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on January 1, 1985.

Approved by:

Merritt W. Sprague,

Manager.

Dated: March 25, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 85-7458 Filed 3-28-85; 8:45 am]

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7 CFR Part 418

[Doc. No. 1927S]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the end of the insurance period, the cancellation and termination dates and filing dates in certain counties; (4) clarifying certain sections of the policy with regard to mechanically seeded acreage and availability of the Late Planting Agreement Option; (5) adding a definition of "Loss ratio;" and (6) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of

these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

Other than minor changes in language and format, the principal changes in the wheat policy are:

1. Section 2.2.(4)—Change to clarify that the Late Planting Agreement Option is available only on spring-planted crops.

2. Section 2.d(7)—clarify when the wheat may be insured if seeded by airplane or broadcast.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule throught the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. Section 9.d.—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

7. Section 15.e.—Change the August 31 and September 15 cancellation/termination dates to September 30. Also, change only the cancellation date from September 15 to September 30 for several western Colorado counties and some western and central South Dakota counties. These changes are made to more closely conform to harvest practices in those areas.

8. Section 16.—Change the filing date for contract changes from May 31 to June 30 for all counties other than those with an April 15 cancellation date. This change was made to coincide with the extension of cancellation dates.

9. Section 17.g.—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

10. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal Crop Insurance for Wheat has been expanded into almost all counties where wheat is produced. FCIC service offices will be able to advise a producer if wheat insurance is offered in a county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 418

Crop insurance, Wheat.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1986 and succeeding crop years, to read as follows:

PART 418—WHEAT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

418.1 Availability of wheat crop insurance.
418.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
418.3 OMB control numbers.
418.4 Creditors.
418.5 Good faith reliance on misrepresentation.
418.6 The contract.
418.7 The application and policy.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 418.1 Availability of wheat crop insurance.

Insurance shall be offered under the provisions of this subpart on wheat in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 418.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for wheat which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 418.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 418) have been

approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 418.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 418.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the wheat insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 418.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the wheat crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 418.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the wheat crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a wheat contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Wheat Insurance Policy for the 1986 and succeeding crop years are to as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Wheat—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good wheat farming practices;

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be wheat planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be wheat planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured wheat at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to wheat, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless (for spring-planted wheat only) you agree, in writing, on our form to coverage reduction;

(5) Of volunteer wheat;

(6) Planted to a type or variety of wheat not established as adapted to the area or excluded by the actuarial table;

(7) On which the seed has not been mechanically incorporated into the soil unless provided for in the actuarial table; or

(8) Planted with another crop.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good wheat irrigation practice; and

(2) Any loss of production caused by failure to carry out a good wheat irrigation practice, except failure of the water supply due to an unavoidable cause occurring after

the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must return on our form:

a. All the acreage of wheat in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any wheat planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the wheat policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches when the wheat is planted except that, in counties with an April 15 cancellation date, insurance on fall-planted wheat attaches on April 16 following planting if there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the wheat;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which wheat is normally harvested:

(a) Alaska.....September 25;
(b) All other states.....October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the wheat on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the wheat and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested wheat (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the wheat on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the wheat which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the wheat on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of wheat on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of wheat to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature wheat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.5 percent; or

(2) Mature wheat production which, due to insurable causes, has a test weight of less than 53 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act: contains more than 10 percent kernel damage; more than 12 percent shrunken kernels; more than 6 green garlic bulblets or the equivalent of dry or partly dry garlic bulblets in a 1000-gram sample; or is smutty or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured wheat by the price per bushel of U.S. No. 2 wheat; and

(b) Multiplying the result by the number of bushels of such wheat.

The applicable price for No. 2 wheat will be the local market price on the earlier of the day the loss is adjusted or the day the insured wheat is sold.

(3) Any harvested production from other volunteer plants growing in the wheat will be counted as wheat on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good wheat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written

consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of wheat becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested wheat may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the wheat is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request To Exclude Hail And Fire."

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all wheat produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records or production for:

(1) The previous crop year in counties having an April 15 cancellation date;

(2) The year prior to the previous crop year in counties having any other cancellation date.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Alaska counties except those listed below; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota and all South Dakota counties lying north and east thereof; Vermont; and Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin and all Wisconsin counties north and west thereof.	Apr. 15	Apr. 15.
All other Colorado counties except those listed below; all other Iowa counties except those listed below; Kansas; Nebraska; New Mexico; Oklahoma; Texas; all other Wisconsin counties and all other states except those listed below.	Sept. 15	Sept. 15
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa and all Iowa counties north thereof; Massachusetts; all other Montana counties; New York; Rhode Island; all other South Dakota counties; and Wyoming.	Sept. 30	Nov. 30.
Matanuska-Susitna County, Alaska; Arizona; California; Idaho; Nevada; Oregon; Utah; and Washington.	Oct. 31	Nov. 30

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by June 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of wheat crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding wheat insurance in the county.

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

c. "Crop year" means the period within which the wheat is normally grown and will be designated by the calendar year in which the wheat is normally harvested.

d. "Harvest" of wheat on the unit means combining, threshing, or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

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

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of wheat in the county on the date of planting for the crop year:

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

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

Land rented for a cash, a fixed commodity payment, or any consideration other than a share in the wheat on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations is accordance with Appeal Regulations.

20. Notices.

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

Done in Washington, D.C., on January 1, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 25, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-7466 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 427

[Doc. No. 1940S]

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the cancellation, termination and filing dates in certain counties; (4) clarifying certain sections of the policy with regard to mechanically seeded acreage and availablity of the Late Planting Agreement Option; (5) adding a definition of "Loss ratio"; and (6) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and

safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the oat policy are:

1. Section 2.d.(5)—Add a stipulation to the policy language to clarify that the Late Planting Agreement Option is available only for use on spring-planted crops.

2. Section 2.d.(7)—Add a section to clarify the insurability of airplane or broadcast seeded acreage in some instances.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. Section 9.d.—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

7. Section 15.e.—Change cancellation and termination dates from August 31 to September 30 for New Mexico except Taos County; Oklahoma and Texas, to more closely conform to harvest in those areas.

8. Section 16.—Change the filing date for contract changes from May 31 to June 30 preceding the cancellation date for all counties other than those with an April 15 cancellation date, to coincide with the extension of cancellation dates.

9. Section 17.g.—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

10. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal Crop Insurance for Oats has been expanded into almost all counties where oats are produced. FCIC service offices will be able to advise a producer if oat insurance is offered in a county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 427

Crop insurance, Oats.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1986 and succeeding crop years, to read as follows:

PART 427—OAT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

427.1 Availability of oat crop insurance.
427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
427.3 OMB control numbers.
427.4 Creditors.
427.5 Good faith reliance on misrepresentation.
427.6 The contract.
427.7 The application and policy.

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

§ 427.1 Availability of oat crop insurance.

Insurance shall be offered under the provisions of this subpart on oats in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for oats which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 427.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 427) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 427.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 427.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the oat insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted

relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 427.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the oat crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 427.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the oat crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of an oat contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Oat Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Oat—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resuling from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good oat farming practices;

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be oats planted for harvest as grain, oats planted in the same manner for harvest as silage or hay, and grain mixtures in which oats are the predominant grain, grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be oats planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured oats at the time of planting.

d. We do not insure any acreage:

(1) Planted with flax or vetch;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to oats, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless (for spring-planted oats only) you agree, in writing, on our form to coverage reduction;

(6) Of volunteer oats;

(7) On which the seed has not mechanically incorporated into the soil unless provided for in the actuarial table; or

(8) Planted to a type or variety of oats not established as adapted to the area or excluded by the actuarial table.

e.If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good oat irrigation practice; and

(2) Any loss of production caused by failure to carry out a good oat irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of oats in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any oats planted in the county. This report must be submitted annually on or before the reporting date esblished by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the

premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the oat policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches when the oats are planted except that, in counties with an April 15 cancellation date, insurance on fall-planted oats attaches April 16 following planting if there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which oats are normally harvested:

(a) Alaska..... Sept. 25;
(b) All other states..... Oct. 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the oats on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use;

(c) You want to harvest the oats for silage or hay. (after such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes); or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the oats and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested oats (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not late than 30 days after the earliest of:

(a) Total destruction of the oats on the units;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the oats which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the oats on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of oats on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom that total production of oats to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature oat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(2) Mature oat production which, due to insurable causes, has a test weight of less than 27 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, contains less than 80 percent sound oats or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured oats by the price per bushel of U.S. No. 2 oats; and

(b) Multiplying the result by the number of bushels of such oats.

The applicable price for No. 2 oats will be local market price on the earlier of the day the loss is adjusted or the day the insured oats are sold.

(3) Any harvested production from other volunteer plants growing in the oats will be counted as oats on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of oats becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested oats may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the oats are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request To Exclude Hail And Fire."

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(8). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgement against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approved or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be

paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all oats produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for:

(1) The previous crop year in counties having an April 15 cancellation date;

(2) The year prior to the previou crop year in counties having any other cancellation date.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; New Mexico except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattrox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia and all counties east thereof.	Sept. 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties.	Oct. 31.
All other California Counties; Taos County, New Mexico; all other Virginia counties and all other states.	Apr. 15.

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by June 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of oat crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding oat insurance in the county.

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

c. "Crop year" means the period within which the oats are normally grown and will be designated by the calendar year in which the oats are normally harvested.

d. "Harvest" of oats on the unit means combining, threshing, or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

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

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of oats in the county on the date of planting for the crop year:

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

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the oats on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any

acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on January 31, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 25, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-7467 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 429

[Doc. No. 1943S]

Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the cancellation and termination dates and filing dates in certain counties; (4) adding a definition of "Loss ratio"; and (5) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

Other than minor changes in language and format, the principal changes in the rye policy are:

1. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

2. *Section 5.*—Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. *Section 9.d.*—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

4. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

5. *Section 15.e.*—Change cancellation and termination dates for Nebraska and South Dakota from September 15 to September 30. These dates more closely relate to harvest in these areas.

6. *Section 16.*—Change the filing date for contract changes from May 31 to June 30 preceding the cancellation date to coincide with the extension of cancellation dates.

7. *Section 17.g.*—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

8. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal Crop Insurance for Rye has been expanded into almost all counties where rye is produced. FCIC service offices will be able to advise a producer if rye insurance is offered in a county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the Federal Register. Written comments will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 429

Crop insurance, Rye.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1986 and succeeding crop years, to read as follows:

PART 429—RYE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

429.1 Availability of rye crop insurance.
429.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
429.3 OMB control numbers.
429.4 Creditors.
429.5 Good faith reliance on misrepresentation.
429.6 The contract.
429.7 The application and policy.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 429.1 Availability of rye crop insurance.

Insurance shall be offered under the provisions of this subpart on rye in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 429.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for rye which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 429.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 429) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 429.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 429.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the rye insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 429.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the rye crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

§ 429.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the rye crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting application in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a rye contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Rye Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Rye—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

Thoughout this policy, "you" and "your" refer to the insured shown on the accepted

Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the acturial table or section 9e(7).

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

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good rye farming practices;

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be rye planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be rye planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured rye at the time of planting.

d. We do not insure any acreage:

(1) If rye was seeded with vetch or flax or other small grains;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to rye, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer rye;

(7) Planted to a type or variety of rye not established as adapted to the area or excluded by the actuarial table; or

(8) Planted with another crop.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good rye irrigation practice; and

(2) Any loss of production caused by failure to carry out a good rye irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of rye in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any rye planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the rye policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

Insurance attaches when the rye is planted and ends at the earliest of:

a. Total destruction of the rye;

b. Combining, threshing, harvesting for silage or hay, or removal from the field;

c. Final adjustment of a loss; or

d. October 31 of the calendar year in which rye is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the rye on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the rye and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested rye (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the rye on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the rye which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the rye on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of rye on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rye to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined.

All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature rye production which otherwise is not eligible for quality adjustments will be reduced .12 percent for each .1 percentage point of moisture in excess of 16.0 percent; or

(2) Mature rye production which, due to insurable causes, has a test weight of less than 52 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act: contains more than 7 percent damaged kernels; more than 25 percent thin rye; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured rye by the price per bushel of U.S. No. 2 rye; and

(b) Multiplying the result by the number of bushels of insured rye.

The applicable price for No. 2 rye will be the local market price on the earlier of the day the loss is adjusted or the day the insured rye is sold.

(3) Any harvested production from other crops growing in the rye will be counted as rye on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good rye farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of rye becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested rye may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the rye is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all rye produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
Minnesota and North Dakota	Sept. 15.
All other states	Sept. 30.

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

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

17. Meaning of terms.

For the purposes of rye crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding rye insurance in the county.

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

c. "Crop year" means the period within which the rye is normally grown and is designated by the calendar year in which the rye is normally harvested.

d. "Harvest" of rye on the unit means combining, threshing, or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

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

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of rye in the county on the date of planting for the crop year:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the rye on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share of the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on January 31, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 25, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-7465 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Extension of Study on Alabama's Program Provisions Concerning Disposal of Excess Spoil

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period on a proposed extension of the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites contained in Alabama's approved permanent program for the regulation of surface coal mining and reclamation operations and the surface effects of underground mining.

The Alabama program was conditionally approved by the Secretary of the Interior on May 20, 1982 (47 FR 22030). By that notice, the Secretary announced that a one-year trial period would be held in order to evaluate the adequacy of Alabama's plan for disposal of excess spoil on abandoned mine sites. The one-year period expired May 10, 1983, and was extended to August 20, 1984 (48 FR 34026). The extension was granted because few permit applications requesting approval to use the excess spoil provisions had been received, and the data was therefore insufficient to allow OSM to make a meaningful evaluation of the plan at that time.

On November 1, 1984, the State submitted to OSM, a status report "to fulfill the provisions of terms of approval of the Alabama Program" concerning excess spoil disposal. After reviewing the status report and discussing the matter with the State, OSM has decided that a further extension of time is necessary to build sufficient data upon which to base an evaluation of the program. Therefore, OSM is proposing to extend the trial study period until August 20, 1989, for the reasons set forth in this notice. The Federal rules at 30 CFR 901.15 would be amended to implement this action.

This notice sets forth the times and locations that the Alabama program, a copy of the State's November 1, 1984 status report, and OSM's review of the report are available for public inspection and the comment period during which interested persons may submit written comments on the proposed extension.

DATES: Written comments, data or other relevant information relating to the proposed extension not received on or before 4:00 p.m. on April 29, 1985, will not necessarily be considered.

A public hearing on the proposed extension has been scheduled for April 23, 1985, at the address listed below under **"ADDRESSES."**

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business April 18, 1985.

ADDRESSES: Writen comments should be mailed or hand delivered to : Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION: Copies of the Alabama program, the State's November 1, 1984 status report and OSM's review of the report, and all written comments received in response to this notice, will be available for public review at the OSM Field Office, the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the material by contacting the OSM Birmingham Field Office.

Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Office of Surface Mining, Room 5124, 1100 "L" Street, N.W., Washington, D.C. 20240

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Birmingham, Alabama, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the date listed under **"DATES."** If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested, and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed extension may request a meeting at the OSM office listed in **"ADDRESSES"** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT."**

All such meeting are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the condition of approval of the Alabama program can be found at 47 FR 22020–22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983). In the May 20, 1982 notice under Finding 18.1 (47 FR 22038–39), the Secretary approved, with certain restrictions, Alabama's plan to allow the disposal of excess spoil generated by current operations on areas which have been previously disturbed but not adequately reclaimed. The provisions of Alabama's plan were set forth at state rule § 805.11. (That section has now been recoded as 880–X–9B–11 under a State generic recodification scheme.) No comparable provision is contained in the Federal rules.

The Secretary's findings on Alabama's provision noted that under the State's plan, the previously disturbed area must be included within the currently permitted bond area, but an additional bond amount would not be required. In an attempt to ensure the reclamation of the entire area in the event an operator defaults on his obligations and abandons the job, the State regulations provide that the condition of the entire area will be considered before full bond release is granted. The Federal regulations at 30 CFR 800.11(b)(1) require that all operations to be conducted within the permit area during the life of the mine be covered by a performance bond. By that definition, those areas to be used for excess spoil disposal must be included in the performance bond. In his decision findings, the Secretary expressed concern that the State's plan might spread bond amounts too thin, resulting in less, rather than more, reclamation. However, since the plan has possibilities for increased reclamation activities, the Secretary proposed to allow its implementation on a controlled basis for an appropriate trial period.

A one-year trial period was established during which the State was allowed to put its plan into effect under the following conditions:

(1) Prior to approval of any application involving this spoil disposal plan, the State Regulatory Authority must notify the OSM Field Office and submit to that Office a report stating the relevant particulars concerning the request indicating that the State approved;

(2) The OSM Field Office will then review the matter and notify the State within 30 days of its approval or objection;

(3) At the end of one year, the State shall submit to the OSM Field Office a report on the project;

(4) The OSM Field Office will then review the State report, add data or material as needed and transmit the material to OSM Headquarters;

(5) A decision will then be made concerning the success or failure of the trial.

The Secretary's findings also stated that it was recognized that a one-year trial period may not be sufficient to adequately evaluate the initial results and that OSM may extend the trial period as needed until sufficient data for appropriate evaluation is obtained.

Alabama agreed to the above restrictions.

II. Reasons for Trial Period Extensions

In a **Federal Register** notice published July 27, 1983 (48 FR 34027), the Director extended the trial period for the subject study to August 20, 1984, due to the lack of data on which to base an evaluation. At that time, only six sites had been approved for implementation of a plan for disposal of excess spoil on abandoned mine sites, and none of these sites had progressed to a point where adequate data could be collected.

On November 1, 1984, the Alabama Surface Mining and Reclamation Commission (ASMRC) submitted a report to OSM on the excess spoil project. After reviewing the State's report and discussing it with the State, OSM has determined that additional data is necessary to do an adequate review. For the reasons set forth below; OSM is proposing to further extend the trial period for five years to August 20, 1989.

To date, only six applications for consideration under the State's excess spoil provisions have been approved. Of these, one is not scheduled for mining for 2 to 3 years, one will not begin spoil placement for 3 to 4 years, three are currently either inactive or under temporary cessation, and one is nearing completion. Therefore, an accurate evaluation of the relative success or failure of the excess spoil project cannot be made at this time.

The State has indicated to OSM that a continuation of the trial period to August 1985, would allow for a completion of one or more of these projects. However, OSM believes that an extension to August 1985 would be insufficient to provide adequate data for OSM to accurately analyze the success of the plan. The completion of even 2 or 3 projects, which is the maximum number expected to be completed by that time, would not be sufficient. The completion of all six projects, and preferably others as well, would be required to provide adequate data to enable OSM to complete an accurate analysis.

Therefore, OSM is proposing to extend the trial study period until August 20, 1989. This period would be extended with the following stipulations:

1. The Director, at his discretion, may terminate the trial study period at any time during the extended period, if sufficient data becomes available. Upon termination of the trial study period and OSM's analysis of the data, the Director may then approve or disapprove the subject excess spoil provisions.

2. At any time during the trial period the Director may, at his discretion, place a moratorium on new permit applications which include consideration of the excess spoil provisions.

3. The State is required to continue to report to the OSM Birmingham Field Office annually on August 20, on the status of all permits and permit applications which include consideration under the excess spoil provisions.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule will not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR 901.15 is proposed to be amended as set forth herein.

Dated: March 25, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 901—ALABAMA

30 CFR 901.15 is proposed to be amended by adding a new paragraph (e) as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(e) The trial period for Alabama's excess spoil plan is further extended from August 20, 1984, to August 20, 1989. The trial study is extended for this period with the following stipulations:

(1) The Director, at his discretion, may terminate the trial study period at any time during the extended period, if sufficient data becomes available. Upon termination of the trial study period and OSM's analysis of the data, the Director may then approve or disapprove the subject excess spoil provisions.

(2) At any time during the trial period the Director may, at his discretion, place a moratorium on new permit applications which include consideration of the excess spoil provisions.

(3) The State is required to continue to report to the OSM Birmingham Field Office annually on August 20, on the status of all permits and permit applications which include consideration under the excess spoil provisions.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 85-7481 Filed 3-28-85; 8 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on February 18, 1985, would amend the Indiana regulations concerning the location of public office for filing permit applications and would clarify the proper newspaper for publishing notice of permit applications.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons

may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. on April 29, 1985, will not necessarily be considered.

If requested, a public hearing will be held on April 23, 1985, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 269-2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments not received by April 29, 1985, or received at locations other than the OSM Indianapolis, Indiana Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business April 18, 1985. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those schedules. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071-32108).

On February 18, 1985, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment would amend the Indiana regulations as follows:

1. Indiana rules 310 IAC 12-3-26, 12-3-64, 12-3-106(b) and (c), 12-3-107(c) and 12-3-108(c) would be amended to change the location for permit applications to be filed from the county recorder's office to the library.

2. Indiana rule 310 IAC 12-3-106(a) would be amended to clarify that if proposed mining operations lie within more than one county, advertisements of permit application filings must be placed in each county.

3. Indiana rule 310 IAC 12-3-106(a)(4) would be added to require that newspaper advertisements of permit applications include the names of the owners of property included in the application.

4. Indiana rule 310 IAC 12-3-106(b) would be amended to list libraries which qualify for permit application filing locations.

5. Indiana rule 310 IAC 12-3-106(c) would be amended to require a filing fee, and to establish requirements for retention of the permit application in public files, including the requirement that the application remain on file until final bond release.

6. Various non-substantive and editorial changes are proposed.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 25, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-7575 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-01]

Marine Event; Annual Newport to Ensenada Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule will establish a special local regulation during the start of the Annual Newport to Ensenada Race. This event usually takes place the last weekend of April each year commencing off Newport, California and finishing in Ensenada, Baja California, Mexico. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the race.

This year will mark the 38th running of this event which will be held on the 27th through the 29th of April 1985. Future information on dates, times, number of participants and location will be published in the weekly issue of the Eleventh Coast Guard District Local Notice to Mariners, at least 30 days prior to the event each year.

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

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Newport Ocean Sailing Association has conducted the Annual Newport to Ensenada Race for the last 38 years; this event normally starts at 12:00 noon on the last Saturday of April in the waters approximately one mile south of Newport Beach, California, near the Newport Jetty. This event usually has 700 to 800 ocean racing and cruising sailboats, 24 to 85 feet in length, that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area is in force for only a short period of time at the start of the race.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-01—Newport to Ensenada Race, Newport, CA.

The Newport to Ensenada Race is conducted annually on the last weekend of April, commencing approximately at 12:00 p.m. on the navigable waters off Newport, California. Further information on exact time, date and location are published by the Eleventh Coast Guard District in the Local Notice to Mariners and/or Special Local Regulations promulgated at least 30 days prior to the event. The special local regulations are effective only in the staging area and last until all participants have started.

Special Local Regulations

For this years' event read as follows:

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic. That portion of the Pacific Ocean off Newport, California, enclosed by the following coordinates:

(1) 33 degrees 35.3' N, 117 degrees 53.3' W.

(2) 33 degrees 34.9' N, 117 degrees 53.3' W.

(3) 33 degrees 34.9' N, 117 degrees 54.5' W.

(4) 33 degrees 35.3' N, 117 degrees 54.5' W.

(b) *Effective Dates:* This year these regulations will be effective from 12:00 PM to 4:00 PM on April 27, 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law inforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 15, 1985.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85-7354 Filed 3-28-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2807-5]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators; Proposed Amendment (Applicable to Central Illinois Public Service Company)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On January 25, 1985, EPA proposed an amendment to Subpart D, the standards of performance for fossil-fuel-fired steam generators for which construction commenced after August 17, 1971 (but before September 18, 1978). This amendment (50 FR 3688) applies to sulfur dioxide (SO_2) emissions from two boilers operated by the Central Illinois Public Service Company (CIPS) at its Newton power station in Jasper County, Illinois. The public comment period following proposal of this amendment ends on March 25, 1985. On March 20, the Natural Resources Defense Council (NRDC) requested an extension to the public comment period. In response to this request, the period for receiving written comments is being extended by 30 days until April 24, 1985.

DATE: Comments must be postmarked on or before April 24, 1985.

ADDRESS: Comment should be submitted (in duplicate, if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Specify Docket Number A-84-01.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Wood, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5578.

Dated: March 25, 1985.

Charles L. Elkins,

Acting Assistant Administrator.

[FR Doc. 85-7544 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-9-FRL-2807-3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to redesignate the attainment status of a portion of the Lake Tahoe, California and Nevada Nonattainment Area for carbon monoxide (CO). This action responds to portons of the requests for redesignation by the California Air Resources Board and the State of Nevada under paragraph 107(d)(5) of the Clean Air Act. EPA invites public comment on this proposed action whose only effect is to eliminate the need for emission offsets or reliance on a growth allowance for the construction of major stationary CO sources in the new attainment area.

DATE: Coments should be submitted on or before April 29, 1985.

ADDRESSES: Send any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Technical Evaluation Section (A-2-1), Air Programs Branch, Air Management Division.

EPA's Technical Support Document concerning the proposed redesignation is available for public inspection during normal business hours at EPA's San Francisco office and at the following locations:

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

Division of Environmental Protection, 201 South Fall Street, Carson City, NV 89710.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Technical Evaluation Section, A-2-1, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7640 FTS: 454-7640.

SUPPLEMENTATARY INFORMATION:

Background

On March 3, 1978 (43 FR 8970) EPA promulgated attainment status designations for all states, as authorized by paragraph 107(d)(2) of the Clear Air Act, as amended. EPA designated all of the Lake Tahoe Basin nonattainment for CO, as requested by the States of California and Nevada.

The format of Title 40 of the Code of Federal Regulations, Part 81, required separate listings for the two states. However, EPA Region 9 has always treated the two portions of the air basin as one nonattainment area for CO. EPA now proposes to reduce the nonattainment area in size while sepatration the Tahoe City area on the California north shore from the stateline area of California and Nevada south shore. EPA believes that such action is reasonable because no other parts of the air basin have been shown to have had measured or modeled violations of either CO National Ambient Air Quality Standard (NAAQS). It is reasonable to split the basin because of the rural nature of the Lake Tahoe area. Information submitted and approved as a part of the California portion of the Nonattainment Area Plan (NAP) shows much traffic movement back and forth between the two States in the south shore area but little movement between the north and south shore areas of the lake.

On May 4 and 5, 1983 the States of California and Nevada, respectively, requested that EPA redesignate part or all of their respective portions of the CO nonattainment area. California requested that EPA redesignate only the Placer County portion to attainment. No request has been received for portions of the more southerly, El Dorado County, portion. NAAQS violations continue to be measured on the California side of the south shore area. Nevada requested that all of its side of the basin be redesignated to attainment for CO. Portions of three counties

comprise the Nevada side of the basin. From north to south, the Nevada counties of Washoe, Carson City, and Douglas are affected.

On July 14, and 26, 1983 EPA responsded to Nevada and California, respectively. The Regional Office informed both States that redesignation of the more urbanized portions of the south shore portion of the basin would not be possible at this time bacause the urban core area, with violations on the California side in El Dorado County, straddles the State line. Because EPA encourages the continuation of coordinated traffic managment even where transportation planning crosses States boundaries, EPA policy states that the minimum size of a CO nonattainment area is the urban core area. The Regional Office informed both States that it would begin the paperwork necessary for the redesignation of only the less urbanized portions of the basin in both States. In addition, California was informed that the criteria for redesignation had not been shown to have been met, and was provided with two alternative methods of demonstrating that attainment had been achieved at Tahoe City, as the result of the implementation of federally approved or promulgated State Implementation Plan (SIP) control measures.

An October 24, 1983 modeling demonstration submitted by California did not succeed in convincing the Regional Office that violations had been eliminated from the Tahoe City area. EPA responded accordingly on December 9, 1983.

At a December 19, 1983 meeting with California State and Placer County officials, California agreed to monitor at the site of the previously measured CO ambient air quality violation.

July 27, August 2, and August 13, 1984 correspondence between the three agencies confirms that the necessary monitoring at Tahoe City would be performed.

On February 24, 1984 (49 FR 6897) EPA fully approved the Nonattainment Area Plan for Lake Tahoe by removing the conditions of approval remaining on the California portion of the 1979 plan. The Nevada portion of the nonattainment area plan was fully approved by removal of its conditions of approval on the same date.

EPA Criteria for Redesignation of a Portion of a Nonattainment Area to Attainment

In general, the area to be redesignated to attainment cannot have had a measured or modeled violation during the past two years for which data are available.

The area to be redesignated cannot contain a source or sources which contribute significantly to a place with measured or modeled violations.

For CO, certain minimum size requirements are prescribed by national and by Regional Office policy.

1. For U.S. Bureau of the Census designated urbanized areas and neighboring urbanized areas, the urban core area, required to be kept nonattainment by national policy, is defined by the Regional Office as all of the urbanized areas which contribute significantly to the measured or modeled violations.

2. For areas such as Lake Tahoe which are not designated as urbanized per the above, the urban core area is defined as the localized commercial and residential areas near the measured or modeled violations.

The areas proposed to remain nonattainment are as follows:

1. In the California north shore area: The Tahoe City area, defined as sections 5, 6, and 7 of T15N, R17E.

2. In the south shore area:

a. In California, all of the portions of El Dorado County within the Lake Tahoe Air Basin, and

b. In Nevada, the portions of Douglas County within sections 3, 9, 10, 14, 15, 22, 23, 26, and 27 of T13N, R18E and within sections 3, 4, 10, 15, 22, 27, and 34 of T14N, R18E.

The remainder of the Lake Tahoe Air Basin in California and Nevada is proposed to be redesignated to attainment. The new attainment area includes all of the basin portions of Washoe and Carson City Counties, Nevada, parts of Douglas County, Nevada and parts of Placer County, California, except as specified above.

The area recommended for redesignation to attainment:

1. Has never had a measured or modeled CO NAAQS violation, and

2. Is not a part of a U.S. Bureau of the Census Urbanized Area.

Proposed Actions

EPA has revised the redesignation requests and recommends that the above specified areas should remain nonattainment while the remainder of the air basin should be redesignated to attainment for CO.

Regulatory Process

The Office of Management and Budget has exempted this action from the requirements of sections 3 of Executive Order 12291. Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Authority: Sections (107(d) and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7407(d) and 7601(a)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Carbon monoxide.

Dated: January 7, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-7542 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 105-63

Preservation and Protection of and Access to the Presidential Historical Materials of the Nixon Administration; Repromulgation of Public Access Regulations

AGENCY: National Archives and Records, Service, GSA.[1]

ACTION: Notice of proposed rulemaking; notice of public comment deadline.

SUMMARY: The National Archives and Records Administration proposes to amend regulations on procedures for preserving and protecting the Presidential historical materials of the Nixon administration and for providing access to these materials. The Archivist of the United States is required by law to issue these regulations.

DATE: All comments must be received by close of business May 28, 1985.

ADDRESS: All comments must be in writing to the Director, Legal Services Staff, National Archives and Records Administration, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Gary Brooks, 202-523-3618.

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration Act of 1984 (Pub. L. 98-497) established the National Archives and Records Administration as an independent executive branch agency, effective April 1, 1985, and amended the Presidential Recordings and Materials

[1] On April 1, 1985, the National Archives and Records Service, General Services Administration, will become an independent agency, the National Archives and Records Administration. References in the text of the document are to the National Archives and Records Administration because of the proximity of the date on which the name of the agency will change.

Preservation Act by transferring to the Archivist of the United States responsibilities previously assigned to the Administrator of General Services. On Friday, March 7, 1980, the Administrator of General Services published in the **Federal Register** (45 FR 14855) public access regulations implementing Section 104 of the Presidential Recordings and Materials Preservation Act. (Pub. L. 93–526, 88 Stat. 1695, 44 U.S.C. 2111 *note.*) hereinafter referred to as the Act. The regulations published at 45 FR 14855 reflected a partial settlement of litigation pending in the United States District Court for the District of Columbia in the matter of *Nixon v. Solomon*, C.A. No. 77–1395, (D.D.C.) aff'd on other grounds sub nom. *Nixon v. Freeman*, 670 F.2d 346 (D.C. Cir.), *cert. den.*, 459 U.S. 1035, 103 S.Ct. 445, 74 L.Ed.2d 601 (1982).

After the promulgation of the previous regulations, the constitutionality of Section 104(b) of the Act was challenged in the United States District Court of the District of Columbia *(Allen et al. v. Carmen et al.*, 578 F. Supp. 951) because the questioned section provided for a legislative veto of any regulations promulgated by the Administrator to implement the provisions of the Act. On December 30, 1983, the court ruled that Section 104(b) of the Act was unconstitutional based upon *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764, 77 L.Ed.2d 317, (1983), and that previously promulgated regulations were invalid due to the exercise of the legislative veto on numerous occasions. It further ruled that Section 104(b) of the Act, which contained the legislative veto provision, was severable from the remainder of the Act, and that the Act was to be construed as a report and wait statute. This proposed set of regulations, which is the sixth proposed set since the Act became law, is the result of a full and independent review of the Act within the General Services Administration and the National Archives and Records Service, of the court's decision in *Allen v. Carmen*, of the previous set of regulations, and of the practices and the policies of existing Presidential libraries.

One factor that must be mentioned is that the previous set of regulations was the result of negotiations and agreement amongst the various interested parties in *Nixon v. Solomon*, including former President Nixon. The negotiations produced administratively practical regulations effectively protecting the interest of individuals while not blunting the mandate of the statute to make the material public.

Following the *Allen v. Carmen* decision, the Archivist of the United States established the Nixon Materials Regulations Review Group to review the previous regulations with a view towards changing any substantive portions, if changes were necessary, for reasons of: (a) Archival efficiency and compliance with commonly accepted archival standards; (b) consistency with the practices of Presidential libraries; or (c) compliance with the Presidential Recordings and Materials Preservation Act of 1974. The revierw continued over a period of months. The Nixon Materials Regulations Review Group issued a report to the Archivist which analyzed the regulations, considering both their actual operation over a period of approximately four years, and their future operation. The group's analysis was carefully reviewed prior to the publication of these proposed regulations, and its recommendations were accepted. In fact, portions of that report are included in this analysis.

The result of our full and independent review of the statute, prior regulations, and court decision is that the new regulations should be published in substantially the same form and content as the previous set of regulations, with one exception. The composition of the Presidential Materials Review Board has been altered by the inclusion of an historian from a Federal agency rather than an archivist or historian, not otherwise a Government employee, nominated by the Council of the Society of American Archivists. This change was made because of our concerns about the performance of a governmental function by someone essentially outside the Executive Branch, even though treated as a special Federal employee. The section pertaining to notice to interested parties of the impending public availability of the materials, and the section pertaining to categories of restricted access to materials, both of which are topics with significant legal and constitutional overtones, remain unchanged. Also unchanged are the proposed regulations concerning the practical matters of the physical handling, storing, and archival processing of the Nixon Presidential materials. No better regulations could be promulgated which would fulfill the requirements of the Act and effectively balance the various conflicting interests within legal and constitutional bounds.

This set of regulations provides for archival treatment of the Nixon materials that is comparable to the treatment of similar materials of other Presidents in the Presidential libraries. The principal departure from standard Presidential library practice is the extraordinary requirement to notify former staff members and other interested parties before any Nixon materials are opened to the public, and to allow persons to object to proposed openings of the materials. With the exception of the legal constraints imposed by this unique concern for any residual rights the originators of the materials may have, these regulations continue the traditions, standards, and practices of the Presidential libraries.

Because these proposed regulations are substantially similar to the previously adopted regulations, which had an extended period of time for public review and comment while they were before Congress, we have determined that a 60-day period of review is sufficient for receipt of written comments hereunder.

General

Sections 105–63.000, 105–63.101, and 105–63.102, set forth the scope, purpose, and application of these regulations. Because of the legislation applicable to them and the circumstances surrounding the Government's obtaining possession of them, the Nixon materials require the promulgation of specific and extensive regulations. This has not been the case with other Presidential materials.

Section 105–63.103 provides that the Archivist of the United States shall maintain exclusive legal custody of all Presidential historical materials of the Nixon Administration.

Section 105–63.104(a) defines Presidential historical materials generally as any and all items of former President Nixon connected with his constitutional or statutory powers or duties as President, including those relating to political activities, where they directly relate or affect the performance of constitutional or statutory powers or duties of the President. As used in the regulations, Presidential historical materials are those materials which must remain in the possession of the Government because they pertain to the President's official duties. This definition was arrived at after intensive consideration of archival, Congressional, judicial, and public concerns. The definition partially encompasses the types of materials Presidents historically have donated to the nation's archives; but former Presidents, other than Mr. Nixon, also have donated materials which would be outside this section. All Presidents since Herbert Hoover have freely donated archival materials without distinguishing or separating those that were directly related to their official

powers or duties as President and those that were not. Although former Presidents have had the opportunity to exclude non-Presidential materials from their gifts to the nation, none has. But, given the fact that the Nixon materials were not freely donated, an intention on the part of former President Nixon to include among the Presidential materials those documents that do not directly pertain to official Presidential activities cannot be inferred. Therefore, these regulations must embody a narrower definition of Presidential materials than what is applied in the Presidential libraries and must take into account the need to distinguish between Presidential and non-Presidential materials.

Section 105–63.104(c) defines the abuses of Governmental power considered to be included in the general rubric of "Watergate." The definition is limited to those matters included in the charter of the Senate Select Committee on Presidential Campaign Activities, the charter of the Watergate Special Prosecution Force, and the Articles of Impeachment contained in House Report No. 93–1305.

Section 105–63.104(d) defines general historical significance in the generally accepted archival sense of those words.

Section 105–63.104(h) defines initial archival processing in such a manner as to limit the intrusion of archivists on personal or private materials while allowing them to carry out the duties prescribed in the statute. A minimal initial archival processing is necessary to determine which material must be returned and which material must be kept.

Section 105–63.105 simply provides for the proper routing of requests for access to Presidential historical materials.

Subpart 105–63.2 deals with general archival processing of the materials and the actual physical access procedures to the materials, which shall be applicable in all instances. The foremost concern in this section, as well as the regulations as a whole, is balancing the privacy issues within the statute and the public's right to know.

Section 105–63.203 authorizes a minimal initial archival processing for the actual physical protection and preservation of the materials.

Section 105–63.204 provides regulation of the actual physical access to the areas where the materials are kept. Section 105–63.204(b) provides, consistent with ensuring the protection of the records, that a minimal number of individuals shall be permitted physical access to the materials. Section 105–63.204(d) permits former President Nixon to have a representative present whenever a search of the materials is made for a Federal agency or for judicial proceedings. Section 105–63.204(f) establishes a procedure whereby former President Nixon may assert any rights or privileges he may have which would restrict or prohibit access to the materials by a Federal agency or for judicial proceedings. Section 105–63.204(g) provides that, in the event the Archivist makes a ruling adverse to any claim of right or privilege by former President Nixon seeking to restrict access, the materials will not be released for a period of five work-days thereafter, thus allowing former President Nixon time to commence a judicial assertion of his claim.

Section 105–63.204(h) provides a protective mechanism which ensures that the original documents will be preserved by providing copies in response to legal requests, whenever possible.

Section 105–63.205 provides the Archivist with the authority normally given to protect the materials speedily in the event they are physically threatened in an emergency.

Subpart 105–63.3 provides for access to the materials by former President Nixon, Federal agencies, and for judicial proceedings. Former President Nixon may have access to the materials at all times pursuant to the regulations governing physical access. Federal agencies may use the materials if needed for Government business; and, the materials are available for production in legal proceedings by lawful process subject to the rights, defenses, and privileges of the Federal Government, former President Nixon, or anyone else who can demonstrate a right, defense, or privilege.

Subpart 105–63.4 governs the area which was and is a primary subject of judicial, congressional and public concern, and scrutiny: access to the materials by the public. To date, primarily due to the litigation surrounding the materials, there has been access, pursuant to the earlier set of regulations, only to the Presidential photographs and to the 31 taped conversations entered as evidence in the Watergate trials. Section 105–63.401(a) provides for the initial processing of the material and the expedited return of private or personal materials. Much private or personal material has already been returned under the provisions of the previous regulations. Section 105–63.401(a) provides for, pursuant to the Act, the expedited processing of the materials relating to the Watergate abuses. It has been accepted by the National Archives and President Nixon that any abuse of power information in the Nixon materials most likely would be found either in the White House tapes or the papers identified as the "Special Files." For this reason, these two segments were the first to be archivally processed. An early legal concern when the statute was enacted was that processing of the Special Files first constituted unequal treatment of the Nixon materials. Some suggested that such high level files would not be prepared for opening at an early date in the Presidential libraries. This concern is moot now that ten years have passed since the end of the Nixon administration. Opening the Special Files now, with restricted documents withdrawn, is well within the time period traditionally accepted by the Presidential libraries for opening material of this nature.

Section 105–63.401 (b) and (c) provide means of notification to interested parties of the impending opening to public access of any segment of the materials. At least thirty days notice before opening will be provided by publication in the **Federal Register**. In addition, personal notice will be given to all who have entered their names in the Nixon Materials Registry, to former staff persons identified as having created or maintained the files to be opened, and to anyone named in materials which would not have been disclosed except for the fact that the material is essential to the understanding of an abuse of power.

The provisions for notice are as broad as reasonably possible. As noted above, the notification requirements are unique to the Nixon materials. It is not the policy in the Presidential libraries to notify anyone other than the former President or his representative prior to opening materials. During the review of these regulations, serious consideration was given to revising the notice provisions, so that opening Nixon materials could be done in a manner consistent with the practices in the Presidential Libraries. All recent Presidents and Federal agencies have accepted archival review as the proper means of preparing materials for public access, and, at the same time, protecting national security and individual rights. But the unique legal background of the Nixon materials adds the requirement of notification to our responsibility of preparing these materials for public release. Given this responsibility, our major concern was that we provide sufficient notification while not postponing access for unacceptably lengthy periods. It was therefore decided that the regulation should remain unchanged because it was the most plausible and effective balancing

of the public's right to know and the individual's right to privacy that we could draft. The notice provisions selected are those which most effectively provide notice to concerned parties while providing for opening the materials in a reasonable time.

Section 105-63.401-1 provides a mechanism for persons claiming a legal or constitutional right to limit public access to the materials, or for those who believe that public access to the materials might jeopardize a right to a fair and impartial trial, to make their objections known to the Archivist, and, if the Archivist makes a decision regarding access which is adverse to the claimant, sufficient postponement of public access thereafter to permit the disappointed claimant to seek judicial recourse. It further provides a similar mechanism for those who claim an ownership interest to commence the process of having the materials returned to them. Once again, these provisions go beyond the accepted practices in Presidential libraries.

Section 105-63.401-2 establishes the procedures for the segregation and review of the materials, the procedures under which objections are made to the segregation and review process, and a process by which significant issues involving the interpretation of these regulations or otherwise having far-reaching precedential value are interpreted.

A primary concern underlying the entire section is the need to minimize intrusion into private and personal materials. A certain degree of archival review within the executive branch has been accepted by the Supreme Court as not violating privacy. See *Nixon v. Administrator*, 425 U.S. 435 (1977). It is recognized that the review within the executive branch must be as limited as possible.

It is also recognized that determination of issues involving the interpretation of these regulations or issues that will have far-reaching precedential value should be made through a formal administrative process, with an administrative record that provides a court with a basis of review. These regulations provide for a multitiered review process.

If the archivists assigned to the Nixon project are uncertain about the segregation or restriction of materials, or conclude that a decision will have far-reaching precedential value, the issue is submitted to the Senior Archival Panel. The Senior Archival Panel is selected by the Archivist of the United States from senior governmental archivists.

If the Senior Archival Panel is unable to make a decision, or the determination is of sufficient import, involving interpretation of the regulations or of far-reaching precedential value, then the Panel may certify the matter to the Presidential Materials Review Board. The Board functions in a manner similar to review committees in a number of Presidential libraries, and, under the previous regulations, has already insured that archival decisions made in the processing of Nixon materials have not been arbitrary or capricious.

The Board's membership has been changed because the fourth member of the Board, "a person, distinguished in archival science, history, or political science, who shall not otherwise be a Federal employee . . .," was not a regular executive branch employee. The status of this fourth member raised concerns about the constitutional propriety of a person essentially outside the executive branch performing executive functions. *See Nixon v. Administrator, supra*. Because the Board is the final decision-making organ on issues of disclosure and other important questions, we believe that all Board members should be regular employees of the executive branch. This fourth member will be an historian of an executive branch agency, and will be selected by the Archivist of the United States in his capacity as Chairman of the Board.

The Board's actual processes are similar to the procedures the Archivist and the Senior Archival Panel employ. The Board reviews the arguments concerning restriction or ownership of materials, makes a determination and issues a decision, and refrains from acting on the decision for a period to allow time for a disappointed party to seek judicial review.

Subpart 105-63.402 governs an area of potential controversy. It concerns the exceptions to public access for the various materials.

Section 105-63.402-1 authorizes the Archivist to restrict access to material relating to abuses of power to which a person has an ongoing claim of constitutional right or legal privilege to restrict access, or to which the Government has a right to restrict access in the interests of national defense or foreign policy. The Act clearly mandates that the public should have access to the portions of the material that are essential to an understanding of abuses of power, even if the material would otherwise be restricted for personal privacy reasons.

Section 105-63.402-2 governs access to materials of general historical significance unrelated to abuses of power, and provides the Archivist broader grounds to restrict such access than for materials concerning abuse of power.

Sections 105-63.402-3 and 105-63.402-4 provide for periodic review of restrictions and for appeal by researchers of the restrictions—both normal archival administrative practices. Section 105-63.402-5 provides for access to materials where restricted portions are reasonably segregable. Section 105-63.402-6 provides for declassification of documents according to normal archival practices under the current governing Executive Order on protection of classified information. E.O. 12356, 3 CFR 1983 Comp., p. 166.

Section 105-63.404 specifies the location for public reference use of the tapes. This section has been amended to allow the tapes to be played in Alexandria, Virginia, where they are now stored.

The remainder of the regulations incorporate standard practices for archival materials.

List of Subjects in 41 CFR Part 105-63

Archives and records, Nixon historical materials.

For the reasons stated in the preamble, it is proposed to amend Part 105-63 of Title 41 of the CFR. As amended, Part 105-63 reads as follows:

PART 105-63—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

Sec.

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105-63.401-1 Rights and privileges; right to a fair trail.
105-63.401-2 Segegration and review; Senior Archival Panel; Presidential Materials Review Board.
105-63.401-3 Transfer materials.
105-63.402 Restrictions.
105-63.402-1 Materials related to abuses of governmental power.
105-63.402-2 Materials of general historical significance unrelated to abuses of governmental power.
105-63.402-3 Periodic review of restrictions.
105-63.402-4 Appeal of restriction
105-63.402-5 Deletion of restricted portions.
105-63.402-6 Requests for declassification.
105-63.403 Reference room location, hours, and rules.
105-63.404 Reproduction of tape recordings of Presidential conversations.
105-63.405 Reproduction and authentication of other materials.
105-63.406 Amendment of regulations.
105-63.407 Freedom of Information requests.

Authority: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98-497; 44 U.S.C. 2104; and Secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act, 88 Stat. 1695; 44 U.S.C. 2107 note.

§ 105-63.000 Scope of part.

This part sets forth policies and procedures concerning the preservation and protection of and access to the tape recordings, papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Subpart 105-63.1—General Provisions

§ 105-63.101 Purpose.

This Part 105-63 implements the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695). It prescribes policies and procedures by which the National Archives and Records Administration will preserve, protect, and provide access to the Presidential historical materials of the Nixon Administration.

§ 105-63.102 Application.

This Part 105-63 applies to all of the Presidential historical materials of the Nixon Administration in the custody of the Archivist of the United States pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695).

§ 105-63.103 Legal custody.

The Archivist of the United States has or will obtain exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695).

§ 105-63.104 Definitions.

For the purposes of this Part 105-63, the following terms have the meaning ascribed to them in this § 105-63.104.

(a) *Presidential historical materials.* The term "Presidential historical materials" (also referred to as "historical materials" and "materials") shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory powers or duties as President and retained or appropriate for retention as evidence of or information about these powers or duties. Included in this definition are materials relating to the political activities of former President Nixon or members of his staff, but only when those activities directly relate to or have a direct effect upon the carrying out of constitutional or statutory powers or duties. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government, private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience or reference when they are clearly so identified.

(b) *Private or personal materials.* The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff.

(c) *Abuses of governmental power popularly identified under the generic term "Watergate".* The term "abuses of governmental power popularly identified under the generic term 'Watergate'" (also referred to as "abuses of governmental power"), shall mean those alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional or statutory functions as President, or as political activities directly relating to or having a direct effect upon those functions, and which

(1) Were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or

(2) Are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93-1305.

(d) *General historical significance.* The term "general historical significance" shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory powers or duties of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term "archivist" shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term "agency" shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President. For purposes of § 105-63.302 only, the term "agency" shall also include the White House Office.

(g) *Initial archival processing.* The term "initial archival processing" shall mean the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, and subject lists; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; and identifying materials requiring further processing.

(h) *Staff.* The term "staff" shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White

House Office or Domestic Council from any other Federal activity; or those persons who were otherwise designated as assistants to the President, in connection with their service in that capacity; or any persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(i) *National security classified information.* The term "national security classified information" shall mean any matter which is security classified under existing law, and has been or should be designated as such.

(E.O. 12356, 47 FR 14874, April 6, 1982)

§ 105-63.105 Requests or demands for access.

Each agency which receives a request or legal demand for access to Presidential historical materials of the Nixon Administration shall immediately forward the request or demand to the Archivist of the United States, National Archives and Records Administration (NARA), Washington, D.C. 20408.

Subpart 105-63.2—Preservation and Protection

§ 105-63.201 Responsibility.

The Archivist of the United States or his designated agent (hereinafter the Archivist) is responsible for the preservation and protection of the Presidental historical materials. He may arrange with other Federal agencies, acting pursuant to appropriate Federal authority, for assistance in their preservation and protection.

§ 105-63.202 Security.

The Archivist is responsible for providing adequate security for the Presidential historical materials.

§ 105-63.203 Archival processing.

When authorized by the Archivist and until the commencement of archival processing in accordance with Subpart 105-63.4, archivists may process the Presidential historical materials to the extent necessary for protecting and preserving the materials, and for providing authorized access to the materials pursuant to Subpart 105-63.3.

§ 105-63.204 Access procedures.

(a) The Archivist will receive and/or prepare appropriate documentation of each access authorized under this Part 105-63.

(b) Entry to the records storage areas will be provided by the Archivist only to archival, maintenance, security, or other necessary personnel or to Mr. Nixon. Two persons, at least one of whom represents the Archivist, will be present at all times that records storage areas are occupied.

(c) The Archivist will determine that each individual having access to the Presidential historical materials has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials examined.

(d) The Archivist will provide former President Nixon or his designated attorney or agent (hereinafter Mr. Nixon), prior notice of, and allow him to be present during, each search necessary to comply with an authorized access under §§ 105-63.302 or 105-63.303.

(e) Only NARA archivists shall conduct searches necessary to comply with authorized accesses under § § 105-63.302 and 105-63.303.

(f) Prior to releasing Presidential historical materials in accordance with an access authorized under §§ 105-63.302 or 105-63.303, the Archivist will give Mr. Nixon notice of the nature and identity of, and at his request allow him access to, those Presidential historical materials which the archivists have determined are covered by the subpoena, or other lawful process, or request. The notice will also inform Mr. Nixon that he may file a claim with the Archivist objecting to the release of all or portions of the described materials within 5 workdays of his receiving the notice described herein. The claim should detail the alleged rights and privileges of Mr. Nixon which would be violated by the release of the materials. The Archivist will refrain from releasing any of the materials to the requester during this period, and while any claim of right or privilege is pending before him, will refrain from releasing the materials subject to the claim.

(g) The Archivist will notify Mr. Nixon in writing of the administrative determination on any claims filed in accordance with paragraph (f), of this section. In the event the determination is wholly or partially adverse to the claim, the Archivist will refrain from releasing the materials to the requester for an additional 5 workdays from Mr. Nixon's receipt of the determination.

(h) Whenever possible, a copy, which shall be certified upon request, instead of the original documentary Presidential historical materials shall be provided to comply with a subpoena or other lawful process or request. Whenever the original documentary material is removed, a certified copy of the material shall be inserted in the proper file until the return of the original.

§ 105-63.205 Extraordinary authority during emergencies.

In the event of an emergency that threatens the physical preservation of the Presidential historical materials or their environs, the Archivist will take such steps as may be necessary, including removal of the materials to temporary locations outside the metropolitan area of the District of Columbia, to preserve and protect the materials.

Subpart 105-63.3—Access to Materials by Former President Nixon, Federal Agencies, and for Use in Any Judicial Proceeding

§ 105-63.301 Access by former President Nixon.

In accordance with the provisions of Subpart 105-63.2, former President Richard M. Nixon or his designated agent shall at all times have access to Presidential historical materials in the custody and control of the Archivist.

§ 105-63.302 Access by Federal agencies.

In accordance with the provisions of Subpart 105-63.2, any Federal agency or department in the executive branch shall have access for lawful Government use to the Presidential historical materials in the custody and control of the Archivist to the extent necessary for ongoing Government business. The Archivist will only consider written requests from heads of agencies or departments, deputy heads of agencies or departments, or heads of major organizational components or functions within agencies or departments.

§ 105-63.303 Access for use in judicial proceedings.

In accordance with the provisions of Subpart 105-63.2, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Archivist will be made available for use in any judicial proceeding and are subject to subpoena or other lawful process.

Subpart 105-63.4—Access by the Public

§ 105-63.400 Scope of the subpart.

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§ 105-63.401 Processing period; notice of proposed opening.

(a) The Archivist will commence initial archival processing of the

materials. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owner in accordance with § 105–63.401–3. As soon thereafter as possible, the Archivist will open for public access all of the materials in the Archivist's custody and control which are neither restricted pursuant to §105–63.402 nor subject to outstanding claims or petitions seeking such restrictions. The Archivist will open for public access each integral file segment of the materials upon completion of initial archival processing on that segment. Insofar as practicable, the Archivist will give priority in such initial archival processing to materials relating to abuses of governmental power as defined in § 105–63.104(c).

(b) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Archivist will publish notice in the **Federal Register** of the proposed opening. The notice will reasonably identify the material to be opened and will include a reference to the right of any interested person to file a claim or petition in accordance with § 105–63.401–1. Copies of the notice will be sent to the incumbent President of the United States or his designated agent and by first-class mail to the last known address of: Mr. Nixon, or his designated agent or heirs; any former staff member reasonably identifiable as the individual responsible for creating or maintaining the file segment proposed to be opened; any individual named in the material which the Archivist may not restrict in accordance with § 105–63.402–1(b) because the material is essential to an understanding of an abuse of governmental power; and any persons named in the materials who are registered with the National Archives and Records Administration in accordance with § 105–63.401(c).

(c) The Archivist will maintain a registry which shall contain the names and mailing addresses of persons who wish to receive personal notice of the proposed opening of integral file segments of the materials when those segments contain references about them. To be included in the registry, a person must submit his/her name and mailing address to the National Archives and Records Administration, (NLN), Washington, D.C. 20408. Both the envelope and letter should be prominently marked, "Nixon Materials Registry." By submitting his/her name for inclusion in the registry, a person agrees to reimburse the United States for the cost of first-class postage for each instance of personal notice received.

§ 105–63.401–1 Rights and privileges; right to a fair trial.

(a) Within 30 days following publication of the notice prescribed in § 105–63.401(b), any person claiming a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Archivist in writing of the claimed right or privilege and the specific materials to which it relates. Unless the claim states that particular materials are private or personal (see paragraph (d) of this section), the Archivist will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 30 days following publication of the notice prescribed in § 105–63.401(b), officers of any Federal, State, or local court and other persons who believe that public access to any of the material may jeopardize an individual's right to a fair and impartial trial should petition the Archivist setting forth the relevant circumstances that warrant withholding specified materials. The Archivist will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the petitioner, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

(c) In reaching decisions required by paragraph (a) and (b) of this section, the Archivist may consult with other appropriate Federal agencies. If these consultations require the transfer of copies of the materials to Federal officials in agencies other than the National Archives and Records Administration, the Archivist will transfer these copies in accordance with the procedures prescribed in §§ 105–63.204 and 105–63.302.

(d) Within 30 days following publication of notice prescribed in § 105–63.401(b), any person claiming that materials proposed for public access are in fact private or personal, as defined in § 105–63.104(b), and that he or she is the proprietary or commemorative owner of those materials shall notify the Archivist in writing. The claim shall describe the specific materials to which it refers, and the claimant's basis for concluding that these materials are private or personal. Upon receipt of such a claim, the Archivist will transmit it to the Presidential Materials Review Board for its consideration and determination in accordance with § 105–63.401–2(i). The Archivist will refrain from providing public access to the pertinent materials or from returning them to the claimant for at least 30 calendar days from receipt by the claimant or any intervening parties of the Board's determination.

§ 105–63.401–2 Segregation and review; Senior Archival Panel; Presidential Materials Review Board.

(a) During the processing period described in § 105–63.401(a), the Archivist will assign archivists to segregate private or personal materials, as defined in § 105–63.401(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials. At all times when the archivists or other authorized officials have access to the materials in accordance with these regulations, they shall take all reasonable steps to minimize the degree of intrusion into private or personal materials. Except as provided in these regulations, the archivists or other authorized officials shall not disclose to any person private or personal or otherwise restricted information learned as a result of their activities under these regulations.

(b) During the processing period described in § 105–63.401(a), the Archivist will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in § 105–63.104(c), nor otherwise having general historical significance, as defined in § 105–63.104(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in § 105–63.401(a), the Archivist will assign archivists to segregate materials subject to restriction, as prescribed in § 105–63.402. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material

and the basis for the restriction as prescribed in § 105–63.402.

(d) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this section, or if the archivists conclude that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist of the United States. The Panel shall then have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this section.

(e) If the Senior Archival Panel is unable to make a determination required in paragraph (d) of this section, or if the panel concludes that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the Panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(f) The Presidential Materials Review Board ("Board") shall consist of the Archivist of the United States, who shall serve as Chairman, and the following additional members:

(1) The Assistant Archivist for the Office of the National Archives;

(2) The Assistant Archivist for the Office of the Presidential Libraries;

(3) The Director of the Legal Counsel Staff of the National Archives and Records Administration; and

(4) The Historian of a Federal agency who shall be selected by the Archivist of the United States in his capacity as Chairman.

The Board shall meet at the call of the Chairman. Three members of the Board shall constitute a quorum for the conduct of the Board's business, although each member of the Board may participate in all of the Board's decisions. Members of the Board may be represented by their delegates on those occasions when they are unable to attend the meetings of the Board. The Board may consult with officials of interested Federal agencies in formulating its decisions. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 105–63.204 and 105–63.302.

(g) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this section, the Board shall prepare a final written decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination.

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraph (c) of this section, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

(i) When the Board considers a matter referred to it by the Archivist as provided in § 105–63.401–1(d), it shall follow these procedures:

(1) The Board will notify the claimant of its consideration of the claim, and invite the claimant to supplement at his discretion the basis for the claim.

(2) The Board will publish notice in the **Federal Register**, advising the public of its consideration of the claim, and describing the materials in question as fully as reasonably possible without disclosing arguably private or personal information. The notice will further advise that any member of the public may petition the Board within 15 calendar days of the publication of notice, setting forth the intervenor's views concerning the public or private nature of the materials.

(3) The Board shall take into account the positions maintained by the claimant and any intervenors in reaching its decision. The Board shall issue its decision, including dissenting and concurring opinions, no sooner than 20 days nor later than 60 days from the publication of notice in the **Federal Register** provided in paragraph (h)(2), of this section. The Board's decision shall be the final administrative determination. The Archivist will notify the claimant and any intervenors of the Board's decision by certified mail, return receipt requested, and shall refrain from acting upon that decision for 30 calendar days as provided in § 105–63.401–1(d).

§ 105–63.401–3 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 105–63.104(a).

§ 105–63.402 Restrictions.

§ 105–63.402–1 Materials related to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 105–63.104(c), when:

(1) The Archivist, in accordance with § 105–63.401–1, is in the process of reviewing or has determined the validity of a claim by any person of a legal or constitutional right or privilege; or

(2) The Archivist, in accordance with § 105–63.401–1, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Archivist may waive this restriction when:

(i) (A) The requester is engaged in a historical research project; or

(B) The requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed, or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of

Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided*, That if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Archivist will make available such personal information, or portions therof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

§ 105-63.402-2 Materials of general historical sigificance unrelated to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to be general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 105-63.402-1(a).

(b) The Archivist will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or;

(vi) Endanger the life or physical safety of law enforcement personnel.

§ 105-63.402-3 Periodic review of restrictions.

The Archivist periodically will assign archivists to review materials placed under restrictions by § 105-63.402 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 105-63.401-2(d), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraph (e) and (h) of § 105-63.401-2, in making its determination. Before opening previously restricted materials, the Archivist will comply with the notice requirements of § 105-63.401(b).

§ 105-63.402-4 Appeal of restrictions.

Upon petition of any researcher who claims in writing to the Archivist that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in § 105-63.401-2(f). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 105-63.204 and 105-63.302. As necessary and practicable, the Board shall also seek the views of any person, including former President Nixon, whose rights or privileges might be adversely affected by a decision to open the materials. The Board shall prepare a final written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Archivist will notify the petitioner and other interested persons of the final administrative determination within 60 calendar days following receipt of such petition. If the Board's decision is to open previously restricted materials, the Archivist will comply with the notice requirements of § 105-63.401(b).

§ 105-63.402-5 Deletion of restricted portions.

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this § 105-63.402.

§ 105-63.402-6 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of § 105-61.104, as that may be amended from time to time.

§ 105-63.403 Reference room locations, hours, and rules.

The Archivist shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, D.C. 20408.

§ 105-63.404 Reproduction of tape recordings of Presidential conversations.

(a) To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which:

(1) Involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and

(2) Were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Md.; Key Biscayne, Fla.; or San Clemente, Calif.; and

(3) Were recorded during the period beginning January 20, 1969, and ending August 9, 1974,

the Archivist will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) Since the original tape recordings may contain information which is subject to restriction in accordance with § 105-63.402, the archivists shall review the tapes and delete restricted portions from copies for public and official reference use.

(c) Researchers may listen to reference copies of the tape recordings described in paragraph (a) of this section in a National Archives building in the Washington, D.C. area and at other reference locations established by the Archivist in accordance with § 105-63.403.

§ 105-63.405 Reproduction and authentication of other materials.

(a) Copying for researchers of materials other than tape recordings

described in § 105–63.404 normally will be done by personnel of the National Archives and Records Administration using Government equipment. With the permission of the Archivist or his designated agent, a researcher may use his own copying equipment. Permission shall be based on the determination that such use will not harm the materials or disrupt reference activities. Equipment shall be used under the supervision of NARA personnel.

(b) The Archivist may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in Subpart 105–61.52 or pertinent successor regulation, as that schedule is amended from time to time.

§ 105–63.406 Amendment of regulations.

The Archivist may from time to time amend the regulations of this Subpart 105–63.4 in accordance with the applicable law concerning such amendments.

§ 105–63.407 Freedom of Information requests.

(a) The Archivist will process Freedom of Information Act requests for access to only those materials within the Presidential historical materials which are identifiable by an archivist as records of an agency as defined in § 105–63.104(f). The Archivist will process these requests in accordance with the Freedom of Information regulations set forth in Part 105–61 or pertinent successor regulations.

(b) In order to allow NARA archivists to devote as much time and effort as possible to the processing of materials for general public access, the Archivist will not process those Freedom of Information requests where the requester can reasonably obtain the same materials through a request directed to an agency (as defined in § 105–63.104(f)), unless the requester demonstrates that he or she has unsuccessfully sought access from that agency or its successor in law or function.

Dated: March 25, 1985.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 85–7382 Filed 3–28–85; 8:45 am]

BILLING CODE 6820–26–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–83; RM–4884; FCC 85–135]

FM Broadcast Station in Kodiak, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action denies an Application for Review filed by Kodiak Broadcasting Company, Inc., which seeks the reversal of a staff decision returning its petition for rule making filed during the pendency of the omnibus proceeding. The arguments presented by Kodiak did not show sufficient special circumstances to warrant reversing the earlier decision. Additionally, this action proposes to assign FM Channel 272A to Kodiak, Alaska inasmuch as the omnibus proceeding has been concluded and the Commission has announced that it is again accepting petitions to amend the FM Table of Allotments.

DATE: Comments are due on or before May 20, 1985, and reply comments on or before June 4, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subject in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order and Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Kodiak, Alaska) MM Docket No. 85–83, RM–4884.

Adopted: March 20, 1985.

Released: March 26, 1985.

By the Commission.

1. The Commission has before it an Application for Review filed October 18, 1984, by Kodiak Broadcasting Company, Inc. ("petitioner").[1] Kodiak Broadcasting seeks review of the staff action of September 18, 1984, returning its petition for rule making for the the allotment of FM Channel 272A to Kodiak, Alaska. Comments in support of the Application for Review were filed by Kodiak Public Broadcasting Corporation, licensee on noncommercial educational FM Station KMXT, Kodiak. An opposition to the Application was submitted by Pillar Mountain ("Pillar") to which petitioner replied.[2]

2. The staff's action denied acceptance of the petition to allot a second commercial FM channel to Kodiak, Alaska, in accordance with the omnibus proceeding.[3] The petition was filed on August 27, 1984 during the pendency of the omnibus rule making but was not acceptable for inclusion in that proceeding. Therefore we indicate that the proposal should be refiled at the conclusion of Docket 84–231.

3. The Application for Review requests the Commission to reconsider its earlier decision and issue a *Notice of Proposed Rule Making* to allocate Channel 272A to Kodiak, Alaska. Petitioner argues that its proposal would not have an impact on any of the channels proposed in MM Docket 84–231. It further argues that a similar freeze imposed for FM was lifted to allow broadcasters to file for and operate additional stations in Alaska in another context. Citing *Broadcast Station Assignments*, 19 F.C.C. 2d 470, 486 (1969).[4] Petitioner asserts that Kodiak's existing stations are inadequate to satisfy the need for service there.

4. Pillar Mountain, in its opposition, argues that the Commission's decision not to process petitions outside the scope of Docket 84–231 during the preparation and pendency of the omnibus proceeding was necessary as not to complicate and impede the orderly introduction of new FM services. According to Pillar, the subject request

[1] Public Notice of the Application for Review was given on November 9, 1984, Report No. 1464.

[2] On December 20, 1984, petitioner filed a request to extend the time for filing reply comments to and including January 4, 1985. Section 1.429(f) of the Rules provides that oppositions must be filed within 15 days following the date the notice of the petition was published in the **Federal Register** and subsection (g) states that replies to oppositions shall be filed within 10 days after the time for filing oppositions has expired. The Public Notice was published on November 9, 1984. Thus replies were due on or before December 6, 1984. However, in view of the disposition of this proceeding, that request and the late filed reply are considered moot.

[3] See *Notice of Proposed Rule Making* in Docket 84–231, 49 FR 11214, published March 26, 1984, and the *Public Notice, Implementation of BC Docket 80–90, The Commission Does Not Contemplate a General Freeze*, Mimeo No. 1306, December 9, 1983.

[4] In further support of its request for preferred treatment during the omnibus proceeding, petitioner cites *Alaska Frequency Band*, 39 F.C.C. 528 (1956), where under § 73.37(f) Alaskan broadcasters were treated differently in filing for AM stations; and under § 73.220 (restrictions on FM Channels 221–300 in Alaska); and the commission's statement in the *Second Report and Order* in Docket 18140 *supra*, recognizing that the Alaskan broadcast markets are unusual, their isolation from the mainland and the state's limited and sparse population help to justify different treatment. See *Evangelistic Missionary Fellowship*, 75 F.C.C. 2d 724, 725, (1980). See also *KINY Associates*, 50 R.R. 2d 981 (1981).

is predicated on the factual assertion that Kodiak is somehow in urgent need of local broadcast service whereas, in fact, the two existing stations (KVOK(AM) and KMXT(FM)) already provide local programming.[5] Kodiak Public Broadcasting Corporation comments that it also provides programming to Kodiak.

5. We do not believe that the petitioner has shown sufficient special circmstances to overcome the Commission's general policy against accepting petitions during the omnibus rule making. The restrictions on accepting petitions unrelated to Docket 84–231 were necessary in order to give the staff the opportunity to process and implement the proposals of the omnibus proceeding in an orderly and expeditious fashion. However, in view of the fact that the omnibus proceeding is now concluded an petitions may again be filed to amend the FM Table of Allotments, we believe that the petitioner's request for Kodiak, Alaska, can now be considered.

6. Accordingly, in order to provide Kodiak with a second commercial FM channel, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Kodiak, AL	*261A, and 266	*261A, 266, and 272A.

7. Further it is ordered, That the Application for Review filed by Kodiak Broadcasting Corporation, is granted to the degree stated herein, and in all other respects is denied.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before May 20, 1985, and reply comments on or before June 4, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners or their counsel or consultants as follows:

Kodiak Broadcasting Company, Inc., c/o Michael H. Bader, Haley, Bader & Potts, 2000 M Street, NW., Washington, D.C. 20036

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of FM Allotments, § 73.202(b), of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court reveiw, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

[5] In addition Pillar points out that Kodiak will soon have a new FM Station (KJJZ–FM).

Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-7516 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-649; RM-4771]

TV Broadcast Stations in Manhattan, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: Action taken herein dismisses the request of Lynn E. Bussey to assign UHF TV Channel 31 to Manhattan, Kansas, as there is no continuing interest in the assignment.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Manhattan, Kansas) MM Docket No. 84-649, RM-4771.

Adopted: March 13, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24921, published July 20, 1984, soliciting comments on the request of Lynn E. Bussey ("petitioner") to assign UHF TV Channel 31 to Manhattan, Kansas. Petitioner filed comments reiterating his intention to apply for the channel. However, on January 3, 1985, petitioner filed supplemental comments withdrawing his interest in the assignment, stating that he no longer intends to apply for the channel, if assigned. No other comments were received.

2. As stated in the *Notice*, continuing interest is required before a channel will be assigned. Therefore, in accordance with the Commission's policy, no further consideration will be given to the assignment of UHF TV Channel 31 to Manhattan, Kansas.

3. It is ordered, That the petition of Lynn E. Bussey is dismissed and that this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7526 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-639; RM-4703]

TV Broadcast Stations in Lafayette, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Dismissal of Petition.

SUMMARY: Action taken herein dismisses a petition for rule making filed by Macon County Publishing Company to assign UHF television Channel 69 to Lafayette, Tennessee, based upon the petitioner's failure to provide the requisite showing of continuing interest in pursuing the proposal.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Lafayette, Tennessee), MM Docket No. 84-639, RM-4703.

Adopted: March 13, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 27959, published July 9, 1984, issued in response to a petition filed by Macon County Publishing Company ("petitioner"), proposing the assignment of UHF television Channel 69 to Lafayette, Tennessee, as that community's first television service. Petitioner failed to file supporting comments in response to the *Notice* and no other comments of interest were received.

2. It is the Commission's general policy to refrain from making a new assignment to a community absent an expression of interest in the use of a proposed channel. See, *Williams, Arizona*, 47 FR 20827, published May 14, 1982, and paragraph 2 of the Appendix to the *Notice*. Since no such interest has been expressed here, we will dismiss the proposal.

3. In light of the above, it is ordered, That the petition of Macon County Publishing Company to assign UHF television Channel 69 to Lafayette, Tennessee, is hereby dismissed.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7518 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-1007; RM-4758]

TV Broadcast Stations in Texarkana, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Dismissal of Petition.

SUMMARY: Action taken herein dismisses a petition filed by Allen Sheets to assign UHF, Television Channel 46 to Texarkana, Texas. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Texarkana, Texas) MM Docket No. 84-1007, RM-4758

Adopted March 13, 1985.
Released: March 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 49 FR 44114, published November 2, 1984, proposing the assignment of UHF Television Channel 46 to Texarkana, Texas, as a third commercial television facility, in response to a petition filed by Allen Sheets.

2. The Commission did not receive comments from the petitioner or any other party, and consistent with the policies and procedures set forth in the Appendix to the *Notice*, we shall dismiss the petition to assign an additional television channel to Texarkana.

3. In view of the foregoing, It is ordered, That the petition of Allen Sheets proposing the assignment of UHF Television Channel 46 to Texarkana, Texas, is hereby dismissed.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–7517 Filed 3–28–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5–84]

Government Procurement

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which will permanently incorporate the contents of Acquisition circular AC–85–1 on payment due dates for construction contracts into the regulation. The proposed change will also establish an alternate "Discount" provision and an alternate "Payment Due Date" clause for use in recurring building service contracts. In addition, the "Payment Due Date" clause for architect-engineer and other professional or technical service contracts has been revised to establish an approval period for purposes of determining due dates for payment. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing not later than April 29, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, 18th and F Sts., NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of Acquisition Policy and Regulations on (202) 523–3782.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The General Services Administration (GSA) 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.). Therefore, no regulatory flexibility analysis has been prepared. The proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: March 20, 1985.

Ida M. Ustad,

Acting Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85–7515 Filed 3–28–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–19, Notice No. 2]

Federal Motor Vehicle Safety Standards; Lamps, Devices and Associated Equipment

Correction

FR Doc. 85–6838 published on page 11506 in the issue of Friday, March 22, 1985, appeared in the Rules section; however, it should have appeared in the Proposed Rules section.

BILLING CODE 1505–02–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Dicerandra frutescens (Scrub Balm), and Dicerandra cornutissima (Longspurred Balm)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine two plants in the mint family, *Dicerandra frutescens* (scrub balm) and *Dicerandra cornutissima* (longspurred balm), to be endangered species pursuant to the Endangered Species Act of 1973. *Dicerandra frutescens* is known only from two areas in Highlands County, Florida, and *Dicerandra Cornutissima* from a single area in Marion County, Florida. Presently known sites for both species are on privately owned land, and the plants are not protected by State or Federal laws. Rapidly expanding commercial and residential development in central Florida has been detrimental to these species in the past and poses a severe threat to their continued survival. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Endangered Species Act of 1973, as amended, for *Dicerandra frutescens* and *Dicerandra cornutissima*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 28, 1985. Public hearing requests must be received by May 13, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Dicerandra frutescens was first collected in Highlands County, Florida, by Small and Matthaus in 1925, near

Lake Stearns (now known as Lake June in Winter). J.B. McFarlin subsequently collected the species from the same area in 1936. A few additional collections were made during the 1940's and 1950's from the same general area. Specimens from these collections were variously filed under already described species in the genera *Conradina, Dicerandra,* and *Ceranthera,* until Shinners (1962) recognized them as representing a new species which he named *Dicerandra frutescens.*

When Shinners described *Dicerandra frutescens,* he included in that species specimens from Sumter County, Florida. It was not until 1981 that Huck recognized that the Sumter County specimens, as well as specimens from collections in adjacent Marion County, represented a distinct species which she described under the name *Dicerandra cornutissima. Dicesandra, cornutissima* was first collected in Sumter County by West and Arnold in 1938; in 1975, Cooper and Martin collected the species in Marion County. Few collections have been made since then, all from a single relatively small area in Marion County. At present, the Sumter County population is thought no longer to exist, and all extant populations of *Dicerandra cornutissima* are believed to be in Marion County. *Dicerandra frutescens* appears to be confined entirely to Highlands County.

Dicerandra frutescens is a strongly aromatic plant ranging up to .5 meter (1.6 feet) tall, with erect non-woody shoots growing from a woody base. The leaves are 1.5–2.5 centimeters (.58–1.0 inch) long, narrowly oblong with entire margins and blunt tips, and covered with conspicuous sunken glands. The leaves are borne oppsite one another on the stems, with usually two smaller leaves at each node. The flowers are borne in pairs. The corolla (petals) of the flower is 1.5–1.6 centimeters (.58–.62 inch) long, tubular with upper and lower lips, and white or pale pink with purplish-rose dots. The four stamens protrude from the flowers. Each half of the anther is tipped by a filamentous horn or spur that is less than 1 millimeter (.04 inch) long.

Dicerandra cornutissima is a strongly aromatic plant up to 0.5 meter (1.6 feet) tall, with erect, non-woody flowering shoots growing from a woody base. Leaves are about 1.5 centimeters (.58 inch) long, linear, with entire margins, and covered with conspicuous sunken glands. The leaves are borne opposite one another on the stems, often with two smaller leaves at each node. Flowers are borne in groups in the axils of the leaves on the upper parts of the stems. The corolla is 7 millimeters (.3 inch) long, tubular, two-lipped, bent at a 90-degree angle in the middle, and purplish-rose with deep purple markings and a whitish throat. The four stamens protrude from the flower; each half of the anther is tipped by a horn or spur about 1.2 millimeters (.05 inch) long.

Although *Dicerandra cornutissima* was for a long time confused with *D. frutescens,* the two are readily distinguishable. *Dicerandra cornutissima* has narrower leaves, purple-rose flowers (white or pale pink in *frutescens*), style with few hairs or naked (hairy in *frutescens*) and another appendage usually over 1 millimeter (.04 inch) long (usually less than 1 millimeter long in *frutescens*). Both species exude a strong, pleasant, minty smell.

Dicerandra frutescens is endemic to Highlands County, Florida. It occurs in the Southern Central Florida Ridge Sandhill geographical province and in sand pine communities, growing primarily on well-drained Paola yellow fine sand soils. *Dicerandra cornutissima* is one time occurred in Sumter and Marion Counties, Florida, but now is apparently confined to Marion County. It is found only in open areas in sand pine scrub or oak scrub, and in the ecotones between these and turkey oak communities. Both species are known only from private lands and are primarily threatened by commercial development.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on these plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No 94–51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Dicerandra frutescens* (including the populations later named *Diceranador cornutissima* by Huck in 1981) was included in the Smithsonian report, the notice of July 1, 1975, and the proposal of June 16, 1976.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). On December 15, 1980, the Service published a revised notice of review in the **Federal Register** (45 FR 82479): *Dicerandra frutescens* (again including the populations later named *Dicerandra cornutissima*) was included as a category-2 species (species for which data in the Service's possession indicate listing is possibly appropriate but for which additional biological information is needed to support a proposed rule). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to its 1980 notice of review. This supplement listed *Dicerandra cornutissima* as a category-2 species, since Huck had described the plant as distinct from *Dicerandra frutescens* in 1981. Additional biological data have now been gathered on both species that fully support this proposed rule.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dicerandra frutescens* and *Dicerandra cornutissima* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and again on October 13, 1984, the Service found that the petitioned listing of *Dicerandra frutescens* and *Dicerandra cornutissima* was warranted, and that although pending proposals had precluded their proposal, expeditious progress was being made to add other species to the list. Publication of the present proposal constitutes the next 1-year finding requirement of on or before October 13, 1985.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (October 1, 1984, 49 FR 38900, to be codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors, and their application to *Dicerandra frutescens* Shinners (scrub balm) and *Dicerandra cornutissima* Huck (longspurred balm) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Dicerandra*

frutescens apparently has always been rare and confined to a small region in Highlands County in central Florida. Today, it is known from only two areas in Highlands County, one near Lake June in Winter, and the other on the Archbold Biological Station. The species does not occur at two sites where it formerly was found in Highlands County; one is now planted in citrus groves and the other has been clear-cut. The populations that still occur on the Archbold Biological Station are largely in areas undisturbed by humans except for vehicular traffic on the fire lanes. Contihued fire suppression by the Archbold staff may eventually lead to the demise of the species here. In the Lake June in Winter area, the present sites for the species are surrounded by developments along U.S. Highway 27. The habitat of this species in the pine scrub community near Highway 27 is prime property for development (Wunderlin 1984a).

Dicerandra cornutissima has probably always been rare, too. It was formerly known from both Sumter and Marion Counties, but the possible site where it occurred in Sumter County is no longer suitable habitat. In Marion County, several of the sites where the species formerly occurred are no longer suitable habitat or are being developed. The species is now known from only a single area approximately 11 miles south-southwest of Ocala. Much of this area is being developed, and such development could eliminate the species. Fewer than 4,000 plants are estimated to be present where it still occurs (Wunderlin, 1984b).

Peninsular Florida has one of the highest population growth rates in the United States, and development pressures on the limited area in which these two species occur can only be expected to intensify over the next decade.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both *Dicerandra frutescens* and *Dicerandra cornutissima* are members of the mint family and have the pleasing, strongly aromtic odor associated with that family. They are highly visible, and can be easily identified by the general public; both occur in areas close to highways and human habitation. Because of these factors, they are vulnerable to taking and vandalism. Although they are of no commercial or horticultural interest, sporadic collection for scientific purposes does occur (Wunderlin, 1984 a, b).

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* These plants are not protected by State or Federal laws, nor do they occur on land under Federal or State jurisdicton (Wunderlin, 1984 a, b). Neither of these plants is currently covered by the Preservation of Native Flora of Florida Act.

E. *Other natural or manmade factors affecting its continued existence.* Both species are extremely restricted in range and occur in small numbers. These factors increase their vulnerability to disturbance and natural disasters.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Dicerandra frutescens* and *Dicerandra cornutissima* as endangered. Both species are extremely restricted in range and occur in areas that are prime property for development. All of the populations are on private land, and there are no Federal or State laws that offer them protection. Several sites where they formerly occurred have been lost to commercial and residential development already, and both species are in danger of extinction. Critical habitat is not being proposed for *Dicerandra frutescens* or *Dicerandra cornutissima* for the reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. *Dicerandra frutescens* and *Dicerandra cornutissima* are mints that have very pleasing aromatic odors and would be of interest to the general public. They are very visible and readily identifiable and occur in areas with easy access, near human habitations and highways. There are no Federal or State laws that protect them, so it would not be possible to safeguard them from curiosity seekers or vandals. To delineate precisely where these plants occur, through publication of critical habitat maps in the **Federal Register**, would therefore increase the threats to the species. These plants are found only on privately owned lands where no Federal involvements are known at present. Should future Federal activities take place in the areas in which *Dicerandra frutescens* and *Dicerandra cornutissima* occur, the Service believes that such activities will be brought to its attention without the designation of critical habitat. Since a determination of critical habitat could create a threat to these species by increasing the possibility of taking and/or vandalism by the public and would provide the plants with no additional protection, it is not deemed prudent to make such a determination at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of any proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for both *Dicerandra frutescens* and *Dicerandra cornutissima* are on privately owned land, there would be no effect of Federal agencies from the above requirements.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dicerandra frutescens* and *Dicerandra cornutissima*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since these species are neither in cultivation nor common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition will apply to *Dicerandra frutescens* and *Dicerandra cornutissima;* however, since neither species is known at present from Federal lands, this prohibition would not have a substantive affect. Permits for excepitions to this prohibition are available through Section 10(a) of the Act until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. Neither *Dicerandra frutescens* nor *Dicesandra cornutissima* are known at present from Federal lands so that this prohibition is not pertinent now. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Dicerandra frutescens* and *Dicerandra cornutissima;*

(2) The location of any additional populations of *Dicerandra frutescens* and *Dicerandra cornutissima* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on *Dicerandra frutescens* and *Dicerandra cornutissima.*

Final promulgation of the regulation on *Dicerandra frutescens* and *Dicerandra cornutissima* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environment Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Huck, R.B. 1981. *Dicerandra cornutissima:* A new woody labiate from Florida. Phytologia 47:313-316.

Shinners, L.H. 1962. Synopsis of *Dicerandra* (Labiatae). Sida 1:89-91.

Wunderlin, R.P. 1984a. Status report on *Dicerandra frutescens* Shinners. Unpublished report prepared under contract with U.S. Fish and Wildlife Service. 30 pp.

Wunderlin, R.P. 1984b. Status report on *Dicerandra cornutissima* Huck. Unpublished report prepared under contract with U.S. Fish and Wildlife Service. 25 pp.

Authors

The primary authors of this proposed rule are John L. Paradiso and David Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580). Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Labiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
Dicerandra cornutissima	Longspurred balm	U.S.A. (FL)	E		N/A	N/A
Dicerandra frutescens	Scrub balm	U.S.A. (FL)	E		N/A	N/A

Dated: March 12, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-7329 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 263

[Docket No. 50340-5040]

United States Standards for Grades of Fish Fillets

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for comments.

SUMMARY: This notice requests comments on the desirability of implementing a proposed amendment to four existing U.S. Standards for Grades: General Standards for Fish Fillets, Cod Fillets, Ocean Perch Fillets, and Haddock Fillets. The amendment, which was requested by a seafood processor, a seafood broker, and a retail food store chain, would include a new category for pin-bone-in style fillers. This agency is now requesting written comments from other industry members, users of these commodities, and the general public to evaluate the national level of interest in the amendment.

DATE: Written comments accepted until May 28, 1985.

ADDRESS: Rita A. Creitz, National Standards Coordinator, National Seafood Inspection Program, Office of Utilization Research, National Marine Fisheries Services, Washington, D.C. 20235. Phone 202-634-7458.

SUPPLEMENTARY INFORMATION: This agency has received petitions under 5 U.S.C. 553(e), the Administrative Procedure Act, from Bornstein Seafoods of Oregon, Inc., Sunstate Seafoods Company, and Alpha Beta Company, requesting an amendment to the fish fillet standards which would allow a new market style of pin-bone-in fillets. A pin bone, as generally understood by industry and NMFS, is any bone radiating downward from the spinal column and running adjacent to the visceral cavity. The requests, all from the West Coast, were made because many West Coast species have traditionally been marketed and accepted by the consumer as fillets, in which the pin bones are left in. The market demand for quality fresh fish has resulted in the desire of several retail food stores and their suppliers to market such fish fillets as U.S. Grade A. The tolerances for bones in current standards prevent the marketing of these species as U.S. Grade A in the traditional West Coast style. Concern has also been expressed that removal of the bones to meet the current U.S. Grade A criteria is costly to the processor and the purchasing consumer.

This agency has heard other points of view stating that the U.S. Grade A mark connotes to the consumer the best quality, which include the workmanship effort of bone removal, and that the consumer is willing to pay for that effort. Given the different points of view about the issue, this agency requests comments on the following questions from members of the seafood industry, users of these commodities, and the general public to evaluate the national level of interest in the proposed amendment:

1. Should the consumer have the opportunity of purchasing U.S. Grade A fillets with plan pin bones if a statement of their presence is declared on the principal display panel of the label?

2. Should all the current fillet grade standards be amended to allow the pin-bone-in style or should this provision be restricted to certain species?

Where available, supporting documentation should accompany the responses to these questions. Other information and viewpoints related to these voluntary grade standards are also invited. This agency's decision regarding the amendment of these standards will be stated in a followup **Federal Register** notice.

(7 U.S.C. 1621-1630)

Dated: March 22, 1985.

J.W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-7507 Filed 3-28-85; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

Northeast Multi-Species Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings and will provide a public comment period to obtain comments on two matters relating to the proposed Northeast Multi-Species Fishery Management Plan. These matters include: (1) The possible establishment of an area closed to trawling within the Southern New England/Mid-Atlantic region as an alternative management measure for yellowtail flounder; and (2) the retention of vessel-identified fishery data in the Federal commercial fishery data base that may be gathered through the NMFS voluntary data collection program.

The matter of vessel ID retention will be discussed at public meetings held in conjunction with the regular meetings of the Gloucester Fisheries Commission and the Maine Fishermen's Cooperative Association.

DATES: The meetings will be held at 2:00 p.m., on March 27, 1985, and at 7:30 p.m. on April 18, 1985. All of the public hearings will begin promptly at 7:30 p.m., and will be held April 8, 9, and 10, 1985. All written comments should be received no later than close of business April 22, 1985.

ADDRESSES: All written comments should be sent to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906. See **"SUPPLEMENTARY INFORMATION"** for locations of the meetings and hearings.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, telephone 617-231-0422.

SUPPLEMENTARY INFORMATION: At a series of public hearings held in January on the proposed Northeast Multi-Species Fishery Management Plan (FMP), the Council received critical public input on a variety of management measures. Comments received at some public hearings, however, suggested the need for further examination and additional opportunity for public comment. These public hearings will examine the possibility of implementing a closed fishing area in the geographic area south and west of Nantucket Shoals to

substitute for the regulated mesh area already proposed by the Council and considered by the public.

Specific options for area/period closures will be presented at the public hearings. The comments received at the hearings, as well as any other written comments received by close of business, April 22, 1985, will be considered by the Council before it makes a final decision on the management program. In addition, the Council proposes to include within the Research and Data Needs section of the FMP the following requirement: that any data respecting a fishing vessel's operations, including information indentifying the vessel, that is voluntarily supplied by fishermen through the NMFS Three-Tier Data Collection Program, be retained within the data base, in strict confidence, for management analysis purposes only, unless removed or deleted at the specific request of an individual vessel owner. This requirement is intended to maintain a fisherman's control over data collected on his fishing activities, while at the same time providing managers with adequate data to make informed decisions. This action will not impose any additional reporting requirements on fishermen. The public is invited to comment on this data proposal at any of the public hearings or public meetings noted, as well as in writing to the Council office.

The meetings are scheduled as follows:

March 27, 1985—Maine Fishermen's Cooperative Association, Public Safety Building, Portland, Maine, (207) 633-5449

April 18, 1985—Gloucester Fisheries Commission Office, City Hall, Dale Avenue, Gloucester, Massachusetts, (617) 283-0857

Persons interested in attending these public meetings to comment on the Council's proposals may contact either the Council or the Organization at the telephone number indicated.

The hearings will take place at the following locations:

April 8, 1985—Holiday Inn, Route 25, Riverhead, New York

April 9, 1985—Dutch Inn, Great Island Road, Galilee, Rhode Island

April 10, 1985—Skipper Inn, 110 Middle Street, Fairhaven, Massachusetts.

Dated: March 27, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-7727 Filed 3-27-85; 4:36 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 61
Friday, March 29, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Pub. L. 96-177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55, and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1985 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 27, 1984 (49 FR 50215), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1985 is 1,199 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate for 1985 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1985 is 1,200 million pounds.

Done at Washington, D.C. this 26th day of March, 1985.

John R. Block,
Secretary.

[FR Doc. 85-7506 Filed 3-28-85; 8:45 am]
BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

Forest Service

[Docket No. 85-318]

Availability of Final Supplement to Gypsy Moth Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service and Forest Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that a final supplement to the Environmental Impact Statement on Gypsy Moth Suppression and Eradication Projects (EIS) has been prepared and is available to the public. The EIS, as amended by the final supplement (EIS—as supplemented 1985), was sent to the Environmental Protection Agency (EPA) on March 11, 1985, by the U.S. Department of Agriculture (USDA) pursuant to section 102(C) of the National Environmental Policy Act of 1969.

ADDRESSES: Requests for a copy of the EIS—as supplemented 1985, should be addressed to: R.L. Williamson, Director, National Program Planning Staff, Plant Protection and Quarantine, APHIS, USDA, Room 648, Federal Building, Hyattsville, MD 20782 or Thomas N. Schenarts, Area Director, USDA Forest Service, 370 Reed Road, Broomall, Pennsylvania 19008.

Copies are available for public inspection at the following locations:

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302-E, Administration Building, 14th and Independence Avenue, Washington, DC 20250

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782

Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008

Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 180 Canfield Street, Morgantown, WV 26505

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295; or Thomas N. Schenarts, Area Director, Insect and Disease Management Staff, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008, (215) 461-3158.

SUPPLEMENTARY INFORMATION: The Animal and Plant Inspection Service (APHIS) and the Forest Service of the United States Department of Agriculture published a notice in the **Federal Register** on August 23, 1984, (49 FR 33471-33472) of their intent to prepare a supplement to the Final Environmental Impact Statement on the Gypsy Moth Suppression and Eradication Projects (EIS). The decision to prepare a supplement to the EIS was made in response to comments and new information received by the Forest Service and APHIS on material discussed in the EIS after the EIS was approved May 8, 1984, (49 FR 20345).

On December 14, 1984, a draft supplement to the EIS was furnished to the Environmental Protection Agency (EPA). A notice was published on December 21, 1984, in the **Federal Register** (49 FR 49649-49650) announcing the availability of the draft supplement for review, and requesting comments on the draft supplement. Comments were accepted on the draft supplement through February 4, 1985.

All comments received pursuant to the notice of availability of the draft supplement were considered in the preparation of the final supplement to the EIS.

The EIS, as amended by the final supplement, was transmitted to EPA on March 11, 1985, and a notice of receipt was published by EPA in the **Federal Register** on March 15, 1985, (50 FR 10540). In accordance with the Council of Environmental Quality's regulations in 40 CFR 1506.10 implementing NEPA, no decision with regards to the EIS, shall be made until after April 15, 1985, concerning what, if any, actions to be taken under the gypsy moth suppression and eradication projects.

Done at Washington, D.C., this 26th day of March 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-7580 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Subcommittee for Aquaculture; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting.

Name: Subcommittee for Aquaculture of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 14, 15, and 16, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 023, J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447-3847.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program of Aquaculture.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Done at Washington, D.C., this 22nd day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85-7529 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-22-M

Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting.

Name: Subcommitte for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 6, 7, and 8, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 217, J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: William D. Carlson, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447-7437.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites.

Agenda: To review and evaluate research proposal and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Done at Washington, D.C., this 22nd day of March 1985.

John Patrick Jordan,

Adminstrator, Cooperative State Research Service.

[FR Doc. 85-7534 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-22-M

Subcommittee for Beef and Dairy Cattle Reproductive Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting.

Name: Subcommittee for Beef and Dairy Cattle Reproductive Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 1, 2, and 3, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 023, J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447-3847.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Reproductive Diseases.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Done at Washington, D.C., this 22nd day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85-7533 Filed 3-28-85; 8:45 am]

BILLING CODE 3410-22-M

Subcommittee for Beef and Dairy Cattle Respiratory Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting.

Name: Subcommittee for Beef and Dairy Cattle Respiratory Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 20, 21, and 22, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 217, J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: William D. Carlson, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447-7437.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Respiratory Diseases.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 22nd day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85–7532 Filed 3–28–85; 8:45 am]

BILLING CODE 3410–22–M

Subcommittee for Poultry and Horse Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting.

Name: Subcommittee for Poultry and Horse Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: April 29–30, and May 1, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 024, J.S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–5007.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program on Poultry and Horse Diseases.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 22d day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85–7531 Filed 3–28–85; 8:45 am]

BILLING CODE 3410–22–M

Subcommittee for Swine and Sheep Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting.

Name: Subcommittee for Swine and Sheep Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 8, 9, and 10, 1985.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 024, J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–5007.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the program on Swine and Sheep Diseases.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 22nd day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85–7530 Filed 3–28–85; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–402]

Oil Country Tubular Goods From Argentina: Final Determination of Sales at Less Than Fair Value

We have determined that oil country tubular goods (OCTG) from Argentina are being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or are threatening materially injury to, a United States industry.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 Telephone: (202)377–3965.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that OCTG from Argentina is being sold in the United States at less than fair value within the meaning of section 731 of the Act. We made fair value comparisons on all of the OCTG from Argentina sold in the United States during the investigative period. We found margins on 100 percent of sales compared. The margins ranged from 3.94 percent to 130.70 percent. The overall weighted-average margin on these sales was 61.70 percent.

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Corporation on behalf of the domestic OCTG industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that imports of OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleged sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. The petitioners, however, did not provide enough information to justify a cost investigation. We notified the ITC of our action and initiated an investigation on July 2, 1984 (49 FR 28087). On August 8, 1984, the ITC determined that there is reasonable indication that imports of OCTG from Argentina are materially injuring a U.S. industry.

On July 18, 1984, we presented an antidumping questionnaire to counsel for Dalmine Siderca S.A.I.C. (Dalsid). An extension of time to respond was granted, and on September 17, 1984, we received Dalsid's response to the questionnaire. The petitioners again alleged that sales were being made below cost and submitted additional support for this claim. We agreed and initiated a cost of production investigation.

On July 26, 1984, LTC Steel Company became an additional petitioner. On October 26, 1984, all of the petitioners requested that the Department extend

the preliminary determination until not later than January 9, 1985. The Department granted that request on October 31, 1984 (49 FR 44318).

Verification was conducted in Argentina, at the plant and corporate offices of Dalsid, on October 30 through November 2, 1984.

On January 9, 1985, we preliminarily determined that OCTG from Argentina were being, or were likely to be, sold in the United States at less than fair value, and that critical circumstances did not exist (50 FR 2307).

Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. Further verification was conducted at the Department on February 15, 1985.

On February 22, 1985, we held a public hearing.

Scope of Investigation

The merchandise covered by this investigation is OCTG. The term OCTG covers hollow steel products circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specification (such as proprietary, as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244.

This investigation includes OCTG that are finished and unfinished.

This investigation covers the period from January 1 to June 30, 1984. Dalsid is the only known Argentine producer who exports the subject merchandise to the United States. We examined all United States sales made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used purchase price of OCTG to represent the United States price for sales by the Argentine producer because the merchandise was sold prior to the date of importation to unrelated United States purchasers.

We calculated the purchase price for Dalsid based on the C&F or FOB price to the unrelated United States purchasers. We made deductions, where appropriate, for port charges, inland freight, and ocean freight costs incurred in delivering the product.

Foreign Market Value

The petitioners alleged that sales to third countries were at prices below the cost of producing OCTG.

There was not a viable home market. Therefore, we based foreign market value on sales to third countries. We chose sales to Peru and Canada, since merchandise sold to these countries was most similar to that sold in the United States.

We examined production costs, including materials, labor and general expenses. We found that all sales to Peru and Canada of the merchandise under investigation were made at prices below the cost of production over an extended period in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period in the normal course of trade. We disregarded these sales in our analysis, in accordance with section 773(b) of the Act. Since there were no sales at or above the cost of production, we used constructed value to determine foreign market value in accordance with section 773 of the Act.

During the period of investigation, Argentina had hyperinflation. In determining the cost of production (COP) and the constructed value of the product under investigation, the Department used its methodology for determining these amounts in a hyperinflationary economy. To account for the effects of this hyperinflation, the Department uses sales prices as of the date of sale and the "current cost" of producing the merchandise as the basis for the COP and constructed value calculations. "Current costs" represent those amounts which are required to produce the merchandise in the month of the sale.

Accordingly, for material and fabrication expenses, we used the costs incurred for these inputs in the month of sale. Other costs which may reflect historically based cost, such as depreciation and general/administrative and selling expenses for the sales market being used for the determination, are indexed for inflation to reflect the costs for the sale month. Actual financial expenses which are already indexed for inflation by the lender are not adjusted. The actual amount for general expenses, since it was greater than the statutory minimum of 10 percent of cost, was used.

Other exchange and inflationary gains and losses on assets and liabilities associated with the production of the merchandise under investigation, which have not been taken into consideration by matching the sales price of OCTG with the current costs of the inputs (as described above), are incuded as a gain or loss in the cost of production. Examples of such gains and losses are those accruing from short-term debt and investments associated with the production process.

By establishing the sales date as the reference point and matching the sales price with current costs as of the date of sale, nominal exchange gains and losses arising subsequent to this date are not relevant because of the Department's methodology. For example, while exchange gains and losses may arise between the date of sale and the collection of sales revenues or between the date of input purchases and the date of payment, the purchasing power of the increased number of pesos received and paid have remained approximately the same. Therefore, these nominal gains and loses are not included as a gain or loss in the cost of production.

Since the profit on the third country sales of the same general class or kind of merchandise under consideration was less than eight percent of the sum of costs and general expenses, we used the statutory minimum eight percent for profit prescribed in section 773(e)(1)(B) of the Act. We added U.S. packing to the foreign market value in accordance with § 353.15 of our Regulations.

In calculating foreign market value, we made currency conversions from Argentine pesos to United States dollars in accordance with § 353.56(a)(1) of our regulations using the certified daily exchange rates.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of Dalsid. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Critical Circumstances

Petitioner alleged that imports of OCTG from Argentina give rise to "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when the

Department finds that (1) there have been massive imports of the merchandise under investigation over a relatively short period, and (2)(a) there is a history of dumping in the United States or elsewhere of the Class or kind of merchandise under investigation or (b) the person by whom, or for whose account, the merchandise was imported knew that the exporter was selling the merchandise under investigation at less than fair value.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels, changes in import penetration since the date of the ITC's preliminary affirmative determination of injury, whether imports have surged recently, whether recent imports are significantly above the average calculated over several years, and whether the patterns of imports over the last several years may be explained by seasonal swings. Based upon our analysis of the information we determine that imports of the products covered by this investigation do not appear massive over a relatively short period.

We therefore did not need to consider whether there is a history of dumping of OCTG from Argentina or whether the person by whom or for whose account these products were imported knew that the exporters were selling these products at less than fair value.

Therefore, we determine that "critical circumstances" do not exist with respect to OCTG from Argentina.

Petitioners' Comments

Comment 1: The Department should not allow Dalsid to significantly understate its cost of production by including foreign exchange gains in its general, selling and administrative expenses.

DOC Position: The Department's preliminary findings did not take into account the "financial effects" of the company's operations, which include foreign exchange gains and losses, because additional clarifying information was needed in order to make such a decision.

To determine if exchange gains and losses should be included in the cost of production, the Department reviews the nature of each item. Gains and losses such as those related to products not under investigation, markets not under investigation, and other gains and losses which are accounted for by the Department's methodology for hyperinflationary economy countries were not included in the Department's cost calculation. Gains and losses such as those arising from short-term foreign debt and investments held for operations were included.

Comment 2: The Department should not allow Dalsid to offset credit expenses on sales with exchange rate gains.

DOC Position: The Department agress. In computing the credit costs for each sale, we used only the net direct costs to Dalsid. This calculation of credit costs does not include exchange rate changes because we use the price on the date of sale. We recognize that although a producer may realize more pesos from dollar-denominated sales on the date of collection than would be realized on the date of sale, the purchasing power in Argentina will have remained approximately the same.

Comment 3: The Department should "present value" Dalsid's cost of credit—the cost of foregoing payment on the date of sale—because of the long payment terms given its customers.

DOC Position: All credit costs under consideration relate to dollar-denominated sales. Argentine law requires that all firms, Dalsid included, discount dollar receivables within 180 days of the date of sale. The present value of the cost of foregoing payment on the sale date—and the value used by the Department in this determination—is the difference between the face value and the discounted value of the receivable, plus the credit cost incurred between the sale date and the date of discount.

Comment 4: The Department erroneously found in the preliminary determination that critical circumstances do not exist.

DOC Position: See the section on critical circumstances, *supra*.

Comment 5: There is no indication in the Department's verification report that the relationship between Dalsid and its commissioned selling agent is one which meets the Department's related party criteria.

DOC Position: The verification team analyzed Dalsid's stock ledgers for all alleged related companies, including its selling agent. The team found that Dalsid and its selling agent are related. Therefore, we did not make any adjustment for commissions paid to Dalsid's selling agent.

Comment 6: The petitioners believe that certain costs, such as material usage rates, labor costs and energy costs are too low as reported to the Department.

DOC Position: The Department used verified information for the cost of materials, labor and energy.

Comment 7: The Department may be able to find a better third-country choice than Peru, such as Colombia or Canada.

DOC Position: The Regulations provide that in determining the appropriate third country for foreign market value purposes, the Department should give first preference to that country with purchases of merchandise that have the greatest degree of similarity to the product exported to the United States (19 CFR 353.5). We found that no single country purchased all of the types of OCTG which were sold to the United States in quantities that would provide an adequate sample. We did find that two countries purchased merchandise which is most similar to that sold to the United States: Peru and Canada. Consequently, we used both Peru and Canada as our choice for third-country sales.

Comment 8: The petitioners claim that the facts reported in the Department's verification report in the countervailing duty investigation of OCTG from Argentina concerning the reembolso and its relationship to costs demonstrate that sales of this product are being made at less than cost.

DOC Position: The Department conducted an independent antidumping investigation and verified the cost of production for Dalsid during the specific period of this investigation. Its findings are based on that verified information.

Respondent's Comments

Comment 1: Dalsid claims that the Department was inconsistent in the adjustments it made to the U.S. and foreign market values, by not taking appropriate account of indirect taxes, brokerage and inland freight.

DOC Position: We agree. The Department has accounted for these items in this determination.

Comment 2: The Department failed to take into account any of the financial income and expenses reported in SG & A.

DOC Position: See our response to petitioners' comment 1.

Comment 3: The Department did not correctly offset interest received on receivables by interest paid. The Department also should use the methodology submitted by Dalsid.

DOC Position: While the Department did offset interest received with interest paid in the preliminary determination, it has now revised its approach based on additional clarification of the nature of Dalsid's complicated credit terms. The Department has now based its credit-cost methodology on the actual dollar income/cost differential in both markets. Dalsid did not include in its

credit cost an imputed credit expense for the time period before it discounted its receivables with the bank. We have included this expense in its cost of credit.

Comment 4: The Department should use the third country with the largest sales volume.

DOC Position: See our response to petitioners' comment 7.

Comment 5: The Department should account for the income tax effect on the reembolso and turnover tax.

DOC Position: We did not account for these taxes in our final determination since we compared United States price to the constructed value, which did not include these amounts.

Comment 6: The respondent argues that the Department's findings in the countervailing duty investigation concerning the reembolso program related to different time periods and issues.

DOC Position: See our response to petitioners' comment 8.

Comment 7: The respondent contends that even under petitioners' reasoning, exchange rate gains and losses must be included in the cost of production.

DOC Position: See our response to petitioners' comment 1.

Continuation of Suspension of Liquidation

Liquidation will continue to be suspended on all entries of OCTG from Argentina that are entered into the United States, or withdrawn from warehouse, for consumption. The United States Customs Service will continue to require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margin. The security amounts established in our preliminary determination of January 9, 1985, will no longer be in effect. The margin is as follows:

Company	Weighted-average margin (percent)
Dalmine Siderca	61.70
All other manufacturers/producers/exporters	61.70

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on OCTG from Argentina will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

We are notifying the ITC and making available to it all nonprivileged and nonconfidential information relating to this determination. We will 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. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on OCTG from Argentina entered, or withdrawn from warehouse, for consumption equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 25, 1985.

[FR Doc. 85-7600 Filed 3-28-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-403]

Oil Country Tubular Goods (OCTG) From Mexico; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for Tubos de Acero de Mexico, S.A., the respondent in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of OCTG from Mexico have occurred at less than fair value, until not later than May 31, 1985.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on July 10, 1984, a notice in the **Federal Register** (49 FR 28084-28088) that it was initiating an antidumping duty investigation to determine whether OCTF from Mexico were being, or were likely to be, sold at less than fair value. On January 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 2313). The notice stated that if this investigation proceeded normally we would make our final determination by March 25, 1985.

On March 21, 1985, counsel for the respondent Tubos de Acero de Mexico, S.A. (TAMSA) requested that we extend the period for the final determination until May 31, 1985, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. TAMSA is qualified to make such a request since it accounts for approximately 80 percent of the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than May 31, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 25, 1985.

[FR Doc. 85-7601 Filed 3-28-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving cellular mobile telephones and subassemblies from Japan is being postponed until not later than June 4, 1985.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkman, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-4929.

SUPPLEMENTARY INFORMATION: On November 30, 1984, we announced the inititation of an antidumping investigation to determine whether cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value (49 FR 47076). The notice stated that we would issue a preliminary determination by April 15, 1985.

As detailed in that notice, the petition alleged that imports from Japan of cellular mobile telephones and subassemblies are being, or are likely to be, sold in the United States at less than fair value.

On March 14, 1985, counsel for petitioner, Motorola, Inc., requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). They cited as reasons for this request the fact that they wanted verifications to occur before the preliminary, to the extent feasible, and that they wanted additional time to review and comment on the responses. Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than June 4, 1985.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 21, 1985.

[FR Doc. 85-7603 Filed 3-28-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-405]

Oil Country Tubular Goods From Spain; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We have determined that oil country tubular goods (OCTG) from Spain are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determinations, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that OCTG from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margins for the two respondents were based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We also found that critical circumstances exist with respect to imports of OCTG from Spain.

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Corporation on behalf of the domestic producers of OCTG. LTV Steel Company later filed as co-petitioner. In compliance with the filing requirements of 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of OCTG from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or are threatening material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on July 2, 1984 (49 FR 28084). On August 8, 1984, the ITC determined that there is a reasonable indication that imports of OCTG are materially injuring a U.S. industry.

On July 27, 1984, we presented questionnaires to Altos Hornos de Vizcaya, S.A. (AHV) and Tubos Reunidos, S.A. (TR), in Spain. On September 6, 1984, petitioners alleged that critical circumstances exist, as defined in section 733(e) of the Act.

Based on a request from petitioners, on October 31, 1984, we postponed our preliminary determination to not later than January 9, 1985 (49 FR 44318).

On September 28, 1984, we received incomplete questionnaire responses from AHV and TR and petitioners requested that the Department investigate whether respondents' home market and/or third country sales were at prices below respondents' cost of production.

On October 11, 1984, we advised AHV and TR that their responses were deficient and that they must submit corrected data by October 23, 1984, or we might rely on the best information available for our preliminary determination.

On October 24, 1984, we advised TR to submit, in addition to price information, cost of production information not later than November 5, 1984. (AHV had submitted cost of production information in its original September 28, 1984, response, which we found to be deficient.)

We did not receive a written supplemental response from TR or AHV until November 13, 1984. On November 21, 1984, we received TR's cost response.

On December 20, 1984, we advised TR and AHV that their supplemental cost responses were deficient and that the deficiencies had to be corrected by December 31, 1984, and we reiterated that failure to file a timely, proper, and complete response could require us to use the best information available in the final determination.

On January 9, 1985, we advised AHV and TR that we did not intend to verify their responses because they were deficient and that we might proceed to the final determination using the best information available. We did not receive any further responses from TR or AHV.

On January 9, 1985, we preliminarily determined that OCTG from Spain are being, or are likely to be, sold in the United States at less than fair value, and that critical circumstances exist with respect to imports of the merchandise under investigation (50 FR 2315).

In accordance with § 353.47 of our regulations, we afforded interested parties an opportunity to comment on our preliminary determination.

Scope of Investigation

The merchandise covered by this investigation is oil country tubular goods. The term "oil country tubular goods" covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4968, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are finished and unfinished.

Because AHV and TR accounted for substantially all the exports of this merchandise to the United States, we limited our investigation to these firms. We investigated all sales of OCTG by the two firms during the period January 1 through June 30, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because respondents did not submit adequate responses in a timely manner and in an acceptable form.

United States Price

As provided in section 772 of the Act, we based the purchase price of OCTG on average ex-factory prices as provided in the petition, which was the best information available.

Foreign Market Value

Since respondents did not submit adequate cost responses in a timely manner and in an acceptable form, we used the best information available as provided by section 776(b) of the Act. The best information available for calculating foreign market value was cost of manufacturing data compiled by Commerce Department industry experts, which we converted to constructed value according to section 773(e) of the act. This data included the statutory minimum of 10 percent for general expenses. We calculated profit on the basis of the statutory minimum of 8 percent of the cost of materials, fabrication and general expenses.

Final Affirmative

Determination of Critical Circumstances

Petitioners alleged that imports of OCTG from Spain present "critical circumstances". Under section 735(a)(3) of the Act, critical circumstances exist if: (1) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of OCTG from Spain in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on OCTG from Spain.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated are sufficiently large that the importer knew, or should have known, that the merchandise was being sold in the United States at less than fair value. We determine that this test is met for the merchandise from all producers.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for OCTG from Spain for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that imports of OCTG from Spain during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios.

Therefore, we determine that critical circumstances exist with respect to all imports of OCTG from Spain.

Verification

We did not verify respondents' information because they did not submit adequate responses in a timely manner and in an acceptable form.

Petitioners' Comments

Petitioners state that the 1983 average cost of production computed by the Department results in a significant understatement of the dumping margins. Petitioners state that since the period of investigation is the first six months of 1984, sales in that period should be compared with costs during the same period. This would take into account the rate of inflation and increase the margins by the inflation factor.

DOC Position: We used average 1983 production costs because they were the best information available. While it is true that costs have increased in Spain due to inflation, the inflation factor may well be offset by the strength of the United States dollar against the Spanish peseta. Since we suspect that some raw materials such as iron ore, scrap, and coke may have been denominated

originally in U.S. dollars, we cannot determine the values of these inputs or the effect of currency fluctuations on these values or the net effect of both inflation and devaluation. Therefore, we have not made an adjustment to reflect the inflation factor.

Respondents' Comments

Comment 1: Respondents state that the Department should calculate the fair value margins on the basis of information submitted by the respondents because respondents' information is more than adequate and is superior to the use of "best information available."

DOC Position: As noted in the "Case History" section of this notice, respondents were notified that their failure to provide adequate cost responses could result in our using the best information available. Since respondents did not correct their deficient responses, we did not verify them. Therefore, in accordance with section 776(b) of the Act, we used petitioners' and the Department's information because we considered it to be the best information available for the purposes of calculating margins for both the preliminary and final determinations.

Comment 2: Respondents state that the Department did not use the best information available in its preliminary determination because it failed to consider TR's 1983 financial reports which were verified in the Department's countervailing duty investigation involving this same product. Respondents state that the use of that information would demonstrate that TR's margins of selling below constructed value were significantly lower than that calculated for the preliminary determination.

DOC Position: We based our determination on information supplied for the record in this investigation, not on information filed in a separate investigation. Furthermore, the 1983 financial reports do not contain specific cost of production information.

Comment 3: Respondents state that the Department's methodology in determining sales at less than fair value was erroneous in that it failed to comply with section 772(d)(1)(D) of the Act which requires that in arriving at United States price, the purchase price must be increased by the amount of any countervailing duties imposed on the merchandise to offset an export subsidy as determined in the Department's final countervailing duty determination on the same product.

DOC Position: There was no countervailing duty order on OCTG from Spain during the January–June 1984 period of investigation. Therefore, no countervailing duties were paid during that period and the purchase price was not affected by the cash deposit or bond requirements imposed under the Department's countervailing duty order (50 FR 5287). Nevertheless, for deposit or bonding purposes, the antidumping duty rate has been reduced by the amount of countervailing duties on export subsidies as determined in the countervailing duty order.

Comment 4: Respondents state that the record in this investigation raises substantial issues of due process in that the Department failed to provide reasonable periods of time to supply requested information and refused to postpone the period for its final determination.

DOC Position: As explained in the "Case History" section of this notice, we believe that respondents were provided a reasonable amount of time in which to respond to our questionnaires. In regard to respondents' January 9, 1985, request for postponement, respondents were notified on January 9 that we did not intend to verify their deficient responses and that we might proceed to the final determination using the best information available. We did not receive any further responses from TR or AHV. On February 19, 1985, we notified respondents that, since they had not amended their responses and we would not verify deficient responses, there was no reason to postpone the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of OCTG from Spain which are entered or withdrawn from warehouse, for consumption, on or after October 18, 1984. The Customs Service shall require a cash deposit or bond in an amount equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers	Weighted-average margin (percent)
AHV	83.5
TR	70.1
All other manufacturers/producers/exporters	76.8

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization". This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, the level of export subsidies, as determined in the countervailing duty order on OCTG from Spain (50 FR 5287), will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretarty for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess an antidumping duty on OCTG from Spain entered, or withdrawn from warehouse, for consumption, on or after the date of suspension of liqudiation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 25, 1985.

[FR Doc. 85-7602 Filed 3-28-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50109-5009]

Proposed Federal Information Processing Standard for Graphical Kernel System (GKS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Proposed Federal Information Processing Standard.

SUMMARY: This proposed standard adopts a voluntary industry standard, Graphical Kernel System, for Federal use. The American National Standards Institute (ANSI) is expected to approve this standard in July 1985 as an American National Standard (ANS).

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed Federal Information Processing Standard (FIPS) contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the standard, draft proposed American National Standard (dpANS) GKS. (Interested parties may obtain a copy of the technical specifications from the Computer and Business Equipment Manufacturers Association (CBEMA), Attn: Sang, X3 Secretariat, 311 First Street, NW, Washington, DC 20001.)

DATE: To be considered, comments on this proposed FIPS must be received on or before June 27, 1985.

ADDRESS: Comments concerning the adoption of GKS as a FIPS are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for GKS, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Skall, Center for Programming Sciences and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: March 25, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication ——

[Date]

Announcing the Standards for Graphical Kernel System (GKS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Graphical Kernel System (GKS) (FIPS PUB ——).

2. *Category of Standard.* Software Standard, Graphics.

3. *Explanation.* This publication announces the adoption of the forthcoming (in July 1985) American National Standard Graphical Kernel System, ANS GKS, as a Federal Information Processing Standard (FIPS). ANS GKS specifies a library (or toolbox package) of subroutines for an application programmer to incorporate within a program in order to produce and manipulate two-dimensional pictures. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* Draft proposed American National Standard dpANS Graphical Kernel System (GKS).

7. *Related Documents.* a. Federal Information Resource Management Regulation 201-36.13, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Software Standards.

b. Draft Proposed American National Standard Computer Graphics Metafile (formerly titled the Virtual Device Metafile).

8. *Objectives.* The primary objectives of this standard are:

—to allow graphics application programs to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.

—to aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

—to encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.

—to aid graphics application programmers in understanding and using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. *Applicability.* a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use. It is suitable for use in graphics programming applications that employ a broad spectrum of graphics, from simple passive graphics output (where pictures are produced solely by output functions without interaction with an operator) to highly interactive applications; and which control a whole range of possible graphics devices, including but not limited to vector and raster devices, microfilm recorders, storage tube displays, refresh displays and color displays. Although this standard was not developed specifically for the Printing/Graphics Arts industry, it may be used in these applications whenever desirable.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.

—The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.

—The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.

—The graphics program will or might be run on equipment other than that for which the program is initially written.
—The graphics program is to be understood and maintained by programmers other than the original ones.
—The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that the use of these or any other non-standard language elements may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

10. *Specifications.* American National Standard Graphical Kernel System, ANS GKS, contains the specifications for FIPS GKS. The ANS GKS document defines the scope of the specifications, the syntax and semantics of the GKS functions and requirements for a conforming implementation and program. All of these specifications apply to FIPS GKS.

11. *Implementation.* The implementation of this standard involves two areas of consideration: acquisition of GKS software system implementations (or toolbox packages), and interpretations of GKS toolbox packages.

11.1 *Acquisition of Two-Dimensional Graphics Toolbox Packages.* This publication is effective (date of approval of this document). Two-dimensional graphics toolbox packages acquired for Federal use after this date should implement FIPS GKS. Conformance to FIPS GKS should be considered whether GKS toolbox packages are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce two-dimensional graphics toolbox packages conforming to the standard. The transition period begins on the effective date and continues for eighteen (18) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, a two-dimensional graphics toolbox package not conforming to FIPS GKS may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS GKS.* Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: GKS Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

[FR Doc. 85-7475 Filed 3-28-85; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council will convene its 53rd regular public meeting on April 22, 1985, from approximately 9 a.m., to approximately 5 p.m., at the Conference Room, Condado Beach Hotel, Ashford Avenue, San Juan, PR, to consider fishery management plans under development, proposed amendments to the Magnuson Fishery Conservation and Management Act, and other Council matters. For further information contact the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918; telephone: (809) 753-4926.

Dated: March 26, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-7509 Filed 3-28-85; 8:45 am]
BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene public meetings at the Holiday Inn Airport, 8439 N.E. Columbia Boulevard, Portland, OR, April 9–11, 1985 as follows:

On April 9, after a short closed session (not open to the public) to discuss litigation and personnel matters, the Council will consider its FY86 budget proposal and other administrative matters. It also will hear the results of public hearings on the 1985 salmon management options adopted in its previous meeting, additional public comment on those options, and recommendation of its Salmon Advisory Subpanel (SAS), Salmon Plan Development Team (SPDT), Scientific and Statistical Committee (SSC), and state and federal agency representatives for the 1985 ocean troll and recreational salmon management measures. The Council tentatively then will adopt management options for SPDT analysis.

On April 10, the Council will hear the Groundfish Management Team's (GMT) analysis of catch rates during the first trimester of 1985, and recommendations from the GMT, the Groundfish Advisory Subpanel (GAP), and the public for inseason adjustments for the second trimester. The Council then will take appropriate action based upon these analyses and recommendations. There will be a public comment period at 3 p.m.

On April 11, the Council will finalize its recommendations for submission to the Secretary of Commerce on salmon management measures for 1985.

The Council's committees on budget and Indian affairs, its SSC, SPDT, SAS, GMT, and GAP will meet at the same location as the Council, April 8–11, to consider agenda items and report to the Council. Detailed agendas for all meetings will be available for the public around March 29. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: March 26, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-7510 Filed 3-28-85; 8:45 am]
BILLING CODE 3510-22-M

National Marine Fisheries Service; Dr. Lewis Rigley; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Lewis Rigley.

b. Address: Division of Natural and Mathematical Sciences, Dickenson State College, Dickenson, North Dakota 58601.

2. Type of Permit: Scientific research.

3. Name and Number of Animals: Bottlenose dolphins (Tursiops truncatus) unspecified number.

4. Type of Take: Potential harassment during studies of feeding and social behavior.

5. Location of Activity: Estuaries of South Carolina.

6. Period of Activity: 4 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Adminstrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Document submitted in conection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702, and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts, 01930–3799.

Dated: March 22, 1985.

Richard B. Roe,

Director, Office of Protected Species Division and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–7508 Filed 3–28–85; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674–2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management, Council Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753–6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa FL 33609, 813/288–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271–4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State of publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between March 1, 1985 and March 29, 1985 from the Government(s), shown below.

Dated: March 28, 1985.

Roland Finch,

Director, Office of Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic billfishes and sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands North Pacific groundfish.	
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SMT	Seamount groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Government of Poland

Joint Venture—The Government of Poland has amended its application to engage in joint venture activities. The initial application made by Poland for 10,000 metric tons of Pollock will not change. The amendment extends the current joint venture operations with Quest Trading Company, in the Gulf of Alaska, for operations in the Bering Sea and Aleutian Islands.

[FR Doc. 85–7790 Filed 3–28–85; 12:15 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a commodity and a service to be provided by workshops

for the blind and other severely handicapped.

EFFECTIVE DATE: March 29, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 26 and November 26, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 43087 and 49 FR 46458) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1985:

Class 6515

Bag, Tube Feeding: 6515–00–461–2049

SIC 7369

Commissary Shelf Stocking and Custodial Service, Francis E. Warren Air Force Base, Wyoming

C.W. Fletcher,

Executive Director.

[FR Doc. 85–7549 Filed 3–28–85; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1985; Proposed Additions

AGENCY: Commitee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: May 1, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 2540

Cushion, Seat Back, Vehicular: 2540–00–880–3925

Class 6532

Gown, Operating, Surgical: 6532–01–058–2520, 6532–01–058–2519, 6532–01–058–2523

Slippers, Convalescent, Patient: 6532–00–079–7889, 6532–01–011–5056, 6532–01–011–5055, 6532–01–011–5057

Class 7125

Cabinet, Storage, Repair Parts and Tools: 7125–00–449–6962

SIC 7349

Janitorial/Custodial, U.S. Army Reserve Center, 2720 Patton Road, Huntsville, Alabama.

C.W. Fletcher,

Executive Director.

[FR Doc. 85–7550 Filed 3–28–85; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has sumitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

The Personnel Security Questionnaire, (Industrial), DD form 49 is used to obtain background information for personnel security investigative and evaluative purposes in order to determine the security eligibility of contractor personnel for assignment to a sensitive position and/or access to information classified Top Secret. The completed form is routinely used by the Defense Investigative Service to determine the scope of a personnel security investigation. It is also used to provide evaluators or adjudicators with personal history information relevant to personnel security determinations. The information contained in the form may also be disclosed to other Federal agencies that are authorized under specific statutory or Executive authority to make personnel security determinations.

Individual/Contractor
Responses—50,000
Burden hours—75,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget; Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 746–0933

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Divison, VO240, 1900 Half Street, SW, Washington, DC 20324–1700, telephone (202) 475–0730.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1985.

[FR Doc. 85–7372 Filed 3–28–85; 8:45 am]

BILLING CODE 3810–01–M

Privacy Act of 1974; Matching Program—Department of Defense/U.S. Postal Service

AGENCY: Office of the Secretary Defense.

ACTION: Notice of a proposed continuing Computer Matching Program between the Department of Defense and the U.S. Postal Service.

SUMMARY: The Department of Defense as the matching agency, proposes to match by computer certain Department of Defense records with records provided by the source agency, the U.S. Postal Service to identify and locate U.S. Postal Service employees indebted to the Department of Defense. Also, a further match will be made to identify those U.S. Postal Service employees who are reservists so as to allow the U.S. Postal Service to determine if any identified employees would be critical to the U.S. Postal Service effort in time of national emergency and should not be retained in the Ready Reserve. This will be a continuing Matching Program. A matching report is set forth below.

DATE: This action shall be effective without further notice April 29, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, 550 Camino El Estero, Suite 200, Monterey, CA 93940-3231, Telephone: 408/646-2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, ODASD(A), The Pentagon, Washington, DC 20310-1100. Telephone: 202/694-3027.

SUPPLEMENTARY INFORMATION: A copy of this notice has been provided to the Congress (President of the Senate and Speaker of the House of Representatives) and to the Director of the Office of Management and Budget on March 21, 1985. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, effective May 11, 1982 and published in the **Federal Register** (47 FR 21656) on May 19, 1982.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 26, 1985.

Report of a Continuing Matching Program Between the Department of Defense and the U.S. Postal Service

a. *Authority:* 5 U.S.C. 552a; 10 U.S.C. 136 and 271; Debt Collection Act of 1982 (Pub. L. 97-365); Executive Order 11190.

b. *Program Description:* Under a written agreement, the Department of Defense will receive, upon request on a semiannual basis, a magnetic tape from the U.S. Postal Service listing the names, Social Security Account Numbers, and salaries of current Postal Service employees. Computer matches will be conducted to identify those Postal Service employees who are indebted to the United States under programs administered by the Department of Defense. The records provided by the Postal Service will be matched with the Department of Defense debtor records and the hits will be referred to the Postal Service which will provide the home and work address of each debtor to the Department of Defense. These records will be used to contact the debtor to request payment of the debt. A further match of the Postal Service records with the Department of Defense Reserve Forces records will be done in order to identify those Postal Service employees who are reservists. This is to allow the Postal Service to identify those employees who would be critical to the Postal Service in time of national emergency and should not be in the Ready Reserve.

c. *Records to be Matched:*

(1) Department of Defense System of Records.

The Department of Defense system of records to be used in this match is identified as S322.10 DLA-LZ, entitled: Defense Manpower Data Center Data Base. This record system notice can be located in the **Federal Register** at 49 FR 44941, November 13, 1984. No amendment to this notice is required. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

(2) U.S. Postal Service System of Records.

The U.S. Postal Service system of records to be used in this match is identified as USPS 050.020, entitled: Finance Records—Payroll System. This records system can be located in the **Federal Register** at 49 FR 46846, November 28, 1984. No amendment to this notice is required and the routine uses, paragraphs 32 and 33, permit the disclosure for these matches.

d. *Period of the Match:* The initial matching will begin when this notice becomes effective as set forth under **"DATE"** in the preamble of this notice. The matches will be an ongoing program: for the indebtedness portion, upon request by the Department of Defense on a semiannual basis; for the updating of the Department of Defense listings of Ready Reservists, upon request by the Department of Defense on an annual basis.

e. *Security Safeguards:* Tapes containing personal data are stored in a secure computer data processing facility at the W.R. Church Data Processing Center, Naval Postgraduate School, Monterey, California. Access to the tapes is by authorized personnel only. The data will be used only for the purposes stated above and data on non-matching records will not be used for any purpose. Data on the entire file may be used for aggregate statistical purposes, not for identifying any individual. All matching records will be examined further for accuracy and any action taken will conform to all applicable due process standards.

f. *Retention and Disposition of Records:* The records furnished by the U.S. Postal Service are only loaned to the Department of Defense and, while in the temporary custody, any release of information from the files will be made in accordance with established procedures and approval of the U.S. Postal Service. The Postal Service may either request return of the data furnished or direct its destruction at any time. Any records on individuals of interest to the Department of Defense will be collected and maintained in appropriate Department of Defense systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose. Upon completion of the comparison process, the Department of Defense will return the uncopied computer tape to the Postal Service and, in addition, will provide to the Postal Service a tape of Postal Service employees with a military mobilization obligation.

[FR Doc. 85-7595 Filed 3-28-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Surface Weapons Center (NSWC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on April 15–18, 1985. The meeting will take place at the Naval Surface Weapons Center, Dahlgren, Virginia, on April 15–16; at the White Oak Laboratory, Naval Surface Weapons Center Detachment, Silver Spring, Maryland, on April 17; and Information Spectrum, Inc., 1745 South Jefferson Davis Highway, Arlington, Virginia, on April 18. Sessions of the meeting will commence at 12:00 P.M. and terminate at 5:15 P.M. on April 15; commence at 8:00 A.M. and terminate at 4:50 P.M. on April 16; commence at 8:30 A.M. and terminate at 5:30 P.M. on April 17 and 18, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NSWC. The agenda for the meeting will consist of technical briefings by the NSWC departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical, and engineering health of the activity. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: March 26, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–7605 Filed 3–28–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Infrastructure Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Infrastructure Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and time: April 22, 1985—9:30 a.m.–3:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 4A–110, Washington, D.C. 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, D.C. 20595, (202) 252–5444.

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Infrastructure Subpanel is a subgroup of the Energy Research Advisory Board. The Board has been charged with overall responsibility for assessing the proper scope and balance of energy R&D programs which are expected to have a payoff around 2020. The Subpanel's specific charge is to assess the infrastructure which will be needed to bring research results to the marketplace in that timeframe.

Agenda

- Discussion of proposed recommendations of the Subpanel.
- Public comment (10 minute rule).

Public participation: the meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William L. Woodard at the address and telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestall Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 21, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff Office of Energy Research.

[FR Doc. 85–7489 Filed 3–28–85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Cities Service Co.; Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial order to Cities Service Company and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Cities Service Company (Cities). This Proposed Remedial Order charges Cities with selling crude oil at prices in excess of those permitted under the DOE regulations, in circumvention and contravention of the Entitlements Program and the pricing regulations, in connection with certain reciprocal purchases and sales of crude oil in which Cities sold volumes of price-controlled crude oil to 13 resellers in return for equivalent volumes of price-exempt crude oil during the period October 1, 1979 through April 30, 1980 and September 1, 1980 through January 27, 1981. The total violation amount is $257,530,553, plus interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Avrom Landesman, Director, Office of Enforcement Programs, ERA, U.S. Department of Energy, 1000 Independence Avenue, S.W. (RG–16), Washington, D.C. 20585, (202) 252–8900.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 6th day of March, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-7598 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket IE-78-6]

Order Authorizing the Exportation of Electric Energy to Canada and Superseding Prior Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of an order in Docket IE-78-6 authorizing the exportation of electric energy and superseding the prior authorization: Northen States Power Company.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) is authorizing new provisions for the continued exportation of electric energy by Northern States Power Company (NSP). This order, which supersedes the order issued in Docket IE-78-6 on August 13, 1979, authorizes the export provisions agreed to between NSP and the Manitoba Hydro Electric Board (MHEB) and the Manitoba Energy Authority (MEA) on July 14, 1984.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5935

Lise Courtney M. Howe, International Trade and Emergency Preparedness, Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-167, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION: On November 21, 1984, Northern States Power Company applied to the Economic Regulatory Administration to amend the existing electricity export authorization in Docket IE-78-6, which was issued by ERA on August 13, 1979, and authorized the transmission of electric energy to Canada under the terms of the Transactions and Coordinating Agreement between NSP and the MHEB dated July 21, 1976. This agreement is due to expire in 1993, and NSP has signed a new Power Agreement which will become effective with the expiration of the existing agreement.

The only changes in the export provisions between the new Power Agreement and the existing Transactions and Coordinating Agreement are the elimination of a 300 megawatt seasonal diversity exchange and a change in the pricing formula for electric energy exported to Canada during adverse water conditions on the MHEB system.

The pricing provisions of the new Power Agreement call for the price of electricity delivered to Manitoba to be based on NSP's cost of providing such energy plus either the average percentage mark-up NSP received from energy sales made to U.S. utilities during the previous 12-month period or 10 percent of NSP's cost of providing such energy, whichever is greater. Under the existing contract, Manitoba's purchase price is 110 percent of NSP's incremental cost of production.

Notice of this application was given on January 22, 1985 (50 FR 2850), stating that any person desiring to be heard or to make any protest with reference to this application should on or before February 15, 1985, file with the ERA petitions to intervene or protests in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.10). No petition or protest or request to be heard in opposition to the granting of the request made in this application was received.

Finding

The Administrator finds that the proposed transmission of electric energy from the United States to Canada as herein authorized and limited will not impair the sufficiency of electric supply within the United States and will not impede the coordinated use of the regional electric bulk power supply system. The staff analysis and recommendation in support of these findings have been made a part of the Docket and are available upon request.

Order

(A) NSP hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the Transactions and Coordinating Agreement between NSP and the MHEB dated July 21, 1976, until April 30, 1993. From May 1, 1993, NSP is authorized to continue to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the Power Agreement between NSP and the MHEB and the MEA dated July 14, 1984, subject to the provisions of this Order.

(B) The electric energy which NSP hereby is authorized to transmit from the United States to Canada shall be transmitted over facilities specified in the Presidential permit in ERA Docket PP-63, issued by the Administrator on March 6, 1979.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Administrator, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permit referred to in Paragraph (B) above.

(D) NSP shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the Department of Energy.

(E) NSP shall make and preserve full and complete records with respect to the sale of electrical energy to Canada. NSP shall furnish a report to the ERA annually, on or before February 15, showing the gross amount of electricity delivered and the consideration received during each month of the preceding calendar year.

(F) The following conditions apply to the export of electricity by NSP utilizing the facilities authorized by Presidential permit PP-63:

(1) The export of electricity from NSP to Canada shall not cause the spinning reserve on the NSP system to fall below the Mid-Continent Area Power Pool's (MAPP) spinning reserve criteria that is applicable at the time of the export.

(2) If all or part of NSP's spinning reserve is being provided by other MAPP members, sufficient transmission tie line capability must be maintained so that NSP may avail itself of those reserves if needed.

(3) NSP shall interrupt or curtail the export of energy whenever and to whatever extent such energy is necessary to supply firm load to a requesting U.S. utility with which NSP has an existing interconnection agreement and which is unable to obtain adequate supply elsewhere.

(4) In the event that the facilities described in Docket PP-63 are unavailable, NSP may arrange for the delivery of energy to Canada over other interconnections between U.S. utilities and the Province of Manitoba; however, in such event, NSP must notify ERA in writing within 30 days indicating the actions taken and the impact of such actions on other transmission systems utilized.

(G) The authorization herein granted shall supersede that heretofore granted by order of the Administrator of ERA issued on August 13, 1979, and referred to above.

Issued in Washington, D.C., March 18, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-7599 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Buck's Butane and Propane Service, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $29,200 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Buck's Butane and Propane Service, Inc. (HEF-0043).

DATE AND ADDRESS: Comments must be filed on before April 29, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to the above case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Buck's Butane and Propane Service, Inc. (Buck's). The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent Order settled possible pricing violations in Buck's sales of propane and rental of propane tanks to customers during the period for March 1974 through January 1981.

The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Buck's pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Buck's who establish that they were injured by Buck's alleged overcharges. Such customers will receive refunds proportionate to the volume of propane they purchased from Buck's. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearing and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: March 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

March 12, 1985.

Name of Firm: Buck's Butane and Propane Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0043.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Buck's Butane and Propane Service, Inc. (Buck's) of San Jose, California.

I. Background

Buck's is a "retailer" of "propane," as these terms were defined in 10 CFR 212.31.[1] In conjunction with its retail sales of propane, Buck's rents propane tanks to its customers. The Federal Energy Administration (FEA), predecessor of the ERA, audited Buck's operations during the period November 1, 1973 through February 29, 1976 (the audit period) and found possible violations of the Mandatory Petroleum Price Regulations.[2] In order to settle all claims and disputes between Buck's and the DOE regarding Buck's compliance with the DOE's price regulations in sales of propane and the rental of propane tanks during the period March 1974 through January 28, 1981 (the consent order period), the firm entered into a Consent Order with the DOE on June 26, 1981.[3] In accordance with the Consent Order, Buck's agreed to remit $29,200 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order states that Buck's does not admit to having violated the price regulations in sales of propane and the rental of propane tanks.

[1] Although the Consent Order identifies Buck's as a reseller-retailer, our records indicate that Buck's sold propane only to residential, commercial, and industrial end-users. Accordingly, this error appears to be inadvertent, and we have determined that Buck's should be classified as a retailer. *See* 10 CFR 212.31.

[2] In a Remedial Order (RO) issued to Buck's on April 21, 1977, the FEA found that during the audit period, Buck's had overcharged its customers by $95,488.65 in sales of propane and $62,909.82 in the rental of propane tanks. This RO was appealed, and in a Decision and Order issued on November 15, 1977, the OHA remanded the RO in part, requiring that the alleged overcharge amounts be reduced by the total amount of any refunds made by the firm to its customers. *Buck's Butane & Propane Service, Inc.*, 1 DOE ¶80,119 (1977). In a Subsequent Decision, the OHA rescinded the portion of the RO relating to sales of propane. *Buck's Butane & Propane Service, Inc.*, 2 DOE ¶80,102 (1978). Consequently, the only outstanding violation for which Buck's was responsible involved the $62,909.82 in overcharges to customers who rented propane tanks. This determination was affirmed by a United States District Court. *Buck's Butane & Propane Service, Inc.* v. *Department of Energy*, 3 Fed. Energy Guidelines ¶26,303 (D.C. Cal. 1981).

The amount Buck's was required to refund was subsequently reduced in a Decision and Order issued by the OHA on June 14, 1978. *Buck's Butane & Propane Service, Inc.*, 8 DOE ¶81,046 (1981). In that Decision, the OHA granted exception relief to Buck's, permitting the firm to offset $46,888.08 of refunds previously made by the firm to its propane customers against the firm's tank rental overcharges. The OHA determined that this offset was appropriate since the firm's tank rental customers and those to whom it sold propane were virtually identical groups. As a result, the firm's refund obligation was reduced to $16,021.74, plus interest.

[3] The Buck's Consent Order settles all claims with respect to Buck's outstanding liability regarding tank rental transactions during the audit period, as well as all other claims and disputes that may have arisen regarding Buck's compliance with the DOE price regulations in sales of propane and the rental of propane tanks during the consent order period. Although the consent order period (March 1974 through January 28, 1981) does not cover the first four months of the audit period (November through February 1974), the FEA audit files clearly indicate that Buck's is not liable for any regulatory violations in its sales of propane and rental of propane tanks during those four months.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify pesons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Buck's consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers who were injured by Buck's alleged pricing violations in sales of propane and the rental of propane tanks. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any alleged overcharges by Buck's during the consent order period.

As an initial matter, we are making a finding that Buck's customers, all of whom were end-users or ultimate consumers, including business that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil & Gas Corp.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of propane purchased from Buck's need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

In addition to our finding regarding end-users, we will adopt a presumption that any alleged overcharges by Buck's were dispersed equally in all sales of propane made by the firm during the consent order period. In the past, we have referred to this presumption as a volumetric refund amount. *See, e.g., Vickers*. In the present case, the information in the FEA audit files provides an insufficient basis for computing refunds according to alleged overcharge amounts. In several prior cases, we have approved refunds on the basis of alleged overcharge amounts, provided that the audit was very narrow in scope, the consent order was limited to the same products and time period as the audit, and the consent order firm had a relatively small number of purchasers, all or most of whom were identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 at 88,031 (1984). In the present proceeding, however, the consent order period (March 1974 through January 28, 1981) is not coterminous with the audit period (November 1973 through February 1976); the Consent Order covers alleged overcharges in sales of propane as well as tank rentals while the Remedial Orders, as affirmed, applied only to tank rental violatons; and only a small percentage of Buck's customers during the consent order period are identified in the audit records. We have therefore determined that a volumetric refund presumption will provide the most efficient and equitable method for distributing the Buck's consent order fund.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.
>
> 10 CFR 205.282(e).

The volumetric refund presumption we are adopting in this proceeding assumes that any overcharges that occurred were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impace of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

To determine the volumetric factor in the present case, we will divide the consent order fund by the estimated total volume of propane sold by Buck's during the consent order period.[4] In the present case, this results in a refund amount of $0.0007454 for each gallon of propane which an applicant purchased from Buck's. The interest which has occurred on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[5] *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82.541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the

[4] The present case is different from *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984), in which we based the volumetric refund level on the tank capacity of each claimant. The alleged overcharges in that case were attributable solely to tank rentals, whereas the alleged overcharges covered by the Buck's Consent Order are attributable to sales of propane as well as the rental of propane tanks. In addition the record in *Buck's Butane & Propane Service, Inc.*, 1 DOE ¶ 80,119 (1977), shows that Buck's tank rental agreements required the firm's tank lessees to fill the tanks only with propane purchased from Buck's. *See* 1 DOE at 80,615. Accordingly, we find it reasonable in the present case to base the volumetric refund level on the volumes of propane sold by Buck's. We have calculated that volume figure by extrapolating available audit data, because the FEA audit files do not list the volumes of propane sold by Buck's during the entire consent order period.

[5] Under the volumetric refund level established in this proceeding, a Buck's customer would have had to have purchased 20,123 gallons of propane during the consent order period in order to qualify for the minimum refund.

funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decisions in the **Federal Register**. If appropriate, we also intend to publicize this proceeding in local newspapers in the area where Buck's conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Buck's Butane and Propane Service, Inc. pursuant to the Consent Order executed on June 26, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-7492 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Riverside Oil, Inc., et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of hearings and Appeals of the Department of Energy announces the procedures for disbursement of $19,000 obtained as the result of a Consent Order which the DOE entered into with Riverside Oil, Inc., a reseller-retailer of motor gasoline located in Evansville, Indiana.

DATE AND ADDRESS: Applications for refund of a portion of the Riverside consent order funds must be received on or before June 27, 1985. All applications should refer to Case Number HEF-0494 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of hearings and Appeals, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by Riverside Oil, Inc. (Riverside). The consent order settled possible pricing violations in the firm's sales of motor gasoline to customers during the period April 1, 1979 through December 31, 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Riverside consent order funds was issued on January 25, 1985. 50 FR 5307 (February 7, 1985)

Today's Decision sets forth final procedures and standards that the DOE formulated to distribute the contents of the escrow account funded by Riverside pursuant to the consent order. The DOE has decided that the consent order funds should be distributed in two stages. In the first stage, funds will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Riverside's alleged pricing violations. However, the information avialable to us at this time regarding the firm's operations does not provide the names and addresses of the firm's customers. In the event that money remains in the escrow account after all first stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Riverside during the audit periods. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: March 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

March 21, 1985.

Name of Firm: Riverside Oil, Inc.

Date of Filing: March 16, 1984.

Case Number: HEF-0494

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA). The petition requests that the OHA formulate and implement procedures for the distribution of funds received in connection with a consent order that ERA entered into with Riverside Oil, Inc. (Riverside).

I. Background

Riverside is a "reseller-retailer" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Evansville, Indiana.[1] A DOE audit of the firm's records revealed possible pricing violations with respect to sales of motor gasoline sales during the period April 1, 1979, through December 31, 1979 (audit period).[2] In order to settle all claims and disputes between Riverside and the DOE regarding the firm's sales of motor gasoline during the audit period, Riverside and the DOE entered into a consent order on August 30, 1980. The Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violations were made. The Consent Order also states that Riverside does not admit that it committed any such violations. Finally, according to the Riverside consent order, the firm agreed to deposit $19,000, plus interest, in an interest bearing escrow account for ultimate distribution by DOE.[3]

On January 25, 1985, a Proposed Decision and Order (PD&O) was issued setting forth a tentative plan for the distribution of the Riverside consent order funds. 50 FR 5307 (February 7, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. The PD&O also stated that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Riverside's pricing practices during the audit period. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. *See generally Office of Special Counsel*, 10 DOE ¶85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

[1] The firm owned and operated several self-service gas stations, in addition to reselling gasoline to other distributors. Riverside sold its products in Indiana, and the states of Kentucky and Illinois.

[2] The ERA in this case conducted its audit based on a portion of the firm's records. The auditors first examined a portion of the firm's retail sales records and then extrapolated from those figures to arrive at an estimate of alleged overcharges during the audit period.

[3] According to the terms of the consent order, Riverside is to pay the $19,000 into escrow in nineteen monthly installments. Thus far, the firm's payments have not been delinquent and the principal of $19,000 should all be in the escrow account by March 1985.

A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. While none of Riverside's customers filed comments on the proposed procedures, comments were filed on behalf of the state of Texas. The State's comments, however, discuss the distribution of any residual funds in a second-stage proceeding. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the Riverside refund proceeding. This Decision sets forth the information that a purchaser of Riverside products should submit in an Application for Refund in order to establish eligibility for a portion of the Consent order funds. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the state's comments concerning the disposition of any funds remaining after all the meritorious first-stage claims have been paid.[4]

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

A. Refunds to Injured Purchasers

In the PD&O we proposed that the Riverside consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Riverside's alleged pricing violations. The information available to us at this time regarding the firm's operations does not provide the names and addresses of the firm's customers. We stated in the PD&O that our experience with Subpart V proceedings indicated that the likely claimants in this proceeding, when more fully identified, would fall into two categories: (1) Resellers (including retailers) of Riverside motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of gasoline purchased from Riverside. The products purchased by these claimants were purchased either directly from Riverside or from other firms in a chain of distribution leading back to the firm.

However, upon further review of the audit records, and after telephone conversations with ERA's Kansas City Regional Office, and with Mr. John Searle, Sr., President of Riverside, we have determined that although Riverside is a retailer-reseller, the consent order only pertains to the retail portion of the firm's operations.[5] Consequently, we conclude from the record that its retail operation was the only aspect of Riverside's business which led to the consent order agreement. Therefore, only retail customers will be eligible to receive a portion of the consent order funds, and reseller refund procedures are not necessary in this case.

As we stated in the PD&O, we will adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). We will adopt presumptions in this case in order to permit claimants to participate in the refund process without disproportionate expense, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Riverside during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Riverside's pricing practices during the consent period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

Under the method we are adopting, a successful refund applicant will receive a refund amount which is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.002908 per gallon ($19,000 received from Riverside divided by 6,534,429 gallons of motor gasoline sold at retail by the firm during the audit period).

Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. Consequently, a successful claimant who purchased, for example, 100,000 gallons of motor gasoline from Riverside during each of the months of the consent order period will receive a refund of $2,617 (100,000 gallons times 9 months times $.002908).

In addition to the presumption we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged

[4] Furthermore, these comments have virtually no bearing on this proceeding. As we have stated previously, we request that states participate only in those cases where they can demonstrate a significant interest and in which they can participate in a meaningful and constructive way. We note that in this instance there is no apparent connection between the violation alleged in this proceeding and the interests of the state of Texas and its citizens.

[5] *See* November 6, 1981 memorandum concerning the telephone conversation between Mr. Tom Elliot of ERA's Kansas City Regional Office and Amy Resner, Staff Analyst, and January 23, 1985 memorandum concerning telephone conversation between Mr. Searle, Sr. and Ms. Resner.

overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Taxes Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1,984) and cases cited therein. Since, as we stated above, the consent order only covers Riverside's sales to end-users, we have concluded that applicants in this case need only document their purchase volumes from Riverside to make a sufficient showing that they were injured by the alleged overcharges.

Finally, as we indicated in the PD&O, we will establish a minimum amount of $15 for refund claims. Our experience in other similar refund proceedings is that the cost to the government of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

III. Applications for Refund

No comments other than the state of Texas' comments were received with regard to the refund procedures proposed in the PD&O. Accordingly, for the reasons stated in the PD&O we will implement these proposals. We shall now accept applications for refunds from retail customers who purchased motor gasoline from Riverside during the audit period.

In order to receive a refund each claimant will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. If no documentation of the gallons purchased is available, an applicant must submit a detailed explanation of how its volumes were estimated, including any perfinent information which supports its claim *e.g.*, the type and number of vehicles owned, the number of miles driven, the location of the Riverside outlets where gasoline was purchased.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF-0494 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Riverside Oil, Inc. pursuant to the consent order executed on August 30, 1980, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: March 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-7493 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Webco Southern Oil, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Webco Southern Oil, Incorporated in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by June 27, 1985, should conspicuously display a reference to case number HEF-0194, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of the consen order between Webco Southern Oil, Incorporated, a reseller and retailer of motor gasoline located in Smyrna, Georgia, and DOE. The consent order settled all disputes between the DOE and Webco concerning possible violations of DOE price regulations with respect to the firm's sales of motor gasoline during the period March 1, 1979 through July 31, 1979.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by June 27, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: March 20, 1985.

George P. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 20, 1985.

Name of Petitioner: Webco Southern Oil, Incorporated.

Date of Filing: October 13, 1983.

Case Number: HEF-0194.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for

funds received as part of a settlement agreement or pursuant to a Remedial Order. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Webco Southern Oil, Incorporated (Webco).

I. Background

Webco is a "reseller/retailer" of motor gasoline as that term was defined in 10 CFR 212.31, and is located in Smyrna, Georgia. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. An audit of Webco's sales of motor gasoline from March 1, 1979 through July 31, 1979 (the audit period) revealed possible regulatory violations. In order to settle all claims and disputes between Webco and the DOE regarding the firm's sales of motor gasoline during the audit period, Webco and the DOE entered into a consent order on April 7, 1981, in which Webco agreed to remit $13,079.52 to the DOE.[1] The sum of $14,561.57 [2] was deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This decision concerns the distribution of the $14,561.57 that was deposited into the escrow account, plus accrued interest, which amounted to $4,651.55 as of February 28, 1985.

On January 17, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the funds that have been deposited in the Webco escrow account, plus accuerd interest. 50 FR 4769 (February 1, 1985). This decision establishes procedures for filing claims in the Webco refund proceeding. In this decision, we will state the kind of information a purchaser of motor gasoline from Webco should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. We will not, however, propose procedures at this time for the disposition of funds that may remain in the escrow account after all claims have been paid. Our determination concerning the disposition of those fund will necessarily depend on the amount remaining in the account at that time. It is therefore premature for us to address issues regarding the disposition of any remaining funds until all claims have been paid.

II. Jurisdiction

We have considered ERA's Petition for Implementation of Special Refund Procedures and determined that it is approprate to establish such a proceeding with respect to the Webco consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Webco consent order funds.

III. Refunds to Injured Purchasers

The Webco consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Webco's alleged pricing violations. During the audit of the firm, ERA identified eight customers who may have been overcharged. The names and addresses of these customers are listed in the Appendix to this Decision and Order. Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including retailers) of motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of motor gasoline. The motor gasoline purchased by these claimants was purchased either directly from Webco of from other firms in a chain of distribution leading back to Webco.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of motor gasoline for the period March 1, 1979 through July 31, 1979. If the motor gasoline was not purchased directly from Webco, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with Webco. In addition, a reseller or retailer of Webco motor gasoline that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.[3] *See Office of Enforcement: In the Matter of Ada Resources, Inc.*, 10 DOE ¶ 85,029 at 88,125 (1982). In addition, a reseller will have to provide some further evidence of injury. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,215 (1982) (hereinafter cited as *Amoco*).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of Webco motor gasoline marketed during the consent order period. This assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser will be allowed to file an application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

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[1] Webco agreed in the consent order to make direct refunds totalling $642.39 to individual consumers of Webco motor gasoline.

[2] Because Webco elected to remit three installment payments in satisfaction of the $13,079.52 owed to the DOE pursuant to the consent order, the interest that accumulated on those installments increased the amount of principal deposited into that deposit account to $14,561.57.

[3] The price rules applicable to sales of motor gasoline by retailers were amended effective July 14, 1979, 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. Since the fixed markup rule was in effect during a portion of the latter month of the period covered by the Webco consent order, no showing of cost banks will be required of retailers from July 14, 1979 through July 31, 1979. The use of banking remained optional for larger resellers of motor gasoline; firms that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds greater than $5,000.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Webco's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case because the time period covered by the Webco consent order is quite distant. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.[4] Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.[5]

In addition to the presumptions we are adopting, we are making a finding that each end-user or ultimate consumer whose business is unrelated to the petroleum industry was injury by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Webco motor gasoline that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of Webco motor gasoline, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Webco motor gasoline. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.005162 per gallon ($14,561.57 received from Webco divided by 2,820,799 gallons of motor gasoline sold by Webco to its customers during the audit period), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of February 28, 1985, accrued interest will increase the per gallon refund amount by .001649 for a total per gallon amount of $.006811. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than than $15.00 outweighs the benefits of restitution in those situations. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

IV. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Webco Consent Order Fund, Case Number HEF–0194. If the applicant is not a direct purchaser from Webco, it should also indicate the basis for its belief that the motor gasoline that it purchased originated from Webco. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Webco product, indicating whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through July 14, 1979. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a monthly basis from November 1, 1973, through July 14, 1979. If the applicant is a reseller, it must also submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infrasible. An applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the period that its application for refund is being considered. *See* 10 CFR 205.9(d). Each applications must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, each applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Each application for refund must be filed in duplicate. A copy of each

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[4] In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

[5] In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 242,154 gallons per month during the Webco consent order period. Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Webco Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Webco consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Webco Southern Oil, Incorporated pursuant to the consent order executed on April 17, 1981, may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in **Federal Register.**

Dated: March 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Identified First Purchasers

R.W. Harris, 85 Hwy., Route 3, Fayetteville, GA 30214

John E. McKinney, 1278 Central Avenue, East Point, GA 30344

Frank T. Hewatt, Marvin Hewatt Enterprises, P.O. Box 424, Snellville, GA 30278

Richard M. Huber, 5110 Old National Highway, College Park, GA 30349

Lance Oil Co., Inc., 3475 A Lake Drive, Smyrna, GA 30080

Wallace Tire & Alignment, 1567 Wellingham Drive, East Point, GA 30344

Lloyd Saggus, 1227 Virginia Avenue, East Point, GA 30344

National Car Rental, 3425 Whipple Avenue, East Point, GA 30344

[FR Doc. 85–7491 Filed 3–28–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of January 22 through January 25, 1985

During the week of January 22 through January 25, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Appeals

E.H. Pechan & Associates, 1/24/85; HFA–0267

E.H. Pechan & Associates filed an Appeal from a partial denial by the Authorizing Official of the DOE Office of Procurement of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that certain of the documents which were initially withheld under exemption 4 of the FOIA should be remanded to the Authorizing Office for further consideration and that additional pages should be released to the public. The DOE found that resumes or portions of resumes which do not contain information specifically relating to the project which was the subject of the requested proposal required further evaluation by the Authorizing Official. The DOE also found that pages of the proposal which contained only general information could be released. Accordingly, the Pechan Appeal was granted in part.

International Brotherhood of Electrical Workers, Local 125, 1/24/85; HFA–0268

Local 125 of the International Brotherhood of Electrical Workers (IBEW) filed an Appeal from a partial denial by the Chief of the Contract Administration and Field Operations Section (Chief) of the Bonneville power Administration (BPA) of a Request for Information which the IBEW had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Chief did not cite any of the FOIA exemptions to mandatory disclosure, and therefore did not adequately justify withholding part of the requested information. The proceeding therefore was remanded to the Chief for a proper determination in accordance with the DOE regulatory provisions implementing the FOIA.

Interlocutory Order

ERA/Revere Petroleum Corp; Walz, Gordon, K; Woolsey, John; Cross, James et al., REVERE PETROLEUM CORP. et al., 1/24/85; HRZ–0223, HRZ–0221, HRZ–0229

The Economic Regulatory Administration (ERA) filed a Motion to Amend a Proposed Remedial Order (PRO) and to Join Additional Parties in connection with an enforcement proceeding pending before the OHA. In support of its Joinder Motion, the ERA maintained that good cause existed to join the additional parties because joinder would ensure that full restitution for the alleged violations would be achieved. In considering the motion, the DOE determined that the ERA's submission established good cause for the joinder and no undue delay would be caused as a result of the joinder. Accordingly the motion was granted.

Supplemental Order

Eldon Spencer, Inc., 1/24/85; HRX–0112

A Remedial Order issued to Eldon Spencer, Inc. (Spencer) by the Office of Hearings and Appeals on January 24, 1985 provided that Spencer could file an Appeal of the Order with the Federal Energy Regulatory Commission (FERC). Section 205.199C(a) of the DOE regulations states that FERC has jurisdiction over appeals of proceedings initiated by the issuance of a Notice of Probable Violation (NOPV) or PRO after October 1, 1977. Because the Spencer proceeding was initiated by the issuance of a NOPV on June 14, 1976, the DOE concluded that the Remedial Order issued to Spencer should be amended to provide that any aggrieved party may seek immediate judicial review.

Refund Applications

OKC Corp./Hornet Oil Company, 1/25/85; RF13–29

The DOE issued a Decision and Order concerning an Application for Refund filed by Hornet Oil Company. Hornet sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Hornet is an independent retailer of petroleumn products which purchased motor gasoline from OKC during the period covered by the consent order. Upon evaluating Hornet's refund request, the DOE concluded that Hornet was injured by OKC's pricing practices during the consent order period and was therefore eligible for a refund. The amount of the refund approved was $57,651 plus interest.

Webster Oil Company/United States of America, 1/25/85; RF48–0002

The Office of Hearings and Appeals awarded a payment of $507 to the U.S. Treasury from the $40,566 settlement fund obtained as a result of the consent order entered into by Webster Oil Company and the DOE. A DOE audit found that a Webster affiliate allegedly overcharged several unidentified government agencies in its sales of propane. The audit identified the government as an end-user, and in *Webster Oil Company, Inc.*, 12 DOE ¶ 85,070 (1984), OHA found that end-users were injured by the Webster companies' pricing practices. For those reasons and because of the small amount of money involved, OHA authorized the refund to the U.S. Treasury.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a

commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 13, 1985.

[FR Doc. 85-7490 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 28 through February 1, 1985

During the week of January 28 through February 1, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Tugalo Gas Company, 1/28/85; *HRA-0006*

On June 13, 1983 Tugalo Gas Company (Tugalo) filed a Statement of Objections to a Modified Remedial Order (MRO) issued to it on April 5, 1983, and a Remedial Order (RO) issued to the firm on May 31, 1977. The MRO and RO found that during the period October 12, 1973 through May 24, 1974, Tugalo violated federal petroleum price regulations by selling propane at prices in excess of those allowed by 6 CFR 150.359 and 10 CFR 212.93. The RO ordered Tugalo to comply with the regulations and to roll back its prices. Tugalo did not roll back its prices, and the ERA issued the MRO, which changed the remedial provisions to provide for payment of the overcharge amount to the Department of Energy, rather than a rollback of prices, and altered the method to be used to calculate interest rates.

Tugalo argued that the MRO should not be issued as a final Remedial Order because (1) the action is barred by laches, (2) the DOE has no authority to enforce regulations promulgated by the Cost of Living Council, (3) the DOE recordkeeping regulations are invalid because they were not properly promulgated and are unintelligible, (4) substantive rulings and regulations of the DOE are invalid, and (5) the MRO AND RO fail to establish a prima facie showing of liability. The DOE rejected all of Tugalo's contentions. Accordingly, the MRO issued to Tugalo Gas Company was issued as a final Remedial Order of the Department of Energy. The OHA ordered that the Stay of the MRO, which it granted on June 1, 1983, expire on the date of the present Decision and Order. Tugalo was ordered to pay the sum of $82,829.34 plus accrued interest to the Department of Energy.

Remedial Order

Brent Explorations, Inc., 1/29/85; *HRO-0162*

Brent Explorations, Inc. objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on May 6, 1983. In the Proposed Remedial Order, the ERA alleged that during the period from August 1979 through December 1980, Brent, as a producer of crude oil, had sold crude oil at prices exceeding the applicable ceiling prices under the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. After considering Brent's objections to the PRO, the DOE found that the crude oil produced from brent's wells did not qualify as either stripper well exempt crude oil, or as crude oil produced from new reservoirs. The DOE also rejected the firm's other objections, and issued the PRO as a final Remedial Order.

Request for Exception

Energy Cooperative, Inc., 2/1/85; *BEE-1629*

Energy Cooperative, Inc. filed an Application for exception from the provisions of 10 CFR 211.67 in which the firm sought retroactive entitlements exception relief to compensate the firm for its lack of access to price-controlled crude oil during the month of January 1981. In considering the request, the DOE found that a substantial portion of the firm's financial difficulties was not directly attributable to the effects of the DOE regulatory program. Accordingly, exception relief was denied. An important issue discussed in the Decision and Order is the effect of the ERA's new policy decision on pending and future entitlements exception applications.

Interlocutory Orders

ERA/National Hydrocarbons Group, Inc., 1/30/85; HRZ-0180

The Economic Regulatory Administration (ERA) filed a motion to amend the Proposed Remedial Order issued to National Hydrocarbons Group, Inc., and National Hydrocarbons Resources Corporation (Group and Resources) and to join additional parties to the enforcement proceeding (Case No. HRO-0164). In addition, Group and Resources requested confidential treatment of several documents filed in this proceeding. The Office of Hearings and Appeals (OHA) granted ERA's motion, thereby joining as parties to the enforcement proceeding a subsidiary corporation of Group and three individuals. The OHA also denied all of the confidentiality claims of Group and Resources.

Office of Special Counsel, 1/29/85; HRZ-0220

The Office of Special Counsel of the Economic Regulatory Administration filed a motion to strike the August 1982 affidavit of O.R. Carter that was submitted by Texaco Inc. in connection with its objections to a Proposed Remedial Order (Case No. DRO-0199). Texaco submitted the affidavit of Mr. Carter, a petroleum geologist, in support of its contentions that certain of its crude oil producing entities qualified as "properties" under the "very large tract" exception to the DOE's definition of "property." In denying the motion to strike, the OHA determined that most of the Carter affidavit had been rendered irrelevant by a legal ruling issued by OHA in the Texaco proceeding, and that the retention in the record of the limited portions of the affidavit that remained relevant would not prejudice ERA. OHA did, however, provide ERA the opportunity to file a response to the portions of the affidavit that remained relevant.

Supplemental Order

David W. Ratliff and John T. Troland, 1/28/85; HRX-0113

David W. Ratliff and John T. Troland filed a petition pursuant to 10 CFR 205.8(a)(4) for the review of subpoenas issued to them in connection with a proceeding involving a Proposed Remedial Order issued to them, among others. The subpoenas had been issued at the request of another party to the Remedial Order proceeding to compel their testimony at an evidentiary hearing. The petitioners sought a ruling that would limit their testimony to the issue of apportionment of liability among the parties, which they alleged was the sole purpose of the hearing. The DOE found that the petitioners had not presented any arguments concerning why any limit should be placed on the scope of their testimony. The DOE further noted that, according to the Decision and Order convening the hearing, its purpose was not limited to the issue of apportionment, but included other matters as well. Accordingly, the request was denied.

Implementation of Special Refund Procedures

J.S. Beebe and J.S. Beebe, Jr., 1/28/85; HEF-0505

The Office of Hearings and Appeals (OHA) issued a Decision and Order concerning a Petition for Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in the matter of J.S. Beebe and J.S. Beebe, Jr. The ERA requested that the OHA formulate a mechanism by with those parties injured by Beebe's crude oil pricing practices during a stipulated time period could apply for a refund from consent order moneys which the firm agreed to pay to the DOE. The Decision and Order determined that, because of the similarities between the violations alleged in the Beebe matter and other previously-instituted refund proceedings involving crude oil producers, the application procedures formulated in the *Alkek, Adams,* and *A. Johnson* proceedings would be utilized. The Decision further determined that those parties who filed refund applications in those proceedings would be deemed to have filed an application for refund in the *Beebe* proceeding.

Webster Oil Company, Inc., 1/28/85; HQF-0561

The DOE issued a Decision and Order establishing second stage refund procedures to distribute the $47,680.66 remaining in the Webster Oil Company, Inc. escrow account after all first purchasers' claims had been processed. Since Webster operated in the central and south west areas of Missouri, the DOE decided that the State of Missouri could most effectively distribute this money to its citizens. Accordingly, the DOE ordered that Missouri should sumbit a plan describing how it would use the remaining money to benefit consumers of Webster petroleum products.

Windham Oil and Gas Co., 1/28/85; HQF-0560

On January 28, 1985, the Office of Hearings and Appeals issued a Decision and Order setting forth second stage refund procedures to distribute unclaimed funds obtained under

a consent order with Windham Oil and Gas Company. The OHA determined that the State of Ohio should be permitted to apply for the remaining consent order funds. The State was directed to submit a plan that would benefit consumers of motor gasoline in the Portage County region, where Windham had marketed its products during the consent order period.

Refund Applications

Brown Oil Company/Chris Standard Service, Clara Lively Robo Carwash, 1/30/85; RF39-1, RF39-2, RF39-3

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers of motor gasoline purchased from Brown Oil Company. These three applicants were the firms identified in the ERA audit as allegedly overcharged by Brown. In accordance with *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984), the applicants were granted refunds based upon the amount of overcharges alleged in the ERA audit. The distribution of funds pursuant to this Decision exhausts the escrow account established pursuant to the Brown consent order.

Houston Natural Gas Corp./Tesoro Petroleum Corp., 1/30/85; RF53-2

Tesoro Petroleum Corporation filed an Application for Refund in which the firm sought a portion of the funds remitted by Houston Natural Gas Corporation pursuant to the consent order that Houston entered into with the Economic Regulatory Administration of the Department of Energy. In considering the request, the DOE found that based on the volume of natural gas liquid products that Tesoro purchased from Houston during the consent order period, Tesoro is eligible for a refund of $1,508. Since the amount is less than the $5,000 thresholed refund level above which a showing of injury is required, the DOE granted Tesoro's refund request.

Triton Oil and Gas Corporation/Tenneco Oil Company, 1/30/85; RF18-0002

The DOE issued a Decision and Order concerning an Application for Refund filed by Tenneco Oil Company, a first purchaser of natural gas liquids sold by Triton Oil and Gas Corporation. As set forth in the Decision which set forth procedures for claimants seeking refunds for the Triton consent order fund, *Office of Enforcement*, 9 DOE ¶ 82,566 (1982), Tenneco had to demonstrate injury by first showing sufficient cost banks and then proving that it did not pass on any alleged overcharges. The DOE analyzed Tenneco's competitive disadvantage and found that the firm had sustained injury in some, but not all, calendar quarters of the Triton consent order period. The DOE granted Tenneco a refund of $4,323 including interest.

Dismissal

The following submissions were dismissed.

Name	Case No.
Bassman, Mitchell & Alfano, Chartered	HFJ-0052.
Darwin Huettl	RF40-182.
Michael Green	RF40-180.
Pacific Northern Oil	HEE-0111.
Silver Eagle Oil, Inc	HED-0176.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. There are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 13, 1985.

[FR Doc. 85-7488 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 25 Through March 1, 1985

During the week of February 25 through March 1, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Barrett & Hanna, 3/1/85; HFA-0271

The law firm of Barrett & Hanna filed an Appeal from a denial by the Dallas Office of Field Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Denying Official's justification for withholding the documents under Exemption 4 was inadequate. Important issues that were considered in the Decision and Order were (i) the effect of Consent Order language stating that the DOE would treat certain information as confidential, (ii) the standards for applying Exemption 4, and (iii) the requirement that an adequate description of documents withheld be provided.

Remedial Order

Vantage Petroleum Corporation, 2/26/85; HRO-0100

On May 5, 1983, Vantage Petroleum Corporation (Vantage) objected to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the firm on November 5, 1982. In the PRO, the ERA found that during the period April 4, 1979 through August 31, 1979, Vantage improperly calculated its maximum legal selling price (MLSP) of motor gasoline and, as a result, overcharged its customers by $1,274,886.72. After reviewing the record, the DOE concluded that the PRO should be issued as a final Remedial Order. The important issues discussed in the Decision and Order include: (i) the due process requirements of the PRO, (ii) the procedural validity of applicable DOE regulations, (iii) the use of estimates to calculate the base cost of a new item, and (iv) the applicability of a non-product cost allowance to the MLSP of a new market item.

Request for Exception

Gulf States Oil and Refining Company, 2/28/85; HEE-0008

Gulf States Oil and Refining Company filed an Application for Exception from the provisions of 10 CFR 211.69 in which the firm sought to file amended ERA-49 entitlements report forms for months prior to October 1980. In considering the request, the DOE found that public policy favored adherence to the limited reporting period specified in § 211.69. The DOE also found that exception relief was not appropriate to remedy the effects of a firm's own errors or discretionary business decisions. Accordingly, the DOE denied Gulf States' exception request.

Interlocutory Orders

Economic Regulatory Administration/Getty Oil Company, 2/27/85; HRZ-0231

On December 28, 1984, the Economic Regulatory Administration of the Department of Energy filed a Motion to Strike the supplemental brief submitted by Getty Oil Company on December 4, 1984, in Case No. HRR-0074. In considering ERA's motion, the DOE determined that the contents of the firm's brief were unauthorized. However, the DOE determined that a small portion of the brief was arguably relevant to the limited issue to which the scope of Getty's brief had been restricted. Accordingly, the DOE concluded that the Motion to Strike should be granted in great part and denied only with respect to the few pages of the brief that contained the arguably relevant passages.

ERA/Sabine Refining and Trading Co., Inc., Stuart Van Eman and Clyde Wilson, 2/25/85; HRZ-0230

On November 13, 1984, the Economic Regulatory Administration (ERA) filed a motion to strike a portion of a submission filed by Sabine Refining and Trading Co., Inc., Stuart Van Eman and Clyde Wilson from the record in the enforcement proceeding involving those parties. The ERA sought to exclude from the record three internal DOE memoranda and a discussion of the DOE's determination in *Osborne Energy Corp.*, 12 DOE ¶ 84,007 (1984). The DOE concluded that the ERA had failed to show that it would be prejudiced by the retention of the contested material in the record. The ERA's motion was therefore denied.

Refund Applications

OKC Corp./Mico Oil Co., RF13-7; Fisca Oil Co. Inc., 2/28/85; RF13-8

The DOE issued a Decision and Order concerning Applications for Refund filed by Mico Oil Company and Fisca Oil Company, Inc. Both applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Mico and Fisca are independent retailers of petroleum products which were indirect purchasers of OKC motor gasoline

during the consent order period. Mico and Fisca submitted certification from their immediate supplier, King & King Enterprises, Inc., which confirmed their claim that they purchased OKC motor gasoline during the consent order period through King & King. However, neither King & King nor the applicants could provide documentation in support of Mico and Fisca's purchase volume. Furthermore, Mico and Fisca were unable to supply cost bank information in support of their claim that they absorbed OKC's alleged overcharges. The DOE noted that the lack of purchase volume claim verification is sufficient ground for denying the applicants' refund claims. However, the DOE was convinced that Mico and Fisca had purchased substantial volumes of OKC motor gasoline. Therefore Mico and Fisca were granted refunds based upon the purchase threshold level of 50,000 gallons of OKC motor gasoline per month. The refunds granted in this Decision total $6,227, including accrued interest.

Standard Oil Company (Indiana)/Grove & Elmwood Standard, 2/25/85; RF21-12378

On March 7, 1983 and March 10, 1983, the Office of Hearings and Appeals (OHA) of the Department of Energy issued Decision and Orders granting Applications for Refund filed by retailers of Amoco motor gasoline, including two Applications filed on behalf of James S. Deine, the owner and operator of Grove & Elmwood Standard. *See Standard Oil Co. (Indiana)/ J.L.G. Standard,* 10 DOE ¶ 85,074 (1983); *Standard Oil Co. (Indiana)/ Ray's Standard Service,* 11 DOE ¶ 85,237 (1983). During a computer check for duplicate filings, OHA became aware of the multiple filings on Devine's behalf and determined that Devine had received a duplicate refund. After conducting an investigation, OHA determined that Devine was not responsible for the fraudulent filing of duplicate applications. OHA therefore determined that Devine be permitted to retain the initial refund, and to remit only the second, duplicate refund, plus interest.

Dismissals

The following submissions were dismissed:

Name	Case No.
Cambridge Rubber Co	RF78-0005
Gene's Gulf	RF40-579

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 14, 1985.

[FR Doc. 85-7494 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Mead-Northwest Intertie; Discussion on Study Report Entitled Completing the Intertie

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a public information forum to discuss the report entitled, "Completing the Intertie."

SUMMARY: Western Area Power Administration (Western) will conduct a public information forum to discuss its report entitled, "Completing the Intertie," published January 1985. Western will explain the public process that it will follow to identify the participants and their future needs that may be associated with the proposed new intertie.

DATES: A public information forum on this subject will be held April 23, 1985, at the Showboat Hotel, Shiloh Room, Las Vegas, Nevada, beginning at 10 a.m. A schedule will be presented at the forum of subsequent intertie planning activities. Future public information forums may be held on dates and at locations to be announced.

SUPPLEMENTARY INFORMATION: Congress directed that Western should expedite work on the previously approved high-voltage, direct-current transmission line between Celilo Substation at the Dalles Dam and Mead Substation at Hoover Dam. In addition, Congress directed that modifications to the original plans be considered as circumstances require and that participation by non-Federal parties be encouraged.

Western conducted an extensive study of the feasibility of constructing the remaining intertie facilities authorized in 1964, and published its findings in the report titled, "Completing the Intertie." Copies of the report were mailed to known interested parties on February 1, 1985. A copy of the report will be supplied upon request.

The public information forum is the first step of Western's public process to explain the study, and to identify any interested participants in the intertie. Western also proposes to coordinate any future project organization meetings that may result from this public information forum. It would be at those project coordination meetings that project participation, ownership and capacity entitlements, and management responsibilities would be discussed, and a project leader elected.

In addition, the Bureau of Reclamation (Bureau) and Western will conduct a public information forum on the afternoon of April 15, 1985, at the same location, on the transmission and marketing of the Bureau's Spring Canyon Pumped Storage Project. The technical details and planning schedule of that project, and the relationship between it and the Mead-Northwest DC Intertie Project, will be discussed at that time.

ADDRESS: For further information contact: Mr. Thomas V. Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293-8855.

Issued to Golden, Colorado, March 21, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-7487 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Salt Lake City Area; Proposals for Developing and Marketing Power From Diamond Fork Power System and Jordanelle Powerplant

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposals for Developing and Marketing Power from the Diamond Fork Power System and Jordanelle Powerplant; Announcement of a Public Forum and Call for Comments.

SUMMARY: On April 11, 1956, Congress authorized the construction of the initial phase of the Central Utah Project, referred to as a participating project in the Colorado River Storage Project (CRSP) Act. By this **Federal Register** notice, the Western Area Power Administration, Department of Energy (Western) and the Bureau of Reclamation, Department of the Interior (Reclamation) are initiating a public consultation and comment process to explore the potential for the combination of Federal and non-Federal financing to fund the construction of the Diamond Fork and Jordanelle power resources and to develop a marketing plan for the utilization of these resources.

ADDRESS: Additional information on matters covered in this **Federal Register** notice can be obtained at the address

and telephone number set forth below. Written comments should be sent to the following address so that comments are received no later than May 6, 1985: Mr. Mark N. Silverman, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524–5493. Western will provide Reclamation with copies of all comments received.

Public Meeting and Dates

A combined public information and comment forum will be held on April 25, 1985, at 8 a.m., at the Sheraton Hotel, in Salt Lake City, Utah. Representatives of Western and Reclamation will explain the proposed option as well as discuss other alternatives for financing construction of the Diamond Fork and Jordanelle power facilities and for marketing the power. Questions will be answered at the forum, or answers will be provided in writing by Western within a reasonable period of time. An opportunity will be given all interested parties to present written or oral statements at the forum. The forum will be transcribed and copies will be available from the firm providing the service upon request. Written comments must be submitted to Western no later than May 6, 1985.

SUPPLEMENTARY INFORMATION: The Diamond Fork Power System and Jordanelle Powerplant are features of the Bonneville Unit of the Central Utah Project. The primary purpose of the Central Utah Project is to provide water supplies to central Utah. The Secretary of the Interior was authorized in 1956 to construct, operate, and maintain the Central Utah Project, as a participating project of the Colorado River Storage Project, under section 1(2) of the Colorado River Storage Project Act (43 U.S.C. 620(2)).

The financing of the Diamond Fork Power System and Jordanelle Powerplant is a critical concern of both Reclamation and Western. Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation as authorized and funded by the Congress. Under this proposal, Reclamation could share some of these responsibilities with non-Federal financing entities. Reclamation is also responsible for allocating all costs for Reclamation project purposes, and thereby determines the reimbursable costs to be recovered by revenues. Western is responsible for marketing that power which is surplus to project needs, for constructing transmission facilities or making transmission arrangements, for assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. (Section 302 of the Department of Energy Organization Act, 42 U.S.C. 7152.)

Description of the Proposed Power Facilities

The proposed Diamond Fork Power System would include Syar, Sixth Water, Dyne, Monks Hollow, and Diamond Fork Powerplants, and would have an installed capacity of approximately 166.2 MW. Sixth Water and Dyne Powerplants would provide approximately 141.8 MW of peaking capacity and the remaining powerplants, operating in accordance with downstream water demands, would provide 24.4 MW of baseload power primarily in the summer months.

For the Diamond Fork Power System, a switchyard would be built at each of the five powerplants, and two separate 13.8-kV transmission lines would connect the Syar Switchyard with the Rays Valley Substation and the Monks Hollow Switchyard with the Dyne Switchyard. Two separate 138-kV lines would connect the Dyne Switchyard and the Sixth Water Switchyard with the Rays Valley Substation. A double-circuit, 138-kV transmission line would then connect the Rays Valley Substation with the Sheep Creek Substation in Spanish Fork Canyon where the system would be tied to the existing interconnected transmission system. A separate 46-kV transmission line would connect the Diamond Fork Switchyard with the interconnected system at the mouth of Diamond Fork Canyon.

The Jordanelle Powerplant, located at the downstream base of the proposed dam near Heber, Utah, would have an installed capacity of approximately 10.4 MW. An existing Utah Power & Light Company substation in the reservoir basin would be relocated adjacent to the new powerplant. The powerplant could then be directly tied to the existing interconnected transmission system.

An average of about 401.4 GWh of energy are expected to be generated annually at the Bonneville Unit Powerplants, which together will have an installed capacity of 176.6 MW. Approximately 22.0 MW of capacity and 33.1 GWh of energy would be needed for pumping irrigation and municipal and industrial (M&I) water at the Bonneville Unit pumping plants. The remaining 154.6 MW of capacity and 368.3 GWh of energy would be available for marketing as commercial power by Western. During dry years, when water demands are higher, more energy will be produced. This characteristic makes Bonneville Unit power attractive for integration with other hydroelectric resources in Western's Salt Lake City Area since a typical hydroelectric plant produces more energy in wet years than in dry years. To further assist the marketing of this resource, Western is willing to consider purchasing about 300 GWh on a pass-through basis to provide these resources on a similar basis as the other post-1989 resources (see 49 FR 34900, September 4, 1984).

Powerplant Construction Costs

Costs provided are Reclamation's preliminary estimates. More detailed estimates will be prepared, either by Reclamation or its contractor. Reclamation will consider obtaining independent certification of the estimates if potential financiers request it.

Under Reclamation's most recent projections of the allocation of costs for the Bonneville Unit, the separable costs of power generation facilities (i.e., costs of facilities whose sole purpose is power generation), are estimated at $221,954,000 of which $191,613,000 is allocated to commercial power and $30,341,000 is allocated to project priority use power. The priority use power would be consumed in pumping project irrigation and M&I water.

The joint costs allocated to commercial power are estimated to be $43,923,000 and the joint costs allocated to project priority use power are estimated to be $6,955,000 making a total joint cost allocation estimate of $50,878,000. These allocated joint costs are the power systems' share of the costs of those facilities that serve more than one of the purposes of the Bonneville Unit. All costs are based upon January 1984 price levels and for estimation purposes include no interest during construction. The allocation of power costs are summarized below:

	Commercial power costs	Priority use power costs	Total power costs
Separable Costs	$191,613,000	$30,341,000	$221,954,000
Joint Costs	43,923,000	6,955,000	50,878,000
Totals	235,536,000	37,296,000	272,832,000

Construction on separable power generation facilities is not expected to proceed until non-Federal entities agree to provide, during construction, 100 percent of the separable costs for commercial power and the currently unfunded joint costs allocated to commercial power. The portion of costs that must be provided from non-Federal sources are shown under the power marketing proposal section below.

Powerplant Construction Schedule

Reclamation's proposed construction schedule shows construction of the powerplants occurring during a 4-year period between 1990 through 1994. Assuming the final unit would be on line by January 1, 1994, Reclamation's need for funds from non-Federal sources is estimated to be

Fiscal year:	
1990	$32,583,000
1991	83,617,000
1992	65,406,000
1993	32,918,000
1994	3,012,000
Total	217,536,000

This construction schedule permits Reclamation to make water deliveries to the Wasatch Front by the end of calendar year 1992.

Power Marketing Proposal

Under this alternative, Western proposes to allocate marketable commercial power and energy from Diamond Fork and Jordanelle to those entities advancing funds for construction of the Bonneville Unit power generation facilities. Among those entities advancing funds, first priority would be given to Western's firm power customers and other preference entities within the proposed post-1989 marketing area for Western's Salt Lake City Area (SLCA) Integrated Projects resouces, which includes the CRSP (see 49 FR 34900, September 4, 1984). Second priority would be given to preference entities in neighboring marketing areas, and third priority would be given to non-preference entities.

Allocations of power would be made based on the percentage that each participating non-Federal entity contributed to the total of non-Federal funds advanced for construction of the facilities.

Western proposes to sell the Bonneville Unit power at a blended SLCA Integrated projects rate for a 25-year term, with an option for an extension of an additional 15 years if the financing entity so elects. The blended rate would include the non-Federal costs of financing the Bonneville Unit power facilities in the SLCA Integrated Projects power repayment studies, with repayment of the costs to be made over a 25-year priod. Those entities advancing funds which are firm power customers of Western would receive a credit on their bills, up to the amount spent by these customers during the same time period to repay their financial obligations resulting from their advance funding arrangements. For entities other than firm power customers, other approaches will be explored.

Based upon the estimated costs given in the preceding section and summarized below, Western estimates that the SLCA Integrated Projects rate would be increased by about 4 to 5 mills per kilowatthour, assuming 25-year bonds bearing 11 percent interest would be used for non-Federal financing. Our analyses assume repayment begins in 1995. The interest rate and repayment period for the Federally financed portion of the costs is 3.222 percent and 50 years. All firm power customers would be billed at the full SLCA Integrated Projects rate, assumning the most, if not all, exising SLCA Integrated Projects customers are interested in acquiring a portin of these new resources.

	Non-Federal financing	Federal financing	Total power costs
Separable Costs	$191,613,000	$30,341,000	$221,954,000
Joint Costs:			
Priority Use		6,955,000	6,955,000
Commercial Power	25,923,000	18,000,000 [1]	43,923,000
Total	217,536,000	55,296,000	272,832,000

[1] The Federally financed commercial power is for already expended joint allocated costs.

Reclamation believes it is important to the feasibility and financial success of the Bonneville Unit that there be repayment assistance to the M&I water supply function from developers of the power facilities. Reclamation is proposing that the total amount of the M&I assistance should be $300 million. The financing described in this proposal assumes that this assistance will be included as a financial obligation of the power financiers and/or purchasers. The M&I assistance could be repaid by those providing non-Federal funds beginning with the retirement of the bonds, in which case it would consist of a $12 million annual payment for 25 years.

Under any known potential financing scheme, title to the power generation facilities will remain in the United States. A specific organizational arrangement that would permit non-Federal financiers to participate in project management during design, construction, and eventual operation and maintenance is not being proposed. However, both Reclamation and Western recgonize the critical interest non-Federal financiers would have in the effective management of this project. Comments regarding the level of participation in mangement that would be desired and suggested structural means for accomplishing necessary coordination are requested.

Reclamation and Western understand that laws of some States might need to be amended to permit non-Federal entities to finance the purchase of capacity and energy, as proposed here, rather than financing the construction and purchase of a share of a power facility. Please address your financing abilities and restrictions and indicate your willingness to try to change such State laws, if necessary.

Transmission Arrangements

It is anticipated that transmission facilities will be built by Western and funded either solely through congressional appropriations or through participation agreements with interested utilities. The preliminary estimates for the cost of the Diamond Fork transmission facilities that would be built to interconnect the plants and to interconnect with other utilities at Sheep Creek Substation are estimated to be $22,600,000. While Western proposes to provide for transmission and wheeling from the Diamond Fork and Jordanelle generation plants to established SLCA Integrated Projects' points of delivery, costs for such transmission will remain uncertain until it is known where the power will be delivered. While Utah Power & Light Company (UP&L) has contractural obligations to wheel Diamond Fork power, the rate for such service is unresolved at this time. Interconnections with Deseret Generation and Transmission Cooperative and UP&L at Sheep Creek Substation are proposed, as well as an interconnection with UP&L at Jordanelle. Comments on proposed transmission system additions and wheeling arrangements are desired by Western.

Federal Commitment

Western and Reclamation are proceeding to obtain necessary appropriations for the Federal investments to ensure that these resources can be brought on line within the next 10 years. Reclamation is assuming that if non-Federal financing is not secured for these resources, repayment of the Federal costs already invested into the system will be reallocated and recovered in accordance with the CRSP authorizing legislation.

Assuming the successful financing of the power facilities, it is envisioned that two types of contracts with the participating non-Federal entities will be necessary—one to market the power, and the other to finance construction. One contract would address the sale of power and transmission arrangements between each purchaser and Western. A second contract would cover the financing and repayment arrangement between Reclamation, Western, and each financing entity.

Conclusion

Western and Reclamation and seeking public input on these proposals for the marketing of Diamond Fork and Jordanelle power, M&I assistance, and the development of the power facilities utilizing non-Federal financing. Western and Reclamation are also interested in receiving information about alternative methods of construction funding, M&I assistance, or other power marketing options that may be more advantageous to both the potential purchaser(s) and the United States than those proposed in this notice.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the plan for developing and marketing power relates to electric services to be provided by Western.

Under 5 U.S.C. 601(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

Environmental Evaluation

The final environmental impact statement (EIS) for the M&I system of the Central Utah Project, Bonneville Unit, was prepared by the Upper Colorado Region of the Bureau of Reclamation and filed on October 25, 1979. This EIS addressed the construction of Jordanelle Reservoir and Powerplant on the Provo River, among other features of the M&I system.

The final EIS for the Diamond Fork Power system was also prepared by Reclamation's Upper Colorado Regional Office and filed on October 4, 1984.

In compliance with the National Environmental Policy Act of 1969 and the Department of Energy (DOE) regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western conducts environmental evaluations of certain marketing, rate and allocation actions. Under the DOE regulations, Western will make an evaluation and determination of the possible environmental impacts of the proposed marketing plan.

Determination Under Executive Order 12291

Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued in Golden, Colorado, March 15, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85-7485 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

Spring Canyon Pumped-Storage Project, Arizona, Proposed Planning Investigation and Expression of Peaking Power Needs

ACTION: Notice of a public information forum on the planning investigation and an expression of peaking power needs.

SUMMARY: As indicated in the February 22, 1985, **Federal Register** notice (50 FR 7403–7404), the Bureau of Reclamation (Bureau) and the Western Area Power Administration (Western) will hold a public information forum to fully explain the Spring Canyon Pumped-Storage Project and the public process.

During the public information forum, Western will explain the public process that will follow and seek to identify the participants and future needs that may be associated with the peaking power development in the Lower Colorado River Basin. The Bureau will explain the planning investigation process and technical details of the proposed project, including associated costs.

DATES: A public information forum on this subject will be held April 23, 1985, at the Showboat Hotel, Shiloh Room, Las Vegas, Nevada, beginning at 1:30 p.m. A schedule will be presented at the forum of activities to follow. Other forums may be held in the future on dates and at locations to be announced.

SUPPLEMENTARY INFORMATION: The Bureau published a **Federal Register** notice on April 27, 1984 (49 FR 18189), requesting non-Federal participation in proposed planning investigations for the Spring Canyon Pumped-Storage Project. Because of a favorable response, the Bureau and Western are seeking to make certain all potential participants have been identified. To date, the following entities have expressed an intent to participate in the pumped-storage project planning investigation:

Entity	Specified amount of capacity (MW)	Estimated upfront funding (dollars) [1]
Arizona Electric Power Cooperative	20	30,000
Arizona Public Service Company	100	150,000
Colorado River Commission of Nevada	15	22,500
Imperial Irrigation District	25	37,500
Los Angeles Department of Water and Power [2]	150	225,000
Nevada Power Company	250	375,000
Public Service Company of New Mexico	100	150,000
Riverside, City of	30	45,000
Salt River Project	200	300,000
San Diego Gas & Electric Company	200	300,000
Tucson Electric Power Company	200	300,000
Wellton-Mohawk Irrigation and Drainage District	5	7,500

[1] The above list shows each potential participant on a common basis. The conversion factor of $1,500 per megawatt is based on the 1,000 MW sized plant and the $1.5 million planning cost. Actual project costs and entitlements will be developed during the planning investigations.

[2] Los Angeles Department of Water and Power's expression of interest did not appear in the notice (50 FR 7403), published February 22, 1985.

Because of the large potential generating capacity available from the Spring Canyon Pumped-Storage Project, additional potential participants should have no impact on those entities who have already expressed their intent to participate in the planning investigation of the project.

Western and the Bureau are continuing the public process to identify participants and needs that may be associated with the peaking power development and will seek additional participants interested in any remaining uncommitted capacity. The United States current objective is for potential participants, electing to participate in the construction of the project, to provide 100 percent upfront financing for the project.

ADDRESSES: For further information concerning power marketing matters contact: Mr. Thomas Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8855.

For further information concerning technical matters contact: Mr. John A. Johnson, Chief, Reports Coordination and Planning, Lower Colorado Region,

Bureau of Reclamation, P.O. Box 427, Boulder City, NV 89005, (702) 293-8509.

Issued in Golden, Colorado, March 15, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85-7486 Filed 3-28-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51564; FRL-2806-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-662, 85-663, 85-664, and 85-665—June 12, 1985.

P 85-666, 85-667, 85-668, 85-669, 85-670, 85-672, and 85-673—June 15, 1985

P 85-671—June 4, 1985.

P 85-674, 85-675, 85-676, 85-677, 85-678, 85-679, 85-680, 85-681, 85-682, 85-683, 85-684, 85-685, 85-686, 85-687, 85-688 and 85-689—June 16, 1985.

P 85-690 and 85-691—June 17, 1985.

P 85-692, 85-693, 85-694, 85-695, 85-696, 85-697 and 85-698—June 18, 1985.

Written comments by:

P 85-662, 85-663, 85-664, and 85-665—May 13, 1985.

P 85-666, 85-667, 85-668, 85-669, 85-670, 85-672, and 85-673—May 16, 1985.

P 85-671—May 5, 1985.

P 85-674, 85-675, 85-676, 85-677, 85-678, 85-679, 85-680, 85-681, 85-682, 85-683, 85-684, 85-685, 85-686, 85-687, 85-688 and 85-689—May 17, 1985.

P 85-690 and 85-691—May 18, 1985.

P 85-692, 85-693, 85-694, 85-695, 85-696, 85-697 and 85-698—May 19, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51564]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-662

Manufacturer. Hercules Incorporated.

Chemical. (G) Organometallic polymer.

Use/Production. (G) The material will be used to remove trace levels of impurities from gas streams. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release to water.

P 85-663

Importer. Confidential.

Chemical. (G) Pyrrolopyrrol.

Use/Import. (G) Additive for coatings and polymers; degree of containment will be open, non-dispersive and highly dispersive. Import range: Confidential.

Toxicity Data. Acute oral (Male & female): >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Processing: dermal, inhalation and ocular, up to 4-7 hrs/da.

Environmental Release/Disposal. Less than 10 to less than 600 kg/yr released to air. Disposal by primary treatment plant at processing site, then to navigable waterway.

P 85-664

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) reaction product of metallic alkyls and polysiloxanes.

Use/Production. (G) Catalyst. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-665

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Reaction product of metallic alkyls, polysiloxanes and titanates.

Use/Production. (G) Catalyst. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-666

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Industrial coatings polymer. Prod. range: 225,000-500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 31 workers, up to 8 hrs/da, up to 119 da/yr.

Environmental Release/Disposal. 4 to 180 kg/batch released to land. Disposal by incineration and landfill.

P 85-667

Importer. Confidential.

Chemical. (G) Aliphatic unsaturated aldehyde.

Use/Import. (G) Ingredients for use in consumer products; highly dispersive use. Import range: 10-100 kg/yr.

Toxicity Data. Acute oral: >5 g/kg.

Exposure. Processing: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release.

P 85-668

Importer. Sherex Chemical Company, Inc.

Chemical. (S) Mixture of acetic acid, 2,2',2",-(dodecylstannylidyne) tris(thio)-tris triisooctyl ester and acetic acid, 2,2',-(dodecylstannylidyne) bis(thio)-bis-, diisooctyl ester.

Use/Import. (S) Industrial thermal stabilizer in polyvinyl chloride and vinyl chloride copolymers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Use: dermal and inhalation.

Environmental Release/Disposal. No data submitted.

P 85-669

Manufacturer. Confidential.

Chemical. (G) Silylated amino carboxylate.

Use/Production. (G) Anticoalescing agent. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Bacterial reverse mutation assay: No genetic activity; LC_{50} 96 hr (Fathead minnow): >1,000 part per million (ppm); LC_{50} 48 hr (Daphnia magna): >1,000 ppm; BOD: Negligible.

Exposure. Manufacture: dermal, a total of 4 workers, up to 12 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. Less than 0.1 to 55 kg incinerated with 0.25 kg disposed of by landfill.

P 85-670

Manufacturer. Polymer Applications.

Chemical. (S) Tall oil rosin propylene oxide reaction product.

Use/Production. (S) Adhesive. Prod. range: 600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 3 workers, up to 2 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. No release to water.

P 85-671

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Reacted modified cycloaliphatic diamine.

Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers.

Environmental Release/Disposal. No release. Disposal by incineration.

P 85-672

Manufacturer. American Cyanamid Company.

Chemical. (G) Thionocarbamate derivative.

Use/Production. (G) Mineral processing agent. Prod. range: Confidential.

Toxicity Data. Acute oral: 574 mg/kg; Acute dermal: 1,751 mg/kg; Irritation: Skin—Non-irritant, Eye—Negative; Ames Test: Negative LC_{50} 48 hr (Daphnids): 24 mg/L; LC_{50} 96 hr (Rainbow trout): 14 mg/L; LC_{50} 96 hr (Bluegill sunfish): 16 mg/L.

Exposure. Manufacture: dermal, a total of 16 workers, up to 3 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 0.2 kg/batch released to land. Disposal by publicly owned treatment works (POTW).

P 85-673

Manufacturer. Confidential.

Chemical. (G) Silylated amino carboxylate.

Use/Production. (G) Anticoalescing agent. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 μγ/κγ≧ Αψθτε δερμαλ≦ ²2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Bacterial reverse mutation assay: No genetic activity; LC_{50} 96 hr (Fathead minnow): >1,000 part per million (ppm); LC_{50} 48 hr (Daphnia magna): >1,000 ppm; BOD: Negligible.

Exposure. Manufacture: dermal, a total of 4 workers, up to 12 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. Less than 0.1 to 55 kg incincerated with 0.25 kg disposed of by landfill.

P 85-674

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester.

Use/Production. (S) Site-limited intermediate. Prod. range: 21,000-27,200 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 42 workers, up to 8 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. Trace to 140 kg/batch released to land. Disposal by incineration and landfill.

P 85-675

Manufacturer. Confidential.

Chemical. (G) Aliphatic/aromatic polyester.

Use/Production. (G) Industrial coatings polymer. Prod. range: 30,000-60,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 31 workers, up to 3 hrs/da, up to 34 da/yr.

Environmental Release/Disposal. 3 to 10 kg/batch released to land. Disposal by incineration and landfill.

P 85-676

Manufacturer. Confidential.

Chemical. (G) Functional polyester.

Use/Production. (G) Binder component for a commercial coating. Prod. range: 31,800-36,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 36 workers, up to 8 hrs/da, up to 41 da/yr.

Environmental Release/Disposal. 1 to 120 kg/batch released to land. Disposal by incineration and landfill.

P 85-677

Manufacturer. Confidential.

Chemical. (G) Functional polyether.

Use/Production. (G) Polymer component for industrial speciality applications of a non-dispersive nature. Prod. range: 22,000-66,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 32 workers, up to 8 hrs/da, up to 55 da/yr.

Environmental Release/Disposal. 2 to 90 kg/batch released to land. Disposal by incineration and landfill.

P 85-678

Importer. Confidential.

Chemical. (G) Aryl sulfonamide.

Use/Import. (G) Used in the manufacture of thermal paper. Import range: Confidential.

Toxicity Data. Ames Test: Non-mutagenic.

Exposure. Use: dermal, inhalation and ocular.

Environmental Release/Disposal. Minimal release. Disposal by incineration.

P 85-679

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Photopolymer. Prod. range: 1,000-3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 18 da/yr.

Environmental Release/Disposal. Minor waste draining product released to land.

P 85-680

Manufacturer. Pennwalt Corporation.

Chemical. (G) 1,1-Dimethylpropyl peroxyester.

Use/Production. (G) Polymerization initiator, curing agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by plant wastewater treatment facility.

P 85-681

Importer. Aldrich Chemical Company, Inc.

Chemical. (S) 1,2,7,8-diepoxyoctane.

Use/Import. (S) Industrial intermediate. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 3 workers, up to 1 hr/da, up to 1 da/yr.

Environmental Release/Disposal. Undertermined amount of release to air.

P 85-682

Manufacturer. The Dow Chemcial Company.

Chemical. (G) Vinyl reactive plasticizer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate to sever. Eye—Slight to moderate.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air and land. Disposal by incineration, landfill and navigable waterway after treatment.

P 85-683

Manufacturer. Marubeni America Corporation.
Chemical. (S) Methacryloxy ethylacidphthalate.
Use/Production. (S) Industrial and commercial electronics (solder mask). Prod. range: 60,000–120,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. Disposal by navigable waterway.

P 85-684

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) Polymer used in formulating industrial coating. Prod. range: 75,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 36 workers, up to 8 hrs/da, up to 52 da/yr.
Environmental Release/Disposal. 4 to 150 kg/batch released to land. Disposal by incineration and landfill.

P 85-685

Manufacturer. Harshaw/Filtrol Partnership.
Chemical. (S) Triethanolamine, compounded with boron fluoride (1:1).
Use/Production. (S) Industrial epoxy resin catalyst. Prod. range: 2,200–3,000 kg/yr.
Toxicity Data. Acute oral: >500 mg/kg; Irritation: Skin—Moderate, Eye—Significant.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 1 kg/batch released to water.

P 85-686

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Iritation: Skin—slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): 560 mg/L; Genotoxicity report: No evidence.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-687

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Blue gill sunfish): 560 mg/L; Genotoxicity report: No evidence.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-688

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. cute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): 560 mg/L; Genotoxicity report: No evidence.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-689

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. A cute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): 560 mg/L; Genotoxicity report: No evidence.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-690

Manufacturer. AMSPEC Chemical.
Chemical. (S) Potassium antimony tris-(ethanediol).
Use/Production. (S) Industrial polyester catalyst and guar gum crosslinker. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild.
Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release to air, water and land.

P 85-691

Manufacturer. Confidential.
Chemical. (G) Metal salt of substituted (dialkyl)bis(alkyl succinate ester).
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 14 workers.
Environmental Release/Disposal. Less than 10 kg/batch released to water. Disposal by navigable waterway.

P 85-692

Manufacturer. Eastman Kodak Company.
Chemical. (S) 7-(Diethylamino)-3-(1-oxo-3-phenyl-2-propenyl)-2H-1-benzopyran-2-one.
Use/Production. (G) Photoinitiator. Prod. range: 100–300 kg/yr.
Toxicity Data. Acute oral (Male & female): >5.0 g/kg; Irritation: Skin—Slight; Ames Test: Not mutagenic.
Exposure. Manufacture: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 6 da/yr.
Environmental Release/Disposal. No release. Less than 5 kg/batch incinerated.

P 85-693

Manufacturer. Ashland Chemical Company.
Chemical. (G) Acrylated urethane resin.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 9 workers, up to 3 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Trace releases to air with 0.1% to land. Disposal by landfill.

P 85-694

Manufacturer. Confidential.
Chemical. (G) 2-propenoic acid copolymer.
Use/Production. (G) Additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 24 workers, up to 10 hrs/da, up to 1–6 da/yr.
Environmental Release/Disposal. 3 to 14 kg/batch released to water with 1 to 6 kg/batch to land. Disposal by POTW and incineration.

P 85-695

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): Between 720 & 1,200 mg/L.

Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-696

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): Between 720 & 1,200 mg/L.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-697

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): Between 720 & 1,200 mg/L.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-698

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Slight, Eye—Slight to moderate; LC_{50} 96 hr (Bluegill sunfish): Between 720 & 1,200 mg/L.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: March 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-7340 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59709; FRL-2806-4]

Certain Chemicals; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substances to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 85-34 and 85-35—April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified fomat will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays .

Y 85-34

Manufacturer. Confidential.
Chemical. (G) Calcium salt of-2-acrylamide-2-methyl-propanesulfonic acid copolymer.
Use/Production. (G) Additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-35

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) For use in separating of blood components as in clinical hematology. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: March 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-7341 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59188; FRL-2806-3]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by April 15, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59188]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Mangement Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 401 M Street SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the perfixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear

in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufactures on the TME received by EPA. The complete non-confidential document is available in the Public reading Room E–107 at the above address.

T 85–31

Close of Review Period. May 2, 1985.
Manufacturer. Confidential.
Chemical. (G) Functional acrylate type polymer.
Use/Production. (G) Industrial paint ingredient. Prod. range: 82.000 kg/8 months.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 20 workers, up to 8 hrs/da, up to 26 da/yr.
Environmental Release/Disposal. 2 to 48 kg/batch released to land. Disposal by incineration and landfill.

T 85–32

Close of Review Period. May 2, 1985.
Manufacturer. CP Chemicals.
Chemical. (S) Lead methanesulfonate.
Use/Production. (S) Customer evaluation as an improvement on other lead salts in electroplating operations. Prod. range: 10,000 lbs/6–12 months.
Toxicity Data. No data submitted.
Exposure. Manufacture; dermal and inhalation, a total of 25 workers, up to 40 hrs/wk for 1 to 4 wks each.
Environmental Release/Disposal. No data submitted.

Dated: March 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–7342 Filed 3–28–85; 8:45 am]

BILLING CODE 6560–50–M

[AAA–FRL–2807–2]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activitiy during the period of suspension, debarment, or voluntary exclusion

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of March 22, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: March 22, 1985.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM–216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Co., Inc. (Danvers, MA)	83-0007-00	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (a), (c), (i)
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	June 17, 1983	June 16, 1986	§ 32.200 (a), (b), (e), (f)
Ashland-Warren, Inc. (McMinnville, TN)	82-0401	D	Sept. 22, 1982	May 6, 1985	§ 32.200 (a), (e)
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-00	D	Aug. 2, 1983	Aug. 1, 1986	§ 32.200(a)
Averill, Ernest, Jr. (Fort Myers, FL)	83-0068-06	S	Dec. 2, 1983	Open	§ 32.300(b)
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (a), (c), (i)
Bowe, Walsh & Associates, Inc. (Melville, NY)	83-0040-00	D	Apr. 14, 1983	Apr. 13, 1986	§ 32.200 (a), (e)
Croft, William A. (Madison, WI)	83-0047-00	D	Aug. 20, 1984	Aug. 19, 1987	§ 32.200(a)
Dakota Contracting Corp. (Sioux Falls, SD)	85-0002-00	S	Nov. 2, 1984	Open	§ 32.200 (a), (b)
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	Mar. 12, 1985	Mar. 11, 1985	§ 32.200(a)
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	Apr. 14, 1983	Apr. 13, 1986	§ 32.200 (a), (b)
Gabey, Martin (Northport, NY)	83-0040-02	D	Dec. 16, 1983	Dec. 15, 1988	§ 32.200(a)
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (c), (i)
Harry Johnson Plumbing Co., Inc. (Walla Walla, WA)	83-0060-00	D	July 22, 1983	July 21, 1986	§ 32.200 (b), (c), (e), (i)
Herbert G. Whyte, Associates, Inc. (Gary, IN)	82-0501	D	Oct. 20, 1982	Oct. 19, 1985	§ 32.200 (b), (e)
Herring, Donald W. (Wilson, NC)	83-0044-01	D	Oct. 11, 1984	Oct. 10, 1987	§ 32.200(a)
Hunter, James C. (Gardena, CA)	83-0002-02	D	July 7, 1983	July 6, 1986	§ 32.200(a)
Insulation Specialty & Supply, Inc. (Cleveland, OH)	84-0025-00	D	Oct. 4, 1984	Oct. 3, 1987	§ 32.200 (c), (i)
Jackson, Marty (San Jose, CA)	83-0048-02	D	June 27, 1983	June 26, 1986	§ 32.200(a)
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	July 22, 1983	July 21, 1986	§ 32.200 (b), (c), (e), (i)
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (c), (i)
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	Oct. 4, 1984	Oct. 3, 1987	§ 32.200 (c), (i)
L.A. Reynolds Co. (Winston Salem, NC)	83-0036-00	D	July 1, 1983	June 30, 1986	§ 32.200(a)
Lee, Herbert P., III (Sumter, SC)	84-0013-01	VE	Feb. 14, 1985	Dec. 31, 1987	§ 32.200(a)
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	July 7, 1983	July 6, 1986	§ 32.200(a)
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (c), (i)
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	Jan. 11, 1985	Jan. 10, 1988	§ 32.200(a)
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601 82-0408	D	Oct. 7, 1982	Feb. 16, 1987	§ 32.200 (b), (c), (e), (i)
Newman, Fred M. (Vienna, VA)	83-0072-01	D	Sept. 30, 1983	Sept. 29, 1986	§ 32.200(i)
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	Nov. 29, 1983	Nov. 28, 1986	§ 32.200(a)
Post-Tensioning Service Corp. (Saratoga, CA)	83-0001-00	D	July 8, 1983	July 7, 1986	§ 32.200(a)
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	July 1, 1983	June 30, 1986	§ 32.200(a)
Richmond, Elwood P. (Grand Forks, ND)	83-0006-01	D	June 6, 1983	June 5, 1986	§ 32.200 (a), (f)
Richmond Engineering, Inc. (Grand Forks, ND)	83-0006-00	D	do	do	§ 32.200 (a), (f)
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0006-02	D	do	do	§ 32.200 (a), (f)
Rotherock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	May 17, 1984	May 16, 1987	§ 32.200(a)
Rotherock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	May 18, 1984	May 17, 1987	§ 32.200(a)
Shepherd, Frank A. (Savannah, TN)	83-0046-01	D	July 15, 1983	Nov. 3, 1985	§ 32.200(a)
Stone, Francis (Swanzey, NH)	83-0007-04	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200 (a), (c), (i)
Suburban Grading & Utilities, Inc. (Norfolk, VA)	83-0022-00	D	Mar. 29, 1983	Mar. 28, 1985	§ 32.200(a)

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Tucker Bros. Contracting Co. (Pell City, AL)	83-0061-00	D	Nov. 26, 1984	Nov. 25, 1987	§ 32.200(a)
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	do	do	§ 32.200(a)
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	do	do	§ 32.200(a)
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	July 8, 1983	July 7, 1986	§ 32.200(a)
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	Apr. 14, 1983	Apr. 13, 1986	§ 32.200(a)
Walstad, Merrit (Huntington Beach, CA)	83-0003-03	D	June 27, 1983	June 26, 1986	§ 32.200(a)
Whyte, Herbert G. (Gary, IN)	82-0501	D	Oct. 20, 1982	Oct. 19, 1985	§ 32.200 (b), (e)
Wirt, David (Douglasville, GA)	82-0601 82-0408	D	Oct. 7, 1982	Feb. 16, 1987	§ 32.200 (b), (c), (e), (i)
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	Dec. 7, 1982	Feb. 16, 1987	§ 32.200 (c), (e)
Wirt, Judith C. (Douglasville, GA)	82-0408	D	do	do	§ 32.200 (c), (e), (i)
Womack, Jerry T. (Norfolk, VA)	83-0022-01	D	Mar. 29, 1983	Mar. 28, 1985	§ 32.200(a)
Zeigler, Beaty Stevens	83-0045-01	D	July 15, 1983	Aug. 31, 1986	§ 32.200

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 85-7543 Filed 3-28-85; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-2805-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 11, 1985 through March 15, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of theClean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-F65010-MN, Rating LO, Superior Nat'l Forest Land and Resource Mgmt. Plan, MN SUMMARY: EPA's review of the DEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. DS-AFS-J65103-MT, Rating EC2, Lewis and Clark Nat'l Forest Land and Resource Mgmt. Plan, Wilderness Designation, MT. SUMMARY: EPA's environmental concerns are centered around potential water quality impact associated with the Forest Service's plans to increase timber harvest in presently unroaded higher watersheds. EPA believes careful pre-planning and extensive water quality monitoring is necessary to prevent water quality damage. The DEIS has insufficient information on the extent of the water quality monitoring planned by the Forest Service.

ERP No. DS-AFS-J65111-MT, Rating EC2, Flathead Nat'l Forest Land and Resource Mgmt. Plan, MT. SUMMARY: The EIS indicates water quality will be degraded and that not all adverse impacts can be mitigated. Insufficient information is provided for an accurate assessment of the water quality impacts of the proposed plan. EPA has recommended that the Northern Region forest planning guidance for sediment production and water quality consideration be incorporated into the final plan and that increased water quality monitoring be undertaken to provide the data base to validate sediment models, and assess the impacts of forest activities upon water quality.

ERP No. D-AFS-J65134-WY, Rating EC2, Medicine Bow Nat'l Forest and Thunder Basin Nat'l Grassland, Land and Resource Mgmt. Plan, WY. SUMMARY: EPA believes that the proposed forest plan alternative (Alternative A), with corrective measures, provides an environmentally acceptable forest and rangeland management program. EPA has expressed concerns regarding the management of such activities as timber harvesting, road construction, grazing, and recreational development in relation to water quality, soils, riparian/wetland areas instream flows and fisheries. To meet these concerns, EPA has requested additional impact analysis, and further development of management direction for individual and cumulative impact assessment, best management practices, watershed planning, monitoring, project-specific NEPA complaints and intergovernmental/public coordination.

ERP No. DS-AFS-L61059ID, Rating EC2, Meadows Unit Land Use Plan, Payette Nat'l Forest, ID. SUMMARY: EPA requested additional information concerning nlivestock control and wildlife passage facilities associated with the proposal. Also, expanded discussion of sedimentation analyses was requested, specifically in conjunction with decreased stream flows. Finally, EPA requested that the final supplement address the proposal's relationship to other potential hydropower projects and potential impacts on land and water uses in the forest.

ERP No. D-BLM-K01003-NV, Rating E02, Mt. Hope Molybdenum Open Pit Mine/Ancillary Facilities, Operation, Land Acquisition, Right-of-Way and Plan Approval, Shoshone-Eureka Resource Area, Battle Mtn. District, NV. Summary: EPA has identified objections to the project based on potential degradation to groundwater and inadequacies in the air quality analyses. Additional analyses, monitoring and mitigation measures were recommended for inclusion in the FEIS.

ERP No. D-BLM-K61068-AZ, Rating EC2, Phoenix/Kingman Resource Areas, Wilderness Study Areas, Designation, AZ. Summary: EPA expressed concerns and requested clarification of the criteria BLM uses to declare lands suitable for wilderness recommendation, further analysis of the impacts to air and water quality from not designating these lands as wilderness and further discussion on potential pesticide uses.

ERP No. D-FHW-L40144-OR, Rating EC2, Kuebler Blvd.—Cordon Road Improvements, S. Commercial St. to N. Santiam Hwy., OR. Summary: EPA requested that an expanded wetland impact discussion, including consideration of habitat functional values in addition to acreages, be included in the FEIS. Evaluation of additional noise mitigation measures for certain areas was also requested. EPA indentified Kuebler Blvd. alternative 3, and Cordon Road alignment options B or C, as environmentally preferred.

ERP No. D-NRC-D00008-PA, Rating EC2, Beaver Valley Power Station Unit 2, Operating License, PA. Summary: EPA wrote to NRC expressing several concerns regarding water quality, air quality, radiation issues, and decommissioning.

ERP No. D-USN-K11028-AZ, Rating EC2, Joint Guayule Rubber Program, Agricultural Operations, Gila River

Indian Reservation, AZ. Summary: EPA found that the DEIS did not adequately address contamination of drinking water supplies by pesticides, herbicides, nitrogen fertilizers, or saline imported water that the agricultural operation would require. Other issues included monitoring, mitigation measures and cumulative project impacts.

Final EISs

ERP No. F-CDB-K89035-CA, Project Delphi, Office and Commercial Development, CDBG, CA. Summary: EPA expressed its concern that air quality mitigation measures were not firmly committed to in the FEIS. EPA recommended that the ROD contain firm commitments to implement these measures, especially because air quality modeling predicted a worsening of air quality (CO) in the area.

ERP No. FS-COE-G32048-LA, Mississippi R. Bank Restoration, Baton Rouge to the Gulf of Mexico, LA. Summary: EPA has not identified any potential environmental impacts requiring substantive changes to proposal.

ERP No. F-NRC-G06006-LA, Riverbend Station Nuclear Power Plant, Unit 1, Operation License, LA. Summary: The FEIS responded to EPA's comments on the DEIS and we have identified no new issues of concern regarding the project.

ERP No. F-SCS-G36117-TX, Big Creek Watershed Flood Control and Soil Conservation Project, TX. Summary: The FEIS adequately responds to EPA's comments made on the DEIS and no new issues of concern were identified with regard to the proposed action.

ERP No. F-USN-C11004-NY, Battleship Surface Action Group Homeport, C/O, Stapleton—Ft. Wadsworth Complex, Boston Army Base, Quonset Pt./Davisville Pier One and Davisville Landfill Bulkhead, RI, NY and MA. Summary: EPA found the FEIS addressed a majority of EPA's concerns. The two remaining issues involve hazardous waste management and air quality impacts.

Section 309 Referral

ERP No. RS-COE-A86209-00, COE Procedures for Implementating the National Environmental Policy Act. Summary: EPA determined that Army's proposed revisions to the COE NEPA implementating regulations would have unacceptable effects on the quality of the environment. Pursuant to Section 309 of the Clean Air Act, EPA has referred this matter to the Council on Environmental Quality (CEQ) and requested the Army take no action until CEQ acts upon this referral.

EPA's concerns include:

(1) The proposed restriction of the scope of the Corps NEPA review of regulatory actions;

(2) The proposed restrictions of analysis of alternatives;

(3) Proposed restrictions in the information and participation opportunities for other Federal, state and local governments and the public; and

(4) Deletion of current requirements regarding environmental monitoring and mitigation.

Amended Notice

The following project should have appeared in the February 1, 1985 FR report.

ERP No. FS-COE-C36032-NY, Consesus Lake Flood Damage Reduction, NY. Summary: EPA does not anticipate any significant adverse environmental impacts.

Dated: March 26, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-7620 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2805-5]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed March 18, 1985 through March 22, 1985, pursuant to 40 CFR 1506.9.

EIS No. 850105, Draft, SCS, LA, West Franklin Watershed Multipurpose Plan, Franklin and Richland Parishes, Due: May 13, 1985, Contract: Harry Rucker (318) 473-7751.

EIS No. 850106, Draft, SCS, MS, Tallahaga Creek Watershed Flood Protection Plan, Winston, Choctaw and Neshoba Counties, Due: May 13, 1985, Contact: A.E. Sullivan (601) 960-5205.

EIS No. 850107, Final, FHW, TX, Farm to Market Road 317 Loop Construction, Henderson County, Due: April 29, 1985, Contact: Gamaliel Olvera (512) 482-5988.

EIS No. 850108, Draft, AFS, WI, Chequamegon National Forest, Land and Resource Management Plan, Due: July 5, 1985, Contract: John Wolter (715) 762-2461.

EIS No. 850109, Draft, BLM, CA, NV, Eagle Lake-Cedarville Resource Area, Wilderness Study Area, Designation, Lassen Co., CA, Washoe and Humboldt Cos., NV, Due: June 27, 1985, Contact: C. Rex Cleary (916) 257-5381.

EIS No. 850110, Final, FHW, MD, MD-43/Whitemarsh Boulevard Extension, I-695/Baltimore Beltway to I-95 and US 1 Improvements, I-695 to north of Silver Spring Road, Baltimore County, Due: April 29, 1985, Contact: Edward Terry (301) 962-4011.

EIS No. 850111, Final, USN, CA, Port Chicago Highway, Main Street and Waterfront Road, Explosive Safety Closure, Naval Weapons Station, Contra Costa County, Due: April 29, 1985, Contact: Mr. Dana Dokomoto (415) 877-7573.

EIS No. 850112, Draft, COE, LA, MS, Slidell-Pearlington Flood Control Plan, Pearl River Basin, St. Tammany Parish, LA and Hancock County, MS, Due: May 13, 1985, Contact: Maryetta Smith (601) 634-5433.

EIS No. 850113, Draft, FHW, OR, Lester Avenue/I-205 Interchange Construction and Improvements, between Sunnyside Road and Foster Road Interchanges, Clackamus County, Due: May 24, 1985, Contact: Dale Wilken (503) 399-5749.

EIS No. 850114, Draft, AFS, MT, ID, Bitterroot National Forest, Land and Resource Management Plan, Missoula and Ravalli Counties, MT and Idaho County, ID, Due: July 15, 1985, Contact: Robert Morgan (406) 363-3131.

Amended Notice

EIS No. 850093, Final FHW, KY, US 27/ Nicholasville Bypass Contruction, Jessamine County, Published FR 3-15-85—Officially retracted due to noncompliance of distribution.

EIS No. 850099, Draft, MMS, AK, 1986 Norton Basin, OCS, Oil and Gas Sale No. 100, Lease Offering, Due: May 14, 1985, Published FR 3-22-85—Review extended.

EIS No. 850085, Draft, BIA, NM, Norton-Tesuque 115 kV Overhead Transmission Line and Substation, Right-of-Way Permit and Approval, Santa Fe County, Due: May 20, 1985, Published FR 3-8-85—Review extended.

EIS No. 850088, Draft, BLM, BIA, NM, Jackpile-Paguate Uranium Mine Reclamation Plan, Cibola County, Due: June 6, 1985, Published FR 3-22-85—Review extended.

EIS No. 850065, Draft, UMT, CA, San Diego East Urban Corridor Transportation Improvement, San Diego County, Due: April 8, 1985, Published FR 3-22-85—Erroneously extended until April 18, 1985.

EIS No. 840562, Draft, AFS, WV, Monogahela National Forest Land and Resource Management Plan, Due: May 1, 1985, Published FR 12-21-84—Review extended.

Dated: March 26, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-7654 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00200; FRL-2809-3]

FIFRA Scientific Advisory Panel; Partially Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review: a set of scientific issues begin considered by the Agency in connection with the Special Review on dicofol; a final interpretive section 6(a)(2) rule containing flagging criteria for certain types of studies; a list of approximately 50 inert ingredients of toxicological concern; certain aspects of the Tolerance Assessment System; and a Standard Evaluation Procedure begin promulgated by the Office of Pesticide Programs (OPP). The Panel will meet in executive session (i.e., in a closed meeting) for the first part of the morning of April 16. The meeting will be open to the public beginning at approximately 10:00 a.m. April 16 until adjournment on April 17.

DATES: Thursday and Wednesday, April 16 and 17, 1985, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Holiday Inn—Rosslyn, 1850 Fort Myer Drive, Arlington, VA 22209 (703-522-0400).

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1117, Crystal Mall No. 2, Arlington, VA (703-557-7096).

SUPPLEMENTARY INFORMATION:

A. Reason for Closed Meeting

Section 10(d) of the Federal Advisory Committee Act (FACA) provides that an advisory committee meeting may be closed to the public "in accordance with subsection (c) of section 552b of Title 5." A portion of the April 16, 1985, meeting of the Scientific Advisory Panel is being closed because of the confidential nature of the material to be considered during this portion of the meeting. A written determination that the meeting shall be closed was made by the Administrator on March 22, 1985, pursuant to section 10(d) of FACA for the following reason: OPP has prepared a list of approximately 50 inert ingredients, contained in certain pesticide formulations, which are of toxicological concern to EPA. OPP wishes to have the SAP review this list to determine suitability of the ingredients listed therein for special regulatory treatment due to their toxicological properties. However, many of these ingredients which are not required to be listed on the pesticide label may be considered to be trade secrets under section 10 of FIFRA, and thus are classified as Confidential Business Information, likewise exempt from public disclosure under section 10(d).

No documents are available at the present time inasmuch as the list of inerts is classified Confidential Business Information. The Agency intends to make a verbatim transcript of the portion of the meeting on inerts. If, upon review of the transcript regarding the inerts discussion, EPA should determine that any portions of the transcript do not contain exempt material, EPA will make those portions of the transcript available to the public.

B. Agenda Topics

The agenda for this meeting is:

1. A list of approximately 50 inert ingredients in pesticide formulations which the Agency considers to be of toxicological concern.

2. The proposed decision options being considered by the Agency to conclude the Special Review on dicofol. In the dicofol Position Document 2/3, published in the **Federal Register** of October 10, 1984 (49 FR 39820), the Agency proposed to cancel all uses of the pesticide because the adverse environmental effects outweighed the benefits of use. The Panel will review the proposed decision and address the following topics:

a. The Agency's assessment of the adverse environmental effects of the DDTr contaminants of dicofol.

b. The Rohm and Haas Company's proposal to lower the DDTr contamination level in its technical products to 0.1 percent.

c. The EPA Carcinogen Assessment Group's evaluation of the carcinogenicity of dicofol, DDT, DDE, and DDD.

3. A final interpretive rule under section 6(a)(2) of FIFRA governing registrant submission of additional information pertaining to unreasonable adverse effects.

4. A review of two aspects of the Tolerance Assessment System:

a. The food consumption data base and its management.

b. Procedures for estimating anticipated pesticide residues on food.

5. A Standard Evaluation Procedure (SEP) being promulgated by the Office of Pesticide Programs' Hazard Evaluation Division. The SEP is entitled, "Toxicity Potential: Guidance for Analysis and Evaluation of Sub-Chronic and Chronic Exposure Studies."

6. Completion of any unfinished business from previous Panel meetings.

7. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 2 above may be obtained by contacting:

Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7400).

Copies of documents relating to item 3 above may be obtained by contacting:

Janet Auerbach, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-0592).

Copies of documents relating to item 4 above may be obtained by contacting:

Christine Chaisson, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Room 821, Crystal Mall No. 2, Arlington, VA. (703-557-7351).

Copies of documents relating to item 5 above may be obtained by contacting:

Stephen Johnson, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1124, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7695).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than April 9, 1985, in order to ensure appropriate consideration by the Panel.

Dated: March 27, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-7699 Filed 3-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53070; FRL-2807-1]

Premanufacture Notices; Monthly Status Report for January 1985

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for January 1985.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53070]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460. (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460. (202-382-3725).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during January; (b) PMNs received previously and still under review at the end of January; (c) PMNs for which the notice review period has ended during January; (d) chemical substances for which EPA has received a notice of commencement to manufacture during January and (e) PMNs for which the review period has been suspended. Therefore, the January 1985 PMN Status Report is being published.

Dated: March 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report—January 1985

I. 109 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-365	Polymer of cyclohexanedimethanol, isophthalic acid, pentaerythritol, tetraisopropyl titanate and trimellitic anhydride	50 FR 1630 (1631) (1-11-85)	Apr. 1, 1985
P 85-366	Generic name: Short oil alkyd resin	50 FR 1630 (1631) (1-11-85)	Do.
P 85-367	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630 (1631) (1-11-85)	Do.
P 85-368	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630 (1631) (1-11-85)	Do.
P 85-369	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630 (1631) (1-11-85)	Do.
P 85-370	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630 (1632) (1-11-85)	Do.
P 85-371	Generic name: Acrylic alkyd resin	50 FR 1630 (1632) (1-11-85)	Do.
P 85-372	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-373	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-374	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-375	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-376	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-377	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-378	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-379	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-380	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-381	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-382	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630 (1632) (1-11-85)	Do.
P 85-383	Phenol, 2,4-bis[(dimethylamino)methyl]-6-methyl	50 FR 2718 (2719) (1-18-85)	Apr. 7, 1985
P 85-384	Generic name: Epoxy amine adduct	50 FR 2718 (2719) (1-18-85)	Do.
P 85-385	Generic name: Acrylic rubber dispersion in epoxy resin	50 FR 2718 (2719) (1-18-85)	Do.
P 85-386	Generic name: Acrylate functional epoxy resin urethane	50 FR 2718 (2719) (1-18-85)	Do.
P 85-387	Generic name: Halogenated acrylate	50 FR 2718 (2719) (1-18-85)	Do.
P 85-388	Generic name: Modified copolymer of acrylic and vinyl aromatic monomers	50 FR 2718 (2719) (1-18-85)	Apr. 8, 1985
P 85-389	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718 (2719) (1-18-85)	Apr. 9, 1985
P 85-390	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718 (2719) (1-18-85)	Do.
P 85-391	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718 (2719) (1-18-85)	Do.
P 85-392	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718 (2719) (1-18-85)	Do.
P 85-393	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718 (2719) (1-18-85)	Do.
P 85-394	Generic name: Heteropolycycle azo benzeneamine derivative, salt	50 FR 2718 (2720) (1-18-85)	Do.
P 85-395	Generic name: Substituted polyester resin	50 FR 2718 (2720) (1-18-85)	Do.
P 85-396	Generic name: Metal salt of organo sulfur compound	50 FR 3592 (1-25-85)	Apr. 13, 1985
P 85-397	Generic name: Acrylated cellulosic	50 FR 3592 (1-25-85)	Do.
P 85-398	Generic name: Vinyl acetate acrylic copolymer	50 FR 3592 (3593) (1-25-85)	Apr. 14, 1985
P 85-399	N-1-pyrenyl-9-octadecenamide	50 FR 3592 (3593) (1-25-85)	Do.
P 85-400	N-(9-ethyl-9H-carbazol-3-yl)-9-octadecenamide	50 FR 3592 (3593) (1-25-85)	Do.
P 85-401	Generic name: Substituted aminoazobenzene	50 FR 3592 (3593) (1-25-85)	Do.
P 85-402	Generic name: Substituted aliphatic alcohol	50 FR 3592 (3593) (1-25-85)	Do.
P 85-403	Generic name: Mixed amine/alkane polycarboxylate	50 FR 3592 (3593) (1-25-85)	Do.
P 85-404	Generic name: Mixed amine/alkane polycarboxylate	50 FR 3592 (3593) (1-25-85)	Do.
P 85-405	Generic name: Phosphated acrylate	50 FR 3592 (3593) (1-25-85)	Do.

I. 109 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-406	Condensation product of nonylphenolformaldehyde, ethoxylate, benzoic acid, maleic anhydride and sodium sulfite	50 FR 3592 (3593) (1-25-85)	Do.
P 85-407	Condensation product of bisphenol A diglycidyl ether, tri-sec-butylphenol and ethylene oxide	50 FR 3592 (3593) (1-25-85)	Do.
P 85-408	Generic name: Polymer from acrylic acid esters and substituted acrylamide	50 FR 3592 (3593) (1-25-85)	Do.
P 85-409	Generic name: Acrylate polymer	50 FR 3592 (3593) (1-25-85)	Do.
P 85-410	Generic name: Amine substituted imidazolidines	50 FR 3592 (3593) (1-25-85)	Do.
P 85-411	Generic name: Amine substituted imidazolidines	50 FR 3592 (3594) (1-25-85)	Do.
P 85-412	Generic name: Amine substituted imidazolidines	50 FR 3592 (3594) (1-25-85)	Do.
P 85-413	Generic name: Blocked isocyanate resin	50 FR 3592 (3594) (1-25-85)	Do.
P 85-414	Generic name: Acrylated alkyd resin	50 FR 4896 (3597) (2-4-85)	Apr. 17, 1985.
P 85-415	Generic name: Acrylic ester	50 FR 4896 (4897) (2-4-85)	Do.
P 85-416	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 84-417	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-418	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-419	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-420	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-421	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-422	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-423	Generic name: Acrylic resin	50 FR 4896 (4897) (2-4-85)	Do.
P 85-424	Diphenylsulfone-3,3'-disulfonylhydrazide	50 FR 4896 (4897) (2-4-85)	Do.
P 85-425	Generic name: Ether dicarboxylate	50 FR 4896 (4897) (2-4-85)	Do.
P 85-426	Generic name: Complex organo-silane	50 FR 4896 (4897) (2-4-85)	Apr. 21, 1985.
P 85-427	Generic name: Unsaturated polyester	50 FR 4896 (4897) (2-4-85)	Do.
P 85-428	Generic name: Ester modified phenolic resin	50 FR 4896 (4898) (2-4-85)	Do.
P 85-429	Generic name: Polyester	50 FR 4896 (4898) (2-4-85)	Apr. 22, 1985.
P 85-430	Generic name: Complex organo-silane	50 FR 4896 (4898) (2-4-85)	Do.
P 85-431	Generic name: Complex amino ester	50 FR 4896 (4898) (2-4-85)	Do.
P 85-432	Generic name: Polyster polyurethane prepolymer	50 FR 4896 (4898) (2-4-85)	Do.
P 85-433	1-Propanol, 3-mercapto	50 FR 4896 (4898) (2-4-85)	Do.
P 85-434	Generic name: Substituted cyclopropane carboxylic acid chloride	50 FR 4896 (4898) (2-4-85)	Do.
P 85-435	Generic name: Polyether polyol oligomer	50 FR 4896 (4898) (2-4-85)	Do.
P 85-436	Generic name: Halogenated silicon magnesium titanium alkoxides	50 FR 4896 (4898) (2-4-85)	Do.
P 85-437	Generic name: Hydroxy-propyl-triazine	50 FR 4896 (4898) (2-4-85)	Apr. 23, 1985.
P 85-438	Generic name: Bis(substituted-benzamide), N,N'-substituted	50 FR 4896 (4898) (2-4-85)	Do.
P 85-439	Generic name: Unsaturated polyester	50 FR 4896 (4898) (2-4-85)	Do.
P 85-440	Methylmethacrylate-styrene-n-vinyl pyrrolidone terpolymer	50 FR 4896 (4898) (2-4-85)	Do.
P 85-441	Generic name: Polymer from N-methyl-N-vinylacetamide, acrylic acid and N-substituted acrylamide	50 FR 8390 (8391) (3-1-85)	Apr. 24, 1985.
P 85-442	Generic name: 2-naphthalenediazonium, 5-sulfo, substituted	50 FR 5416 (2-8-85)	Do.
P 85-443	Generic name: Bis(substituted alkyl) disulfide	50 FR 5416 (2-8-85)	Do.
P 85-444	Generic name: Aromatic amidoamine	50 FR 5416 (2-8-85)	Apr. 27, 1985.
P 85-445	Generic name: Unsaturated polyester	50 FR 5416 (2-8-85)	
P 85-446	2, 3-isopropoylidene dioxyphenol	50 FR 5416 (2-8-85)	
P 85-447	Polymer of 4,4'-isopropylidenedicyclohexanol-epichlorohydrin, terephthalic acid, isophthalic acid, adipic acid, tetramethyl ammonium chloride, linseed fatty acid.	50 FR 5416 (2-8-85)	Apr. 28, 1985.
P 85-448	Generic name: Tetra-substituted-biphenol	50 FR 5416 (5417) (2-8-85)	
P 85-449	Generic name: Phosphorus acid ester	50 FR 5416 (5417) (2-8-85)	
P 85-450	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	Apr. 29, 1985.
P 85-451	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	
P 85-452	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	
P 85-453	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	
P 85-454	Generic name: Tetra-substituted-biphenol	50 FR 5416 (5417) (2-8-85)	
P 85-455	Palm kernel acids, 2-sulfoethyl ester, sodium salt	50 FR 5416 (5417) (2-8-85)	
P 85-456	Generic name: Substituted phenylazopyridone trisulfonic acid, alkali metal salt	50 FR 5416 (5417) (2-8-85)	
Y 85-1	Generic name: Polyoxymethylene co-polymer	50 FR 2720 (1-18-85)	Jan. 24, 1985.
Y 85-2	Generic name: Linear saturated polyester resin containing hydroxyl groups	50 FR 2720 (1-18-85)	Jan. 27, 1985.
Y 85-3	Generic name: Modified styrene copolymer	50 FR 3592 (1-25-85)	Jan. 31, 1985.
Y 85-4	Generic name: Acrylic copolymer	50 FR 3592 (1-25-85)	Jan. 24, 1985.
Y 85-5	Generic name: Polymer of styrene with substituted acrylates and methacrylates	50 FR 3592 (1-25-85)	Feb. 4, 1985.
Y 85-6	Polymer of cyclohexanedimethanol, isophthalic acid, pentaerythritol, tetraisopropyl titanate and trimelletic anhyfride	50 FR 3592 (1-25-85)	Do.
Y 85-7	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Feb. 7, 1985.
Y 85-8	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Do.
Y 85-9	Generic name: Aromatic polycarbodiimide	50 FR 4790 (2-1-85)	Do.
Y 85-10	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Feb 12, 1985.
Y 85-11	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Do.
Y 85-12	Generic name: Rosin-modified phenolic resin	50 FR 4790 (2-1-85)	Do.
Y 85-13	Generic name: Polymer of aromatic diisocyanates, aliphatic diisocyanates, aliphatic glycols and aliphatic diacid	50 FR 4790 (2-1-85)	Do.
Y 85-14	Generic name: Rosin-modified phenolic resin	50 FR 5417 (2-8-85)	Feb 17, 1985.
Y 85-15	Polymer of soybean oil, pentaerythritol, phthalic anhydride, intermediate, 1,2-propanediol, 2,4-tolylene diisocyanate and 2,6-tolylene diisocyanate.	50 FR 5417 (5418) (2-8-85)	Feb 18, 1985.
Y 85-16	Polymer of phthalic anhydride, trimethylolpropane and Tone 0200 polycaprolactone diol	50 FR 5417 (5418) (2-8-85)	Do.
Y 85-17	Generic name: Ethylene terpolymer	50 FR 5417 (5418) (2-8-85)	Feb 19, 1985.

II. 126 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-236	Generic name: Unsaturated polyester	49 FR 48801 (48802) (12-14-84)	Mar 2, 1985.
P 85-239	Generic name: Substituted phenylazo tetrasubstituted naphthalenesulfonamide	49 FR 48801 (48802) (12-14-84)	Do.
P 85-240	Generic name: Substituted phenylazo disubstituted naphthol	49 FR 48801 (48802) (12-14-84)	Do.
P 85-241	Generic name: Disubstituted benzenesulfonic acid derivative	49 FR 48801 (48802) (12-14-84)	Do.
P 85-242	Generic name: Tetrasubstituted phenylazonaphthalene	49 FR 48801 (48802) (12-14-84)	Do.
P 85-243	Generic name: Linear saturated polyester resin containing hydroxyl groups	49 FR 48801 (48802) (12-14-84)	Do.
P 85-244	Generic name: Branched polyester resin containing hydroxyl groups	49 FR 48801 (48802) (12-14-84)	Do.
P 85-245	Generic name: Modified hydrocarbon resin	49 FR 48801 (48802) (12-14-84)	Mar 3, 1985.
P 85-246	Generic name: Tetra-substituted-biphenol	49 FR 48801 (48803) (12-14-84)	Do.
P 85-248	Generic name: Quinone-imine dye	49 FR 48801 (48803) (12-14-84)	Do.
P 85-249	Generic name: Isobenzofuranone	49 FR 48801 (48803) (12-14-84)	Do.
P 85-250	Generic name: Polyoxymethylene copolymer	49 FR 48801 (48803) (12-14-84)	Do.
P 85-251	Generic name: Reaction product of polyalkylene oxide polyol, isocyanate and diol	49 FR 48801 (48803) (12-14-84)	Do.
P 85-252	Generic name: Polyurethane polymer	49 FR 48801 (48803) (12-14-84)	Mar 4, 1985.
P 85-253	Generic name: Polyester resin	49 FR 48801 (48803) (12-14-84)	Do.

II. 126 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-254	Generic name: Amine salt of mono-, di-, and tri-substituted heterocyclic compound	49 FR 48801 (48803) (12-14-84)	Do.
P 85-255	Generic name: Sulfonamide of mono-, di-, tri-, and tetra-substituted heterocyclic compound	49 FR 48801 (48803) (12-14-84)	Do.
P 85-256	Generic name: Alcohol ether sulfate, ammonium salt	49 FR 48801 (48803) (12-14-84)	Mar. 5, 1985.
P 85-257	Generic name: Acrylic copolymer	49 FR 48801 (48803) (12-14-84)	Do.
P 85-258	Generic name: Substituted phenylazo substituted carbopolycycle-carboxylic acid, salt	49 FR 48801 (48803) (12-14-84)	Do.
P 85-259	Generic name: Substituted phenylazo substituted heteropolycycle	49 FR 48801 (48803) (12-14-84)	Do.
P 85-260	Generic name: Substituted phenylazo substituted carbopolycycle	49 FR 48801 (48803) (12-14-84)	Do.
P 85-261	Generic name: Heteropolycycle azo substituted heteromonocycle	49 FR 48801 (48804) (12-14-84)	Do.
P 85-262	Generic name: Substituted terpene resin	49 FR 48895 (48896) (12-24-84)	Mar. 6, 1985.
P 85-263	Generic name: Substituted terpene resin	49 FR 49895 (49896) (12-24-84)	Do.
P 85-264	Generic name: Substituted terpene resin	49 FR 49895 (49896) (12-24-84)	Do.
P 85-265	Amines, tri(C$_{n...n}$-iso-C$_{n,n,n}$-rich)	49 FR 49895 (49896) (12-24-84)	Do.
P 85-266	Acryamide-methyl chloride quaternary of dimethylaminoethyl acrylate copolymer	49 FR 49895 (49896) (12-24-84)	Do.
P 85-267	Generic name: Unsaturated etherfied melamine formaldehyde resin	49 FR 49895 (49896) (12-24-84)	Mar. 9, 1985.
P 85-268	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do.
P 85-269	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do.
P 85-270	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do.
P 85-271	Generic name: Substituted furanone	49 FR 49895 (49896) (12-24-84)	Do.
P 85-272	Generic name: Substituted aliphatic-terminated poly (dimethylsiloxane)	49 FR 49895 (49896) (12-24-84)	Do.
P 85-273	Generic name: Polyester urethane acrylate blocked	49 FR 49895 (49896) (12-24-84)	Do.
P 85-274	Generic name: Substituted phenylazo naphthalene sulfonic acid, salt	49 FR 49895 (49896) (12-24-84)	Do.
P 85-275	Generic name: Substituted naphthylazo naphthalene sulfonic acid	49 FR 49895 (49896) (12-24-84)	Do.
P 85-276	Generic name: Substituted phenylazo substituted naphthalene sulfonic acid, salt	49 FR 49895 (49897) (12-24-84)	Do.
P 85-277	Generic name: Substituted phenylazo substituted naphthalene sulfonic acid, salt	49 FR 49895 (49897) (12-24-84)	Do.
P 85-278	Generic name: Functionalized polyacrylic acid derivative	49 FR 49895 (49897) (12-24-84)	Do.
P 85-279	Generic name: Vinyl modified terpene resin	49 FR 49895 (49897) (12-24-84)	Do.
P 85-280	Generic name: Disubstituted naphthalene sulfonic acid derivative	49 FR 49895 (49897) (12-24-84)	Do.
P 85-281	Generic name: Disubstituted naphthalene sulfonic acid derivative salt	49 FR 49895 (49897) (12-24-84)	Do.
P 85-282	Generic name: Substituted benzoic acid derivative	49 FR 49895 (49897) (12-24-84)	Do.
P 85-283	Generic name: Disubstituted naphthol	49 FR 49895 (49897) (12-24-84)	Do.
P 85-284	Generic name: Substituted phenylazo disubstituted naphthol	49 FR 49895 (49897) (12-24-84)	Do.
P 85-285	Generic name: Polyhydroxy ether phosphate	49 FR 49895 (49897) (12-24-84)	Mar. 10, 1985.
P 85-286	Generic name: Polyhydroxy ether phosphate	49 FR 49895 (49897) (12-24-84)	Do.
P 85-287	Generic name: Alkali metal dicarboxylate	49 FR 49895 (49897) (12-24-84)	Do.
P 85-288	Generic name: Alkyl oxirane reacted with polyalkylene glycol	49 FR 49895 (49897) (12-24-84)	Do.
P 85-289	2,5,8,10-tetraoxaridec-12-enoic acid, 9 oxo-, 2 propenyl ester, polymer with vinyl acetate	49 FR 49895 (49898) (12-24-84)	Do.
P 85-290	2,5,8,10-tetraoxaridec-12-enoic acid, 9 oxo-, 2 propenyl ester homopolymer	49 FR 49895 (49898) (12-24-84)	Do.
P 85-291	2,5,8,10-tetraoxaridec-12-enoic acid, 9 oxo-, 2 propenyl ester, polymer with methyl 2-propenyl ester, polymer, with methyl 2-methyl-2-propenoate.	49 FR 49895 (49898) (12-24-84)	Do.
P 85-292	Generic name: Organofunctional polysiloxane	49 FR 49895 (49898) (12-24-84)	Do.
P 85-293	Generic name: Chloroetherketone	49 FR 49895 (49898) (12-24-84)	Do.
P 85-294	Generic name: Etherketone	49 FR 49895 (49898) (12-24-84)	Do.
P 85-295	Generic name: Modified acrylic polymer	49 FR 49895 (49898) (12-24-84)	Do.
P 85-296	Generic name: Silicone ester polyacrylate	49 FR 49895 (49898) (12-24-84)	Mar. 11, 1985.
P 85-297	Generic name: Isophorone diisocyanate adduct of a polyether glycol, an alkanediol, and a substituted alkanol	49 FR 49895 (49898) (12-24-84)	Do.
P 85-298	Generic name: Amino acrylate monomer	49 FR 49895 (49898) (12-24-84)	Mar. 12, 1985.
P 85-299	Generic name: Polyester resin	49 FR 49895 (49898) (12-24-84)	Do.
P 85-300	Generic name: Bis-arylmethylene aminobutene, nickel complex	49 FR 49895 (49898) (12-24-84)	Do.
P 85-302	Generic name: Polyol acetal	49 FR 50444 (12-24-84)	Mar. 14, 1985.
P 85-303	Generic name: Aliphatic polyester urethane	49 FR 50444 (12-28-84)	Do.
P 85-304	Generic name: Alkyl diol, toluene diisocyanate, alkene ester, adipic acid resin	49 FR 50444 (12-28-84)	Do.
P 85-305	Generic name: Substituted silyl epoxide	49 FR 50444 (12-28-84)	Do.
P 85-306	Generic name: Substituted silyl epoxide	49 FR 50444 (12-28-84)	Do.
P 85-307	Generic name: Substituted alkyl silyl urea	49 FR 50444 (12-28-84)	Do.
P 85-308	Generic name: Substituted alkyl silyl urea	49 FR 50444 (12-28-84)	Do.
P 85-309	Generic name: Di-substituted phenol	49 FR 50444 (50445) (12-28-84)	Mar. 17, 1985.
P 85-310	Generic name: Tri-substituted phenol	49 FR 50444 (50445) (12-28-84)	Do.
P 85-311	Generic name: Polyurethane	49 FR 50444 (50445) (12-28-84)	Do.
P 85-312	Generic name: Complex polyether-amine	49 FR 50444 (50445) (12-28-84)	Do.
P 85-313	Generic name: Substituted silanol adduct of a long chain diisocyanate	49 FR 50444 (50445) (12-28-84)	Do.
P 85-314	Generic name: Fatty acid amide	50 FR 543 (544) (1-4-85)	Do.
P 85-315	Generic name: Substituted benzotriazole	49 FR 50444 (50445) (12-28-84)	Do.
P 85-316	Generic name: Aryl alkenyl aryl nitrile	49 FR 50444 (50445) (12-28-84)	Do.
P 85-317	Phosphine oxide, diphenyl (2,4,6-trimethyl-benzoyl)-	49 FR 50444 (50445) (12-28-84)	Do.
P 85-318	1-isopropylthio-beta-D-galactopyranoside	49 FR 50444 (50445) (12-28-84)	Do.
P 85-319	Pentaacetyl-beta-D-galactopyranoside	49 FR 50444 (50445) (12-28-84)	Do.
P 85-320	Generic name: Polyamide	49 FR 50444 (50445) (12-28-84)	Do.
P 85-321	Generic name: Substituted phenol/formaldehyde resin	49 FR 50444 (50445) (12-28-84)	Do.
P 85-322	2-Propanamine, N-(1-methylethyl)-, lithium salt	49 FR 50444 (50445) (12-28-84)	Do.
P 85-323	Generic name: Bis(substituted alkyl) disulfide	49 FR 50444 (50445) (12-28-84)	Do.
P 85-324	Generic name: Substituted hetero-monocyclic phenol	49 FR 50444 (50446) (12-28-84)	Do.
P 85-325	Cobaltate(1-), (N-[8[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-7-hydroxy-1-naphthalenyl]acetamidato(2-)-[3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato(2-)]-, sodium (9Cl).	49 FR 50444 (50446) (12-28-84)	Mar. 18, 1985.
P 85-326	Chromate(1-), [3-[4,5dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato(2)] [4-hydroxy-3-[(2-hydroxy-1-naphthalenyl) azo]benzensulfon-amidato(2-)]-hydrogen (9Cl).	49 FR 50444 (50446) (12-28-84)	Do.
P 85-327	Generic name: Isocyanate terminated polyether prepolymer	49 FR 50444 (50446) (12-28-84)	Do.
P 85-328	Generic name: Substituted paracyclophane	49 FR 50444 (50446) (12-28-84)	Do.
P 85-329	Generic name: Silylated amino ester	49 FR 50444 (50446) (12-28-84)	Do.
P 85-330	Alkyl aryl ethoxylate sulfate, sodium salt	49 FR 50444 (50446) (12-28-84)	Mar. 17, 1985.
P 85-331	Generic name: Acrylic polymer imine reaction product	49 FR 50444 (50446) (12-28-84)	Mar. 19, 1985.
P 85-332	Generic name: Acrylic copolymer	49 FR 50444 (50446) (12-28-84)	Do.
P 85-334	Generic name: Aromatic dinitro compound	49 FR 50444 (50446) (12-28-84)	Do.
P 85-335	Generic name: Aromatic diamine	49 FR 50444 (50446) (12-28-84)	Do.
P 85-336	Generic name: Polyimide precursor	49 FR 50444 (50446) (12-28-84)	Do.
P 85-337	Generic name: Fiber reinforced polyimide	49 FR 50444 (50447) (12-28-84)	Do.
P 85-338	Generic name: Cyanoacrylate ester	50 FR 543 (544) (1-4-85)	Mar. 20, 1985.
P 85-339	Generic name: Coconut alkyd resin	50 FR 543 (544) (1-4-85)	Mar. 23, 1985.
P 85-340	Generic name: Organofunctional polysiloxane	50 FR 542 (544) (1-4-85)	Do.
P 85-341	Generic name: Substituted xanthone	50 FR 543 (544) (1-4-85)	Mar. 25, 1985.
P 85-342	Generic name: Polyester resin	50 FR 543 (544) (1-4-85)	Do.
P 85-344	Benzoic acid, 2-[[3-(1,3-benzodioxole-5-yl) 2 methy propylidene) amino, methyl ester	50 FR 543 (544) (1-4-85)	Mar. 23, 1985.

II. 126 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-345	Generic name: Phenolic resin	50 FR 543 (544) (1-4-85)	Mar. 25, 1985.
P 85-346	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Do.
P 85-347	Generic name: Modified phenolic resin	50 FR 543 (544) (1-4-85)	Do.
P 85-348	Generic name: Alkyd resin	50 FR 543 (544) (1-4-85)	Do.
P 85-349	Generic name: Acrylated alkyd resin	50 FR 543 (544) (1-4-85)	Do.
P 85-350	Generic name: Modified phenolic resin	50 FR 543 (544) (1-4-85)	Do.
P 85-351	2,6-Naphthalenee dicarboxylic acid	50 FR 543 (544) (1-4-85)	Mar. 26, 1985.
P 85-352	Generic name: MDI adduct with a polyether glycol and a hydroxy methacrylate	50 FR 543 (544) (1-4-85)	Do.
P 85-353	Generic name: Polymer of aliphatic diisocyanate, aliphatic glycols, aliphatic diacid, aromatic anhydride and alkylene oxides.	50 FR 543 (545) (1-4-85)	Do.
P 85-354	Generic name: Polymer of aliphatic diisocyanate, aliphatic diacids, aromatic diacid, aliphatic diol, aliphatic epoxides	50 FR 543 (545) (1-4-85)	Do.
P 85-355	Generic name: Polyhalogenated alkyl phenol	50 FR 1630 (1-11-85)	Mar. 27, 1985.
P 85-356	Generic name: Alcohol sulfate, lithium salt	50 FR 1630 (1-11-85)	Do.
P 85-357	Polymer of ester diol 204, trimethylol propane, adipic acid, Desmodur-W, isocyanato ethyl methacrylate and butyl methyacrylate.	50 FR 1630 (1-11-85)	Do.
P 85-358	Polymer of 2,2 dimethyl-3-hydroxypropyl-1,2 dimethyl-3-hydroxypropionate, methylene bis (4-cyclohexyl isocyanate), polycaprolactone triol, adipic acid, E-caprolactone.	50 FR 1630 (1631) (1-11-85)	Do.
P 85-359	Generic name: Advancement product of triglycidyl ether of tri(hydroxyphenyl) methane	50 FR 1630 (1631) (1-11-85)	Do.
P 85-360	Generic name: Partial metal complex of aminomethylene phosphonic acid	50 FR 1630 (1631) (1-11-85)	Do.
P 85-361	Generic name: Polymer of aliphatic diisocyanate, aliphatic diacid, aromatic, diacid, aliphatic diol, aliphatic epoxide, urea, and formaldehyde.	50 FR 1630 (1631) (1-11-85)	Do.
P 85-362	Polymer of mercaptobenzimidazole and ethylene oxide	50 FR 1630 (1631) (1-11-85)	Do.
P 85-363	Generic name: Alkyl substituted cyclopentanol acetate	50 FR 1630 (1631) (1-11-85)	Do.
P 85-364	Generic name: Hydrochloride salt of a substituted dialkyl amine	50 FR 1630 (1631) (1-11-85)	Do.

III. 109 Premanufacture Notices for Which the Notice Review Period has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical had Been Added to the Inventory.)

PMN No.	Identity/generic name	FR citation	Expiration date
P 83-755	4-hydroxy-6-phenylaminonaphthalene-2-sulfonic acid	48 FR 24967 (6-3-83)	Jan. 16, 1985.
P 84-358	Generic name: Polyaromatic urethane poly(unsaturated) ester	49 FR 6991 (2-24-84)	Jan. 27, 1985.
P 84-839	Generic name: Polyfunctional aziridine	49 FR 25676 (25677) (6-22-84)	Jan. 27, 1985.
P 84-1129	Acetic acid, ester with C_9–C_{11} iso alcohols, C_{10}—rich	49 FR 35414 (35417) (9-7-84)	Jan. 10, 1985.
P 84-1130	Acetic acid, ester with C_9–C_{10} alcohols, C_9—rich	49 FR 35414(235417) (9-7-84)	Do.
P 84-1131	Acetic acid, ester with C_{11}–C_{14} iso alcohols, C_{13}—rich	49 FR 35414 (35417) (9-7-84)	Do.
P 84-1189	Generic name: Modified acrylamide polymer	59 FR 38356 (38357) (9-38-84)	Jan. 30, 1985.
P 84-1190	Generic name: Modified acrylamide polymer	49 FR 38356 (38357) (9-38-84)	Do.
P 85-2	Generic name: Nitro alcohol	49 FR 41100 (41101) (10-19-84)	Jan. 29, 1985.
P 85-10	Benzothiazolilim, 2-(2-ethoxy-1-propenyl)-3-ethyl, ethyl sulfate	49 FR 41100 (41101) (10-19-84)	Jan. 1, 1985.
P 85-11	Generic name: Aryl substituted aliphatic thiol	49 FR 41102 (10-19-84)	Jan. 2, 1985.
P 85-12	Generic name: Aliphatic nitrile	49 FR 41102 (10-19-84)	Do.
P 85-13	Generic name: Substituted borazole polymer	49 FR 41102 (10-19-84)	Do.
P 85-14	Dimethylsila-17-Crown-6	49 FR 41102 (41103) (10-19-84)	Do.
P 85-15	Generic name: Halogenated fatty acid ester	49 FR 41102 (41103) (10-19-84)	Jan. 6, 1985.
P 85-16	Generic name: Acrylamide unsaturated quaternary ammonium copolymer	49 FR 41102 (41103) (10-19-84)	Do.
P 85-17	Generic name: Acrylic copolymer	49 FR 41102 (41103) (10-19-84)	Jan. 7, 1985.
P 85-18	Generic name: Substituted amino anhtraquinone	49 FR 41102 (41103) (10-19-84)	Do.
P 85-19	Generic name: Terephthalic acid, polymer with 2-oxepanone, and an alkane diol	49 FR 41102 (41103) (10-19-84)	Do.
P 85-20	Generic name: Arylhydrozonotrimethyl-indolim, salt	49 FR 41102 (41103) (10-19-84)	Do.
P 85-21	Generic name: Substituted alkenyl dimethyl-chlorosilane	49 FR 41102 (41103) (10-19-84)	Do.
P 85-22	Generic name: Polymer of isooctyl acrylate and N-t-octylacrylamide	49 FR 41102 (41103) (10-19-84)	Do.
P 85-23	Generic name: Iron complex of a substituted phenyl azo	49 FR 41102 (41103) (10-19-84)	Do.
P 85-24	Generic name: 3-substituted propionic acid	49 FR 41102 (41103) (10-19-84)	Jan. 8, 1985.
P 85-25	Generic name: Methyl(aryl)indolylazo-thiazolium, salt	49 FR 41102 (41103) (10-19-84)	Do.
P 85-26	Generic name: Substituted phenyl disulfide	49 FR 41102 (41103) (10-19-84)	Do.
P 85-27	1-(2-aminophenyl) ethanone hydrochloride	49 FR 41102 (41103) (10-19-84)	Do.
P 85-28	Generic name: Trisubstituted benzene	49 FR 43105 (10-26-84)	Jan. 9, 1985.
P 85-29	Generic name: Trisubstituted benzene	49 FR 43105 (10-26-84)	Do.
P 85-30	Generic name: Carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	49 FR 43105 (43106) (10-26-84)	Do.
P 85-31	Generic name: Carbopolycycle sulfonate of substituted heteropolycycle	49 FR 43105 (43106) (10-26-84)	Do.
P 85-32	Generic name: Alkyl mercaptothiadiazole	49 FR 43105 (43106) (10-26-84)	Jan. 12, 1985.
P 85-33	Generic name: Polymonocyclic urethane	49 FR 43105 (43106) (10-26-84)	Jan. 13, 1985.
P 85-34	Generic name: Polyoxypropylene polyoxyethylene block copolymer ester acyl lactum	49 FR 43105 (43106) (10-26-84)	Do.
P 85-35	Generic name: Polybutanediene ester acyl lactum	49 FR 43105 (43106) (10-26-84)	Do.
P 85-36	Generic name: Substituted pyridine	49 FR 43105 (43106) (10-26-84)	Do.
P 85-37	Generic name: Isocyanate-terminated polyurethane	49 FR 43105 (43106) (10-26-84)	Do.
P 85-38	Generic name: Hydroxyl-terminated polyurethane	49 FR 43105 (43106) (10-26-84)	Do.
P 85-39	Generic name: Benzoquinolinyl-sulfoindendione, substituted ammonium salt	49 FR 43105 (43106) (10-26-84)	Do.
P 85-40	Generic name: Aliphatic ketone	49 FR 43105 (43106) (10-26-84)	Do.
P 85-41	Carboxylic acids, C_6–C_{10} mono and C_6–C_{12} di-, polymers with adipic acid, 1,4-butanediol and propylene glycols	49 FR 43105 (43106) (10-26-84)	Do.
P 85-42	Carboxylic acids, C_6–C_{14} mono and C_6–C_{12} di-, polymers with adipic acid, 1,4-butanediol, propylene glycols and acetic anhydride.	49 FR 43105 (43106) (10-26-84)	Do.
P 85-43	Polymer of phenol, triphenyl ethyl phosphonium iodide, trimellitic anhydride and EPON 828	49 FR 43105 (43107) (10-26-84)	Do.
P 85-44	Generic name: Substituted benzocyazoleydine ethylidine	49 FR 43105 (43107) (10-26-84)	Do.
P 85-45	Generic name: 3-substituted propanoic acid, glycol ester	49 FR 43105 (43107) (10-26-84)	Do.
P 85-46	Generic name: Sulfonated polycyclic aromatics	49 FR 43105 (43107) (10-26-84)	Jan 14, 1985.
P 85-47	Generic name: Sulfonated polycyclic aromatic, sodium salt	49 FR 43105 (43107) (10-26-84)	Do.
P 85-48	Generic name: Sulfonated polycyclic aromatic, ammonium salt	49 FR 43105 (43107) (10-26-84)	Do.
P 85-49	Generic name: Sulfonated polycyclic aromatic, calcium salt	49 FR 43105 (43107) (10-26-84)	Do.
P 85-50	Generic name: Sulfonated polycyclic aromatic zinc salt	49 FR 43105 (43107) (10-26-84)	Do.
P 85-51	Generic name: Monoethanolamine salt of lignin	49 FR 43105 (43107) (10-26-84)	Jan. 15, 1985.
P 85-52	Generic name: Modified fatty acid polyamine condensate	49 FR 43105 (43107) (10-26-84)	Do.
P 85-53	Generic name: Crosslinked acrylic copolymer	49 FR 43105 (43107) (10-26-84)	Do.
P 85-54	Generic name: Organotungsten compound	49 FR 44139 (11-2-84)	Jan. 16,1985.
P 85-55	Generic name: Substituted sulfonated naphthalene	49 FR 44139 (11-2-84)	Do.
P 85-56	Generic name: Alkylcycloalkenyl ketone	49 FR 44139 (11-2-84)	Do.
P 85-57	Generic name: Cycloalkenyl alkyl oxirane	49 FR 44139 (44140) (11-2-84)	Do.
P 85-58	Generic name: Cycloalkenyl alkyl oxirane	49 FR 44139 (44140) (11-2-84)	Do.

III. 109 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY.)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-59	Generic name: Cycloalkenyl alkyl thiol	49 FR 44139 (44140) (11-2-84)	Do.
P 85-60	Generic name: Functional polyester	49 FR 44139 (44140) (11-2-84)	Jan. 19, 1985.
P 85-61	Generic name: Aromatic polyester	49 FR 44139 (44140) (11-2-84)	Do.
P 85-62	Generic name: Polyalkylene oxide aromatic diisocyanate prepolymer	49 FR 44139 (44140) (11-2-84)	Do.
P 85-63	Generic name: Alkyl substituted cyclopentanol	49 FR 44139 (44140) (11-2-84)	Jan. 30, 1985.
P 85-64	Generic name: Organosilicone copolymer	49 FR 44139 (44140) (11-2-84)	Do.
P 85-65	Generic name: Substituted cycloalkanone	49 FR 44139 (44140) (11-2-84)	Do.
P 85-66	Generic name: Polyurethane polymer	49 FR 44139 (44140) (11-2-84)	Do.
P 85-67	2,2'-diallyl-4,4'-sulfonyl diphenol	49 FR 44139 (44140) (11-2-84)	Do.
P 85-68	Generic name: Alkyd resin	49 FR 44139 (44140) (11-2-84)	Do.
P 85-69	Generic name: Condensation acrylic copolymer	49 FR 44139 (44140) (11-2-84)	Do.
P 85-70	Generic name: Epoxy modified alkyd resin	49 FR 44139 (44140) (11-2-84)	Do.
P 85-71	Generic name: Alkyd resin	49 FR 44139 (44141) (11-2-84)	Do.
P 85-72	Lanthanum phosphate, cerium and terbium activated	49 FR 44139 (44141) (11-2-84)	Do.
P 85-73	Generic name: Modified acrylic polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-74	Generic name: Modified acrylic polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-75	Generic name: Modified acrylic polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-76	Generic name: Modified acrylic polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-77	Generic name: Modified acrylic polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-78	Generic name: Substituted propionamide	49 FR 44139 (44141) (11-2-84)	Do.
P 85-79	Generic name: Substituted naphthol dyestuff	49 FR 44139 (44141) (11-2-84)	Do.
P 85-80	3-dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione	49 FR 44139 (44141) (11-2-84)	Do.
P 85-81	N-[3-methyl-5-(phenylamino)-2,4-penta-dienylidene] benzenamine, monohydrobromide salt	49 FR 44139 (44141) (11-2-84)	Jan. 22, 1985.
P 85-82	Generic name: Tetrasubstituted pyrazole salt	49 FR 44139 (44141) (11-2-84)	Do.
P 85-83	Generic name: Polyester from dimethyl terephthalate, ethylene glycol and 3-substituted propanoic acid glycol ester	49 FR 44139 (44142) (11-2-84)	Do.
P 85-84	Generic name: Perfluoroalkyl sustituted acrylate polymer	49 FR 44139 (44141) (11-2-84)	Do.
P 85-85	Generic name: Sodium salt of sulfated linear C_{8-10} alcohol ethoxylated	49 FR 44139 (44142) (11-2-84)	Do.
P 85-86	Generic name: Modified acrylic polymer	49 FR 44676 (11-8-84)	Jan. 23, 1985.
P 85-87	Generic name: Sulfonated carbocyclic diester	49 FR 44676 (11-8-84)	Do.
P 85-88	Generic name: Substituted phenylamino substituted carbopolycyclic sulfonic acid, salt	49 FR 44676 (44677) (11-8-84)	Do.
P 85-89	Generic name: Polyester from dimethyl terephthalate, ethylene glycol, isophthalic acid and a carboxylic acid	49 FR 44676 (44677) (11-8-84)	Jan. 26, 1985.
P 85-90	Polymer of dimethyl terephthalate, ethylene glycol, dimethyl 5-sulfoisophthlate, sodium salt and polyethylene glycol	49 FR 44676 (44677) (11-8-84)	Do.
P 85-91	Generic name: Alcohol ether sulfate, sodium salt	49 FR 44676 (44677) (11-8-84)	Do.
P 85-92	Generic name: Hydroxyethylthiopolyalcohol	49 FR 44676 (44677) (11-8-84)	Do.
P 85-93	Generic name: Rosin-modified phenolic resin	49 FR 44676 (44677) (11-8-84)	Jan. 27, 1985.
P 85-94	Generic name: Carboxylated styrene/acrylic multipolymer	49 FR 44676 (44677) (11-8-84)	Do.
P 85-95	Generic name: Carboxylated acrylic multipolymer	49 FR 44676 (44677) (11-8-84)	Do.
P 85-96	Generic name: Reaction product from the catalyzed reaction of 1,3-disubstituted benzene and an oxoalkane, reacted with sodium sulfide ($Na_2(Sx)$)	49 FR 44676 (44677) (11-8-84)	Do.
P 85-97	Generic name: Modified polymer of alkyfacrylates and alkyl methacrylates	49 FR 44676 (44677) (11-8-84)	Do.
P 85-98	2,2'-(1,3-phenylene)bis(4,5-dihydrooxazole)	49 FR 44676 (44677) (11-8-84)	Do.
P 85-99	Generic name: (Polyoxyalkylene)bis[N-trimellitimide]	49 FR 44676 (44677) (11-8-84)	Do.
P 85-100	Generic name: Modified melamine formaldehyde resin	49 FR 44676 (44678) (11-8-84)	Do.
P 85-101	Generic name: Modified melamine formaldehyde resin	49 FR 44676 (44678) (11-8-84)	Do.
P 85-102	Generic name: Modified soybean-tung alkyd resin	49 FR 44676 (44678) (11-8-84)	Do.
P 85-103	Generic name: Thermoplastic saturated polyester	49 FR 44676 (44678) (11-8-84)	Jan. 29, 1985.
P 85-104	Generic name: Alkenyl substituted carbomonocyclic alkenyl ether	49 FR 44676 (44678) (11-8-84)	Do.
P 85-105	Generic name: Poly alkenyl substituted carbomonocyclic ether	49 FR 44676 (44678) (11-8-84)	Do.
P 85-106	Generic name: Alkenyl substituted carbomonocyclic alcohol	49 FR 44676 (44678) (11-8-84)	Do.
P 85-107	Generic name: Polyurethane resin	49 FR 45657 (11-19-84)	Jan 30, 1985.
P 85-108	Generic name: Acrylic copolymer	49 FR 45657 (11-19-84)	Do.
P 85-109	Generic name: Arylthioalkanoyl-hydrazide	49 FR 45657 (11-19-84)	Do.

IV. 56 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Chemical identification	FR citation	Date of commencement
P 81-605	Generic name: substituted benzophenone reacted with methyl silesquioxane	46 FR 60055 (60056) (12-6-81)	Jan. 25, 1985.
P 82-10	2-Ethylmercapto-3-ethylbenzthiazole iodide	47 FR 2309 (2310) (1-15-82)	Jan. 23, 1985.
P 82-141	Adduct of bis(isocyanatomethyl)benzene with 2-ethyl-2 (hydroxymethyl)-1,3-propanediol	47 FR 10073 (10074) (3-9-82)	Jan. 30, 1985.
P 82-216	Adduct of 1,3-bis(isocyanatomethyl)-cyclohexane with 2-ethyl-2(hydroxymethyl)-1,3-propanediol	47 FR 13697 (13698) (3-26-82)	Do.
P 82-423	Generic name: Polyhaloalkoxyalkylphenone	47 FR 26234 (26235) (6-17-82)	Dec. 6, 1984.
P 82-635	Generic name: Alkyl acid esters	47 FR 39884 (39885) (9-10-82)	Jan. 14, 1985.
P 82-645	Generic name: Condensate of formaldehyde and an organic base	47 FR 41165 (41166) (9-17-82)	Dec. 6, 1982.
P 83-408	Generic name: Triazine trisisocyanate	48 FR 5304 (5305) (2-4-83)	Jan. 17, 1985.
P 83-534	Generic name: Etheric aromatic ester	48 FR 11498 (11500) (3-18-83)	June 6, 1983.
P 83-628	Reaction product of diglycidyl ether of bisphenol A, dimer acid, soya fatty acid, dimethylol propionic acid	48 FR 17385 (4-22-83)	On or after Nov. 5, 1984.
P 83-664	Generic name: Substituted benzoic acid	48 FR 20490 (5-6-83)	Jan. 28, 1985.
P 83-667	Generic name: Pentasubstituted benzimidazolium salt	48 FR 20490 (5-6-83)	Feb. 20, 1984.
P 83-861	Generic name: Substituted vinyl polymer	48 FR 30434 (30435) (7-1-83)	Apr. 1, 1985.
P 83-899	Generic name: Alkyl (hydroxy aryloxy) alkanoate	48 FR 32381 (32382) (7-15-83)	Dec. 27, 1984.
P 83-989	Generic name: Substituted carboxylated cocoimidazoline	48 FR 35713 (8-5-83)	Jan. 23, 1985.
P 83-1168	Generic name: Monosubstituted-phenyl magnesium bromide	48 FR 41638 (41643) (9-16-83)	Dec. 11, 1984.
P 84-2	N,N,N',N'-tetraglycidyl-1,3-bisaminomethyl cyclohexane	48 FR 46851 (46853) (10-14-83)	Dec. 21, 1984.
P 84-111	Generic name: Substituted aromatic polymer	48 FR 50944 (50946) (11-4-83)	Jan. 2, 1985.
P 84-250	Nickel fluorotitanate	48 FR 55916 (55917) (12-16-83)	Mar. 26, 1984.
P 84-314	Generic name: Partially oxidized polysaccharide	49 FR 1787 (1788) (1-13-84)	Dec. 26, 1984.
P 84-437	Generic name: Amine adduct of epoxy resin	49 FR 2654 (2656) (2-1-84)	Jan. 9, 1985.
P 84-464	Generic name: Halogenated aromatic ether	49 FR 9013 (9015) (3-9-84)	Oct. 7, 1984.
P 84-473	Generic name: Isocyanate modified phenolic resin	49 FR 9954 (3-16-84)	Dec. 12, 1984.
P 84-507	Polymer of dodecane, 1-amine (laurylamine), ethylenimine, hydrochloric acid	49 FR 13746 (13747) (4-6-84)	Jan. 21, 1985.
P 84-594	Generic name: Dimer acids, dicarboxylic acid, diamines polyamide resin	49 FR 16833 (16835) (4-20-84)	Nov. 5, 1984.
P 84-658	Polymer of Epsilon-Caprolactam, 2,4-toluene diisocyanate, epsilon caprolactone triol	49 FR 19111 (19113) (5-4-84)	Nov. 26, 1984.
P 84-675	4-Benzoyl-N,N,N-trimethylbenzenemethanaminium chloride	49 FR 20060 (20062) (11-8-84)	Dec. 26, 1984.
P 84-676	Generic name: Methacrylate copolymer	49 FR 20060 (20062) (5-11-84)	Do.
P 84-695	Generic name: Oil modified polyester	49 FR 22128 (22129) (5-25-84)	Aug. 20, 1984.

IV. 56 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Chemical identification	FR citation	Date of commencement
P 84-727	5-[(3,5-dinitrophenyl)methylthio]-1-phenyl-1H-tetrazole	49 FR 22128 (22131) (5-25-84)	Jan. 3, 1985.
P 84-731	Generic name: Polymer of aliphatic diacid, aliphatic polyamines and substituted alkane	49 FR 22128 (22132) (5-25-84)	Dec. 12, 1984.
P 84-740	Generic name: Substituted dianhydride and cyclic amine polymer	49 FR 22865 (22866) (6-1-84)	Oct. 20, 1984.
P 84-741	Generic name: Substituted dianhydrice, cyclic amine and substituted amine terminated polymer	49 FR 22865 (22866) (6-1-84)	Do.
P 84-785	Generic name: Disubstituted naphthoic acid	49 FR 23916 (23919) (6-8-84)	Oct. 23, 1984.
P 84-845	Generic name: Vinyl trialkoxy silane	49 FR 25676 (25678) (6-22-84)	Jan. 2, 1985.
P 84-890	Generic name: Substituted polystyrene	49 FR 28614 (28615) (7-13-84)	Dec. 10, 1984.
P 84-911	Cyclododecane, (2-Methoxyethoxy)-	49 FR 28616 (28617) (7-13-84)	Jan. 7, 1985.
P 84-1066	Generic name: Substituted trisazo dye, salt	49 FR 33721 (33722) (8-24-84)	Dec. 14, 1984.
P 84-1071	Generic name: Alkoxy aluminum alkylacetoacetate	49 FR 33721 (33722) (8-24-84)	Jan. 17, 1985.
P 84-1101	Generic name: Type I anion exchange resin, bicarbonate/carbonate form	49 FR 35414 (35415) (9-7-84)	Dec. 24, 1984.
P 84-1109	Generic name: Modified rosin	49 FR 35414 (35415) (9-7-84)	Dec. 20, 1984.
P 84-1155	Generic name: Quaternary polyamine	49 FR 37458 (37459) (9-24-84)	Jan. 5, 1985.
P 84-1156	Generic name: Quaternary ammonium chloride of an oxyalkylated polyamine	49 FR 37458 (37459) (9-24-84)	Do.
P 84-1157	Generic name: Oxyalkylated phenolic ester	49 FR 37458 (37459) (9-24-84)	Do.
P 84-1158	Generic name: Quaternary ammonium chloride of an oxyalkylated polyamine	49 FR 37458 (37459) (9-24-84)	Do.
P 84-1159	Generic name: Oxyalkylated tetrol 2-butenedioic acid ester	49 FR 37458 (37459) (9-24-84)	Do.
P 84-1160	Generic name: Propoxylated imidazoline	49 FR 37458 (37459) (9-24-84)	Do.
P 84-1222	Generic name: Polymer of substituted methacrylic acid and polydimethylsiloxane	49 FR 39379 (39381) (10-5-84)	Jan. 25, 1985.
P 85-1	Generic name: Aromatic oxime	49 FR 41100 (10-19-84)	Jan. 8, 1985.
P 85-9	Generic name: Fatty alcohol, ethoxylated, propoxylated, fatty acid ester	49 FR 41100 (41101) (10-19-84)	Jan. 1, 1985.
P 85-14	Dimethylsila-17-crown-6	49 FR 41102 (41103) (10-19-84)	Jan. 15, 1985.
P 85-26	Generic name: Substituted phenyl disulfide	49 FR 41102 (41103) (10-19-84)	Jan. 9, 1985.
P 85-38	Generic name: Hydroxyl terminated polyurethane	49 FR 43105 (43106) (10-26-84)	Jan. 16, 1985.
P 85-40	Generic name: Aliphatic ketone	49 FR 43105 (43106) (10-26-84)	Jan. 23, 1985.
P 85-64	Generic name: Organosilicone copolymer	49 FR 44139 (44140) (11-2-84)	Jan. 21, 1985.
P 85-65	Generic name: Substituted cycloalkanone	49FR 44139 (44140) (11-2-84)	Jan. 30, 1985.

V. 106 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Date suspended
P 83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10-18-82)	Oct. 22, 1982.
P 83-333	Generic name: Reaction product of polycyclesulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 72 (73) (1-3-83)	Mar. 14, 1983.
P 83-401	Generic name: Naphthalenetrisulfonic acid, chlorortriazinylamino-methoxymethyl phenylazo	48 FR 5304 (2-4-83)	Aug. 18, 1983.
P 83-418	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthaleneazo-	48 FR 5304 (5306) (2-4-83)	Feb. 19, 1985.
P 83-461	Generic name: Substituted alkoxy silane	48 FR 7299 (7300) (2-18-83)	July 1, 1983.
P 83-634	Generic name: Substituted mono azo aromatic	48 FR 17385 (4-22-83)	July 5, 1983.
P 83-669	Generic name: Chromium complex of substitutedphenolazosulfonaphthol with naphtholazosulfonaphthol	48 FR 20490 (5-6-83)	Aug. 5, 1983.
P 83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sultonaphtholazosulfophenytpyrazolone.	48 FR 20490 (20491) (5-6-83)	Aug. 5, 1983.
P 83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24967 (24968) (6-3-83)	Aug. 15, 1983.
P 83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazo-sulfonaphthol.	48 FR 24967 (24968) (6-3-83)	Do.
P 83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30434 (30435) (7-1-83)	Sept. 21, 1983.
P 83-875	Generic name: 4-[2-cyano-4-nitrophenylazo)-[N-2-cyanoethyl)-N-(2-phenoxyethyl) amino] benzene	48 FR 31460 (31462) (7-8-83)	Do.
P 83-876	Generic name: 4-[2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31460 (31462) (7-8-83)	Do.
P 83-913	Generic name: Copper sulfonylphenazopoly-hydroxy phenazobenzoate	48 FR 32381 (32383) (7-15-83)	Oct. 1, 1983.
P 83-1006	Generic name: (Amino)-(hydroxy)-(substituted) (substituted) naphthalenedisulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, salts with sodium and potassium.	48 FR 36647 (36648) (8-12-83)	July 19, 1984.
P 83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36647 (36648) (8-12-83)	Do.
P 83-1012	Generic name: Bis (sulfophenylchlorotriazineaminosulfophenylazo) hydroxyamino-disulfonaphthalene	48 FR 36647 (36648) (8-12-83)	Oct. 24, 1983.
P 83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo) phenyl] derivative	48 FR 36647 (36649) (8-12-83)	Do.
P 83-1033	Generic name: C_6 ,carboxylic acid	48 FR 37699 (37700) (8-19-83)	Dec. 8, 1983.
P 83-1238	Generic name: Substituted anthraquinone	48 FR 43397 (43400) (9-23-83)	Dec. 9, 1983.
P 84-15	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48864) (10-21-83)	Feb. 9, 1985.
P 84-17	Generic Name: Substituted heterocyclic metal complex	48 FR 48863(48864) (10-21-83)	Do.
P 84-18	1(1,1 dimethylethoxy)-propan-2-ol	48 FR 48863(48864) (10-21-83)	Jan. 6, 1984.
P 84-36	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48866) (10-21-83)	Feb. 9, 1985.
P 84-50	Generic name: Substituted heterocyclic metal complex	48 FR 50951 (50952) (11-4-83)	Do.
P 84-64	Generic name: Substituted-phenylamino monochloro-triazinylamino sulfophenylazo-substituted-disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt.	44 FR 50951 (59053) (11-4-83)	July 9, 1984.
P 84-108	Generic name: Trisubstituted heterocyclic disubstituted monocycle	48 FR 50944 (50945) (11-4-83)	Mar. 5, 1984.
P 84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50944 (50946) (11-4-83)	Feb. 9, 1985.
P 84-306	Benzoic acid, 2-[[[(2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester	49 FR 930 (932) (1-6-84)	Mar. 22, 1984.
P 84-307	2-propenoic acid, 2-methyl-, 2-[(hexahydro 2-oxo-1H-azepin-1-yl)carbonyl)amino)ethyl ester	49 FR 930 (932) (1-6-84)	Do.
P 84-375	Generic name: Sodium slat of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Jan. 10, 1985.
P 84-376	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Do.
P 84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amino)]-1,3,5-triazin-2-yl]aminu,]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], pentasodium.	49 FR 6160 (6162) (2-17-84)	Apr. 27, 1984.
P 84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6160 (6162) (2-17-84)	Do.
P 84-485	Generic name: Poly(oxy-1,2-ethanediyl) alpha-acyl-w-alkyl	49 FR 11009 (11010) (3-23-84)	June 4, 1984.
P 84-558			Dec. 6, 1984.
P 84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16833 (16835) (4-20-84)	Aug. 21, 1984.
P 84-597	Generic name: Blocked aliphatic polyisocyanate	49 FR 16833 (16835) (4-20-84)	July 19, 1984.
P 84-649	Generic name: Chromate, bis(substituted substituted phenolato) inorganic salts	49 FR 19110 (19113) (5-4-84)	July 20, 1984.
P 84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19110 (19113) (5-4-84)	Do.
P 84-651	Generic name: Chromate, bis(substituted substituted naphthalenolato) sodium	49 FR 19110 (19113) (5-4-84)	Do.
P 84-664	Generic name: Chromate, (substituted substituted phenolato) (substituted substituted substituted substituted phenolato) sodium.	49 FR 20060 (20061) (5-11-84)	Do.
P 84-665	Generic name: Chromate, bis(substituted substituted substituted phenolato), sodium	49 FR 20060 (20061) (5-11-84)	Do.
P 84-669	Oleic, linoleic, palmitic acid ester of ethoxylated $C_{12}C_{14}$ alcohols	49 FR 20060 (20061) (5-11-84)	July 18, 1984.
P 84-673	Generic name: Chromate (substituted naphthalenolato) (substituted substituted naphthalenolato) inorganic salts	49 FR 20060 (20061) (5-11-84)	July 20, 1974.
P 84-698	Generic name: 9, 10-Anthracenedione sulfonic acid, sodium salt	49 FR 22128 (22129) (5-25-84)	Aug. 10, 1984.
P 84-703	Oxo-octyl acetate	49 FR 22128 (22130) (5-25-84)	Oct. 29, 1984.
P 84-713	Generic name: Acrylated alkoxylated aliphatic polyol	49 FR 22128 (22130) (5-25-84)	Feb. 1, 1985.
P 84-737	Generic name: Glycol ether	49 FR 22865 (22866) (6-1-84)	Nov. 19, 1984.

V. 106 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
P 84-738	Generic name: Glycol ether	49 FR 22865 (22866) (6-1-84)	Nov. 29, 1984.
P 84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR 22865 (22866) (6-1-84)	Aug. 22, 1984.
P 84-780	Generic name: Aliphatic diacrylate	49 FR 23916 (23919) (6-8-84)	Nov. 10, 1984.
P 84-792	Generic name: Disubstituted anthraquinone-2-sulfonic acid, alkali metal salt	49 FR 23916 (23920) (6-8-84)	Aug. 22, 1984.
P 84-796	Generic name: Polyfunctional aziridine	49 FR 24782 (6-15-84)	Dec. 17, 1984.
P 84-814	Generic name: Polysubstituted polyol	49 FR 24782 (24784) (6-15-84)	Jan. 4, 1985.
P 84-824	Generic name: Brominated aromatic	49 FR 25676 (6-22-84)	Feb. 7, 1985.
P 84-858	Generic name: Polyalkylene glycol ether acrylate	49 FR 26800 (26801) (6-29-84)	Jan. 3, 1985.
P 84-860	Generic name: Modified melamine formaldehyde polymer	49 FR 28614 (7-13-84)	Aug. 22, 1984.
P 84-881	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28614 (28615) (7-13-84)	Oct. 31, 1984.
P 84-886	Generic name: Triazine derivative	49 FR 28614 (28615) (7-13-84)	Oct. 22, 1984.
P 84-895	Generic name: Substituted-substituted benzenesulfonic acid coupled with substituted-substituted benzenes and substituted substituted naphthalenedisulfonic acid, sodium salt.	49 FR 28614 (28616) (7-13-84)	Nov. 16, 1984.
P 84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris(2,3-dibromopropyl)	49 FR 28616 (28617) (7-13-84)	Sept. 28, 1984.
P 84-901	Bis(tetrabromobisphenol A)Bis(tribromophenyl)ethylenetetracarbonate	49 FR 28616 (28617) (7-13-84)	Feb. 7, 1985.
P 84-902	Hexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do.
P 84-903	N-methylhexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do.
P 84-913	Generic name: N,N'-bis(2-2-(3-alkyl) thiasoline)vinyl)-1,4-phenylene diamine double salt	49 FR 28616 (28618) (7-13-84)	Nov. 28, 1984.
P 84-927	Generic name: Carbopolycyclic alkenyl ether	49 FR 29451 (29452) (7-20-84)	Sept. 26, 1984.
P 84-938	Polymer of hydroxy ethyl acrylate and polyisocyanate T 1890/100	49 FR 29451 (29453) (7-20-84)	Jan. 3, 1985.
P 84-954	Generic name: Substituted aromatic	49 FR 30238 (30239) (7-27-84)	Oct. 10, 1984.
P 84-963	6-Nitro-2(3H)-benzoxazolone	49 FR 30238 (30240) (7-27-84)	Oct. 11, 1984.
P 84-968	Generic name: Modified sodium polyacrylate	49 FR 30238 (30240) (7-27-84)	Feb. 11, 1985.
P 84-989	4-amino-3,6-bis[5-[4-(3-carboxypyridinio-6-(4-chloro-3-sulfonateanilino)-1,3,5-triazin-2-ylamino]-2-sulfonato-phenylazo]-5-hydroxy-2,7-napthalene-disulfonate-dihydroxid, hexasodium	49 FR 31136 (31137) (8-3-84)	Oct. 16, 1984.
P 84-1005	Generic name: Alkyl amine derivative	49 FR 32110 (8-10-84)	Oct. 24, 1984.
P 84-1007	Generic name: 3-alkyl-2-(2-anilino)vinyl thiazolinium salt	49 FR 32110 (8-10-84)	Jan. 7, 1985.
P 84-1042	Methylammonium n-methyldithiocarbamate	49 FR 33718 (33719) (8-24-84)	Oct. 31, 1984.
P 84-1053	Generic name: Ethoxylated vegetable fatty acid	49 FR 33718 (33720) (8-24-84)	Oct. 26, 1984.
P 84-1062	Methyl vinyl sulfone	49 FR 33718 (33721) (8-24-84)	Nov. 6, 1984.
P 84-1068	N-dimetylthiocarbamylthio-N'-phenyl urea	49 FR 33718 (33722) (8-24-84)	Nov. 5, 1984.
P 84-1074	Generic name: Polyurethane polymer	49 FR 34572 (8-31-84)	Nov. 9, 1985.
P 84-1079	Generic name: Alkylated diphenyl oxide	49 FR 34572 (34573) (8-31-84)	Nov. 26, 1984.
P 84-1114	Generic name: Sodium salt of sulfonated, alkylated diphenyl oxide	49 FR 35414 (35416) (9-7-84)	Nov. 19, 1984.
P 84-1128	Generic name: Isoalkyleneoxy alkanol	49 FR 35414 (35417) (9-7-84)	Nov. 26, 1984.
P 84-1136	Generic name: Substituted aromatic amide	49 FR 36151 (36152) (9-14-84)	Feb. 4, 1985.
P 84-1137	Generic name: Cycloaliphatic epoxide	49 FR 36151 (36152) (9-14-84)	Do.
P 84-1144	Generic name: Isoalkyleneoxy alkanoate	49 FR 36151 (36152) (9-14-84)	Feb. 11, 1985.
P 84-1145	Generic name: Alkyltrialkoxysilane	49 FR 36151 (36152) (9-14-84)	Nov. 27, 1984.
P 84-1184	Generic name: Polyehlorofluoro aromatic alkylated hydrocarbon	49 FR 38356 (38357) (9-28-84)	Dec. 5, 1984.
P 84-1188	Generic name: Modified acrylamide polymer	49 FR (38356) (38357) 9-28-84)	Dec. 7, 1984.
P 84-1204	Generic name: Substituted, sulfonated naphthylazo soldium salt	49 FR 38356 (38356) (9-28-84)	Dec. 17, 1984.
P 84-1219	Generic name: Substituted pyridine	49 FR 39379 (39380) (10-5-84)	Feb. 5, 1985.
P 84-1228	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Jan. 8, 1985.
P 84-1229	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Do.
P 85-8	Generic name: Polyether polyester urethane	49 FR 41100 (411001) (10-19-84)	Dec. 17, 1984.
P 85-16	Generic name: Acrylamide unsaturated quaternary ammonium copolymer	49 FR 41102 (41103) (10-19-84)	Jan. 4, 1985.
P 85-18	Generic name: Substituted amino anthraquinone	49 FR 41102 (41103) (10-19-84)	Jan. 18, 1985.
P 85-30	Generic name: Carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	49 FR 43105 (43106) (10-26-84)	Jan. 9, 1985.
P 85-31	Generic name: Carbopolycycle sulfonate of substituted heteropolycycle	49 FR 43105 (43106) (10-26-84)	Do.
P 85-67	2,2'-diallyl-4,4'-sulfonyl diphenol	49 FR 44139 (44140) (11-2-84)	Jan. 23, 1985.
P 85-85	Generic name: Sodium salt of sulfated C_{9-11} alcohol ethoxylate	49 FR 44139 (44142) (11-2-84)	Jan. 9, 1985.
P 85-98	2,2'-(1,3-phenylene)bis(4,5-dihydro-oxazole)	49 FR 44676 (44677) (11-8-84)	Jan. 18, 1985.
P 85-109	Generic name: Arylthiodialkanoylhydrazide	49 FR 45657 (11-19-84)	Jan. 22, 1985.
P 85-118	Generic name: Polyurethane	49 FR 45657 (45658) (11-19-84)	Jan. 30, 1985.
P 85-247	Generic name: Bis-imidazolium dibromide	49 FR 48801 (48803) (12-14-84)	Jan. 28, 1985.
P 85-301	Generic name: Urethane acrylate	49 FR 50444 (12-28-84)	Dec. 20, 1984.
P 85-333	Generic name: Polyurethane acrylate	49 FR 50444 (50446) (12-28-84)	Jan. 30, 1985.
P 85-343	Alpha, alpha, alpha tribromomethyl phenylsulfone	50 FR 543 (544) (1-4-85)	Jan. 15, 1985.

[FR Doc. 84-7539 Filed 3-28-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83-1145; Phases I and II, Part 1; FCC 85-70]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order requiring amendments to carriers' proposed rate structures.

SUMMARY: This action finds that the Special Access tariff provisions filed on December 3, 1984, are generally acceptable subject to specifed revisions. This order is limited to non-cost issues, such as rate structures and tariff provisions. Specifically, we require the local exchange carriers to make certain amendments to their proposed rate structures and other tariff terms and conditions.

This action is necessary to resolve the various non-cost related issues.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Regina Keeney, Tariff Division, 202-632-6917.

SUPPLEMENTARY INFORMATION:

Note.—This document, delayed in publication due to non-receipt of the text by the FCC liason officer and the Office of Federal Register, was to precede the Memorandum Opinion and Order, FCC 85-100, published on March 21, 1985, 50 FR 11440, in the same proceeding.

Memorandum Opinion and Order

In the Matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83-1145, Phase I and Phase II, Part I.

Adopted: February 14, 1985.
Released: February 19, 1985.

By the Commission.

1. Pending before the Commission are special access tariff provisions filed on December 3, 1984. We find the tariffs

generally acceptable subject to specified revisions. In this order we require the local exchange carriers to make certain amendments to their proposed rate structures and other tariff terms and conditions. In a subsequent order which will deal with cost and rate issues raised by the special access tariffs, we will include specific instructions regarding the filing of these required amendments by the carriers. We also designate for further investigation several issues raised by the pending tariffs. We also intend to conclude our current investigation of special access and initiate another investigation after the tariffs become effective pursuant to our subsequent cost order. Further, in this order we deny the emergency petition filed by Pacific Bell and Nevada Bell on October 19, 1984.

I. Summary

2. The special access tariff provisions originally riled by the local exchange carriers in September and October 1983 presented this Commission with numerous difficult problems. The local private line segments which those provisions govern have in the past been provided to interexchange carriers and end users under a hodgepodge of mechanisms. The American Telephone and Telegraph Company (AT&T) obtained these channels from the Bell Operating Companies (BOCs) through internal Bell System arrangements and from independent local exchange companies under settlement agreement contracts. The wide variety of interstate private line services was then provided by AT&T jointly with the local concurring and connecting exchange companies. Other Common Carriers (OCCs) have since 1974 obtained channels under BOC and AT&T tariffs filed pursuant to the Docket No. 20099 Settlement Agreement.[1] The OCCs then provided service to their own customers by resale of those channels and use of their own networks, at terms specified in their tariffs.

3. With the adoption of the access charge plan [2] and the break up of the Bell System, substantial changes in these mechanisms became inevitable. Under the Modification of Final Judgment (MFJ),[3] the BOCs are required to offer special access to all carriers, AT&T and the OCCs alike, at the same rates and on the same terms. This approach coincided with our own policy goals of full and fair competition in interstate services. However, implementing this approach presented formidable problems. All local carriers were required for the first time to develop general tariffs with specific rate structures, rates, and regulations for all carriers as well as end users.

4. The BOCs faced the additional burdens of dividing their facilities with AT&T, and determining the costs of the facilities they retained. Moreover, both the local carriers and AT&T asserted that with the end of their joint provision of end-to-end interstate private line service, local rates would generally have to be increased substantially because long haul channels had historically been overpriced, and had in effect subsidized short haul, local channels. Pricing of local channels at cost would, under this view, require rate increases which would be offset in some degree by lower long haul rates.

5. The massive overhaul of local channel rates and rate structures, occurring at the same time as the implementation of switched access tariffs, clearly presented substantial issues of lawfulness and reasonableness, as the Commission pointed out in its order establishing this investigation. The first tariffs wholly revamped the rate structures for these channels and proposed substantial rate increases. These rate changes varied widely for different types of private line networks. The rates proposed by individual carriers also varied substantially. Since that time, our efforts have been directed to balancing a number of objectives, principally ensuring that the initial special access tariff structure and rates are generally workable and reasonable, while recognizing that we could not expect that tariffs filed by so many new carriers to implement such major and uncertain changes could be expected to be perfect or perfectly supported.

6. In this ongoing 16-month investigation, we found unacceptable the first two sets of special access filings, concluding that the proposed structures contained basic problems and that gaps and deficiencies in the support information raised continuing doubts concerning the rate levels. However, we also concluded in the *November 8 Order* [4] that significant progress had been made in both areas. In particular, we noted that a filing by the National Exchange Carrier Association (NECA) of a revised illustrative tariff with corrections and updates of the cost support information appeared to be a substantial improvement over the earlier tariffs. We accordingly directed the filing carriers to file new special access tariffs and recommended that they use the revised NECA structure and cost support information filed in March, with adjustments to reflet that structural revisions and the needed correction of errors in that material. In geneal, our intent was to narrow the remaining issues in order to achieve workable, effective tariffs. As part of this approach, we encouraged carriers not to propose other changes, although NECA for one asserted that a further 13 percent increase in the revenue requirement was warranted.

7. The *November 8 Order* also sought to make progress toward ending the disparate ratres charged to AT&T and the OCCs in an equitable manner. We recognized that the local companies had adequately demonstrated that some rate increase was justified over the low Docket No. 20099 rates paid by the OCCs and that AT&T was paying significantly higher charges under its interim compensation arrangements. At the same time, we believed that abrupt, massive rate increases to the OCCs might threaten the viability of the services they offered to the public and the effetive development of a competitive communications marketplace. Based on these considerations, and in response to a proposal by the Ameritech companies [5] which was supported in part by many major OCCs and other commenters, we directed that the local carriers increase rates under the Docket No. 20099 tariffs by 20 percent, and tentatively concluded that any further OCC rate increases should be phased in over a 12-month period. We requested comments on this plan, and on the revised tariffs.

8. The 20 percent increase become effective on November 13. On December 3 the local carriers filed revised special access tariffs. In general, these tariffs follow the course recommended in the *November 9 Order*, using the rate structure proposed by NECA and proposing rates based on the March cost

[1] *See* American Telephone and Telegraph Company, 47 FCC 2d 660 (1974), 52 FCC 2d 727 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C. Cir. 1976).

[2] MTS and WATS Market Structure, CC Docket No. 78-72, 93 FCC 2d 241 (1983), *recon.*, 97 FCC 2d 682 (1983), *further recon.*, 97 FCC 2d 834 (1984), *aff'd in principal part*, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir 1984), *pet'n for cert. filed*, 53 U.S.L.W. 3070 (U.S. July 18, 1984) (No. 84-95).

[3] United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[4] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part I, FCC 84-524, released November 9, 1984 (*November 9 Order*).

[5] Ameritech Petition to Expedite Transition to Special Access Tariff Rates, filed August 8, 1984.

support figures, with corrections and adjustments to reflect Commission directives, but without rate increases.

9. In the present order, we conclude that the rate structures and tariff regulations contained in the revised NECA tariff and those filed by other carriers are generally acceptable as a basis for implementing effective special access rates, although our review indicates that certain further specific modifications are necessary. As noted in paragraph 1, *suprea,* we will address cost and rate issues in a subsequent order and, in that order, we will include specific instructions regarding the filing of those further modifications. Our goal is to permit these tariffs to become effective at the earliest practicable date. This order concludes that our investigation of these tariffs has reached a point where implementation of the tariffs should begin and that any later fine tuning or corrections should be based on our monitoring of the operation of the tariffs in practice and further investigation.

II. Background and Procedural History

10. The special access tariffs pending before the Commission were filed by NECA and local exchange carriers in response to the *November 9 Order.* These tariffs are the third set of special access tariffs filed by the local exchange carriers.[6]

11. Special access services include segments of interstate or international private lines, ranging from telegraph grade and voice grade to high capacity analog and digital channels. Under the Commission's access charge plan a variety of services and facilities are included in special access so that the divested BOCs may offer those services and facilities under access tariffs, as mandated by the MFJ.

12. As we have noted in our previous special access orders, with limited exceptions, neither the access charge plan nor the MFJ requires changes in the rates, rate structure or provisions currently applied to special access services. The BOC tariffs must, however, implement the MFJ with respect to local access and transport area (LATA) boundaries. The MFJ also requires that the BOC tariffs offer services to AT&T and other interexchange carriers under the same terms. Local exchange carrier tariffs must also apply the special access surcharge developed by the Commission to recover a reasonable contribution to the interstate revenue requirement for unmeasured access service tariffic which "leaks" into the local exchange by means of private branch exchanges (PBXs) or other switching devices.

13. In September and October 1983, the exchange carriers filed special access tariff provisions to become effective January 1, 1984. After an initial review of the access and divestiture-related tariffs revealed significant issues of lawfulness, the Commission suspended the tariffs until April 3, 1984, and initiated an investigation.[7] In its lengthy February 17 and March 7, 1984 *ECA and Non-ECA Tariff Orders,*[8] the Commission identified special access as an area of primary concern. The Commission found that: (1) The proposed special access rate structure was unreasonable, discriminatory, and violative of Commission decisions and policies; (2) the proposed special access nonrecurring charges were unlawful; (3) the Commission had inadequate information upon which to judge the overall allocation of costs to special access; and (4) additional information was necessary to understand the bases and justification for the proposed rate changes. Pursuant to the *ECA and Non-ECA Tariff Orders,* NECA was directed to file a revised access tariff by March 15, 1984 and the "non-NECA" local exchange carriers (BOCs and independent telephone companies which are not participating in all the NECA "pools") were directed to file revised access tariffs no later than March 19, 1984. By letter dated February 24, 1984, the exchange carriers were asked to provide information and justification regarding the development of special access rates.

14. In March 1984, NECA and most of the exchange carriers filed revised access tariffs which were scheduled to become effective April 3, 1984.[9] Two dozen parties petitioned the Commission for reconsideration or stay of the proposed expedited schedule for filing and review of the revised special access tariffs and, in its March 27 *Access Tariff Order,*[10] the Commission deferred the revised access tariffs until June 13, 1984. In that order the Commission also established a bifurcated pleading cycle for special and switched access. The Commission requested interested parties to file comments on the special access tariff provisions by April 16, 1984, and required replies by April 30, 1984. The same pleading cycle was established by the Commission in its *March 28 Order*[11] for comments on whether the Docket No. 20099 Settlement Agreement continued to be in the public interest.

15. In its *May 15 Order,*[12] the Commission allowed the switched access tariffs to become effective on May 25, 1984, but noted that it was continuing its review of the special access tariff provisions. The Commission concluded in the *May 15 Order* that it would prescribe interim special access arrangements only if the carriers could not work out such arrangements themselves. On May 23, AT&T petitioned the Commission to establish interim special access tariffs to replace the existing interim arrangements which were due to expire May 25, 1984. Despite finding serious shortcomings in AT&T's petition and its proposals, on May 25 the Common Carrier Bureau prescribed adjustments to the existing interim contractual arrangements between AT&T and the exchange carriers to avoid any possibility that service could lapse because of disagreement as to the rates to be charged.[13] The *May 25 Order* also clarified that the application of the special access surcharge would be deferred temporarily. On June 26, 1984, AT&T filed an application for review of the *May 25 Order* arguing that it is unjustly discriminatory to require AT&T to pay more for special access facilities than the OCCs pay. As discussed below, on October 19, 1984, Pacific Bell and Nevada Bell petitioned the Commission to maintain the interim special access arrangements until special access tariffs become effective.

16. The Commission's continued scrutiny of the special access filings and

[6] Lists of the filing carriers and the corresponding transmittal and tariff numbers appear in Appendix A.

[7] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, FCC 83-470, released October 19, 1983 (*October 19 Order*), *recon. denied,* FCC 83-568, released December 29, 1983.

[8] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 84-51, released February 17, 1984 (*ECA Tariff Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 2802, March 7, 1984 (*Non-ECA Tariff Order*).

[9] Pursuant to the Common Carrier Bureau's order in Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 2964, released March 16, 1984, six telephone companies filed after the March 19 deadline for non-NECA carriers.

[10] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 84-104, released March 27, 1984 (*March 27 Order*).

[11] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, and MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84-106, released March 28, 1984 at n.8 (*March 28 Order*).

[12] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, and MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84-201, released May 15, 1984.

[13] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Mimeo No. 4453, released May 25, 1984 (*May 25 Order*).

comments disclosed that although the tariffs had been greatly revised, significant questions of lawfulness remained: the proposed rate structures were complex and not clearly set forth; the rate development appeared to have gaps and relied on the same cost data and projections found deficient in earlier orders; and many commenters asserted that the revised tariffs would impose even greater rate increases than the earlier, unlawful provisions. Accordingly, on June 8, 1984, the Common Carrier Bureau suspended the effective date of the special access tariff provisions for five months until November 13, 1984, "to consider in a consolidated fashion the industry-wide effects of the various rate structures proposed." [14] The Bureau concluded that suspension was necessary to enable it to address the significant questions of lawfulness raised by the commenters and its own review. NECA was also requested to submit a proposal to the Commission to implement the special access surcharge independently of other special access tariff provisions.

17. NECA filed proposed special access surcharge tariff provisions on June 26, to become effective August 10, 1984. The Common Carrier Bureau identified a number of deficiencies with the proposed implementation of the surcharge and in an August 10 order deferred the effective date until August 25 and required specific amendments to the tariff provisions.[15] On August 17, NECA filed revised special access surcharge provisions which became effective August 25. In an order adopted August 24 and released September 5, the Bureau denied a petition for reconsideration of its Augsut 10 special access surcharge order and denied petitions to reject or suspend NECA's August 17 surcharge proposals.[16] Because all exchange carriers concur in Section 3 of ECA Tariff F.C.C. No. 1, the NECA special access surcharge provisions apply to all exchange carriers.

18. On August 9, 1984, the Ameritech Operating Companies filed a petition with the Commission which proposed a phase-in of special access rates. Comments on Ameritech's proposal were filed September 5 and replies were filed September 12. In a letter dated September 12, 1984, from the Chief of the Common Carrier Bureau, NECA was asked to provide further information regarding its proposed special access rates and rate structure. On October 10, 1984, NECA responded to the Bureau's letter and in the accompanying illustrative tariff pages it proposed a new special access rate structure and new rate levels.

19. In its *November 9 Order*, the Commission found the special access tariff provisions scheduled to become effective November 13, 1984, unlawful because the proposed rates and rate structures were unreasonable and unsupported. The Commission found the exchange carriers had not met their burden of proof pursuant to Section 204(a) of the Communications Act, 47 U.S.C. 204(a). The *November 9 Order* also required the exchange carriers to withdraw the "copycat" private line tariffs and concurrences in AT&T's private line tariffs because they would duplicate and conflict with the special access tariffs. Further, in response to the Ameritech petition for a phase-in of special access tariff rates, the Commission required carriers to file tariffs, or amend their contractual arrangements, to estalish rates for OCCs which reflected a 20 percent increase over the Docket No. 20099 rates until special access tariffs become effective. The Commission proposed that once special access tariffs become effective, the OCCs would be allowed a 50 percent discount from the tariff rates for six months. For the next six months, the OCCs would pay 75 percent of the tariff rates. Subsequently, OCCs would pay full special access tariff rates. Only OCC circuits activated on or before November 8, 1984, would be phased-in under the proposal; new orders would be priced at the full tariff rate. In the *November 9 Order* the Commission also denied AT&T's application for review of the *May 25 Order*.

20. Thus, the Commission directed the exchange carriers to file revised special access tariffs which complied with the policy determinations and specific instructions of the *November 9 Order* no later than December 3, 1984, to become effective Janaury 17, 1985. The *November 9 Order* also stated that the illustrative tariff filing made by NECA on October 10, 1984, seemed to remedy at least the major defects of the special access tariffs.

21. On November 26, 1984, the Common Carrier Bureau dismissed as moot a motion by the American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc. (the Networks) to establish a pleading cycle to allow interested parties to respond to the October 10, 1984, illustrative special access rate structure and rate levels submitted by NECA.[17] The Bureau pointed out that interested parties would be able to comment on the special access tariffs to be filed on December 3, 1984. Subsequently, the Bureau granted NECA's petition of November 29, 1984, for a limited waiver of the *November 9 Order* with respect to the required acceptance testing parameters applied to voice grade services.[18]

22. On December 3, 1984, 62 special access tariffs and about 5,500 tariff pages were filed by NECA and the local exchange carriers. Together with supporting materials, over 31 pages were filed in the third special access tariff filing and NECA alone filed approximately 9,000 pages. Forty-five different sets of special access rates were proposed.

23. The comment period established by the *November 9 Order* for the December 3 special access tariffs was extended in response to motions for extension from numerous parties.[19] The due date for comments was extended from December 18, 1984 to January 7, 1985; replies were due January 22, 1985, instead of December 28, 1985. In a letter dated January 4, 1985, from the acting Chief of the Tariff Division, the effective date of the special access tariffs was deferred from January 17 to February 15, 1985. The effective date was further deferred until March 3, 1985 in a Bureau order released February 11, 1985.[20] A list of parties who filed initial comments on the December 3 special access tariffs appears in Appendix A; a list of reply comments also appears in Appendix A of this order.

III. Pending Special Access Tariffs

24. Although they represent the third round of special access filings, the tariffs filed on December 3, 1984 do not satisfy all the concerns of the Commission in this proceeding. We believe, however, that with the modifications required by this order, and with the actions we will take in the subsequent cost order, the proposed

[14] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 4741, released June 8, 1984 (*June 8 Order*).

[15] National Exchange Carrier Association (Transmittal No. 11), Mimeo No. 5955, released August 10, 1984.

[16] National Exchange Carrier Association (Transmittal No. 15), Mimeo No. 6379, released September 5, 1984.

[17] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 1003, released November 26, 1984.

[18] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 1135, released December 3, 1984.

[19] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and National Exchange Carrier Association (Transmittal No. 31), Mimeo No. 1398, released December 14, 1984.

[20] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and II, Part I, Mimeo No. 2503, released February 11, 1985.

tariffs will be workable, albeit not perfect. Further delay of the tariffs, we have decided, would be of little value. Our investigation of special access, initiated October 19, 1983, has already lasted 16 months and we have achieved as much as we can without actual operating results. With some experience, we will be better able to determine whether further refinements are required to make the tariffs comply fully with applicable rules and statutory requirements. We will continue our investigation while the tariffs are in place and persist in improving the tariffs where needed.

25. In their pending special access tariffs, NECA and most of the exchange carriers would establish three rate elements and nine channel types. Generally, the tariffs contain a channel termination charge "for the communications path between a customer designated premises and the serving wire center of that premises." *See, e.g.*, NECA Tariff No. 1, section 7.1.2(A).[21] Included as part of the channel termination charge is a standard channel interface arrangement. One channel termination charge applies per customer premises and the charge applies even if the customer designated premises and the serving wire center are co-located in a telephone company building. The second rate category generally proposed in the pending tariffs is the channel mileage charge. The channel mileage element provides for the transmission facilities between (1) the serving wire centers associated with two customer designated premises, (2) a serving wire center associated with a customer designated premises and a telephone company hub, or (3) two telephone company hubs. Channel mileage charges are most frequently assessed as a flat rate per designated mileage band plus a per mile rate. *See, e.g.*, NECA Tariff No. 1, section 7.1.2(C); *cf.* Rochester Telephone Corporation Tariff F.C.C. No. 1, sections 7.5(D), 7.5.2(B), which proposes a uniform $.90 per quarter mile charge. The third element proposed in most of the tariffs, optional features and functions, provides for quality or utility-improving features and functions obtained to meet specific communications requirements. *See, e.g.*, NECA Tariff F.C.C. No. 1, section 7.1.2(E). Nine special access channel types are also proposed by most of the exchange carriers: (1) Metallic, (2) telegraph grade, (3) voice grade, (4) program audio, (5) video, (6) wideband analog, (7) wideband data, (8) digital data, and (9) high capacity. *See, e.g.*, NECA Tariff F.C.C. No. 1, section 7.1.1.

A. Rate Stucture Issues

26. The applicable standards for evaluating the proposed structures are the private line guidelines adopted by the Commission in Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, FCC 84-147, released April 24, 1984. Absent a justification for departure from them and a showing that the tariff is just, reasonable and nondiscriminatory, those guidelines, which are codified in section 61.40 of the Commission's Rules, 47 CFR 61.40, require a consistent, building block tariff. The guidelines set forth five general standards for private line and special access tariffs:

1. Rate structures for the same or comparable services should be integrated.

2. Rate structures for the same or comparable services should be consistent with one another.

3. Rate elements should be selected to reflect market demand, pricing convenience for the carrier and customers, and cost characteristics; a rate element which appears separately in one rate structure should appear separately in all other rate structures.

4. Rate elements should be consistently defined with respect to underlying service functions and should be consistently employed through all rate structures.

5. Rate structures should be simple and easy to understand.

27. Generally, the rate structures proposed are a marked improvement over the two previous special access filings and comply with the private line guidelines and the Commission's directives in the February 17, 1984 *ECA Access Tariff Order* and the *November 9, Order*, regarding the special access structure. Some problems still remain, however, and in the discussion below we address the issues which must be resolved before the tariffs become effective and those which will be subject to continued investigation after the tariffs are in place.

1. Multipoint Access Services

28. Several users of multipoint services criticize the proposed special access tariff structures. A fundamental problem raised by the commenters is that the tariffs do not list the locations of serving wire centers or hubs where bridging is performed. *E.g.*, Ad Hoc comments at 30; AFSA comments at 10; BRE comments at 9-10. Group W comments at 8-10."Bridging" is an optional feature or function performed at designated serving wire centers, called hubs, and is used to connect (1) three or more customer designated premises in a multipoint arrangement, or (2) full-time video or program audio services with part-time or occasional video or program audio services. *See, e.g.*, NECA Tariff F.C.C. No. 1, section 7.1.2(E). The location of hubs and all serving wire centers is crucial in calculating the rate applicable to a special access service because channel mileage charges are assessed according to the distance between serving wire centers, including hubs. Thus, without the vertical and horizontal (V & H) coordinates of the serving wire centers and hubs, a customer cannot accurately determine the applicable rates. In its reply comments, NECA states that the exchange carriers have identified hub locations for audio program and digital data services and that specific bridging hub location information will be incorporated in NECA F.C.C. Tariff No. 2.

29. Ad Hoc contends that all hub locations should be published in the tariffs rather than in a separate document in order to prevent exchange carriers from altering the locations without satisfying Part 61 of the Commission's Rules regarding tariff filings. Without Commission scrutiny under Part 61, Ad hoc argues, the local exchange carriers "would be free to gradually eliminate the locations where certain bridging functions are offered or change the facility hubs for multiplexing without undergoing the normal process for effecting tariff changes that alter costs of telecommunications services." Ad Hoc comments at 31.

30. We find that the omission of a tariff or other listing of all serving wire center and hub locations is an unjustified violation of the requirement that a tariff be clear and complete, for the reasons cited by Ad Hoc. Customers should be able to determine their rates from the tariff. Private Line Guideline Number 5, 47 CFR 61.40(a)(5), and §§ 61.55 and 61.74 of the Commission's Rules 47 CFR 61.55 and 61.74. Therefore, the locations of all hubs and other

[21] This structure is used by NECA, the BOCs, and some of the major independent carriers. Some carriers do have different structures, however. For example, the GTE companies do not use rate bands but a rate per airline mile. Although we find the NECA structure acceptable, we recognize that differing conditions and facilities could warrant different structures. We also do not wish to impose unnecessary burdens upon smaller carriers. For these reasons, we will not prescribe specific structures for other carriers, but will examine any issues presented by these structures in our continuing investigation. We will discuss the cost support and rate levels filed by these carriers in our forthcoming cost order.

serving wire centers must be published before the tariffs will be permitted to become effective. Exchange carriers, such as Rochester, which might not have any hubs because they do not have any multipoint customers, may so certify. We are also persuaded by Ad Hoc's arguments regarding the listing of hub locations in the tariffs. Absent compelling justification for a waiver of Section 61.74 of the Commission's Rules, 47 CFR 61.74, which requires tariffs to be self-contained, complete documents, we require that the hub and other serving wire center locations be listed in tariffs.

31. Multipoint users also criticize NECA's proposed tariff because it limits multipoint service to a maximum of three mid-links in tandem. AFSA comments at 8–9; JCP comments at 5–6. A mid-link is a channel between hubs where bridging is performed. NECA Tariff F.C.C. No. 1, 7.1.3(B). The commenters argue that this restriction is illogical and has not been justified by NECA. In its reply NECA gives no specific technical reasons to justify the limitation, but alludes instead to unidentified "design, installation, and maintenance problems that could affect the overall quality of service." NECA reply at Appendix A. NECA also states that the limit of three mid-links "will help to control carrier expenses, which otherwise would be reflected in the overall revenue requirements that must be recovered through special access charges." *Id.* NECA's reply does not adequately explain or justify the proposed restrictions. We find the restrictions are unreasonable under Section 201(b) of the Communications Act, 47 U.S.C. 201(b), and therefore require that NECA and any exchange carriers that have similar restrictions remove them. The exchange carriers may, however, include advisory language in their tariffs stating that more than three mid-links in tandem may degrade the quality of the service.

32. SATNET alleges that NECA's rate structure discriminates against multipoint users because "exorbitant" nonrecurring charges are imposed on changes in circuit design. SATNET comments at 16–18. SATNET also claims that the provision governing service rearrangement would discourage gradual expansion of service and is onerous in connection with multipoint circuits because each additional termination point is treated as a cancellation of the existing service and the installation of an entirely new service, with nonrecurring charges imposed for each point of termination on the multipoint service. SATNET comments at 16–18. NECA replies that SATNET has misinterpreted the service rearrangement tariff provision, section 7.4.1(C)(3). NECA explains that the nonrecurring charge applies only to the added termination, not to each existing leg of the configuration. SATNET's concern, therefore, appears to be unfounded. In its reply, NECA indicates its willingness to amend the language of Section 7.4.1(C)(3) to clarify that an addition to a multipoint service is not classified as a service rearrangement, and we require NECA to do so. Pursuant to the Commission's Rules, tariffs must be clear. Sections 61.40, 61.55 of the Commission's rules, 47 CFR 61.40, 61.55.

33. Group W also raises two points regarding the proposed multipoint rate structure. First, Group W asserts that although it is more efficient to link a single studio to numerous subscriber premises with multipoint access than with point-to-point access, the proposed structure is unlawfully discriminatory because it makes multipoint service more expensive than point-to-point service in many cases. Group W comments at 11–14. Second, Group W contends that the proposed "per amplifier" bridging charges proposed by NECA and several BOCs create "disjointed and irrational results." Group W comments at 11. The "per port" bridging charge proposed by Bell of Pennsylvania "would be a much more sensible pricing scheme for all exchange carriers." *Id.*

34. With respect to the first argument, it is not necessarily the case that multipoint layouts are always more economical than point-to-point, because the economies depend upon the relative costs of transmission and bridging. But Group W does appear to raise a valid point that the relative prices of multipoint and point-to-point networks for different numbers of channels may be anomalous. Therefore, we will revisit this issue in our continuing investigation of special access. Group W's remarks regarding the "per amplifier" bridging charges prompted NECA, Pacific Bell and Mountain Bell to agree to amend their tariffs to impose "per port" charges. NECA reply at Appendix A; Pacific Bell reply at Appendix; Mountain Bell reply at 27. Other carriers preferred to retain the "per amplifier" charge and argue that it better reflects costs. Ameritech reply at 11 n.31. We request that carriers reexamine these issues and address them in the next annual access filing. We require a per port charge in the revised filings and will revisit the issue in our continuing investigation.[22]

[22] Dow Jones urges the Commission to suspend NECA's special access tariff until circuit configuration information is provided to interested parties. Dow Jones contends that the Commission has insufficient information regarding the rate impact on multipoint customers because only AT&T has complete circuit data for private line users such as Dow Jones. Dow Jones comments at 5–12. The contentions of Dow Jones do not provide a basis for suspension of NECA's tariff. Reasonable sturctures which fairly assign costs, and the support for those costs, and not simply rate effect, are central to our evaluation of proposed rates and our determinations of reasonableness. See *November 9 Order* at paras. 81–82. Moreover, we see no basis for suspending NECA and other LEC tariffs because AT&T has declined to provide information to Dow Jones.

2. Video Service

35. A number of parties [the Networks, HTN, TBS, INTV and NAB] raise objections to provisions affecting video transmission including the proposed rate structure, rate levels and elimination of "topping." These commenters assert that by basing video charges on the location of associated serving wire centers, the proposed rate structure discriminates among similarly situated customers.[23] They contend that because the location of such serving wire centers is dictated by the distribution of telephones in a given area, it is unreasonable to apply the rate structure used for voice grade service to video service. Moreover, they argue that this rate structure bears no relationship to the actual routing or cost characteristics of video service since video channels use microwave links and dedicated cable facilities which do not transit the same wire centers as voice channels but must be routed through television operating centers (TOC). In this regard, several parties note that the Commission's private line guidelines only require integrated and consistent rate structures for the same or comparable services. Hence, they conclude, because video and voice grade services are not the same or comparable, different rate structures are justified.[24]

36. The commenters also allege that the proposed rate structure fails to recognize the functional and cost differences between intraexchange and interexchange circuits. They argue that the proposed rates do not reflect the fact

[23] For example, the Networks point out that under NECA's tariff a full-time television channel connecting two premises which are an airline distance of 24 miles apart would be priced at $648.36 if both terminating point were associated with the same serving wire center; the rate would be 11 times as much, however, if the terminating points were associated with different serving offices 24 miles or more apart.

[24] The Networks note that only a selected number of wire centers have the capability to provide television service and that cable and microwave links are typically routed through one TOC rather than two wire centers serving the customers' designated premises and interexchange carrier, respectively.

that long haul, interexchange circuits are provided predominantly over microwave facilities, the cost of which tend not to vary with distance, whereas short haul, intraexchange circuits use both microwave and cable facilities, depending on the location of the customer designated premises and the length of the haul.[25] Finally, insofar as the rate structure is concerned, the Networks urge us to reject the exchange carriers' proposal to offer part-time, long haul channels on a daily rather than hourly basis because it would lead to inefficient usage by providing an incentive not to release channels to other customers. They also claim it would give the exchange carriers an excuse to construct additional part-time, long haul video channels which would add unnecessarily to the television rate base and the users' costs.

37. The Networks and HTN claim that NECA's proposed revenue requirement of $49 million [26] for video service is excessive because it is based on grossly inflated television service investment in plant. They allege that less than one-half of the claimed investment in plant allocated to the television service is actually needed or used to provide video program transmission service. More specifically, they state that $63.7 million of $108 million assigned to investment for short haul circuits is allocated either to video plant which should have been retired years ago or to plant which has never been used to provide video services. This $63.7 million breaks down as follows: $12.9 million allocated to unassigned cable previously used for Local Channel Service; $29.2 million to unassigned polyethylene shielded video (PSV) cable pairs; $5.7 million to equipment which AT&T stated it would retire in 1976, but for which no reductions in equipment and investment have been reported; $11.4 million to unexplained, post-divestiture investment; and $4.5 million to land, buildings and miscellaneous items associated with the above investment. The Networks and HTN request that the Commission disallow and/or require the carriers to reassign this $63.7 million. Furthermore, the Networks claim that expenses assigned to video are likewise excessive because they are based primarily upon the allegedly overstated amount of investment allocated to the television rate base. The Networks assert that they should not have to pay for operation and maintenance expenses attributed to plant that is not actually being used for video service.

38. Most of the exchange carriers have proposed to eliminate "topping." [27] HTN, TBS, INTV and the Networks contend that the exchange carriers have failed to justify the elimination of this provision as required by our *November 9 Order*. The justification proffered by NECA is that "topping" is arbitrary, that it does not reflect the cost of providing video service, that its elimination will not result in any shortage of full-time facilities which would force users to acquire more expensive part-time service, and that if reinstated, part-time rates would have to increase in order to reflect more accurately actual part-time usage. The commenters raise a number of arguments to refute this justification. First, they state that "topping" is not arbitrary, but rather prevents the discriminatory rate treatment of like full-time and part-time services. Second, INTV asserts that "topping" is related to the cost of providing service since the cost of the two like services is the same and should therefore be priced the same on a monthly basis. In this regard, TBS notes that although the costs associated with providing part-time service (*e.g.*, administrative, construction and disassembly, and equipment) may exceed those for full-time service, these costs appear to be nonrecurring in nature and should not be recovered on a daily usage basis. Third, the commenters argue that carriers would in fact exercise their discretion to classify available inventory as part-time so as to contrive shortages of full-time facilities in order to collect higher part-time rates. Fourth, the elimination of "topping," according to TBS and the Networks, will encourage inefficient use of full-time facilities since customers needing facilities for more than two days will have an incentive to order and hold a full-time channel for an entire month, even though the facilities may be idle at times. The Networks add that the carriers may use this as an excuse to construct additional facilities which would not be needed if the existing facilities were used more efficiently. Finally, HTN and INTV point out that another inefficiency that would flow from a dramatic increase in part-time rates and a corresponding shortage of full-time facilities would be the stifling of recurring part-time users' ability to engage in arbitrage and thereby satisfy in the most economical way the transmission requirements of various users having short term requirements.

39. We find that the proposed rate structure as applied to video service does not warrant suspension or rejection. We will, however, look into this issue further as part of our overall investigation of special access. The Commission has said previously that it would consider a variety of structures that carriers propose. The fact that the one proposed here differs from the rate structure in AT&T Tariff No. 260 does not make the special access structure unreasonable. NECA points out that such a comparison fails to recognize the differences between long haul facilities used by interexchange carriers and interoffice facilities used for video access services. The latter, it notes, are often short haul low capacity radio and cable facilities, even where the distances exceed 25 miles, whereas the former are usually comprised of high capacity facilities such as TD2.[28] A mileage sensitive rate structure seems reasonable since the composite of facilities used for video channels gives characteristics of both microwave and cable. Given a distance sensitive rate structure, it follows that mileage must be measured from some point. Use of serving wire centers for this purpose does not appear unreasonable since it does not purport to reflect actual physical routing for individual services. It is simply a surrogate for exact mileage calculations made necessary by the practicialities involved.[29]

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[25] According to the Networks, video cable is normally not used beyond eight to 10 miles. Mobile microwave facilities, however, are also used at these short distances, particularly for part-time channels. Under AT&T Tariff F.C.C. No. 260, a channel that is 25 miles or less is considered to be a local channel or short haul circuit. This circuit length corresponds approximately to the range of a single hop microwave transmission. Hence, Tariff No. 260 prices local channels at a flat rate as opposed to a mileage-sensitive basis for interexchange channels. The proposed rate structure in the NECA tariff is mileage-sensitive for all distance.

[26] The Networks point out that of this $49 million, $39 million is applicable to circuits which are comparable to local channels formerly provided by AT&T for annual revenues of $17 million in 1982.

[27] "Topping" is a mechanism, adopted by negotiated agreement in the mid 1970's, which limits the total monthly charges payable by a part-time customer to the amount for monthly full-time service.

[28] In this regard, NECA also disputes the Networks' contention that the absence of hourly rates for long haul channels promotes inefficient part-time usage. It asserts that video access is an end link comprised of facilities which are not as easily rearranged as long haul high capacity facilities used for interexchange channels, and thus hourly channel mileage charges would not be practical. We agree that there is little basis for requiring hourly rates for long haul channels. Moreover, to the extent that this rate structure reclassifies some interexchange channels as local, the absence of hourly rates does not appear to raise a significant problem.

[29] It would appear that the main available alternative would be to measure all mileage by hand, by measuring the distance between two points on a local area map.

40. The commenters contend that only those wire centers actually used in routing video services should be included in the rate structure, This argument appears to be based on two assumptions. First, by using only those wire centers which have been designated as TOCs, investment associated with local television plant neither in use nor practically useful would not be included in the video service category revenue requirement. This assumption is incorrect, however, since the use of wire centers as surrogates for mileage does not impute additional costs to the service classification that would not otherwise be assigned. Second, the argument assumes that by measuring channel mielage only between TOCs, as opposed to the nearest wire centers, channel mileage charges would be eliminated in many cases since the area subtended by a TOC would often be larger than those being served by wire centers. While this assumption may be correct to a certain extent, two consequences would flow from moving to such a structure. First, the revenue requirement for the service as a whole would have to be reallocated between channel mileage and station connections, possibly increasing the latter by a substantial amount. Second, such a structure would still not necessarily correspond to the way service is provided. Even though it may be necessary to route a video channel to a TOC, this does not necessarily mean, so far as we are able to determine, that the transmission channel is actually routed that way. Rather, it may transit intermediate wire centers en route to the TOC.[30] Any additional links (exchange trunks) connecting a serving wire center to a TOC would be reflected in the costs underlying the channel mileage rate element.

41. The Commission's private line guidelines state that rate structures need only be integrated and consistent for the same or comparable services. There is some evidence in the record to indicate that video services may be routed differently than voice grade services. It is not clear, however, precisely to what extent such differences exist and whether they are enough to warrant a different rate structure. Ameritech argues, for example, that a flat or distance insensitive rate structure would not be appropriate in its operating territories since microwave facilities are seldom used in the provision of full-time television service and cable facilities are used about 50 percent of the time for part-time service.[31] On the basis of the record before us we do not believe that prescription of a different rate structure for video service is warranted at the present time. Nevertheless, the record does raise a factual question regarding the routing of video services which warrants further investigation.[32] We will consider this issue in our continuing investigation.

42. As to NECA's revenue requirement and proposed rate levels, we note as a preliminary matter that any comparison between NECA's rates and AT&T's 1982 local channel rates is irrelevant to the reasonableness of the rates proposed in this filing. The proposed rates must be judged independently on the basis of the cost support data now before us.[33] We do believe, however, that the Networks and HTN raise a legitimate concern with respect to the full inclusion of investment in unassigned PSV pairs in the video rate base. In the past, we have allowed the inclusion of this investment because it seemed reasonable and prudent at the time and was intended solely for video service.[34] PSV pairs were included in composite cables along with voice pairs at a price which was far lower than if separate video-only cables were used. This use of composite cable, however, required long-term projections of video demand which, perhaps understandably, resulted in idle facilities in many cases. Overall, video customers may nevertheless have benefitted from this approach. However, these facilities can now be applied to other uses, including digital data transmission. By including all unassigned facilities in the video category, we would appear to be discouraging local carriers from applying these facilities to such uses. The carriers can recover the full return from video users already, and would incur new costs with greater risk by developing other uses. It thus appears that continued full allowance of these costs encourages inefficiency and, possibly, unnecessary investment in other facilities.

43. Given these circumstances, it appears to us reasonable, as an initial approach, to partially suspend for the five month statutory period half of the total unassigned PSV investment to be recovered from video.[35] To a large extent, our allowance of only a partial amount of this investment as part of the justification for the increased local channel rates is because, despite their claims to the contrary, carriers have generally made no evident effort to find alternative uses for these facilities. In response to our inquiry in Docket No. 21499, AT&T and the BOCs admitted that PSV cable pairs are useful for local distribution of group/supergroup channels in addition to local origination of video programming.[36] As pointed out by the Networks, however, the BOCs did not comply with our directive to provide a list of locations where the PSV cable pairs could be used to provide group/supergroup channels, claiming that the compilation of such an inventory would be too costly. To the extent that such other uses do exist, however, it is unfair to allocate this entire investment to the television rate base when it is concededly of no use to video service ratepayers.[37] It seems likely that regulatory incentives, rather than a lack of technological ingenuity, are behind the failure to develop alternative uses. Inasmuch as television is a relatively inelastic service, carriers have an incentive to continue loading PSV investment into the video service category rather than developing other uses. A partial allowance of 50 percent seems a reasonable interim approach to this problem during the period of the investigation. It provides a balance between the likelihood that these facilities can be used for other high capacity services and the fact that PSV cable pairs were included in composite cables solely to serve video users.

44. Carriers have a burden under the Communications Act to justify proposed

[30] It seems reasonable to make this assumption inasmuch as the same cables used to carry voice grade wire pairs are frequently used to carry video cable pairs, so that the initial routing would be the same in either case.

[31] Ameritech states that Michigan Bell is its only operating company which exclusively utilizes microwave facilities for a video service (interoffice) and that its tariff offers such service at a flat rate.

[32] The degree to which other high capacity services may not transit serving wire centers used for voice grade services will also have to be considered in connection with this question.

[33] One particular video service rate which must be found unreasonable and unlawful because it is completely out of line with the charge proposed by other carriers, however, is the daily rate of $5,972.56 per point of termination proposed by Pacific Northwest Bell. In the *November 9 Order* the Commission said it would carefully scrutinize the justification for any extremely high rates. This particular rate is wholly unjustified. We suggest that PNB review its rate development study to see if this excessive rate is attributable to some sort of error. In the interim, PNB must retain its present rate until a fully cost supported rate is filed.

[34] American Telephone and Telegraph Company, 68 FCC 2d 1656, 1677 (1982).

[35] *See* 47 U.S.C. § 204(a). Section 204(a) states in pertinent part, that the Commission may initiate a hearing concerning the lawfulness of any new or revised charge, classification, regulation or practice and pending such hearing "may suspend the operation of such charge classification, regulation, or practice, in whole or in part. . . ."

[36] Comments of Bell Operating Companies, Docket No. 21499, August 15, 1983.

[37] *See* AT&T Transmittal No. 13663, Vol. 1 at 1-5 to 1-7, (February 13, 1981). AT&T noted that "there is no foreseeable use for these facilities for television * * *."

rate increases. It would appear that the carriers may have failed to justify that part of their proposed increase in video rates attributable to half their investment in unassigned PSV cable pairs. During the suspension period, we will further investigate the allocation of PSV cable costs and, if appropriate, will determine a more accurate allocation of this investment.[38]

45. The Networks' and HTN's challenge of $5.7 million in central office equipment (COE) which was supposed to have been retired appears to be adequately rebutted by NECA's reply. NECA states that the Network's contention is based on a comparison of COE investment in 1976 with a 1982 amount showing that there has been no reduction in investment during that period. According to NECA, however, the Network's data has been assembled from disparate sources. The result is that the purported 1982 data is a forecast, while the 1976 data do not represent the investment assigned to the interstate jurisdiction under separations but rather as assigned under FDC–7. The historical video investment necessary to do the analysis properly, according to NECA, is available in AT&T's June 1982 Tariff Filing Reference View. That filing does in fact show a decline in actual COE investment between 1976 and 1980.

46. The $11.4 million in unexplained, post-divestiture investment can also be attributed, in part, to a discrepancy in the figures used by the Networks as compared with AT&T's data. Appendix 3 of the Network's comments, a table breaking down local channel investment, shows $21.4 million in COE investment for 1978.[39] AT&T's June 1982 Tariff Filing Reference View, as reported by NECA, shows $28.2 million in COE investment for 1978. Thus, part of the $11.4 million is attributable to this difference. The Networks further criticize the level of post-divestiture investment by quoting from the 1978 AT&T Annual Report which states that television service is "characterized by stable market structure and lack of significant growth." NECA points out, however, that circumstances have changed since 1978, and video has experienced growth. It notes that the customer base between 1965 and 1978 only grew by 21 percent, whereas it grew by 135 percent between 1978 and 1982. Hence, part of the $11.4 million can be attributed to growth not taken into account by the Networks. Still another part of the disputed increase in revenue requirements is a result of increasing the overall revenue requirement in the budget view process.[40] We can find no persuasive reason the video service category should not share in the generally increasing cost of providing service. We therefore see no basis for concluding that the $11.4 million in post-divestiture investment is unreasonable. Furthermore, it follows that to the extent to which we have allowed the aforementioned revenue requirement items, the $4.5 million allocated to land, building and miscellaneous items associated with this investment, as well as related operation and maintenance expenses, must similarly be allowed.

47. In the *November 9 Order* the Commission required exchange carriers which did not propose a monthly maximum on part-time charges for video and program audio service to either explain and justify their failure to do so or to retain "topping."[41] We find that the exchange carriers have not adequately justified their proposal to eliminate "topping." The Commission has stated previously that absent such justification, the elimination of "topping" results in unlawful discrimination between like full-time and part-time services.[42] This is because the rate structure operates to compound part-time rates on a daily basis. Consequently, a part-time customer can pay up to 15 times the rate that a full-time customer pays for the same number of days of use. To the extent that "topping" is part of an overall rate structure that continues to bundle the costs of in-place cable and portable microwave equipment, which tend to be used primarily for full-time and part-time service, respectively, we do not believe the elimination of "topping" would be justified until the rate structure is revised to disaggregate these facilities or eliminate preferential rates.

48. Contrary to the assertions of video users, NECA contends that the reinstatement of "topping" would result in a shortage of full-time facilities because part-time users would have no incentive to return a facility, irrespective of need. We do not believe that "topping" necessarily creates an incentive to hold facilities for an entire month. Inasmuch as a customer knows he will not have to pay more than the full-time rate in any given month, he is likely to order only the service actually needed until he reaches the "topped" rate. In many instances, part-time facilities are needed only for one day, especially where they are being used to cover a breaking news story or a single-day sporting event. In fact, NECA's own operating data belie its claim inasmuch as the data indicate that 80 percent of part-time orders are for one or two days.[43] Moreover, "topping" may in fact result in certain economies, as HTN and INTV argue, by making possible a more efficient allocation of facilities through arbitrage.

49. Further militating against the elimination of "topping" at this time is that we are concerned by the commenters' allegations that exchange carriers are unable or refuse to provide full-time channels in a timely manner.[44] Indeed, carriers have little incentive to classify facilities in inventory as full-time given the opportunity to collect the more expensive daily rates.[45] Carriers must be made to recognize that they have a responsibility under the Communications Act to maintain adequate facilities to satisfy orders for full-time service. If a customer makes a reasonable request for full-time facilities, the carrier is obligated to provide him with any suitable facilities available in its inventory, regardless of designation, at the full-time rate. Therefore, if carriers want to propose

[38] Part of the difficulty in making an initial allocation stems from the lack of specificity in the carriers' responses to our inquiries.

[39] This does not include the $5.7 million which the Networks claimed was scheduled to be retired in 1976. Some percentage of this amount representing the investment not yet retired as of 1978 must therefore be added to the $21.4 million.

[40] The cost basis for the special access filing was the 1984 Budget View. This view was developed by adjusting 1982 data for divestiture and trending the adjusted results to estimate the costs that would be incurred in 1984. These estimated costs were then figured into the separations model to determine the costs that would be assigned to each separations element in 1984. These elements were then assigned to various service components for the purpose of developing rates.

[41] *See November 9 Order*, Appendix B, at 11.

[42] *See* AT&T, 67 FCC 2d 1134, 1137 (1978), *recon. denied*, 70 FCC 2d 2031 (1979); *aff'd sub nom.* ABC v. FCC, 663 F. 2d 133 (D.C. Cir. 1980). *See also* Sports Network, Inc., 25 FCC 2d 550 (1970).

[43] Similarly, Ameritech notes that in Ohio, 91 percent of the part-time video orders are for two or fewer days and in Michigan, 92 percent of the orders are for three or fewer days, with 82 percent of the orders completed on one day.

[44] For example, TBS points out that C&P Telephone Company had still not filled, as of January 1985, Cable News Network's (CNN) orders for full-time channels to replace the three Washington, D.C. part-time channels it has been leasing since before its April 16, 1984 filing in this proceeding. Had a "topping" mechanism not been in place, TBS asserts, CNN, through no fault of its own, would have had to pay tens of thousands of dollars more for these channels.

[45] NECA has stated that facility usage is determined by customer requirements but, again, its operating data belie this contention. According to NECA, 11 percent of its part-time orders are for 26 to 30 days but account for 67 percent of total usage. It attributes this atypical part-time usage to "topping." However, as HTN argues, this usage figure seems to indicate that facility allocations are not based upon customer demand. If they were, recurring daily users would have appropriately been given full-time channels.

the elimination of "topping" in the future, they should submit documentation showing that requests for full-time facilities are being satisfied on a timely basis.[46] Should complaints of facility manipulation persist, we may be more inclined in our overall investigation to consolidate the full-time and part-time rate structures [47] or disaggregate portable and in-place facilities. Such measures would likely result in increased competition—both facilities based (e.g., portable microwave, satellite, fiber optics) and by resale This might eliminate the need for "topping."

50. To the extent that "topping" is somewhat arbitrary and not based on cost, it is not a device which we want to sanction on a long term basis. We also recognize that "topping" may in some instances create a disincentive to return unneeded facilities if, for example, a customer is concerned about future availability. These concerns can be partially addressed, we believe, by a modification of the current "topping" arrangement, so that part-time users will pay some price for retaining facilites. At present, the part-time rate for one day is about half the monthly rate, so part-time rates "top" after two days. Given the information we have before us, we believe that a structure which partially "topped" the part-time rate at the monthly rate, but allowed additional days to be priced at the far lower daily rate of 1/30th of the monthly rate is a reasonable compromise. Part-time customers could at maximum pay almost double the full-time rate, but, as the exchange carriers point out, part-time service costs are probably higher in most cases.[48] Those users would not, however, face rates which are 15 times greater then the full-time rate as the total elimination of "topping" might cause. They can also reduce their costs by using part-time facilities only as needed. We will allow carriers to implement this change in the compliance tariff filing (the details of which will be discussed in our subsequent cost order). However, given the uncertainty of any actual effects this approach may have on revenues, carriers should not increase the monthly or initial daily video or program audio rates. Any adjustments to those rates may be proposed in later filings.

3. Channel Mileage Chares

51. In addition to the concerns about the proposed mileage charges raised by the users of video services, several issues are addressed by other commenters. Some contend that the proposed mileage band structure unreasonably favors AT&T and disadvantages other, smaller carriers. Joint Parties comments Appendix 2 at 1–4, 9–14; TRT comments at 6–8. These parties claim that the points of presence (POPs) of small OCCs are generally located farther from serving wire centers and are fewer in number and, therefore, small OCCs will incur higher mileage charges that AT&T and Western Union. In reply to that assertion, several exchange carriers argue that the number of POPs alone does not indicate whether channel mileage charges will be high, because a special access customer with several POPs within a LATA might have only one designated for private line use. *See, e.g.*, Bell Atlantic reply at 14. Ameritech also argues in its reply that the flat rated, bundled channel mileage charge sought by the commenters was criticized by the Commission in its *November 9 Order*. Ameritech reply at 12 n.32.

52. We do not fault the proposed mileage charge structure simply because AT&T's or Western Union's mileage charges for their shorter channels may be lower than the mileage charges of small OCCs for their longer channels. The LEC's mileage charges do not discriminate according to the class of customer, but rather result in differing amounts according to distance. As the Joint Parties themselves note, the proposed channel mileage structure appears to be "an attempt to correlate the recovery mechanism with actual cost incurrence." Joint Parties comments § 2 at 2. We believe the commenters have failed to establish the contention that "[i]n this particular instance . . . an overriding concern for the development of a fully competitive environment requires a minor deviation from [the] principle [that rates should track costs]." *Id.* Competition between AT&T and the OCCs already exists in the private line market and the OCCs have been free for some time to establish POPs and provide private line services. Although we wish to ensure that rates fairly reflect costs, we see no reason to require that rates for these channels be priced to favor particular carriers, as the Joint Parties seem to propose. We therefore conclude that the commenters' criticism of the proposed channel mileage charges is unfounded.

53. Several commenters question the procedures used to allocate costs within the channel mileage element, that is, to particular mileage bands or between fixed and per-mile rates. Joint Parties comments Appendix 2 at 4–9; IDCMA comments at 9. The Joint Parties assert that the costs developed for mileage bands bear no resemblance to the actual mileage bands used in the rate structure and that the cost support has been developed for mileage bands which differ from the mileage bands used in the tariffs. Joint Parties comments Appendix 2 at 6–7. Further, the Joint Parties criticize the Private Line Optimization system (PROS) program used by NECA and the BOCs to smooth rates across distances. Joint Parties comments Appendix 2 at 7–9. IDCMA also contends that a full review of the cost support for the fixed at per-mile channel mileage rates "is almost impossible" and that the channel mileage costs figures rely on flawed demand data. IDCMA comments at 9.

54. We agree with the commenters that the allocation of costs within the channel mileage rate element is difficult to review because the derivation of the rates included the use of computer programs not fully explained. On the basis of the information that is provided, however, the allocation does not appear to be unreasonable on its face and has not been shown to cause unreasonable discrimination against any individual or group of customers. "Smoothing" the rates so that the mileage banks show a consistent progression of rate steps without, for example, abnormally large or small changes, also does not seem unreasonable. After we have gained some experience with the operating tariffs, we may find that some further refinements to the distance-sensitive charges will be required, but we believe they are not necessary at present.

55. Another issue raised regarding the proposed distance sensitive charge is that the channel mileage charges may change if the local exchange carrier establishes additional serving wire centers. TRT comments at 8–9. As discussed above in connection with multipoint service, we are requiring the exchange carriers to include a list of the serving wire centers in their tariffs. Changes to the list of serving wire centers will therefore be subject to Commission scrutiny under Part 61 of the Commission's Rules, 47 CFR Part 61. We believe that this requirement will ameliorate TRT's concern.

[46] We believe that the potential for facility manipulation, *see, e.g.*, n. 44 *supra*, is compelling enough to warrant our taking some action pending the carriers' submission of adequate documentation to justify the elimination of "topping."

[47] Having a single daily usage charge for all users and charging separately for nonrecurring set-up costs such as construction, disassembly, testing and administration would eliminate the possibility that multi-day users are subsidizing single-day users as a result of bundling recurring and nonrecurring costs.

[48] Pacific Northwest Bell suggests that "topping" at two or more times the monthly rate would more reasonably reflect these higher costs.

B. Shared Network Facility Arrangements

56. MCI contends that the special access tariffs unlawfully discriminate against interexchange carriers that cannot buy private line access through the Shared Network Facilities Agreements (SNFAs) between AT&T and the BOCs. MCI comments at 32–47. MCI argues that exchange carrier provided dedicated transport is available to AT&T under two offerings: SNFAs and the special access tariffs. MCI also contends that SNFA dedicated transport is "like" special access dedicated transport. The OCCs, however, can only buy exchange carrier-provided dedicated transport through the special access tariffs. MCI maintains that the proposed special access rates appear significantly higher than the rates AT&T pays under the SNFAs, but that AT&T has refused to disclose the SNFA transmission rates. MCI concludes that the BOCs should be required to disclose the SNFA rates, terms and conditions and that the special access tariffs must be suspended while an investigation is conducted.

57. In its reply comments, AT&T argues that the facilities leased under SNFA are part of its network and "do not perform an access function." AT&T reply at 8. Further, AT&T argues, SNFAs were found to be in the public interest in the MFJ and were reviewed by the Commission in its Section 214 proceeding regarding divestiture. AT&T reply at 12.

58. We believe that the existence of SNFAs does not render the pending special access tariffs unreasonable *per se*. The tariffs themselves do not restrict the use of facilities by OCCs and MCI's contentions apear to be an attack on SNFAs.[49] MCI has not presented a basis for suspending or rejecting the special access tariffs at this time, however. If it is determined in our continuing investigation that MCI's allegations regarding discrimination have merit, some modifications of the special access tariffs may be necessary.

IV. Interim Compensation Arrangements

A. Arrangements Until Effective Date of Special Access Tariffs

59. Until the special access tariffs become effective, exchange carriers shall continue to charge the rates prescibed in our *November 9 Order*. By this order we are requiring modifications of the pending tariffs, and in some cases, substantial amendments. As previously noted, the special access tariffs will not be permitted to take effect until our subsequent issuance of a cost order and the filing of tariff modifications by the carriers. It is our intention, however, that those additional steps will delay the effective date of the special access tariffs only for a very short period, and we will continue the existing rates until the tariffs become effective. *See* para. 1, *supra*.

60. The existing contracts and arrangements between AT&T and the exchange carriers are also to be extended until the implementation of the special access tariffs. The extension of the arrangements between AT&T and the BOCs may require the parties to the antitrust settlement agreement to seek further waiver of the MFJ as they deem appropriate.

B. Pacific Bell and Nevada Bell Emergency Petition

61. On October 16, 1984, Bell Atlantic informed its fellow BOCs that it would cease all participation "in any pooling of special access and other non-tariffed costs or revenues beginning September 1, 1984." Pacific Bell petition at 7. Bell Atlantic and the other BOCs had previously been involved in a contractual relationship wherein they pooled revenues from special access services provided to AT&T. On October 19, 1984, Pacific Bell and Nevada Bell (collectively Pacific Bell) responded to Bell Atlantic's action by filing an emergency petition asking the Commission to require Bell Atlantic and the other BOCs to extend their pooling agreement until permanent special access tariffs became effective. For reasons discussed below, we deny this petition.

62. Following our *October 19 Order*, in which we initiated this investigation and deferred the effective date of all access and divestiture related tariffs from January 1, 1984 to April 3, 1984, AT&T and the BOCs established a variety of voluntarily-arranged interim contracts. Under those interim contracts, the BOCs were to be compensated by AT&T for providing switched and special access until the proposed tariffs became effective on April 3, 1984. On January 1, 1984, the BOCs agreed to pool the special access revenues received from AT&T, and that agreement is the focus of Pacific Bell's petition. In our *March 27 Order*, we found it necessary to defer the effective date of the proposed tariffs to June 13, 1984. At the same time, we recognized that the voluntary interim contracts were due to expire on April 3, and that AT&T and the BOCs were unlikely to reach negotiated settlements for extended interim agreements by that date. Because this situation threatened to result in an interruption of service or a decline in service quality, our *March 28 Order* required that AT&T and the BOCs preserve the *status quo* as constituted in the existing interim contracts.[50] The *March 28 Order* also initiated an investigation into the reasonableness of the rate of return prescription originally established in 1981, which provided a basis for the interim contracts.

63. In the *May 25 Order*, the Common Carrier Bureau clarified its position on the carriers' agreements concerning special access revenues. The Bureau stated that the switched access tariffs, which became effective on May 25, did not automatically terminate the interim contractual agreements among the carriers, the interim contracts should be adjusted, and the *status quo* should still be maintained. The Bureau prescribed adjustments to the existing interim arrangements between AT&T and the exchange carriers which were to remain in effect until the special access tariffs became effective. Also on May 25, the BOCs agreed among themselves to extend the contract calling for pooling of special access and private line revenues from that date until September 1, 1984, or until special access tariffs became effective, whichever occurred first.

64. In its *June 8 Order*, the Bureau suspended the special access tariffs until November 13, 1984. On October 16, 1984, 47 days after the pooling contract expired, Bell Atlantic notified the other BOCs that it would not participate in any further pooling arrangements involving special access or other non-tariffed costs or revenues. On October 19, 1984, 50 days after the pooling contract expired, Pacific Bell filed its emergency petition seeking to compel the perpetuation of the pooling agreement. In the *November 9 Order*, we found the submitted special access tariffs unlawful and required that new tariffs be submitted by December 3, 1984. On January 4, 1985, by letter to NECA, we deferred the effective date of those tariffs until February 15, 1985.[51]

65. In its emergency petition, Pacific Bell contends that (1) the *May 25 Order* contemplated the maintenance of the *status quo*, including continued pooling of revenues and expenses, until effective tariffs, a Commission-ordered change, or a new interim agreement replaces it, (2) Bell Atlantic's unilateral withdrawal from the pooling arrangement disrupts a

[49] MCI's request for information regarding SNFAs is before the Commission in a formal request under the Freedom of Information Act and we will act on that request separately.

[50] *March 28 Order* at paras. 17–19.

[51] Letter dated January 4, 1985 from the Acting Chief, Tariff Division, to NECA.

division of revenues concept mandated by the Commission, and (3) Bell Atlantic's withdrawal would result in unjustified windfalls for some companies and severe financial hardship for others. In its reply to Bell Atlantic's comments, filed November 5, 1984, Pacific Bell further contends that (4) the Commission's refusal to require pooling of tariffed special access charges has no bearing on interim arrangements regarding nontariffed charges, (5) the pooling contract among the BOCs is inseparably linked to the BOC–AT&T access service contracts and BOC–AT&T contracts cannot be negotiated without continued pooling, and (6) the termination of the pooling arrangement will lead to uncertainty as to customer rates, and hence, to chaos in the telecommunications industry. Pacific Bell's position is supported by comments filed on October 29, 1984, by Southwestern Bell, NYNEX, and Bell South.

66. Bell Atlantic, in its comments on the emergency petition, filed October 29, 1984, contends that (1) no emergency exists because discontinuation of service is not threatened, (2) the inter-BOC pooling agreement is separable from the BOC–AT&T access contracts, and does not affect the *status quo*, (3) the Commission never prescribed the pooling of access revenues by the BOCs, (4) the Commission does not have the authority to prescribe pooling in this case, and (5) continued pooling would not serve the public interest. In reply comments filed on November 5, 1984, Bell Atlantic further contends that (6) no chaos will result from a "bill and keep" approach, because this is the procedure that will be employed once the access tariffs become effective. This position is supported by comments filed jointly by Mountain States Telephone and Telegraph, Northwestern Bell and Pacific Northwest Bell (collectively Mountain States). Mountain States also argues that (1) even though the pooling contract ahs expired, all BOCs still offer AT&T special access, and AT&T has no right to receive such service at expired rates, and (2) there is insufficient record on which to establish a Commission rate prescription mandating pooling.

67. AT&T, in comments filed on November 1, 1984, takes no position on the issues raised by Pacific Bell's emergency petition, but maintains that the resolution of this issue should not affect the rates prescribed in the *May 25 Order* and should not interfere with the extant arrangements between AT&T and the BOCs.

68. Of the numerous arguments listed only three need be addressed in order to resolve the controversy at hand. Pacific Bell cites a number of Commission decisions in arguing that the BOCs' pooling arrangement is essential to maintaining the *status quo*. Pacific Bell cites language in the *October 19 Order* stating that "We [the Commission] also expect that existing settlement agreements and division of revenues procedures will continue in force during the period of delay." What we referred to in that order, however, was a comprehensive set of processes relating to the division of both switched and special access revenues. Nowhere in that order did we refer to a process for pooling access revenues. Indeed, Pacific Bell acknowledges that the access pooling contract among the BOCs did not exist until January 1, 1984, two and one-half months after the *October 19 Order* was released. In fact, we have only prescribed pooling among BOCs in one limited context: inter-BOC pooling of switched access carrier common line revenues.

69. Similarly, Pacific Bell cites the *May 25 Order* as "continuing the Commission's stated policy of maintaining the *status quo* during its review of the remaining provisions of the interstate access tariffs". Pacific Bell petition at 4. The focus of the *May 25 Order*, however, was exclusively special access charge agreements between the BOCs and AT&T, not inter-BOC pooling. We specifically stated in that order, "[w]e find here that it is necessary to prescribe adjustments to interim contractual arrangements between AT&T and the exchange carriers." [52] We conclude that a correct reading of past Commission orders militates against any interpretation of "*status quo*" as including inter-BOC pooling contracts, and we further point out that we have never ordered the extension of the inter-BOC contract calling for pooling of special access revenues.

70. Pacific Bell and the commenters supporting it also argue that expiration of the revenue pooling contract will result in a windfall for some carriers and severe financial hardship for others, and that this result justifies a prescription continuing the pooling agreement. However, these allegations are unsupported and are impugned by the fact that Pacific Bell did not file its emergency petition until 50 days after the pooling contract expired. In the absence of a showing of actual or expected economic harm, we cannot accept Pacific's argument. In addition, even if we assume, *arguendo*, that some economic hardship will result from the termination of the pooling agreement, the financial discomfort of the carriers has not provided a basis for rate prescriptions in the orders cited by Pacific Bell. The *March 28 Order*, cited extensively by Pacific Bell, clearly states the reasons for our prescription of interim agreements between the BOCs and AT&T: "Accordingly, it is necessary for us to impose interim arrangements to prevent any laps in service." [53] Similarly, in the *May 25 Order*, we prescribed adjustments to the interim agreements between the BOCs and AT&T, stating that "[o]ur adjustments will assure that service continues to be provided to the public. . . ." [54] Our policy regarding pooling prescriptions was clearly enunciated in the Third Report and Order in Docket No. 78–72: "We believe that our power to compel participation in such [pooling] arrangements should be used sparingly. A carrier should not be prohibited from pursuing a course that its management believes to be in its best interests unless the public interest requires such a prohibition." [55]

71. In the orders cited by Pacific Bell, we repeatedly defined the threat of interrupted service as the reason for our prescriptions. In the current controversy, this potential harm to the public interest apparently does not exist. In its emergency petition, Pacific Bell states that renegotiated special access agreements with AT&T are impossible absent resolution of the pooling issue. This claim is unsubstantiated, however, and is belied by the fact that all the BOCs have been providing AT&T with special access services despite the fact that the BOC pooling agreement expired almost five months ago. In addition, both Bell Atlantic and Mountain States have expressed their willingness to renegotiate private line charges with AT&T that will maintain the rates of return that we prescribed for both the BOCs and AT&T. Similarly, nothing in this order would preclude Pacific or any other carrier from renegotiating their special access arrangements. Because interim agreements apparently have been established without the pooling contract, and because special access tariffs will become effective shortly, we must conclude that continued special access service is not in jeopardy.

72. Finally, Pacific Bell argues that the expiration of the BOCs' pooling agreement augurs impending chaos for

[52] *May 25 Order* at para. 10.

[53] *March 28 Order* at para. 17.

[54] *May 25 Order* at para. 10.

[55] MTS and WATS Market Structure, CC Docket No. 78–72, 93 FCC 2d 241, at 327 (1983).

the telecommunications industry, and that the public interest must be served by a prescription perpetuating that agreement. That argument can be dismissed summarily because it is wholly unsupported. We conclude that Pacific Bell has been unable to identify a public interest issue sufficient to justify the prescription it requests.

73. In conclusion, we find that Pacific Bell's reading of previous Commission orders is in error, and that we never considered the inter-BOC pooling agreement essential to the maintenance of the *Status quo* in the interim period prior to the date special access tariffs become effective. Indeed, we never considered that agreement at all. Similarly, we find that no interruption or diminution of service to the public is threatened, and that no other public interest issues exist that would justify the relief sought by Pacific Bell. We therefore deny Pacific Bell's emergency petition for a prescription perpetuating the BOCs' expired pooling agreement.

V. Conclusion

74. Overall, our review of the special access tariffs filed on December 3, the support information, and the comments largely confirms the view expressed in the *November 9 Order*. The revised rate structure proposed by NECA has adequately addressed our major structural concerns with these filings. They represent a sound foundation for implementing special access.

75. At the same time, we have identified a number of further improvements and corrections that we conclude should also be made, based on further review and more recent information. These include the changes in tariff language specified in Appendix B. We also will be addressing rate levels, cost allocations, and other cost issues relating to the special access tariffs in a subsequent order. See para. 1, *supra*.

76. It is important to note that we are most aware of the preliminary and tentative nature of these conclusions. While we have sought to make our best, most careful judgments of reasonable structures, the massive changes in these services brought on by divestiture and access prevent these filings from being more than a first approximation of what later, more refined tariffs and rates should look like.

77. Some of the commenters urge that, because of these continuing uncertainties and the impact of these rates on customers, we should again delay the effectiveness of these tariffs. We believe, however, that the improvements are such that further delay is unwarranted and would be unprofitable, particularly in view of the further adjustments made here and the availability of other remedies. We will continue to monitor and investigate these tariffs, and take further action as necessary to protect end users in the event rates or terms prove to be unreasonable.

VI. Implementation

78. Because we wish to implement special access tariffs promptly for all carriers, we are requiring that all carriers make tariff filings in which only the changes required or permitted by this order (both the text and the section by section analysis in Appendix B) and the subsequent cost order are made. Any other changes which carriers might wish to propose should be made in separate filings.

79. Carriers should begin preparations to make the changes specified in this order immediately, in order to minimize any further delay in implementing the tariffs. Carriers should not, however, file transmittals to implement this order at present. In the forthcoming cost order, we will set out schedule for transmittals to implement the conclusions in both orders.

80. Pursuant to our authority under 47 U.S.C. 154(i), 201(a), 203(b), 204, 205, and 211, it is so ordered.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX A.—SUMMARY LIST OF SPECIAL ACCESS TARIFF FILINGS

Company	Transmittal No.	Tariff No.
National Exchange Carrier Association	31	1
Bell of Pennsylvania	735	41
C&P Telephone	166	3
Cincinnati Bell	371	35
Illinois Bell	734	43
Indiana Bell	733	34
Michigan Bell	511	38
Mountain Bell	685	65
Nevada Bell	19	1
New England Telephone	722	40
New Jersey Bell	438	38
New York Telephone	663	41
Northwestern Bell	976	52
Ohio Bell	660	38
Pacific Bell	1078	128
Pacific Northwest Bell	135	8
South Central Bell	143	4
Southern Bell	1288/89	61
Southern New England	316	34
Southwestern Bell	1264	68
Wisconsin Bell	548	39
Anchorage Telephone Utility	18	4
Carolina Telephone (United)	22	3
Centel—Florida	10	1
Centel—Illinois	11	1
Centel—Minnesota	11	1
Centel—Nevada	11	1
Centel—North Carolina	11	1
Centel—Ohio	11	1
Centel—Texas	11	1
Centel—Virginia	11	1
Citizens Telephone Co	11	1
Fidelity & Bourbeuse Telephone Co	12	1
General Telephone Op. Cos	25	1

APPENDIX A.—SUMMARY LIST OF SPECIAL ACCESS TARIFF FILINGS—Continued

Company	Transmittal No.	Tariff No.
Highland Telephone Co	9	1
Matanuska Telephone Co	11	1
Merchants & Farmers Telephone Co. (Centel)	11	1
Orchard Farm Telephone Co	11	1
Palo Pinto Telephone Co. (United)	19	2
Rochester Telephone Corp	10	1
Sylvan Lake Telephone Co	9	1
Telephone Utilities Exchange Carrier Association	12	1
United Intermountain Tennessee	45	4
United Intermountain Virginia	46	5
United Tel—Arkansas	21	1
United Tel—Carolinas	16	2
United Tel—Florida	18	2
United Tel—Indiana	19	3
United Tel—Iowa	19	3
United Tel—Kansas	22	4
United Tel—Minnesota	18	2
United Tel—Missouri	21	4
United Tel. Northwest—Oregon	54	8
United Tel. Northwest—Washington	55	9
United Tel—Ohio	21	3
United System—Pennsylvania	38	1
United System—New Jersey	39	1
United Tel—Texas	19	2
United of the West—Nebraska	35	5
United of the West—Wyoming	36	6
Walnut Hill Tel. Co	11	6

[FR Doc. 85-7527 Filed 3-28-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Hazardous Materials Training Workshop

AGENCY: Federal Emergency Management Agency.

ACTION: Notice is hereby given of a National Workshop on Hazardous Materials.

SUMMARY: Training to be held at the Federal Emergency Management Agency's National Emergency Training Center, Emmitsburg, Maryland, April 15-18, 1985. Approximately sixty (60) persons representing Federal, State, and local governments, and the private sector have been invited to participate in the Workshop.

The focus of the Workshop will be on the role of the Federal government in providing hazardous materials training in the areas of planning, preparedness, response, and recovery; the need for a coordinated Federal effort in providing such training; and the relationship of Federal training to that training provided by State and local governments, and the private sector.

The result of the Workshop will be a better appreciation and understanding of the respective roles and responsibilities of the Federal agencies involved in hazardous materials training; the development of criteria for

a national curriculum for hazardous materials training; and improved interaction between and among Federal, State, local, and private sector agencies.

Those private sector organizations who would be interested in having their hazardous materials training materials displayed and reviewed at the National Workshop should have six (6) copies of these materials forwarded, at no expense to the government, to the address shown in this Notice.

Fravel S. Brown,

Special Assistant to the Director, Training and Fire Programs.

March 25, 1985.

[FR Doc. 85-7470 Filed 3-28-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-733-DR]

Major Disaster and Related Determinations; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA-733-DR), Mated march 29, 1985, and related determinations.

DATED: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of March 20, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding during the period of December 29 to 30, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Michael J. Chivinski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster: Lewis and Oswego Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-7472 Filed 3-28-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-734-DR]

Major Disaster and Related Determinations; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA-734-DR), dated March 22, 1985, and related determinations.

DATED: March 22, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice: Notice is hereby given that, in a letter of March 22, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding beginning on February 23, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Curtis R. Carleton of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster: Erie and Niagara Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-7471 Filed 3-28-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Fifth Third Bancorp et al.; Notice of 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 accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to engage *de novo* through its subsidiary, Fountain Square Insurance Company, Cincinnati, Ohio, in the business of underwriting and reinsuring credit life, accident and health insurance directly related to extensions of credit made by banks affiliated with the company.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Credit Corporation, Elizabeth City, North Carolina, in making direct consumer installment loans, secured and unsecured, to individuals; purchasing consumer installment sales finance contracts, extending direct loans to dealers for the financing of inventory (floor planning) and working capital purposes; making, acquiring and servicing, for its own account or for the account of others, loans secured principally by mortgages on real property and acting as agent for the sale of credit life and credit accident health insurance and physical damage insurance, pursuant to 12 U.S.C. 1848(c) (A) & (D), all of which are directly related to extensions of credit by Sovran Credit Corporation.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texana Bancshares, Inc.*, Austin, Texas; to engage directly in the *de novo* provision of trust company functions and securities brokerage activities. These activities would be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, March 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7468 Filed 3-28-85; 8:45 am]

BILLING CODE 6210-01-M

First National Lincoln Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 19, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First National Lincoln Corporation*, Damariscotta, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Damariscotta, Damariscotta, Maine.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *PSB Bancshares, Ltd.*, Postville, Iowa; to become a bank holding company by acquiring 54.4 percent or more of the voting shares of Postville State Bank, Postville, Iowa.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Commerce Corporation*, North Carrollton, Mississippi; to become a bank holding company by acquiring 80 percent of the voting shares of Peoples Bank and Trust Company, North Carrollton, Mississippi.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brush Country Holding Company, Inc.*, Freer, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Freer Bancshares, Inc., Freer, Texas, thereby indirectly acquiring Brush Country Bank, Freer, Texas.

Board of Governors of the Federal Reserve System, March 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7469 Filed 3-28-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 22, 1985.

Public Health Service

Centers for Disease Control

Subject: Menstrual Toxic Shock Syndrome—A Case Control Study—Revision—(0920-0153)
Respondents: Individuals
Subject: Coalworkers' Pneumoniosis in Underground Coalminers—New
Respondents: Coalminers
Subject: Congenital Syphilis Follow-up—Extension (0920-0128)
Respondents: State/local health departments

National Institutes of Health

Subject: A Case-Control Study of Biliary Tract Cancer—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Taxation of Benefits Questionnaire—SSA-5031—New
Respondents: Individuals

Subject: Claims Modernization Project Integrity Review—SSA—5026-BK—New
Respondents: Individuals
Subject: Application for Disability Insurance Benefits—SSA 16, SSA-1650—Revision—(0960-0060)
Respondents: Individuals
Subject: Application for Retirement Insurance Benefits—SSA-1, SSA-451—Revision (0960-0007)
Respondents: Individuals
OMB Desk Officer: Robert J. Fishman

Health Care Financing Administration

Subject: Request for Medicare Payment—Ambulance—HCFA-1491—Reinstatement—(0938-0042)
Respondents: Individuals or households
Subject: Financial Statement of Debtor—HCFA-379—Extension—(0938-0270)
Respondents: Businesses or other for-profit
Subject: Free Standing Federally Funded Health Center Cost Report—HCFA-242—Revision—(0938-0235)
Respondents: Businesses or other for-profit
Subject: Organ Procurement/Histocompatibility Laboratory Statement of Reimbursable Cost—HCFA-216—Reinstatement—(0938-0102)
Respondents: Non-profit institutions, businesses, or other for-profit
Subject: BERC-192-F, Payment for Physician's Services Furnished in Hospitals, SNFs and CORFs—HCFA-R-20—Extension—(0938-0285)
Respondents: Businesses or other for-profit, small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Report Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: March 25, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-7540 Filed 3-28-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85F-0115]

Morton Thiokol, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Morton Thiokol, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl) maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3850) has been filed by Morton Thiokol, Inc., Ventron Division, 150 Andover St., Danvers, MA 01923, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl) maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 21, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-7464 Filed 3-28-85; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Adjustments to Fiscal Year 1986 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Office of Human Development Services, and Administration on Developmental Disabilities; Department of Health and Human Services.

ACTION: Notification of Adjustments to Fiscal Year 1986 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1986 pursuant to Section 125 of the Developmental Disabilities Act of 1984. The allotments to the States published herein are based upon the Fiscal Year 1985 appropriations levels and are contingent upon Congressional appropriations actions for Fiscal Year 1986. If Congress enacts and the President approves an amount different from this budget amount, the allotments will be adjusted accordingly.

EFFECTIVE DATE: The allotments shall be effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Department of Health and Human Services, 330 Independence Avenue, SW., Room 1296, Washington, D.C. 20201, telephone (202) 245-7220.

SUPPLEMENTARY INFORMATION: Pub. L. 98-527, section 125(a)(2), required that adjustments in the amounts of State allotments could be made not more often than annually and that States were to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the database for issuance of Fiscal Year 1986 formula grants. These allotments are based upon:

A. Number of Beneficiaries In State Under Childhood Disabilities Beneficiary Program from Social Security Administration, U.S. Department of Health and Human Services; "Social Security Bulletin, Annual Statistical Supplement, 1983"

B. Average Per Capita Income from Bureau of Economic Analysis, U.S. Department of Commerce: "Survey of Current Business, Volume 64, Number 8, August 1984"

C. Total Population and "Working" Population (Ages 18-64) Estimated by the Bureau of the Census, U.S. Department of Commerce: State Information From "Current Population Reports, Estimates of the Population of States by Age: July 1, 1981, to 1983, Series P-25, Number 951, May 1984" and Territorial Information From "Current Population Reports, Estimates of the

Population of Puerto Rico and the Outlying Areas: 1980 to 1983, Series P-25, Number 960, November 1984".

The above data is the most recent satisfactory data available at this time.

The adjustments are set forth below.

Adjusted Fiscal Year 1986 Federal Allotments Administration on Developmental Disabilities

	Basic support	Protection and advocacy
Total	[1] $50,250,000	[1] $13,750,000
Alabama	1,012,207	242,773
Alaska	300,000	*150,000
Arizona	538,360	150,000
Arkansas	585,580	150,000
California	3,918,951	941,074
Colorado	467,105	150,000
Connecticut	521,846	150,000
Delaware	300,000	150,000
District of Columbia	300,000	150,000
Florida	1,914,790	459,831
Georgia	1,246,931	299,244
Hawaii	300,000	150,000
Idaho	300,000	150,000
Illinois	2,041,707	489,898
Indiana	1,150,215	276,007
Iowa	615,951	154,164
Kansas	436,140	150,000
Kentucky	950,070	227,793
Louisiana	977,581	234,502
Maine	300,000	150,000
Maryland	725,751	174,195
Massachusetts	1,054,546	252,911
Michigan	1,844,669	442,482
Minnesota	796,111	191,046
Mississippi	726,270	174,244
Missouri	1,041,228	249,803
Montana	300,000	150,000
Nebraska	316,111	150,000
Nevada	300,000	150,000
New Hampshire	300,000	150,000
New Jersey	1,250,241	299,898
New Mexico	314,919	150,000
New York	3,343,192	801,602
North Carolina	1,423,556	341,548
North Dakota	300,000	150,000
Ohio	2,218,445	532,130
Oklahoma	634,307	154,573
Oregon	506,106	150,000
Pennsylvania	2,492,381	597,852
Rhode Island	300,000	150,000
South Carolina	795,144	190,814
South Dakota	300,000	150,000
Tennessee	1,123,409	269,515
Texas	2,746,427	659,527
Utah	364,820	150,000
Vermont	300,000	150,000
Virginia	1,052,234	252,461
Washington	721,508	175,693
West Virginia	566,282	159,646
Wisconsin	976,879	234,309
Wyoming	300,000	150,000
American Samoa	160,000	80,000
Guam	160,000	80,000
Puerto Rico	1,753,200	420,755
Trust Territories of the Pacific	244,779	80,000
Virgin Islands	160,000	80,000
Northern Mariana Islands	160,000	80,000

[1] Based On The Fiscal Year 1985 Appropriations Levels and Are Contingent Upon Congressional Appropriations Actions for Fiscal Year 1986.

Dated: March 15, 1985.

Jean K. Elder,

Commissioner, Administration on Developmental Disabilities.

Approved: March 26, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85-7604 Filed 3-28-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-88913]

Coal Lease Offering by Sealed Bid; Wyoming

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming, 82001. Notice is hereby given that certain coal resources in the lands hereinafter described in Lincoln County, Wyoming will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass application filed by The Pittsburg & Midway Coal Mining Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). The sale will be held at 2:00 p.m., April 30, 1985, in the third floor conference room at the above address.

Preliminary processing of the emergency lease application, in accordance with 43 CFR Part 3425, was completed on March 7, 1985. This included an Environmental Assessment (EA) of the proposed coal development and related requirements for consultation, public involvement and hearings. The results of these activities were a finding of no significant environmental impacts for the proposed coal development and the decision to offer the federal coal resources for lease. The Tract 98 EA and Record of Decision, including mitigation requirements, are on file in the Wyoming State Office at the above address.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., April 30, 1985, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming, 82001. Bids received after that time will not be considered.

Coal Offered: The coal resource to be offered consists of all the coal in the following described lands located approximately 3 miles west of Kemmerer, Wyoming:

T. 21 N., R. 116 W.,
Sec. 17: Tracts 98-A, B, C, D.

The 164.81-acre tract contains an estimated 3.4 million tons of recoverable coal with the following coal quality: BTU—9,260/lb; Sulfur—0.7%; Ash—9%; Moisture—21%. The coal classifies as subbituminous B&C rank.

Rental and Roaylty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8.0 percent of the value of coal produced by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public inspection in the Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82902.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 85-7514 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-22-M

[M 60093]

Conveyance and Order Providing for Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Lands in Garfield County, Montana—M 60093.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. No minerals were transferred by either party on the exchange. This notice also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

DATE: At 9 a.m. on May 13, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining laws, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on September 13, 1984 (49 FR 36023). The segregation terminated on issuance of the patent on March 7, 1985.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to D.K., Inc., a Montana corporation:

Principal Meridian, Montana

T. 18 N., R. 31 E.,
Sec. 14, SE¼SE¼;
Sec. 24, NW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 25, NW¼NW¼; and
Sec. 26, NW¼NW¼.
T. 17 N., R. 32 E.,
Sec. 2, SW¼SW¼;
Sec. 3, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 4, S½SW¼;
Sec. 8, SE¼NE¼, NE¼NW¼, NE¼SE¼;
Sec. 9, W½, S¼SE¼;
Sec. 10, N½SW¼;
Sec. 11, W½;
Sec. 14, N½NW¼, SE¼NW¼;
Sec. 17, NE¼NE½.
T. 18 N., R. 32 E.,
Sec. 18, SE¼SE¼;
Sec. 19, lots 1-4, NE¼NE¼, E½W½; and
Sec. 20, NW¼SW¼.
Aggregating 2,113.52 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County, Montana:

Principal Meridian, Montana

T. 18 N., R. 31 E.,
Sec. 1, lots 1 and 2, S½NE¼, N½SE¼;
Sec. 2, E½SW¼, W½SE¼; and
Sec. 12, All.
T. 18 N., R. 32 E.,
Sec. 6, lots 3, 4, 5, and 6, S½NE¼;
SE¼NW¼, NE¼SW¼, SE¼; and
Sec. 7, Lot 1, NE¼, NE¼NW¼, N½NE¼ SE¼.
T. 19 N., R. 32 E.,
Sec. 31, lot 4, SE¼SW¼ and S½SE¼.
Aggregating 1,926.86

3. The values of Federal public land and the non-Federal land in the exchange were appraised at $134,100 and $133,600, respectively.

4. At 9 a.m. on May 13, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,
Deputy State Director, Division of Lands & Renewable Resources.

[FR Doc. 85-7512 Filed 3-28-85; 8:45 am]
BILLING CODE 4310-DN-M

[M 59618]

Conveyance and Order Providing for Opening of Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Land in Garfield County, Montana, M 59618.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on May 13, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining laws, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on February 23, 1984 (49 FR 6801). The segregation terminated on issuance of the patent on December 12, 1984.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to George Thomas Wilson:

Principal Meridian, Montana

T. 21 N., R. 33 E.,
Sec. 28, NE¼NW¼.
T. 21 N., R. 34 E.,
Sec. 34, NW¼SE¼.
Aggregating 80 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County, Montana:

Principal Meridian, Montana

T. 21 N., R. 34 E.,
Sec. 20, SW¼SE¼; and
Sec. 27, NW¼SW¼.
Containing 80 acres.

3. The values of Federal public land and the non-Federal land in the exchange were appraised at $5,200 and $4,000, respectively. An equalization payment in the amount of $1,200 was paid to the United States.

At 9 a.m. on May 13, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

March 21, 1985.

John A. Kwiatkowski,
Deputy State Director, Division of Lands & Renewable Resources.

[FR Doc. 85-7513 Filed 3-28-85; 8:45 am]
BILLING CODE 4310-DN-M

[U-51923]

Emergency Coal Lease Offering By Sealed Bid; Utah

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, Consolidated Financial Center, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303. Notice is hereby given that at 1:30 p.m. MST, April 18, 1985, certain coal resources in the lands hereinafter described in Carbon County, Utah will be offered for competitive lease by sealed bid of $100 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended. *However, no bid will be accepted for less than fair market value as determined by the authorized officer.*

This lease is being offered for sale under the provisions set forth in the regulations for emergency coal leasing at 43 CFR 3425.1-4. The Secretary has exempted emergency leasing from the administrative moratorium imposed until all coal management program changes are implemented.

The sale will be held in the 4th Floor Conference Room of the Consolidated Financial Center at 1:30 p.m. MST, April 18, 1985. At that time, the sealed bids will be opened and read. No bids received after 1:00 p.m. MST, April 18, 1985 will be considered.

Coal Offered: The coal reserves to be offered consists of all seams available for underground mining in the following described land located north of the town of Hiawatha, Utah:

T. 15 S., R. 8 E., SLM, Utah
Sec. 20, NW¼.
Containing 160.00 acres.

The estimated total recoverable underground reserves are 1,745,000 tons. The coal is located in the Wattis, Third and Hiawatha seams. The coal quality is expected to average approximately 12,701 Btu per pound with approximately 6.45 percent ash, and approximately .58 percent sulfur. Thickness for the Wattis, Third and Hiawatha coal seams average ten, nine and eight feet respectively.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States.

Notice of Availability: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the Statement and of the proposed coal lease are available at the Bureau of Land Management, Utah State Office, Consolidated Financial Center, 324 South State, Suite 301, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act are available for public inspection in the Public Room 400 on the 4th Floor of the Consolidated Financial Center.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-7503 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-DQ-M

Realty Action; Idaho Falls District

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands (I-21501) in Clark and Fremont Counties, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 9 N., R. 34 E., B.M.
Sec. 4: Lot 4;
Sec. 5: Lots 1, 2, 3, 4.
T. 9 N., R. 36 E., B.M.
Sec. 22: SE¼, S½NE¼, SE¼NW¼, NE¼SW¼;
Sec. 23: S½NW¼, SW¼;
Sec. 27: W½;
Sec. 28: S½ and lands within the SE¼NE¼ that are within and east of Right-of-way I-609;
Sec. 33: NW¼;
Sec. 34: N½NW¼.
T. 8 N., R. 37 E., B.M.
Sec. 17: N½;
Sec. 18: N½.
Totalling 2,306 acres.

In exchange for these lands, the Federal government will acquire non-Federal land in Clark County from Blaine Larsen, described as follows:

T. 10 N., R. 34 E., B.M.
Sec. 34: E½, NW¼, W½SW¼;
Sec. 35: All.
T. 9 N., R. 34 E., B.M.
Sec. 11: NW¼, N½SW¼, SW¼SW¼;
Sec. 14: NW¼NW¼.
Totalling 1,520 acres more or less.

The purpose of the exchange is to acquire the non-Federal lands for use in providing support to Idaho Department of Fish and Game's management of Antelope populations in the area. In addition, these lands will help to reestablish antelope use of their traditional winter range in the Table Butte/Cedar Butte areas. The exchange is consistent with Bureau's planning for the lands involved and has been discussed with the Idaho Department of Fish and Game and Clark County. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

A. Selected Lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Reserving to the United States a right-of-way over and across a strip of land 40 feet in width along the northern boundary of the SW¼ of Sec. 28 in T. 9 N., R. 36 E., B.M. for the full use as a road by the United States of America, its licensees and permittees, including the right of access and use for and by the people of the United States generally, to lands owned, administered, or controlled by the United States.

3. All rights and reservations of record at the time patent is issued.

4. Minerals

A. Selected Public Lands—All minerals will be reserved by the United States on the following selected public lands.

T. 9 N., R. 34 E., B.M.
Sec. 4: Lot 4;
Sec. 5: Lots 1, 2, 3 and 4.
T. 9 N., R. 36 E., B.M.
Sec. 27: NW¼NW¼;
Sec. 28: NW¼SW¼;
Sec. 33: SW¼NW¼.

Oil and gas only will be reserved on the remaining selected lands.

B. Offered lands—All minerals will be reserved on the following offered private lands:

T. 10 N., R. 34 E., B.M.
Sec. 34: E½, NW¼, W½SW¼;
Sec. 35: All.

Oil and gas estates will be reserved on the following lands:

T. 9 N., R. 34 E., B.M.
Sec. 11: NW¼, N½SW¼, SW¼SW¼;
Sec. 14: NW¼NW¼.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401

For a period of 45 days, interested parties may submit comments to the Idaho Falls District Office, at the address listed above.

Dated: March 22, 1985.

O'dell A. Frandsen,

District Manager.

[FR Doc. 85-7511 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-85-M

Draft Eagle Lake Cedarville Wilderness Study Area, CA; Environmental Impact Statement; Availability and Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of and public hearings on the draft Eagle Lake Cedarville Wilderness Study Areas Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 603(a) of the Federal Land Policy and Management Act of 1976; the Bureau of Land

Management has prepared a draft environmental impact statement which analyzes management alternatives for thirteen wilderness study areas (WSA's) in the Eagle Lake and Surprise Resource Areas, Susanville District. Two of the WSA's include small acreages of the Winnemucca Nevada District that are included in this study under a Memorandum of Understanding with Nevada BLM. The total acreage of the thirteen WSA's is 697,058 with 175,340 Acres in California and 521,718 Acres in Nevada. The preferred alternative preliminarily recommended as suitable for wilderness designation 60,410 Acres in California and 173,260 Acres in Nevada. Preliminarily recommended as nonsuitable were 114,930 Acres in California and 348,458 Acres in Nevada.

Copies of the Draft Eagle Lake Cedarville Wilderness Study Area Environmental Impact Statement are available from: Bureau of Land Management, P.O. Box 1090, 705 Hall Street, Susanville, CA 96130. Telephone (916) 257-5381.

DATES: Written comments on the draft should be submitted to the Susanville District Office, P.O. Box 1090, 705 Hall Street, Susanville, CA 96130 by June 27, 1985. There will be three public hearings, April 30, 1985 at 7:30 pm at the community church in Cedarville, CA. May 1, 1985 at 7:30 pm at the Lassen College Humanities Building Auditorium in Susanville, CA and May 2, 1985 at 7:30 pm at the Sundowner Hotel, 450 N. Arlington Ave., Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Larry Teeter, Bureau of Land Management, P.O. Box 1090, 705 Hall Street, Susanville, CA 96130 or (916) 257-5381.

SUPPLEMENTARY INFORMATION: The draft EIS analyzes the potential environmental effects of a range of six management alternatives that vary from designation of all the WSA's as wilderness to not designating any WSA's or portions thereof as wilderness. The preferred alternative was developed through the use of citizens advisory committees. The WSA's covered by this EIS are: Tunnison Mountain, CA-020-311, 20,650 Acres; Five Springs, CA-020-609, 48,460 Acres; Skedaddle, CA-020-612, 63,790 Acres; Dry Valley Rim, CA-020-615, 95,025 Acres; Buffalo Hills, CA-020-619, 47,315 Acres; Twin Peaks, CA-020-619A, 91,405 Acres; Wall Canyon, CA-020-805, 45,790 Acres; Little High Rock Canyon, CA-020-913/NV-020-008, 52,143 Acres; Yellow Rock Canyon, CA-020-913A, 13,050 Acres; High Rock Canyon, CA-020-913B, 33,300 Acres; East Fork High Rock Canyon, CA-020-914/NV-020006A, 52,000 Acres; Sheldon Contigous, CA-020-1012, 24,130 Acres; Massacre Rim, CA-020-1013, 110,000 Acres.

The preferred alternative recommends the following acreages as preliminarily suitable and nonsuitable for each WSA: Tunnison Mountain, CA-020-311, 7,660 Acres suitable, 12,990 Acres nonsuitable; Five Springs, CA-020-609, 0 Acres suitable, 48,460 Acres nonsuitable; Skedaddle, CA-020-612, 37,240 Acres suitable, 26,550 Acres nonsuitable; Dry Valley Rim, CA-020-615, 52,530 Acres suitable, 42,495 Acres nonsuitable; Buffalo Hills, CA-020-619, 0 Acres suitable, 47,315 Acres nonsuitable; Twin Peaks, CA-020-619A, 54,970 Acres suitable, 36,435 Acres nonsuitable; Wall Canyon, CA-020-805, 0 Acres suitable, 45,790 Acres nonsuitable; Little High Rock Canyon, CA-020-913/NV-020-008, 17,320 Acres suitable, 34,823 Acres nonsuitable; Yellow Rock Canyon, CA-020-913A, 0 Acres suitable, 13,050 Acres nonsuitable; High Rock Canyon, CA-020-913B, 11,980 Acres suitable, 21,320 Acres nonsuitable; East Fork High Rock Canyon, CA-020-914/NV-020-006A, 31,810 Acres suitable, 20,190 Acres nonsuitable; Sheldon Contiguous, CA-020-1012, 780 Acres suitable, 23,350 Acres nonsuitable; Massacre Rim, CA-020-1013, 23,260 Acres suitable, 86,740 Acres nonsuitable.

The recommendations made in the draft EIS are not final decisions. Following the public comments on the DEIS, a final EIS, report and recommendation will be prepared and submitted by the administration to the congress for a final decision.

Oral and written comments should be substantive and focus on: (1) The views of the interested public on the wilderness recommendations for consideration by the administration and the congress, in accordance with requirements of the Wilderness Act and Federal Land Policy and Management Act; and (2) obtaining the views of the public on the adequacy of the document in relationship to the requirements of the National Environmental Policy Act.

C. Rex Cleary,

District Manager.

[FR Doc. 85-7451 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-40-M

Kemmerer Resource Area, Rock Springs District, Wyoming; Availability of Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice that Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Resource Area, Rock Springs District, Wyoming, is available for public review and comment.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, U.S. Highway 191 North, Rock Springs, Wyoming 82902-1869, (307-382-5350).

SUMMARY: The Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) presents a range of resource management alternatives and the consequences of implementing each alternative for the public lands in the Kemmerer Resource Area (KRA). The preferred alternative (Alternative E) in the draft is composed of elements of the Existing Management alternative and Alternatives A, B, C, and D, in a mix of plan elements which resolves the issues and would result in effective multiple-use management.

The draft RMP/EIS and associated background and source material are available for public review at the Kemmerer Resource Area Office, 189 N. Highway 30, Diamondville, Wyoming 83116.

Public comments, additional information on the draft RMP/EIS, or requests to be placed on the mailing list should be addressed to Alan Stein, Team Leader, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, telephone (307) 382-5350.

A ninety (90) day comment period is allowed. The comment period extends from April 5, 1985, to July 12, 1985. Public hearings will be scheduled to allow individuals to present oral or written testimony on the draft RMP/EIS. The times and places for public meetings have not been set. It is anticipated that there will be one public meeting in Kemmerer and one in Evanston in May 1985. The meeting times and places will be published in local newspapers at least 15 days prior to the meetings.

SUPPLEMENTARY INFORMATION: The Rock Springs District is proposing a resource management plan (RMP) to

guide future management actions on the public lands within the Kemmerer Resource Area which includes Lincoln, Uinta, and part of Sweetwater counties in Wyoming; portions of Bear Lake County, Idaho, and Rich County, Utah are managed for grazing use.

The major purpose in preparing the Kemmerer RMP was to provide a comprehensive framework for managing and allocating resources in the KRA for the next ten years or more. The six alternatives emphasized different approaches for managing the Resource Area. The consequences of implementing each alternative are presented in the environmental impact statement. Resource management plans are authorized under the Federal Land Management Policy Act of 1976. Standards, guidelines, and procedures of RMP preparation are contained in 43 CFR Part 1600.

The Kemmerer Resource Area RMP/EIS was prepared by an interdisciplinary team of specialists from the Resource Area and the District Office. Disciplines included cultural, energy and minerals, fire, forestry, grazing (range), lands, recreation, soil, water, air quality, wildlife, and socioeconomics. In-depth reviews for accuracy and consistency were provided by the District Office and Wyoming State Office staffs. Consultation, coordination, and public involvement have occurred throughout the process.

The nine major issues addressed in the draft RMP/EIS are: geophysical exploration, oil and gas development, reclamation, range management, riparian habitat, recreation management, land tenure, access, and rights-of-way.

Gene Herrin,

Associate District Manager.

[FR Doc. 85-7333 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Outer Continental Shelf Order No. 5, "Production Safety Systems"

Abstract: Respondents are required to submit recordkeeping and information in the form of plans, programs, procedures, and other narrative formats on production safety systems. This information will be used by the Minerals Management Service District Supervisors to evaluate and approve or disapprove equipment and/or procedures to be used during operations on production platforms offshore.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees offshore performing production operations offshore.

Annual Response: 888

Annual Burden Hours: 4,958

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214.

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7565 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 7, "Pollution Prevention and Control"

Abstract: Respondents are required to submit information pertaining to drilling-fluid composition liquid disposal, oil spills, pollution-control equipment, contingency plans, and training. The information submitted will be used by the Minerals Management Service District Supervisors of all Offsore Regions to assess the ability of a lessee to prevent or contain any spillage of hydrocarbons into offshore waters.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees offshore performing operations under OCS Order No. 7, "Pollution Prevention and Control."

Annual Responses: 1,340

Annual Burden Hours: 14,740

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7566 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 9, "Oil and Gas Pipelines," Submitted Under Plans, Programs, Procedures, and Other Narrative Formats

Abstract: Information relative to offshore piplelines is collected from offshore oil and gas lessees. The information is needed to enable Minerals Management Service to review pipeline designs prior to approving a pipeline application to ensure that each pipeline is designed, installed, and maintained in a way to assure safety, protection of the environmental, and prevention of waste.
Bureau Form Number: None
Frequency: Various
Description of Respondents: Federal oil and gas lessees on the Outer Continental Shelf who construct or operate pipelines which fall under the jurisdiction of the Minerals Management Service.
Annual Responses: 3,700
Annual Burden Hours: 58,900
Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7567 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Gates of the Arctic National Park and Preserve; Draft General Management Plan/Environmental Assessment Availability

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of availability of a Draft General Management Plan/ Environmental Assessment, Land, Protection Plan, and Wilderness Suitability Review, Gates of the Arctic National Park and Preserve.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Gates of the Arctic National Park and Preserve. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, Fairbanks, and local communities.

This document proposes management actions addressing issues and problems facing Gates of the Arctic National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing wilderness, wild rivers, natural and cultural resources, subsistence and visitor uses, and determining National Park Service needs for operations and facilities. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the purposes for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park and preserve for inclusion in wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability review will be developed.

DATES AND ADDRESSES: Comments on the draft document should be received no later than July 1, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell St., Rm 107, Anchorage, Alaska 99503-2892.

Public reading copies of the draft document will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240
Alaska Resources Library, Federal Building, 701 C Street, Anchorage, AK 99502
Alaska Regional Office, National Park Service, 2525 Gambell St., Rm 101, Anchorage, AK 99503-2892
Consortium Library, University of Alaska, 3211 Providence Ave., Anchorage, Alaska 99507
Loussac Library, Anchorage, AK 99502
Public Library, 1215 Cowles, Fairbanks, AK 99707
Juneau Memorial Library, 114 W. 4th, Juneau, AK 99801
City Office, Anaktuvuk Pass, AK 99721
City Office Allakaket, AK 99720
City Office, Kobuk, AK 99751
Gates of the Arctic National Park and Preserve Headquarters, 201 First Avenue, Fairbanks, AK 99707
Elmer Rasmuson Library, University Of Alaska, Fairbanks, AK 99707
Gates of the Arctic, Ranger Station, Bettles, AK 99726
City Office Ambler, AK 99786
Truckstop, Coldfoot, AK 99701
City Office, Shungnak, AK 99773

The following public meetings have been scheduled:

Ambler, AK—May 7, 7:00 p.m., Comm. Bldg.
Kobuk, AK—May 8, 7:00 p.m., City Office
Shungnak, AK—May 9, 7:00 p.m., School
Bettles, AK—May 13, 7:00 p.m., FAA Rec. Hall
Allakaket, AK—May 14, 7:00 p.m., Comm. Bldg.
Coldfoot, AK—May 15, 7:00 p.m., Truckstop
Anaktuvuk Pass, AK—May 16, 7:00 p.m., Comm. Hall
Anchorage, AK—June 6, 7:00 p.m., National Park Service, Alaska Regional Office, 12525 Gambell St., Room 110
Fairbanks, AK—June 10, 6:00 p.m., Public Library, 1215 Cowles

Copies of a summary and a limited number of copies of the full document are available upon request from: Linda Nebel, Chief of Planning, National Park Service, Alaska Regional Office, 2525 Gambell St., Room 107, Anchorage, Alaska 99503-2892, (907) 271-4366.

Dated: March 22, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-7563, Filed 3-28-85; 8:45 am]

BILLING CODE 4310-70-M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold a public meeting on Tuesday, April 9, 1985 at 7:00 p.m. at Diamond X Ranch, 26412 Mulholland Drive, Calabasas, California.

The topics for discussion will include:

Superintendent's Status Report of the Santa Monica Mountains National Recreation Area
Status of Land Acquisition
Interim Public Use of Recently Acquired Lands

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California, 91364.

The minutes of the meeting will be available by May 31, 1985.

Dated: March 7, 1985.

Daniel R. Kuehn,

Superintendent.

[FR Doc. 85-7562 Filed 3-28-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-176 (Sub-3X)]

The Valley and Siletz Railroad Company; Abandonment in Polk County, OR; Exemption

The Valley and Siletz Railroad Company (V&S) has filed notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. V&S will abandon its entire line of railroad, extending from Stapleton Road crossing at mile post 3.125 to Becken Road crossing at mile post 1.875, a distance of approximately 1.25 miles, in Polk County, OR.

V&S has certified (1) that no local traffic has moved over the line for a least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the commission or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Utilities Commission or equivalent agency in the State of Oregon has been notified. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

Employee protective conditions will not be imposed since V&S does not have any employees. Furthermore, since this transaction involves an entire line abandonment, the Commission does not normally impose labor protective conditions unless the evidence shows that the applicant railroad has a corporate affiliate which will continue carrier operations or that applicant has a corporate parent that will realize significant benefits as a result of abandonment. See *Matter of New York, Susquehannah & Western R. Co.*, 504 F. Supp. 851 (D.N.J. 1980) and *Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978).

The exemption will be effective on April 28, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of exemption must be filed by April 8, 1985, and petitions for reconsideration, including environmental, energy, and public Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representatives: R. W. Walters, Vice President, P.O. Box 7747, Boise, ID 83707.

If the notice of exemption contains false or misleading information, the use of the exemption is void *od initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use condition.

Decided: March 22, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne

Secretary.

[FR Doc. 85-7505 Filed 3-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-105 (Sub-5X); Docket No. AB-72 (Sub-No. 5X)]

The Western Pacific Railroad Company; Discontinuance of Service; Solano County, CA and Sacramento Northern Railway; Abandonment; Solano County, CA; Exemption

The Western Pacific Railroad Company (WPR) and the Sacramento Northern Railway (SNR) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line involved is known as the Vacaville Branch, extending from milepost 0.00 to milepost 4.214, a distance of 4.21 miles, in Solano County, CA. WPR will discontinue service and SNR will abandon the line.

WPR and SNR have certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *regon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on May 1, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by April 11, 1985, and petition for reconsideration, including environmental, energy, and public use concerns must beled by April 22, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Any petitions filed regarding AB-72 (5X) should be marked "See AB-105 (5)". A copy of any petitions filed with the Commission must be sent to WPR and SNR's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public us conditions.

Decided: March 22, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-7504 Filed 3-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-21X)]

The Grand Trunk Western Railroad Co.; Abandonment in Saginaw County, MI; Exemption

The Grand Trunk Western Railroad Company (GT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. GT will abandon a portion of former Michigan Central Saginaw Branch railroad line extending between milepost 92.5 and milepost 98.6, a distance of approximately 6.1 miles, in Saginaw County, MI.

GT has cetified (1) that no local traffic has moved over the line for at least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Service Commission or equivalent agency in the State of Michigan has been notified. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on April 21, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by April 1, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 11, 1985; with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representatives: John C. Danielson, Grand Trunk Western Railroad Company, 131 West Lafayette Boulevard, Detroit, MI 48226.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use condition.

Decided: March 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-7793 Filed 3-28-85; 12:15 pm]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on March 21, 1985, a proposed consent decree in *United States* v. *Clark Oil and Refining Corporation*, Civil Action No. 84-2387(A), was lodged with the United States District Court for the Eastern District of Louisiana.

This case concerns discharges from Clark Oil and Refining Corp.'s Garyville, Louisiana petroleum refinery in violation of section 301 of the Clean Water Act, 33 U.S.C. 1311. The refinery presently is inactive. The proposed consent decree sets forth a schedule whereby Clark Oil will implement various remedial measures to insure compliance with the Clean Water Act. The consent decree also makes provision for payment by Clark Oil of $90,000 in civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Clark Oil and Refining Corporation*, D.J. Ref. 90-5-1-1-2117.

The proposed decree may be examined at the office of the United States Attorney, Eastern District of Louisiana, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130, and at the Region VI office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Division of Justice. In requesting a copy, include a check in the amount of $1.50 ($0.10 per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7568 Filed 3-28-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 14, 1985, a proposed consent decree in *United States* v. *Clarence Stephens, individually and d/b/a Acme Services and A.C. Lawrence Leather Company Inc.*, C.A. 85-0071P was lodged with the United States District Court, District of Maine. The compliant was filed by the United States and alleges a violation of the Clean Air Act and the National Emission Standards for Hazardous Pollutants (NESHAP) for asbestos by both defendants. The complaint seeks both injunctive relief, requiring the defendants to comply with the Clean Air Act and the NESHAP for asbestos in the future, and a penalty for a past violation. The proposed consent decree relates only to defendant A.C. Lawrence Leather Company Inc., which owned a building at which certain renovation work took place. The renovation work involved the removal, by defendant Stephens, of several thousand linear feet of asbestos from piping in the building. Prior notice of the removal was not given to the Environmental Protection Agency as required by the NESHAP for asbestos. The proposed consent decree requires defendant A.C. Lawrence Leather Company Inc. to comply with the Clean Air Act and the NESHAP for asbestos in the furtue and imposes a $9,500 civil penalty for violation of the notice requirement. The decree does not release defendant Stephens.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Clarence Stephens, individually and d/b/a Acme Services and A.C. Lawrence Leather Company Inc.*, Department of Justice Reference 90-5-2-1-755.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Courthouse, Portland, Maine 04104 and at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts, 02203. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States* v. *Clarence Stephens*, individually and d/b/a Acme Services *and A/C. Lawrence Leather Company Inc.*, Department of Justice Reference 90-5-2-1-755.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7570 Filed 3-28-85; 8:45am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, Notice is hereby given that on March 6, 1985 a proposed consent decree in *United States* v. *Penntech Papers, Inc.*, Civil Action No. 84-82, was lodged with the United States District Court for the Western District of Pennsylvania. The complaint filed by the United States alleged violations of the Clean Water Act by Penntech Papers, Inc. due to unauthorized discharges of pollutants from its paper mill in Johnsonburg,

Pennsylvania. The complaint sought civil penalties for past violations, and injunctive relief to bring Penntech Papers into compliance with the Clean Water Act. The consent decree provides that Penntech Papers will cease discharging any pollutant without a valid NPDES permit, and will pay a civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Penntech Papers, Inc.*, D.J. Ref. No. 90-5-1-1-1436.

The proposed consent decree may be examined at the office of the United States Attorney, 137 U.S. Courthouse, Erie, Pennsylvania and at the Region III office of the Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1710, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7569 Filed 3-28-85; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

Private Sector/Prison Industry Enhancement Certification Program; Issuance of Final Guideline

ACTION: Issuance of Final Guideline.

SUMMARY: Pursuant to Section 819 of the Justice Assistance Act of 1984 (Pub. L. 98-473), the Bureau of Justice Assistance is issuing the final revision to its *Private Sector/Prison Industry Enhancement Certification Program* Guideline, 46 FR 24748 (May 1, 1981). Certification allows prison made goods to be placed in interstate commerce and sold to Federal agencies. Such activities are normally restricted under 18 U.S.C. 1761 and 41 U.S.C. 35, respectively.

EFFECTIVE DATE: This guideline is effective March 29, 1985.

FOR FURTHER INFORMATION CONTACT: H.T. Tubbs, Corrections Program Supervisor, Bureau of Justice Assistance, 633 Indiana Avenue, NW., Room 603 G, Washington, DC 20531. Telephone (202) 724-5961.

SUPPLEMENTARY INFORMATION: Draft guidelines were orginally published in the **Federal Register** on August 6, 1984 for public comment. Written comments from public and private organizations and agencies were received. All comments have been considered by the Bureau of Justice Assistance in this publication. These guidelines are final.

Discussion of comments: The following is a summary of substantive comments and the response of the Bureau of Justice Assistance.

1. Payment of Wages

Comments—The program's wage rate should be calcuated to include transportation costs to rural areas, reduced production levels due to rapid turnover, and added expenses of training and start-up.

Program wage requirements should provide exemption for U.S. firms who contract with prison industries in lieu of contracting with a foreign country.

The term "locality," as used in the statement "not less than that paid for work of a similar nature in the locality in which the work is performed" should be defined.

Response—The Justice Assistance Act (Pub. L. 98-473, Title II, Chapter 6) section 609K, which amends section 819 of the Omnibus Crime Control and Safe Streets Act of 1968, is the program's underlying legislation. Section 819 specifically states that wages must be paid at a rate which is "not less than that paid for work of a similar nature in the locality in which the work is performed." BJA cannot therefore adjust wage rates to include unusual costs of doing business in the prison environment, however meritorious such adjustments might be. If the project is located in a rural area, wage rates will presumably reflect that reality. Formal, fixed time training may be done at the Federal minimum wage level.

Section 819 makes no allowance for manufacturers who establish prison-based businesses in lieu of overseas relocation. BJA cannot declare such an exemption given the lack of legislative basis. The meaning of "locality," as used in the calculation of program wage rates, is a matter for definition by the appropriate state agency which normally determines wage rates (usually the State Department of Economic Security).

Accordingly, no change was made in the wage payment provisions of the proposed guideline.

2. Deductions from Wages

Comments.—The guideline goes inappropriately beyond the legislation in the detailed requirements for wage deductions.

Victim compensation should not be singled out—noting it as one of four possible deductions should be adequate.

Victim compensation should not be confused with restitution.

Response.—Section 819 is explicit in providing an opportunity to achieve a balance of benefits among the interests of prison industries, the public, offenders and their families, and innocent victims of crime. Prison industries may benefit from expanded market opportunity; the public may benefit when room and board payments and profits are used to reduce the level of public support of prison industries; offenders and their families may benefit from wages available to provide family support and to provide support of offender costs incurred immediately following release from prison; and innocent victims of crime may benefit from funds in support of victim compensation programs, victim assistance programs or victim restitution.

Accordingly, a change was made in the proposed guideline to accurately reflect the policy of the Bureau of Justice Assistance that support of crime victim compensation or crime victim assistance programs is a prerequisite to participation in the certification program. The Federal government has made substantial sums of money available to states for construction of prisons, and the education and rehabilitation of state prisoners who have committed state crimes. Justice and equity support the Federal government in requiring aid to citizens victimized by those state prisoners employed within prison industries assisted by the certification program.

3. Compensated Training

Comments—The regulation permitting less than minimum wage to be paid for training is insufficiently explained.

The guideline should allow informal on-the-job training to permit adjustment in the prevailing wage rate using the Federal minimum wage as a floor.

The inference that vocational training may be a screening criterion for certification is overly intrusive.

The training period, during which lower wages may be paid, should be that accepted by the State Department

of Labor, as well as that generally accepted by the industry in question.

Response—BJA's position is that the Federal mimimum wage must be a floor for all program wage payments, since the Fair Labor Standards Act sets the Federal mimimum wage as a floor for any training which results in its products being sold. The single exeception to this rule, then, is pre-entry or vestibule training for new workers subject to the regulations and requirements set by State Fair Labor Standards, or Federal Fair Labor Standards legislation and procedures. Informal, intermittent on-the-job training, at minimum wages, is not permissible given the high potential for worker exploitation and the impossibility of regulating time limits on such practices.

Accordingly, no change was made in the training compensaton provisions of the proposed guideline.

4. Certification Process

Comments—Do not restrict the definition of "prison industry" to industries operated solely in "prison."

Applicants should apply with a mix of products and programs—not just a single industry—to best utilize the limited number of certification slots. That is, a state-wide certification should be made available.

Under a state-wide certification, additional industries should be reported with sufficient information to allow compliance with guidelines.

Certification should permit private sector employment of inmates on and off prison property.

Certification should go mainly to states rather than counties due to the longer length of stay and the severity of program needs in state institutions. Priority should go to the direct employment and subcontract employment projects.

The requirement as to the minimum allowable number of inmate employees handicaps smaller institutions.

The requirement that a minimum of 25% of produced goods must go into interstate commerce of the Federal agencies is an unnecessary restriction.

A 60-day (rather than a 30-day) notice for decertification would be more equitable.

Response—The certification process, as outlined in the proposed guideline, elicited the largest number of comments, and, as a result, is the area which in the final guideline has undergone the most change. The guideline now allows for two separate types of certification—the individual project certification and the department certification. Procedures for certification differ significantly depending upon the applicant's choice of certification type. All states (including the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands) and units of local government authorized by law to administer prision industry programs and projects are eligible to apply for certification. Projects may be located on or off prison property. All certified agencies will be required to report to BJA sufficient information to assure compliance with the guideline.

BJA will make no attempt to favor one model over another, nor one unit of government over another. A purpose of this program is to encourage experimentation on the state and county levels. Certification will be awarded solely on the basis of the applicant's demonstrated ability to meet all guideline criteria.

No restrictions as to the minimum allowable number of inmate employees in a certified project, or the minimum percentage of goods for sale through interstate commerce or to the Federal government will be imposed. A 60-day notice for decertification has been included in the final guideline.

5. Coordination with Private Sector

Comments—The guideline includes no allocation for certain expenses commonly found in the private sector such as corporate taxes, utilities, property taxes, insurance, interest expenses, legal audit and other fees, pensions, profit sharing, etc. Therefore, prison industries arrive at lower bid costs than are possible in the real world. We urge that normal costs and expenses incurred by local private businesses be factored into the selling price of all prison products.

We urge affected local businesses be permitted to bid for subcontract, for direct employment of inmates in a competitive, open, and public process, including provision for public hearing.

The Program name should be changed to the "Private Sector/Prison Industries Enhancement Program." This change will indicate clearly that the Program is a departure from traditional state and Federal prison industry programs. These "autonomous" programs compete unfairly with the private sector by using taxpayers' monies to subsidize the sale of prison industry goods and services to state/Federal government agencies at the expense of for-profit, taxpaying private businesses.

The Department of Corrections should seek local industry comment when reviewing an application for certification, by publishing notice of the application in a local newspaper with general circulation, and inviting local industry comment.

Furthermore, in a manner similar to consultations with representatives of local labor union central bodies, the Department of Corrections should specifically ask for comment on the application from a local chamber of commerce, private industry council, or local, state, or national trade association representing businesses that may be affected. Ideally, an industry representative should be included in the selection process.

Response.—Policies and procedures established by state legislative or administrative requirement govern the determination of product prices for items produced within prison industry operations. Depending upon the form of private sector involvement chosen by the participating state corrections agency, "normal" costs and expenses incurred by local private businesses do impact product price. It is beyond the scope of BJA's authority to dictate pricing policies to state or local prison industries.

Policy and procedure guiding local business access to participation in this program are established by state legislative and administrative requirements. BJA's policy is to encourage substantial open involvement of the private sector in order to expand the range and options available to prison based businesses.

The requirement that organized labor be consulted is a condition of certification established in Section 819. BJA concurs with the suggestion that consultation with representatives of local businesses potentially affected by certification occur as a requirement of certification.

To indicate clearly that the goals and objective of this program are a distinct departure from traditional state prison industry programs, the name of this program is changed as recommended.

This announcement does not constitute a "major rule" as defined by Executive Order 12291, because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

As a result of public review and comment, the final "Private Sector/Prison Industry Enhancement Certification" guideline is revised to read as follows:

Private Sector/Prison Industry Enhancement Certification Guideline

Scope of Program Announcement

A. General Provisions

1. Statutory Authority
2. Submission Date
3. Definitions

B. Mandatory Requirements

1. Eligibility
2. Crime Victim Compensation Program, Or Crime Victim Assistance Program
3. Consultation with Organized Labor
4. Consultation with Local Private Industry
5. Payment of Prevailing Wages
6. Free Worker Displacement
7. Voluntary Participation
8. Workers Compensation
9. Private Sector Involvement

C. Purposes of Project Certification

1. General
2. Project Purposes
3. Project Objectives

D. Eligible Projects

1. Individual Project Certification
2. Department Certification

E. Application Content

1. General
2. Purpose of Application
3. Application Kit

F. Selection Process

1. General
2. Review Criteria

G. Performance Reports

H. Conditions of Certification Suspension/Termination

I. Transition

A. General Provisions

1. *Statutory Authority:* Up to 20 projects may be exempted from Federal restrictions on the marketability of prison made goods, as certified by the Director, Bureau of Justice Assistance, as provided by sections 609 B(o) and 609 K, of the Justice Assistance Act of 1984, Pub. L. 98–473, Title II, Chapter VI. Section 609 B(o) amends section 819 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, as amended, and section 609 K amends 18 U.S.C. 176(c).

2. *Submission Date:* Applications will be reviewed and certifications issued on an as-received basis until the twenty (20) pilot projects have been selected in accordance with the selection criteria enumerated in this guideline.

3. *Definitions:* a. *Individual Project Certification* means acknowledgment by the BJA that a single state or local Department of Corrections' prison-based business cost accounting center has met the Federal legislative and adminsitrative requirements to permit sale of prisoner made goods to the Federal government and in interstate commerce.

b. *Department Certification* means acknowledgment by the BJA that a state or local Department of Corrections' Comprehensive Private Sector/Prison Industry Enhancement Plan has met the Federal legislative and administrative requirements to designate, administer, and manage one or more prison-based cost accounting centers for the production and sale of prisoner made goods to the Federal government and in interstate commerce.

c. *Comprehensive* means that the Private Sector/Prison Industry Enhancement Plan must be an integrated analysis of the present industry system which determines problems and defines solutions to achieve agreed upon short range and long range goals.

d. *Cost Accounting Center* means one distinct production operation unit of the industries system which is managed as a cost center or separate accounting entity.

e. *Crime victim compensation program* means a state administered program providing compensation to victims of crime and survivors of victims of crime.

f. *Crime victim assistance program* means a program meeting the eligibility criteria of the Victims of Crime Act of 1984, Pub. L. 98–473, Title II, Chapter XIV.

B. Mandatory Requirements

1. *Eligibility:* All states (including the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands) and units of local government authorized by law to administer prison industry programs and projects are eligible to apply for project certification.

2. *Crime Victim Compensation Program, Or Crime Victim Assistance Program:* Applicants must, by state legislation or rule, be able to collect and provide for financial support to a crime victim compensation program, or crime victim assistance program. Applicants must provide for the transfer of funds to a state crime victim compensation program, or to a state agency designated by the Governor to administer victim assistance grants under the Victims of Crime Act for the purpose of awarding such funds to eligible crime victim assistance programs under the Act. The recipient agency must, by state legislation or rule, be able to accept financial support from the applicant. Applicants shall ensure that these financial contributions for victim compensation are equivalent to not less than 5 percent nor more than 20 percent of gross wages paid inmate workers. Because the statute does not permit deductions from inmate wages for victims assistance programs, contributions to those programs must be taken from project income.

3. *Consultation with Organized Labor:* Applicants must consult with representatives of local union central bodies, or similar labor organizations prior to the submission of the application for project certification.

4. *Consultation with Local Private Industry:* Applicants must consult with representatives of local business that may be affected prior to the submission of the application for project certification.

5. *Payment of Prevailing Wages:* Applicants must have verified by the appropriate State agency which normally determines wage rates (usually the Department of Economic Security) that proposed wage plans are comparable to wages paid for work of a similar nature in the locality in which the project is located.

6. *Free Worker Displacement:* Applicants must have verified by the State Department of Economic Security (or other appropriate state agency) that paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services.

7. *Voluntary Participation:* Applicants must assure that inmate participation is voluntary and that inmate workers have agreed in advance to the specific deductions made from their gross wages and all other financial arrangements.

8. *Workers Compensation:* Applicants must provide for inmate worker entitlement to benefits and compensation as a result of injuries sustained in the course of employment related to project certification.

9. *Private Sector Involvement:* Applicants must provide for substantial involvement of the private sector. The purpose is to obtain private sector expertise, skill, and capital to expand the range and options of prison industry operations, not simply to apply an overlay on traditional, limited market, intrastate activities. There are four basic types of private sector involvement:

—An employer of inmate workers;
—an investor in a prison-based business owned by the state;

—a customer purchasing a significant portion of the output of a prison-based business; and
—a manager of a prison-based business owned by the State.

C. Purpose of Project Certification

1. *General:* This section sets forth the required purposes and objectives for all projects for which certification is requested.

2. *Project Purposes:* Projects certified will have the dual purpose of: (a) increasing benefits to the public including crime victims; and, (b) providing purposeful work for inmates as a means of reducing tensions caused by overcrowding while increasing job skills, and opportunities for rehabilitation.

3. *Project Objectives:* The objectives of projects certified are: (a) to develop and establish new models for prison-based businesses which create jobs approximating the conditions of private sector employment; (b) to experiment with methods which draw upon the economic base of certified operations for the purpose of compensating crime victim programs; (c) to experiment with one or more models for prison-based businesses including an examination of the program's impact on correctional policies and practices; and, (d) to substantially involve private sector capital, management skills and business expertise in the design, development, and operation of certified prison-based businesses.

D. Eligible Projects

1. *Individual Project Certification:* A single prison-based business cost accounting center, as defined in this guideline, is eligible for an individual project certification.

2. *Department Certification:* A state or local Comprehensive Private Sector/Prison Industry plan, for the designation, administration, and management of one or more prison-based cost accounting centers, is eligible for department certification.

E. Application Content

1. *General:* This section describes the required content of applications for individual project certification and department certification.

2. *Purpose of Application:* State or local Departments of Corrections must submit for approval an application presenting information and documentation necessary for determining project compliance with the Act and guideline.

3. *Application Kit:* The Bureau of Justice Assistance will provide application kits to each interested state or local Department of Corrections describing the form and contents for individual project certification and department certification applications.

F. Process

1. *General:* Projects will be certified by the Director, Bureau of Justice Assistance, upon review and recommendation by an internal agency review panel.

2. *Review Criteria:* Applications will be judged on the basis of demonstrating compliance with the statutory, guideline and application kit form and content criteria; feasibility of project or comprehensive plan; likelihood of success; and the scope of private sector involvement.

G. Performance Reports

Each project certified is required to submit a performance report to the Bureau of Justice Assistance by the 30th of the month following the end of each calendar quarter for the activities undertaken during the prior quarter. Performance reports must provide the following information and data:

—Title of Certified Cost Accounting Center;
—Dates of Reporting Period;
—Average Workforce Number;
—Average hours worked per day;
—Hourly wage range;
—Average days worked per week;
—Average monthly wage;
—Gross wages paid;
—Contribution to crime victim compensation program;
—Contribution to crime victim assistance program;
—Deductions for Federal income tax;
—Deductions for State income tax;
—Deductions for room and board;
—Deductions for family support;
—Deductions for restitution (court ordered); and,
—Other deductions (savings, Social Security, etc).

H. Conditions of Certification Suspension/Termination

Certification will set forth the certified corrections agency, the certified private sector/prison industry project, the terms and conditions of certification, and the effective date of certification. Provisional certification may be issued in special circumstances subject to completion of designated actions within specified periods of time. The Director, Bureau of Justice Assistance, may, for cause, following a 60-day written notice to the certified state or unit of local government, suspend or terminate a certification.

I. Transition

Prison Industry Enhancement projects certified prior to December 31, 1984 under the authority of Section 827, Pub. L. 96–157, the Justice Improvement Act of 1979, shall continue in effect according to their terms until January 1, 1987, at which time they must demonstrate compliance with the requirements of this guideline. Failure to comply will result in the suspension or termination of certification.

Richard B. Abell,

Deputy Assistant Attorney General.

[FR Doc. 85–7547 Filed 3–28–85; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D. Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 18th day of March 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former worker of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Accessories, Inc. (workers)	Dandridge, TN	2/26/85	2/19/85	TA-W-15,789	Overnight bags.
American Safety Equipment Corp. (workers)	Palmyra, MO	2/20/85	2/10/85	TA-W-15,790	Seat belts for cars.
Brunswick Maine Shoe Co. (workers)	Brunswick, ME	2/28/85	2/12/85	TA-W-15,791	Women's shoes and men's shoes and boots.
Chambersburg Manufacturing (ILGWU)	Chambersburg, PA	2/15/85	2/11/85	TA-W-15,792	Rain wear.
Corey Shoe Co., Inc. (workers)	Sanford, ME	2/26/85	2/8/85	TA-W-15,793	Ladies' open toe dress shoes.
Crest Shoe (workers)	Lewiston, ME	2/28/85	2/12/85	TA-W-15,794	Ladies' shoes, men's shoes and boots.
Dori Shoe Co., Inc. (workers)	Lewiston, ME	2/28/85	2/20/85	TA-W-15,795	Ladies' dress shoes.
Harrington & Richardson, Inc. (IUE)	Gardner, MA	2/20/85	2/13/85	TA-W-15,796	Firearms (Long and hand guns).
Harris Graphics (workers)	Dayton, OH	2/25/85	2/21/85	TA-W-15,797	Printing presses, whole machines, and misc. parts.
Hoffman-LaRoche (workers)	Nutley, NJ	2/20/85	2/15/85	TA-W-15,798	Sundry items and bulk pharmaceuticals.
Hoffman-LaRoche (workers)	Belvidere, NJ	2/20/85	2/15/85	TA-W-15,799	Sundry items and bulk pharmaceuticals.
ITT Courier (company)	Tempe, AZ	2/22/85	2/15/85	TA-W-15,800	Data communication products.
ITT Grinnell Corp. (company)	Princeton, KY	2/22/85	2/19/85	TA-W-15,801	Welding fittings.
Jumping Jacks Shoe, Inc. (workers)	Monett, MO	2/25/85	2/22/85	TA-W-15,802	Shoes, dress, casual work for ladies' misses, and children.
NPR, Inc. (URW)	Nephi, UT	2/25/85	2/15/85	TA-W-15,803	Hydraulic hose and oil drilling hoses.
Reeves Brothers, Inc., Eastman Plant (workers)	Eastman, GA	2/20/85	2/14/85	TA-W-15,804	Fabrics for apparel trade.
SKF, Inc. (USWA)	Altoona, PA	2/15/85	2/12/85	TA-W-15,805	Precision ball bearings.
Simpson Timber Co., Northwest Operation (IWA)	Shelton, WA	2/19/85	2/12/85	TA-W-15,806	Lumber.
Trojan Luggage Co. (United Furniture Wkrs)	Memphis, TN	2/19/85	2/12/85	TA-W-15,807	Luggage and tote bags, attache cases.
U.S. Shoe Corp. (company)	Chillicothe, OH	2/18/85	2/13/85	TA-W-15,808	Ladies' nonrubber footwear.
United Uniforms Manufacturing Co. (United Furniture Wkrs).	Memphis, TN	2/20/85	2/12/85	TA-W-15,809	Industrial uniforms.
Piano Action & Key Div. of Aeolian Pianos, TN Inc. (United Furniture Wkrs).	Menphis, TN	2/19/85	2/13/85	TA-W-15,810	Piano actions, keys and other related parts.
Pratt & Whitney Machine Tool Div. of Colt Industries Operating Corp., Inc. (UAW).	West Hartford, CT	2/19/85	2/13/85	TA-W-15,811	Numerically-controlled machine tools.

[FR Doc. 85-7571 Filed 3-28-85; 8:45 am]

BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Funding Availability for Development of Source Materials on Laws Affecting Elderly Persons

AGENCY: Legal Services Corporation.

ACTION: Announcement of Funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for developing classroom and bar association source material on laws affecting the elderly. The Corporation will distribute one-time awards totalling approximately $300,000. Each award will be for a term of up to 12 months. Applicants may request funding of up to $50,000 per grant. All grants will be awarded pursuant to authority conferred by Pub. L. 98-411 and § 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Recipients are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services. Grantees must further agree that they will not copyright the materials developed and will not charge other than private groups or individuals for such materials and such charge will not be for more than approximately their net cost of production.

This Congressionally mandated project is designed to increase and improve the quantity and quality of legal services to elderly Americans.

Proposals for the grants will be solicited from bar associations and from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools or other qualified institutions and individuals or groups. Each applicant must submit apporpriate documentation of status.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before April 30, 1985. Grant awards will be announced no later than June 1985.

FOR FURTHER INFORMATION CONTACT: Beverly Bunn, Legal Services Corporation, Office of Field Services, 733 Fifteenth Street, NW, Washington, D.C. 20005, (202) 272-4351.

SUPPLEMENTARY INFORMATION: Proposals under this solicitation should focus on the development and distribution of source materials (e.g. practice manuals, texts, form books, video recordings, etc.) for use by law schools, the private bar, legal service grantees, and continuing legal education programs. This initiative has been designed to achieve six major goals: (1) The identification of existing source materials on laws affecting the elderly; (2) the development of material to enhance and update existing source materials; (3) the identification of new areas of interest and specialization pertaining to legal needs of the elderly and the development of source materials for those areas; (4) the dissemination of these source materials to other law schools, the private bar, legal services grantees and legal education programs; (5) the maximization of cooperation between segments of the legal community: law schools, bar associations, the private bar, legal services grantees, etc; (6) the expansion of the number of lawyers interested in providing legal services to elderly poor persons.

All proposals will be evaluated by OFS using selection criteria which include: (1) The provision of a clear description of the source materials to be developed, including a plan for dissemination of materials; (2) evidence that the project director and key project staff have the necessary qualifications and experience to effectively develop materials, and will be able to allocate an adequate amount of time and

resources to appropriate levels of research and development of source materials; (3) the extent to which source materials developed will assist the practitioners dealing with present and future legal needs of the elderly poor and evidence of development of source materials for emerging areas of interest; (4) evidence of adequate budgetary funding and a manageable plan to support the development and dissemination of materials. Cited costs must be reasonable in relation to the duration and objectives of the proposed project. Indirect administrative costs must be specified in the proposal. Lower indirect costs will be given a higher rating; in order to maximize project goals, an absence of indirect costs would be preferred; (5) demonstration that the applicant plans to make an adequate cash or in-kind contribution which, among other things, could include contribution of adequate facilities and equipment to the proposed project. **Note.**—*Federally funded assets and projects cannot be counted as an in-kind contribution;* (6) the extent to which a cooperative effort in relation to this project is shown between an area's law schools, law school clinics, LSC grantees, bar associations and members of the bar. Letters or other evidence of support by these organizations for the proposed project may be attached where appropriate; (7) the degree to which the addition of these source materials will enhance the capacity of law school and bar association programs to sensitize and educate law students and lawyers to the legal needs of the elderly poor; (8) the degree to which the institution's regular budget is currently allocated to research activities; assurances or evidence that such budgetary support will be maintained during and beyond the term of the award.

An effort will be made to ensure nationwide participation and geographic distribution.

Peter P. Broccoletti,

Acting Director, Office of Field Service.

[FR Doc. 85-7536 Filed 3-28-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-20]

NASA Advisory Council Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Adminsitration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE: Dates and time: April 15-16, 1985, 8:30 a.m.to 4:30 p.m.; April 17, 1985, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration/Lewis Research Center, Room numbers as noted in the Agenda below, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Artur Mager and is composed of 32 members. The committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all committee and subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of the room.

Type of meeting: Open.

Agenda

April 15, 1985

Remote Sensing Subcommittee—Room 215—Administration Building; 8:30 a.m.—Review of FY 1987 Budget Planning:

- Update on Plans for the Ocean Topography Experiment (TOPEX) and International Solar Terrestrial Program;
- Report on Plans for the Earth Observing System (EOS) and its Instruments;
- Projections for Remote Sensing Research and Analysis (R&A).

—Interagency Committee on Earth Science Research from Space.
—Update on Remote Sensing Input to the Long-Range Plan for Applications.
—Approve Remote Sensing Subcommittee Report.
—Approve Subcommittee Charter and Work Plan.

Communications Subcommittee—Room 101—Building 54; 8:30 a.m.—Review of FY 1987 Budget Planning:

- Update on Planning for Mobile Satellite;
- Review of Advance Technology Development (R&A).

—Approve Communications Subcommittee Report.
—Approve Work Plan.

Information Systems Subcommittee—Room 103—Building 142; 8:30 a.m.—Review of FY 1987 Budget Planning:

- Planning for Mission Support (EOS, TOPEX, Gamma Ray Observatory, etc.);
- Planning for R&A and Facilities Support.

—Review results of visit to the Jet Propulsion Laboratory on March 18-19, 1985.
—Update on Status of Input to the Long-Range Plan for Applications.
—Approve Subcommittee Charter and Work Plan.

Microgravity Subcommittee—Room 111—Building 49; 8:30 a.m.—Review of FY 1987 budget:

Update on Flight Programs Leading to the Space Station;

- Projections for Microgravity R&A.

—Update on Microgravity Input to the Long-Range Plan for Applications.
—Discussion of Microgravity Subcommittee Report.
—Approve Subcommittee Charter and Work Plan.
—Discussion of Soviet Microgravity Program.
—Technical Briefing on Bio-Processing Research in Microgravity.

4:30 p.m.—Adjourn.

April 16, 1985

Space Applications Advisory Committee—Room 215—Administration Building—

8:30 a.m.—Opening Remarks with Dr. Mager:

- Approve Minutes from January Meeting;
- Approve Agenda.

8:45 a.m.—Overview of the Lewis Research Center with Mr. Stofan.

9:30 a.m.—Reconvene Subcommittee Meetings—

Remote Sensing Subcommittee—Room 215—Administration Building.
Communications Subcommittee—Room 101—Building 54, Information Systems Subcommittee—Room 103—Building 142.
Microgravity Subcommittee—Room 111—Building 49.

4:30 p.m.—Adjourn.

April 17, 1985

8:30 a.m.—All subcommittees reconvene for subcommittee business—

Remote Sensing Subcommittee—Room 215—Administration Building.
Communications Subcommittee—Room 101—Building 54.
Information Systems Subcommittee—Room 103—Building 142.
Microgravity Subcommittee—Room 111—Building 49.

11:15 a.m.—Subcommittee Status Reports and Wrap-Up Discussion with Dr. Mager—Room 215—Administration Building.

12:00 noon—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 25, 1985.

[FR Doc. 85-7463 Filed 3-28-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (New Genres Fellowships Section) to the National Council on the Arts will be held on April 15–18, 1985 from 9:00 a.m.–8:00 p.m. and on April 19, 1985, from 9:00–6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

This meeting is 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 inconficence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions 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 with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–7576 Filed 3–28–85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. Title of the information collection: Revision 3 to Regulatory Guide 1.28, "Quality Assurance Program Requirements (Design and Construction)".

3. The form number if applicable: Not applicable.

4. How often the collection is required: Optional.

5. Who will be required or asked to report: Optional.

6. An estimate of the number of responses: 0: Optional.

7. An estimate of the total number of hours needed to complete the requirement or request: 0: No new requirements specified.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Regulatory Guide 1.28 with its 3 supplemental regulatory positions, endorses ANSI/ASME NQA–1–1983 and ANSI/ASME NQA–1a–1983 Addenda as a method acceptable to the NRC staff for complying with the provisions of Appendix B to 10 CFR 50 requiring the establishment and implementation of a quality assurance program during the design and construction of nuclear power plants.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 25th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–7588 Filed 3–28–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–298]

Nebraska Public Power District; Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix E to 10 CFR 50 to the Nebraska Public Power District (the licensee) for Cooper Nuclear Station, located at the licensee's site in Nemaha County, Nebraska.

ENVIRONMENTAL ASSESSMENT

Identification of Proposed Action: The exemption relates to Section IV.F.2 of Appendix E to 10 CFR Part 50 which requires that each licensee at each site shall annually exercise its emergency plan. By letter dated December 28, 1984, as supplemented by submittal dated February 1, 1985, the licensee requested an exemption from these schedular requirements to permit the emergency drill to be performed in October 1985 rather than May 1985. The anniversary date for all future drills would then be in October. The exemption was requested to avoid schedular and licensee staff resource conflicts during the ongoing extended 1985 outage and during future refueling outages scheduled on an annual basis during March and/or April.

The Need for the Proposed Action: Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2 of Appendix E requires that each licensee at each site shall annually exercise its emergency plan. The current anniversary date for the performance of the Cooper Nuclear Station emergency drills falls in mid-May. However, in May 1985 the plant will still be involved in the ongoing major outage for refueling, pipe replacement and other plant modifications. It is anticipated that the plant will be in the outage through May 1985 with additional time required for post-outage testing and recovery. Performance of an emergency drill in May 1985 would divert significant licensee staff resources from the timely accomplishment of plant modifications. Delaying the anniversary date for the emergency drills would also preclude future conflicts with the scheduled April refueling outages and with the Spring flood control activities of other agencies involved in the plant emergency drills.

Environmental Impacts of the Proposed Action: The proposed exemption only affects the conduct of the annual emergency preparedness exercise and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor any significant occupational exposures. Likewise, the exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological impacts associated with the proposed exemption.

Since we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives will either have no environmental impact or greater

environmental impact. The principal alternative to the exemption would be to require literal compliance with Section IV.F of Appendix E to 10 CFR Part 50. Such an action would not enhance the protection of the environment and would result in unnecessary expenditure of resources to participate in the exercise.

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 this facility (Final Environment Statement—Cooper Nuclear Station, February 1973).

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request dated December 28, 1984 and the supplemental submittal dated February 1, 1985. 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 exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with regard to this action, see the request for exemption dated December 28, 1984 and supplemental submittal dated February 1, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Bethesda, Maryland this 21st day of March, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors Division of Licensing.

[FR Doc. 85-7590 Filed 3-28-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-259]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Tennessee Valley Authority (TVA, the licensee), for the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama.

Environmental Assessment

Identification of Proposed Action: The exemption would extend by up to 84 days the two-year test period for performing Type B and C tests of some bellows, electrical penetrations, and double O-ring seals and valves which cannot be tested during power operation. The exemption is responsive to the licensee's application for exemption dated December 21, 1984, as supplemented by letter dated February 22, 1985.

The Need for the Proposed Action: The proposed exemption is needed to minimize simultaneous outage time of Browns Ferry Units 1 and 2. Browns Ferry Unit 2 shut down for its Cycle 5 outage September 15, 1984. Projected start up is mid-August 1985. Unit 1 is in coastdown operation scheduled to shut down for its Cycle 6 outage on June 1, 1985. The two-year test interval for various Unit 1 components subject to 10 CFR Part 50 Appendix J testing runs out starting April 20, 1985. Although the Unit 1 Cycle 6 outage is expected to begin in June 1985, TVA requests extension through July 12, 1985 to allow for schedular flexibility and uncertainty.

Environmental Impacts of the Proposed Action: An extension period of 84 days is relatively short (i.e., less than the 25% value permitted for surveillance tests not subject to Appendix J). Also, for a significant period of the total interval (April 19, 1983 through January 1, 1984) the facility was shutdown in a refuelng outage during which the components were not subject to deleterious service conditions. Therefore, the extension in the two-year test interval for the specific components identified in the licensee's letter will not result in any significant reduction in a margin of safety. The proposed exemption will not involve a significant increase in the probability or consequences of any previously evaluated accident nor create the possibility of an accident of a type different from any previously evaluated. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (operating license stage) for the Browns Ferry Nuclear Plant, Units 1, 2 and 3.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 21, 1984, as supplemented by letter dated February 22, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated at Bethesda, Maryland, this 21st day of March, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-7591 Filed 3-28-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-223]

University of Lowell; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission or NRC) is considering renewal of Facility Operating License No. R-125 issued to the University of Lowell (the licensee) for operation of the training and research reactor located on the campus in Lowell, Massachusetts.

The renewal would extend the expiration date of Facility Operating License No. R-125 for thirty years from date of issuance, in accordance with the licensee's timely application for renewal dated February 14, 1984.

Prior to a decision to renew the license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 29, 1985, the licensee may file a request for a hearing with respect to renewal of the subject facility license

and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, at 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); University of Lowell); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the Atomic Safety and Licensing Board designated to rule on the petition and/or request that the petition has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.174(d).

For further details with respect to this action, see the application for renewal dated February 14, 1984, which is available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555.

Dated at Bethesda, Maryland this 22th day of March 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85–7592 Filed 3–28–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–440–OL, 50–441–OL; ASLBP No. 81–457–04 OL]

Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 & 2); Amended Notice of Hearing

March 25, 1985.

The Board has been informed that the Lake County Administration Center referred to in our notice of March 15, 1985 (50 FR 11471, March 21, 1985) has become unavailable for the hearings that have been scheduled in this matter. Accordingly, the hearings will be held at the following location: Perry Town Hall, Center Road and Main Street, Perry, Ohio 44081.

The hearings will commence at 9:00 a.m., Tuesday, April 9, 1985 as announced in our previous Order.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Jerry R. Kline,

Administrative Judge.

[FR Doc. 85–7589 Filed 3–28–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–602]

University of Texas; Proposed Issuance of Construction Permit and Facility Operating License

The Nuclear Regulatory Commission (the Commission) is renoticing consideration of the issuance of a construction permit and subsequently a facility operating license to The University of Texas (the applicant) at Austin to change the maximum operating power level and redefine the pulse magnitude. The permit would authorize the applicant to construct for educational training and research purposes a nuclear research reactor (the facility) at the University's Balcones Research Center in Austin, Texas. The license would authorize the applicant to operate the reactor at power levels not in excess of 1.1 Megawatt (thermal), with pulse step reactivity insertion not in excess of 2.2%Δ k/k.

Prior to issurance of the construction permit, the Commission will have made the findings required by the Act and the Commission's rules and regulations.

Upon completion of the construction of the facility in Austin, Texas; in compliance with the terms and conditions of the construction permit and the applicantion, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor

at the power and pulse levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issurance of the license, the facility will be inspected by a representative of the Commission to determine whether it has been constructed in accordance with the application and the provisions of the construction permit. The license will not be issued until the Commission makes the findings required by the Act and the Commission's rules and regulations and concludes that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public or to the environment. In addition, the applicant will be required to execute an indemnity agreement as required by Section 170 of the Act and by 10 CFR Part 140 of the Commission's regulations.

By April 29, 1985, the applicant may file request for a hearing with respect to issuance of the construction permit and the facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the permit under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to C.O. Thomas (petitioner's name and telephone number); (date petition was mailed); (University of Texas); and (publication date and page number of the **Federal Register** Notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James L. Crowson, Esq., Office of General Counsel, 210 West 7th Street, Austin, Texas 78701, attorney for the applicant.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the construction permit and operating license dated November 9, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 22th day of March 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85-7393 Filed 3-28-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21887; SR-CBOE-85-5]

Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change; Chicago Board Options Exchange, Inc.

March 25, 1985.

On February 28, 1985, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19-4 thereunder,[2] to amend CBOE Rule 9.21 ("Communications to Customers") to conform it with the recent Commission amendment to Rule 134a under the Securities Act of 1933 ("Securities Act")[3] relating to the content of written materials disseminated to the public.[4] Specifically, CBOE would (1) delete from its Rule 9.21 the legend requirement regarding prospectus delivery; (2) permit the identification of certain specific securities, namely securities exempt from registration under the 1933 Act; options on such exempt securities, including the component securities of an index; and foreign currency options; and (3) amend the CBOE rule to clarify that it applies to advertisements promoting

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 17 CFR 230.134a (1984).

[4] The amendments to Rule 134a were announced in Securities Act Release No. 6518, March 22, 1984, 49 FR 12667.

options instruments as well as other written materials. As CBOE points out, the Commission previously has approved similar rule proposals for the American ("Amex") and Philadelphia ("Phlx") Stock Exchanges.[5] CBOE states that the statutory basis for its proposed rule change is Section 6(b)(5) of the Exchange Act in that it promotes just and equitable principles of trade, protects investors and promotes the public interest.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission 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 5th Street, N.W., Washington, D.C. 20549., Reference should be made to File No. SR-CBOE-85-5.

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 at the CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change conforms CBOE Rule 9.21 witrh amendments to Rule 134a under the 1933 Act that were published in the **Federal Register** for comment, considered, and approved by the Commission and parallels rule changes by the Amex and Phlx which also were published for comment in the **Federal Resister**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7583 Filed 3-28-85; 8:45 am]

BILLING CODE 8010-01-M

[5] Securities Exchange Act Release Nos. 21063 and 21254, June 18, and August 17, 1984, 49 FR 25725 and 33522.

[Release No. 34-21888; SR-Amex-84-40]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 25, 1985.

The Amercian Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on December 28, 1984, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to expand its policy regarding the use of index option escrow receipts for broad-based index options so that customers can also use such receipts as cover, in lieu of margin, for their short options positions in industry or narrow-based index options.

The proposed rule change would permit the use of escrow receipts for short positions in narrow-based index options under the same conditions that currently apply to their use for broad-based index options. These conditions require that the bank or trust company issuing the escrow receipt certifies that it holds for the customer at least ten qualified equity securities, each issued by a different entity, with a fixed aggregate dollar value at trade date, and that it agrees to meet the customer's settlement obligations upon assignment. In addition, the rule requires that no single qualified security may represent more than 15 percent of the total collateral.

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. 21712, February 4, 1985) and by publication in the **Federal Register** (50 FR 5831, February 12, 1985). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.[1]

[1] The Commission received one comment from the staff of the Board of Governors of the Federal Reserve System indicating that its view that the escrow receipts currently used for broad-based index options constitutes cover under § 220.8(4)(i) of Regulation T also would be applicable to transactions in cash-settled narrow-based index options. *See* letter from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System, to Richard T. Chase, Associate Director, Division of Market Regulation, dated November 15, 1984.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7582 Filed 3-28-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21886; SR-CBOE-84-34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change

March 25, 1985.

The Chicago Board Options Exchange Inc. ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted on December 24, 1984, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to allow customers to meet their margin obligations regarding Government security options by delivering to their broker-dealer a Treasury security escrow receipt issued by a bank that is collateralized by Treasury bonds ("T-bonds") other than the T-bonds underlying the T-bond option the escrow receipt covers.

Options writing programs on T-bonds are usually effected on a covered basis through the use of escrow receipts issued by a bank. The exchange contends that because T-bonds trade on the same credit basis, a close relationship exists between T-bonds in the same maturity tiers. CBOE believes it is thus practical for institutions to use options strategies to hedge portfolios composed of a variety of T-bonds, not all of which specifically underlie the T-bond options. Under the proposal, bonds of a single coupon/maturity that do not underlie the T-bond option contract

written could be held in escrow against one specific T-bond option contract. The bank, however, still would be obligated to deliver the underlying T-bond should assignment occur.

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 and publication in the **Federal Register** (Securities Exchange Act Release No. 21728, February 8, 1985; 50 FR 6420, February 15, 1985). Although no comments were directly received by the Commission concerning the proposed rule change, the CBOE forwarded to the Commission a letter from the staff of the Board of Governors of the Federal Reserve System indicating that they did not object to the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder, in that the proposal is intended to facilitate the use of T-bond options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7584 Filed 3-28-85; 8:45 am]

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[Release No. 34-21890; SR-NASD-85-5]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change

March 25, 1985.

National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted a proposed rule change on March 20, 1985, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, relating to the NASDAQ-100 Index Option.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In Securities Exchange Act Release No. 19264 (November 22, 1982) the Commission approved rule changes of certain self-regulatory organizations relating to the listing and trading of standardized put and call option contracts on various stock indices. In the Release, the Commission stated "each index that will underlie an options contract must be reviewed separately as a proposed rule change pursuant ot Rule 19b-4 under the [Securities Exchange] Act before trading in an option based on that index may commence." The purpose of this proposed rule change is to permit the National Association of Securities Dealers, Inc. ("NASD") to include in the NASDAQ System options on the stock index described in Item 3.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the NASD to include standardized put and call options on the NASDAQ-100™ Index in the NASDAQ Options Program. Options on the NASDAQ-100™ Index will be traded within the general framework of NASD rules proposed for the trading of index options in SEC File No. SR-NASD-80-10 which is now pending before the Commission.

Description of the NASDAQ-100 Index™

The NASDAQ-100 Index™ will be composed of the 100 largest non-financial securities included in the NASDAQ National Market System ("NASDAQ/NMS") as of February 1, 1985, subject to the condition that not more than one issue of a particular company will be included in the Index, and subject to the criteria that the minimum market value of the public float of the issue is $100 million. Both foreign and domestic issues will be included. In the event a security is deleted from the NASDAQ-100 Index™, the largest non-financial NASDAQ/NMS issue not then in the Index which meets the applicable criteria will be substituted. The NASD will establish procedures for, and controls over, substitutions of securities.

The NASDAQ-100 Index™ is market value weighted. The representation of each security in the Index is proportional to its last sale price times the total number of shares outstanding, in relation to the total market value of the Index. The level of the Index is calculated as follows:

$$\text{NASDAQ-100 Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 250$$

$$\text{Adjusted Base Period} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numeric value level of the NASDAQ-100 Index™ was established at 250 prior to the opening of the market on February 1, 1985. The level of the NASDAQ-100 Index™ will only change as a result of price changes occurring between the opening and closing of the market. Adjustments for securities being added to or deleted from the NASDAQ-100 Index™, or capitalization changes or adjustments, will take place during the system maintenance process which occurs after the market has closed. These adjustments will result in value changes to the current market value and adjusted base period market value, but will not in and of themselves alter the level of the NASDAQ-100 Index™.

Stock splits and stock dividends are likewise adjusted for during the system maintenance process. The system makes a price adjustment, however, to account for the increased number of shares outstanding from such an action with the result being that the current market value does not change.

In the case of cash dividends, no system adjustment is made. The NASDAQ-100 Index™ formula relies on market forces to determine the level of the Index. Neither the current market value nor the adjusted base period market value are adjusted to reflect cash dividends.

The NASD will begin immediately to disseminate daily closing calculations of the NASDAQ-100 Index™ on Level 2 and Level 3 NASDAQ terminals via the NASDAQ News Frame. It will also attempt to have this information carried on the Associated Press or UPI news services. When trading in NASDAQ-100 Index™ Options commences, the NASD will calculate the NASDAQ-100 Index™ and disseminate the Index value to NASDAQ Level 1 vendors at one-minute intervals.

The base value of the NASDAQ-100 Index™ on February 1, 1985 was 250.

[1] *See* letter from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System, to Mary Bender, Assistant Vice President, CBOE, dated November 16, 1984.

Terms of NASDAQ-100 Index™ Option Contract

The NASDAQ-100 Index™ Option will be based on the NASDAQ-100 Index™ and will utilize an index multiplier of $100. The unit of trading will be determined by multiplying $100 times the current index value. The unit of trading as of February 1, 1985, therefore, would be $25,000 (250 × $100).

Exercise prices for the NASDAQ-100 Index™ Option will be set at five point intervals in terms of the NASDAQ-100 Index™, e.g., 250, 255, 260. Options contracts will have up to four consecutive monthly expirations.

Premiums on the NASDAQ-100 Index™ Options will be expressed in terms of dollars and fractions per unit of the index. Each point will represent $100. The minimum fraction will be 1/16th which will represent $6.25.

The NASD has developed rules permitting it to establish position and exercise limits for market index options. Those rules have been submitted to the Commission as proposed amendments to Appendix E under Article III, section 33 of the NASD Rules of Fair Practice in File No. SR-NASD-80-10. The NASD expects to amend those rules to provide that limits established will not be in excess of a dollar equivalent of $300 million, as determined by multiplying the current index value times the current index multiplier times the position limit. On the basis of the NASDAQ-100 Index™ value as of February 1, 1985, a position limit of 12,000 contracts would equal $300 million.

The NASD has proposed rules governing the trading of NASDAQ-100 Index™ Options which are believed to be comparable to those established by other options self-regulatory organizations for trading in broad-based index options. Those amendments are pending before the Commission in File No. SR-NASD-80-10.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934, as amended (the "Act") in that approval of the proposed rule change will serve to "perfect the mechanism of a free and open market and a national market system."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change in Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) 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.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will 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 19, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7585 Filed 3-28-85; 8:45 am]

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[1] As indicated above, the NASD has submitted in a separate filing (SR-NASD-80-10) the rules that would govern the trading of the specific contract described in this filing. Approval of both filings would be necessary in order to allow the commencement of actual trading of the specific contract contained in this filing.

[Release No. 34-21891; File No. SR-NASD-80-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Amendment No. 3 to Proposed Rule Change; Relating to NASDAQ Options Plan Amendments

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on March 19, 1985, copies of Amendment No. 3 to the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1), as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amendment No. 3 to the proposed rule change redefines the term "option" to clearly include new options products such as index and foreign currency options; incorporates into Appendix E, Section 33 of the Rules of Fair Practice rule changes previously approved by the Commission; establishes multiple categories of NASDAQ Options market makers with qualification requirements and commitment rules; establishes trading practices for options including expiration dates and units of trading; mandates participation in an automated execution and reporting system for certain orders of limited size; requires primary market makers to disclose side-by-side market making status on confirmations to customers; modifies proposed position and exercise limits; adopts procedures to detect market maker possession of unfair informational advantage; and refines provisions to enhance the effectiveness of an automated surveillance program.

The terms of substance of Amendment No. 3 are as follows: [1]

Underlying Securities

The eligibility criteria for underlying securities have been amended in Amendment No. 3 to reflect changes in exchanges eligibility rules adopted since 1982. In addition, Amendment No. 3 provides that prior to securities being authorized by the Association as underlying securities for NASDAQ options, the issuer of the underlying

[1] A chart detailing the precise changes contained in Amendment No. 3 is available at the Commission and the NASD.

security will be given the opportunity to approve or disapprove the use of its securities for options purposes.

NASDAQ Options Automated Execution System (NOAES)

The Association's proposed Options Program will provide for the automatic execution of orders in stock options and index options as an integral part of the service. The system will automatically execute entered trades creating a "lock-in trade" by reporting the trade to Options Price Reporting Authority ("OPRA") forwarding confirmations to both sides of the execution, and producing clearing data and forwarding such to the Options Clearing Corporation ("OCC").

This capability will be limited to small customer orders and will function in a manner which is similar to the Association's Small Order Execution System ("SOES"). Additionally, a new transaction, the Order Confirmation Transaction, will permit trades which are not automatically executed to be captured by the system. When this type of transaction is entered into the system and the entry is accepted by the contra-party, both parties will have the advantage of a "locked-in trade" and the reporting features of the automatic execution system. The following section describes, in general terms, features of the NASDAQ Options Automatic Execution System.

The NASDAQ Options Automatic Execution System will automatically execute orders in NASDAQ stock and index options. The system will permit the execution of orders initially for up to three contracts in any NASDAQ stock or index option.

Participation in NOAES will be mandatory for all options market markers. Therefore, all NASDAQ options quotations displayed will reflect prices at which automatic executions may be effected. The automatic execution system will be able to automatically execute transactions at the "best" displayed NASDAQ option bid or offer.

NOAES market makers will be able to enter "exposure limits" on an individual security basis. This will allow a firm to specify the maximum number of contracts that the firm will be willing to have bought and sold in an option via automatic executions. The exposure limits for the buy side and for the sell side may be changed by the market maker on-line during the day via an entry similar to a quote update entry. These exposure limits will not be displayed on bid/ask responses but will be available to the market maker each time he updates his quote and may also be obtained at any time by separate inquiry. Any NOAES market maker whose quotes are displayed must accept at least one automatic execution for up to three contracts at his stated quotation if such quotation is the best quotation in the system.

When a market maker's exposure limit is exhausted, the market maker's quotations will be deleted from NOAES. However, the market maker's symbol identification will continue to be displayed.

NOAES automatic executions will have a maximum size limit of three contracts. However, larger transactions will be effected via OCT's and still be locked in the system. Therefore, the system will accommodate both large and small orders.

With respect to automatic executions, the system will execute each NOAES order against only one market maker. Any order entered in NOAES equal to or less than three contracts will be automatically executed against an active NOAES market maker at the best NOAES price.

To assure that orders up to three contracts may be executed in their entirety against a single market maker at the best displayed price, market makers whose exposure limits are less than three contracts, but greater than zero, will be obligated to execute one additional order for contracts prior to having their quotations deleted from NOAES.

In the event that thre is only one market maker at the best NOAES bid or offer and such market maker's exposure limit is exhausted, the next best remaining quotation will automatically become the new best bid or offer for purposes of automatic executions.

In the event all market makers' exposure limits in a particular option are exhausted, the NOAES system will display the bid and offer of the last market maker whose exposure limit was exhausted and automatic executions will continue on a rotating basis among *all* registered market makers in the option at that price until new quotations and/or exposure limits are entered into NOAES by affected market makers.

The NOAES will permit the entry of orders that are preferenced or non-preferenced. Orders entered without a preferenced market maker will be executed at the NOAES best price on a rotating basis with market makers whose exposure limits have not been exhausted. A preferenced order will be executed against the preferenced market maker if his quote is equal to the NOAES best price and he has a sufficient exposure limit to fill the order. If the preferenced order cannot be executed against the preferenced market maker, the system will execute against the next market maker in the rotation at the best NOAES price.

The Order Confirmation Transaction will allow an order entry firm to contact a NASDAQ options market maker via telephone and negotiate a trade which is not subject to an automated execution and then report and lock-in the trade using an OCT which is referred to as a Confirmation Message ("CM"). The order entry firm will be required to enter a CM into the system within two minutes. Fields will be provided in the CM to indicate information to be reported to the OPRA Tape and the trade will be reported to OPRA upon the entry of the CM. The market maker receiving the Confirmation Message via the system will be given a time limit in which to accept the message which will provide all the fields of trade information required to be "locked-in" for clearing purposes. If the message is accepted, the transaction becomes a "locked-in" trade to be reported to OCC at the end of the trading day. In the event a member fails to respond to a CM message, such message will be retained in NOAES for reconciliation at the close of the trading day.

A second form of OCT called an Internalized Trade Transaction ("ITT") will be utilized when the order entry firm executes its customers' order as a market maker.

A third type of OCT called an Unsolicited Order Transactions ("UOT") may be used by an order entry firm to direct an unsolicited order to a market maker without first contacting the market maker by telephone. Once the UOT is accepted by the market maker via terminal entry, the trade will be automatically reported and locked-in for clearing purposes.

In any event, only OCT messages which are affirmatively accepted will be treated as trades and reported to the OCC as such. However, all OCT messages entered into the system, whether confirmed or unconfirmed, will be captured by the system.

The OCT will be designed with a cancellation capability which will permit the firm entering an OCT, and the firm accepting the trade, to "break" the trade by mutual agreement in the event an incorrect OCT message is inadvertently accepted by the contra-party. Such "broken" trades will also be captured by the system.

Order entry firms will be able to enter orders either for their firm or on behalf of another NOAES approved member firm. NOAES will process orders entered between the hours of 10:00 a.m.

and 4:00 p.m. Eastern Time. Market maker options quotations displayed in the system outside these operating hours will include a close indicator. Once the underlying security is opened, the system will begin accepting NOAES orders.

Participating market makers having the best NOAES price will have automatic executions of orders performed on a market maker rotating basis starting with the quotation having the earliest time of entry. NOAES will keep track of the last NOAES execution in an option and will perform the next automatic execution against the following market maker in sequence at the best NOAES price. Separate market maker rotations will be maintained for the buy side and the sell side of an option. Each NOAES automatic execution will reduce the market maker's appropriate (buy or sell) exposure limit by the size of the order. As long as the market maker's exposure limit is greater than zero, the market maker's quote will be eligible for an additional NOAES execution. All orders executed by NOAES will always be executed against only one market maker. When a NOAES market maker has an automatic execution which causes his exposure limit to be reached, then that market maker will be notified and taken out of the NOAES rotation. Market maker identification, but not quotations, will be displayed for market makers who have been taken out of rotation. When the market maker enters a new exposure limit for the option and the market maker's quote is equal to the best NOAES quote, the market maker will again be eligible to participate in NOAES automatic executions within that option.

Order entry firms will be permitted to designate a "preferenced market maker" with each NOAES order. The preferenced market maker will have a NOAES execution if:

(a) The market maker's quote is the best NOAES quote, and,

(b) The market maker's exposure limit has not been exhausted.

Note.—If the market maker's exposure limit has not been reached and the order is equal to or less than the "maximum" order size, the order will be automatically executed. Thus, a market maker whose exposure limit has been reduced to one contract will still be obligated to execute one additional trade for up to three contracts prior to being taken out of rotation.

A preferenced market maker execution will not affect the NOAES execution rotation within that option. If however, an order is entered with a preferenced market maker and that order cannot be automatically executed against the preferenced market maker, then a NOAES execution will be made against the next eligible market maker in the rotation.

The execution of an OCT by a market maker will not reduce the member's exposure limit or affect his position within the NOAES automatic execution rotation.

The NOAES will automatically forward trade data from execution reports to OPRA for dissemination to the distribution vendors. In addition, NOAES executions and Order Confirmation Transactions will result in "locked-in" trades. As such, both sides of the execution will be forwarded to the clearing facility for clearing purposes.

NOAES execution notices for automatic executions and acceptance order confirmation messages will be immediately forwarded to the order entry firm's specified input device (terminal, computer interface, etc.). In addition, if the order entry firm uses a terminal as an input device, then hard copy execution report will also be immediately forwarded to the order entry firm's designated printer.

Market makers will be notified of a NOAES execution by the immediate forwarding of an execution notice to the market maker's specified terminal. These execution notices will also contain the market maker's updated exposure limits. When their exposure limits in a security have been reached, market makers will receive an immediate notice via terminal and printer. Hard copy execution reports will be forwarded to the market maker's printer at the end of the trading day in option/time sequence. During the day, however, the market maker will be given the on-line ability to query the system to obtain data on individual trades.

Primary (Side-by-Side) Market Makers, Market Makers and Members

Markets for NASDAQ options will be maintained in a manner comparable to the secondary markets for NASDAQ equity securities. Market makers, qualified and registered with the Association specifically for NASDAQ options, will create and maintain over-the-counter markets in NASDAQ options. They will purchase and sell (write) for their own accounts and maintain inventories in the NASDAQ options in which they make a market. Thus, a firm having a customer's order to buy or sell a NASDAQ option, whether acting as a broker or dealer, will go to a market maker to make the purchase or sale.

An essential element of the NASDAQ Options Program will be the ability of market makers in underlying securities quoted on the NASDAQ System to make markets simultaneously in NASDAQ options written on those securities. The Association's rules will impose specific requirements on side-by-side market makers who, in addition, will be bound by rules which are applicable to all members. Requirements specific to side-by-side market makers that would be added by Amendment No. 3 are as follows:

- In effecting a NASDAQ option transaction with or for a customer, a side-by-side market maker will be required to disclose such function on the confirmation sent to the customer.
- Side-by-side market makers will be subject to commitment and sanction rules obligating them to continuously quote all options in which side-by-side markets are made.
- The Association will continuously monitor the extent of prospective or active side-by-side market makers' market making activities in underlying securities. If a side-by-side market maker accounts for more than 50% of non-block volume in an underlying security over a period of time, or otherwise appears to have a potentially unfair informational advantage in options owing to its market making activity in the underlying security, the Association will review the primary market maker's registration and, where appropriate, suspend such registration.
- Side-by-side market makers must demonstrate the adequacy of their trade reporting systems and procedures for underlying equities prior to being registered to make side-by-side markets in options and underlying securities.

The Association's plan will permit side-by-side market making only by members who agree to be "primary" market makers. Primary market makers will be those members who register as such with the Association and agree to be subject to the commitments and sanctions rules and other special requirements discussed herein.

Primary market makers will be obligated, upon undertaking this designation, to continuously quote all options in their primary markets through the completion of all expiration cycles which are open for trading in such markets at the time the member's registration as a primary market maker becomes effective. Such obligation will also apply to any new option series added in those expiration cycles during the term of the market maker's commitment. Thus, a member becoming a primary market maker in XYZ options at the expiration of the October options will be required to remain in the market

through the expirations of all January, April and July XYZ options, a period of approximately 9-months.

Further, should the primary market maker elect to commence quotations in options series in a subsequent expiration cycle, the market maker's commitment to continuously quote options will extend through the expiration of such options. This will extend the market maker's commitment for three additional months.

Thus, in the above-referenced example, if the primary market maker in XYX options commences quotations in new October XYZ options upon the commencement of trading in these options in January, the member will be obligated to quote all XYZ options in the October expiration cycle until the end of that expiration cycle, i.e., for a period of 9-months.

Any primary market maker failing to abide by these commitments will have its market maker registration revoked and will not be permitted to re-register as an options market maker in such options until the expiration of both the near term expiration cycle and the expiration cycle which follows. Thus, a primary market maker in XYZ options withdrawing quotations from the NASDAQ System market maker in XYZ options terminated and will not be permitted to re-register as a market maker in XYZ options until the expiration of the January options.

In addition to the above-referenced sanctions, primary market makers failing to abide by the commitment rules could have their market maker registration in the underlying security revoked for a period of time, subject to procedures which will offer rights of due process. In addition, primray market makers whose quotations are withdrawn during the 15 business days preceding the expiration of an option series may be found in violation of Article III, Section I of the Association's Rules of Fair Practice which obligates members to act in accordance with high standards of commercial honor and just and equitable principles of trade. Any finding of violation or imposition of sanctions will follow Association procedures providing members with due process and rights of appeal.

The above-referenced sanctions will apply for unexcused absences from the NASDAQ System or voluntary terminations by primary market makers.

Members who elect not to become primary market makers will not be permitted to make side-by-side markets. Such secondary market makers will however be subject to commitment rules obligating them to continuously quote any option series in which they commence market making through the expiration of such option series or be subject to findings of violations and imposition of sanctions.

NASDAQ index option market makers will also be subject to a commitment rule obligating them to continuously quote all index option series through three expiration cycles, a period of up to three months or be subject to penalties.

To assure that all option market makers maintain quotations which are reasonably related to the prevailing market, the Association's options rules contain quote spread and price continuity parameters comparable to those of the options exchanges.

The Association's NASDAQ Options Program will provide for the simultaneous surveillance and regulation of markets in both NASDAQ options and their underlying NASDAQ equity securities. Through a comprehensive monitoring program, all transactions executed by all side-by-side market makers, other market makers, and members in both NASDAQ options and equities will be closely surveilled. Such will be accomplished primarily through a side-by-side comparison of quotation and last-sale reports for both the options and their underlying securities.

Other specialized rules have been developed to govern NASDAQ options trading, not only by side-by-side market makers, but also by other market makers, retail firms and their customers as well. These rules, such as position and exercise limits, are comparable to the standards presently applied to options trading on the various exchanges. They are intended to prevent manipulative abuses in NASDAQ options and their underlying securities and to assist in the detection of manipulative activities. Amendment No. 3 would amend the filing to reflect changes made to these rules and standards since 1982.

NASDAQ Index Options

Amendment No. 3 contains rules relating to NASDAQ index options including position and exercise limits, definitions, specification of base index value and contract multiplier, and consecutive monthly expiration dates.

Market and Members Surveillance

A key feature of the NASDAQ Options Program will be the unified surveillance and regulation of the trading markets for both the NASDAQ options and their underlying NASDAQ equity securities. This simultaneous surveillance and regulation will be performed by the Association's Market Surveillance Section in a manner comparable to that in which NASDAQ equity securities are presently surveilled.

The locked-in trade features of NOAES will provide an audit trail for options transactions when NOAES trade data is integrated with clearing data. Thus, the Association will be able to capture and analyze all trade data for options in addition to all quotations changed. Further with the Small Order Execution System ("SOES"), a significant number of transaction in underlying securities will also be captured by an automatic execution system.

From quotation and last-sale data for options and their underlying equity securities, a series of daily computerized reports will be produced by the NASDAQ System. The information on these reports will be displayed in such a way as to facilitate the review by a market surveillance analyst of every transaction and/or quotation for an option and its underlying security, particularly those which exceed pre-established parameters.

In addition to the reports produced in-house, the Market Surveillance Section will receive for review various reports produced by OCC and the National Securities Clearing Corporation (NSCC). From time to time, it will also receive various reports from members concerning options positions in various types of accounts. By means of these reports, the Association will have the capability to conduct a thorough and comprehensive monitoring of trading in both NASDAQ options and their underlying securities and to perform such surveillance on a comparative basis.

The comparative surveillance procedures developed by the Association will aid in the prompt and early detection of fraudulent activities in a NASDAQ option or its underlying security. Because markets for options and underlying securities will be integrated, the problems of inter-market surveillance of options and underlying securities will be eliminated.

As a complement to its daily market surveillance activities, the Association's field inspection program of members will be expanded to give comprehensive coverage to all rules, regulations and procedures pertaining to NASDAQ options trading.

Trade Comparison, Clearing and Settlement

The "locked-in trade" features of NOAES and OCT will facilitate the comparison, clearing and settlement of NASDAQ options transactions. Because

the terms of automatically executed trades will be captured on-line as trades occur by the NOAES, these trades will not be subject to error and thus may be reported to OCC as compared trades at the end of the trading day. Similarly, OCT trades, which will be accepted and confirmed through NOAES will constitute compared trades and will be reported to OCC as such.

Exercise Delivery and Payment

Subject to the rules of OCC and the NASD, a NASDAQ option contract will be exercisable by its holder on any business day on or before the expiration date of the option contract. An exercise notice must be submitted to OCC by a clearing member acting on behalf of an exercising holder of an unexpired long option contract. An exercise notice accepted by OCC will be assigned on a random basis to a clearing member(s) maintaining an open short position in the series of options involved. Within five business days of receipt of the exercise assignment, the clearing member, representing the writer, will be obligated to deliver the subject underlying securities or, cash of index options, against payment to the exercising clearing member.

Although the settlement of transactions between exercising and assigned clearing members may take place directly between such clearing members, OCC has established certain interfaces with various clearing corporations to handle the exercise settlement process.

Options Committee and Board of Governors Oversight

Subsequent to the commencement of NASDAQ options trading, the Options Committee together with the Association's Board of Governors will closely monitor the operation of the NASDAQ Options Program and the initial package of specialized options rules as adopted. Based on such review and as deemed appropriate, alteration, amendment, supplementation or abrogation of certain rules will be made and filed with the SEC for its approval.

Summary

In summary, Amendment No. 3 would amend the proposed rule change as follows:

(1) Amend Section 33 of Article III of the Association's Rules for Fair Practice, to redefine "option" to clearly include the various new options products, such as index options and foreign currency options, and to retain sufficient flexibility to address new options products as they arise. The proposed rule change achieves this purpose by defining an "option" as any put, call, staddle or other option or privilege which is a "security" as defined in Section 2(1) of the Securities Act of 1933, as amended.

(2) Amend Appendix E to Section 33 of the Association's Rules of Fair Practice to achieve several purposes. First, Amendment No. 3 seeks to incorporate six amendments to Appendix E previously approved by the Commission. On October 22, 1980, Sections 8 through 22 were renumbered. On December 7, 1981, Section 20 was amended. On December 15, 1981, Section 23 was deleted. On July 5, 1983, Section 24 was amended. On August 2, 1983, Sections 2, 11 and 16 were amended. On November 30, 1983, Sections 3 and 4 were amended. Second, proposed amendments broaden the scope of Appendix E to include index options. Third, proposed amendments to Sections 3 and 4 of Appendix E include position and exercise limits for NASDAQ index options and permit the Association to establish tiered position limits for NASDAQ stock options utilizing criteria identical to those proposed by other option exchanges. Fourth, Section 12 of Appendix E has been amended to require primary market makers engaged in side-by-side market making to disclose that status on a confirmation to customers. Fifth, the proposal establishes position and exercise limits applicable to access firms in exchange traded options and members' transactions in conventional options.

(3) Amend Article XVI, Section 3, Schedule D, Part IV of the Association's By-Laws to achieve several purposes. First, definitions have been added and old definitions refined to reflect similar changes adopted in Appendix E, but more importantly to provide greater clarity of terms, particularly with respect to systems to be utilized by NOAES participants to effect report and clear NASDAQ stock and index option transactions. Second, Section 13 which states qualifications for authorized underlying securities has been rewritten to reflect existing exchange criteria and to limit eligibility to NASDAQ/NMS securities. Third, the proposal provides for issuer approval of options trading on each underlying security. Fourth, the proposal adopts multiple categories of registered NASDAQ options market makers and establishes commitment rules for all market makers. "Primary Market Makers" status requires demonstrated adequacy of trade reporting systems, and procedures in equity transactions and requires a continuing monitoring of the market maker's activity in the underlying equity to assure that the market maker does not possess an unfair informational advantage. Fifth, the proposed rules for NASDAQ index options includes consecutive monthly expiration dates and clarifies index option contract specifications. Sixth, primary market makers are required to meet certain quote spreads and price continuity parameters comparable to those of other options exchanges. Seventh, participation in an automatic execution system that will generate contra-broker confirmations, trade reports and clearing information, is mandatory for orders of limited size and for agency orders of limited size. In addition, the proposal includes systems for reporting and capturing all other options transactions for trade reporting, clearing and surveillance purposes. These locked-in trade features, together with the NASD's ability to capture and retain all quotations entered into the system, will create a complete record of all NASDAQ options transactions, permitting the NASD to compare transaction reports with market maker quotation changes to determine if abuses have occurred. To complement its surveillance of the NASDAQ OPTIONS PROGRAM, the NASD will implement an audit trail for underlying equities which will result in automated surveillance reports to readily detect stock/options abuses.

II. Self Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the amended proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Statutory Basis.* Section 15A of the Securities Exchange Act of 1934 provides, pursuant to subsection (b)(2), that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that its rules provide it with the capacity to carry out the purposes of the Act, to enforce compliance with the Act by its members

and persons associated with its members, and the rules and regulations thereunder, and to protect investors and the public interest. Further, the Commission must determine pursuant to subsection (b)(6) that the rules of the Association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. Finally, the Rules of the Association are required by subsection (b)(7) to provide that its members and persons associated with its members shall be appropriately disciplined for violation of any provisions of the Act or the rules and regulations thereunder, or the Rules of the Association and under subsection (h)(1), by adjudication and the subsequent imposition of appropriate sanctions. The provisions of Article III, Section 33 prohibit a member or a person associated with a member from effecting transactions in options if such were inconsistent with the rules, regulations and procedures adopted by the Board of Governors. Under the authority granted pursuant to Section 33, the Board had developed a regulatory program of rules, regulations and procedures which meet or exceed provisions of existing option programs and Securities and Exchange Commission requirements.

The amended proposed rule change is consistent with the provisions of section 15A(b)(2), 15A(b)(6) and 15A(b)(7) of the Act in providing a system of regulation for trading in NASDAQ stock and index options.

2. *Purpose.* The purpose of the proposed rule change and Amendment No. 3 thereto is to establish a program for the quotation display of put and call options on certain designated NASDAQ securities and indices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes the amended proposed rule changes impose no burden on competition. Rather, by introducing stock and index options trading to the NASDAQ market, the Association believes that it is enhancing competition among members in a manner entirely consistent with the purposes of the Securities Exchange Act of 1934, as amended.

The Association's position in this regard was set forth in he December 22, 1983 submission to the Commission and in the response to Securities and Exchange Commission Release No. 34–20853, dated April 12, 1984.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed changes contained in Amendment No. 3. However, numerous comments were received in response to Securities and Exchange Commission Release No. 34–20853, dated April 12, 1984, to which the Association has responded.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commisson Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) 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 (2) as to which the self-regulatory organization consents the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C., 522 will be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization located at 1735 K Street, N.W., Washington, DC 20006. All submissions should refer to the file number in the caption above and should be submitted by April 19, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–7528 Filed 3–28–85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 23]

Delegation of Authority to the Inspector General

Delegation of authority No. 23 is hereby made to effect a delegation of investigative authority to the position of the Inspector General, which authority is properly related to the functions of the Office of Inspector General and will further the purposes of the Inspector General Act:

I. Pursuant to the authority vested in the Administrator by the Small Business Act, 72 Stat. 384, as amended, the Small Business Investment Act of 1958, 72 Stat. 689, as amended, and pursuant to section 9(a)(2) of the Inspector General Act of 1978, 91 Stat. 1101, there is hereby delegated to the Inspector General:

A. Investigation Authority: Small Business Act

The authority to administer oaths and affirmations in the course of any investigation deemed necessary by the Inspector General to determine whether a recipient of or participant in any assistance under the Small Business Act or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of that Act, or of any rule, regulation or order issued thereunder, which authority is conferred on the Administration by § 5(b)(11) of the Small Business Act, 15 U.S.C. 634(b)(11).

B. Investigation Authority: Small Business Investment Act

The authority to administer oaths and affirmations in the course of any investigation deemed necessary by the Inspector General to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Small Business Investment Act of 1958, or of any rule, regulation or order issued under that Act, which authority is conferred on the Administration by § 310(a) of the Small Business Investment Act of 1958, 15 U.S.C. 687b(a).

II. The authority delegated herein may be redelegated.

Dated: March 20, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–7551 Filed 3–28–85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0276]

Cal Fed Venture Capital Corp.; Surrender of License

Notice is hereby given that Cal Fed Venture Capital Corp., 5670 Wilshire Boulevard, Suite 1875, Los Angeles, California 90036 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Cal Fed Venture Capital Corp. was licensed by the Small Business Administration on December 12, 1980.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on March 20, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7557 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 10/10 5183]

Eastpac, Inc.; Surrender of License

Notice is hereby given that Eastpac, Inc., 1940 116th Avenue, NE., Bellevue, Washington 98004 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Eastpac, Inc. was licensed by the Small Business Administration on October 13, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on March 19, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7558 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/12-0023]

First Southern Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1985)) for Transfer of Ownership and Control of First Southern Capital Corporation (Licensee), 6161 Perkins Road, Baton Rouge, Louisiana 70808, a Federal Licensee under the Small Business Investment Act of 1958 (The Act), as amended (15 U.S.C. 661 *et seq.*).

Pursuant to an agreement dated February 1, 1985, between Southfirst Corporation (SFC) and John H. Crabtree (Crabtree), SFC will acquire 100 percent of the issued and outstanding stock of Crabtree Investments, Inc. (CII), presently owned by Crabtree and certain employee benefit plans. CII owns 100 percent of the Licensee. SFC is a Louisiana Corporation located at Post Office Box 3608, Lafayette, Louisiana 70502. SFC is presently wholly owned by American Bank and Trust Co., 2600 Johnson Street, Lafayette, Louisana 70502. Subsequent to the Transfer of Control of CII, one-third of SFC's stock will be acquired by Charest Thibaut, Jr.

Assuming consummation of the proposed transfer of ownership and control, the officers and directors of the Licensee will be:

Charest Thibaut, Jr., 6161 Perkins Road, Suite 2C, Baton Rouge, Louisiana 70808—President, Chief Executive Officer, General Counsel and Director

Thomas E. Harrison, American Bank & Trust Company, Operations Center, 2600 Johnston Street, Lafayette, Louisiana 70502—Vice President, Seceretary Treasurer and Director.

Kevin Pickard, American Bank & Trust Company, Operations Center, 2600 Johnston Street, Lafayette, Louisiana 70502—Vice President, Assistant Seceretary and Director.

Don Woodland, 6161 Perkins Road, Suite 2C, Baton Rouge, Louisiana 70808—Director

Crabtree Investments, Inc., 6161 Perkins Road, Baton Rouge, Louisiana 70808—Investment Advisor.

The Licensee will retain its corporate name and location.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Baton Rouge, and Lafayette, Louisiana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7554 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2185]

Florida; Declaration of Disaster Loan Area

Dade, Flagler, Hernando, Lake, Lee, Marion, Orange, Osceola, Palm Beach, Polk, St. Lucie, and Seminole Counties and the adjacent Counties of Brevard, Broward, Charlotte, Citrus, Collier, Hardee, Hendry, Highlands, Hillsborough, Indian River, Manatee, Martin, Pasco, Putnam, St. Johns, Sumter, and Volusía in the State of Florida constitute a disaster area because of severe freeze which occurred on January 20-21, 1985. Applications for loans for physical damage may be filed until the close of business on May 20, 1985, and for economic injury until the close of business on December 23, 1985, at the address listed below.

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, GA 30303.

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218507 for physical damage and for economic injury the number is 629600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-7553 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

Pilot Project in the State of Illinois

AGENCY: Small Business Administration.

ACTION: Notice.

Subject: Pilot Project in the State of Illinois.

SUMMARY: The Small Business Administration authorized a pilot program that is designed to increase the access of Illinois small business to fixed rate loans. This program is fully described in the **Federal Register** at 48 FR 36553 (August 11, 1983 and amended at 49 FR 16916 April 20, 1984).

At the request of the local and Regional SBA officials and representatives of the Illinois Department of Commerce and Community Affairs, SBA will extend the pilot program in the State of Illinois until March 31, 1986.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Economist, Small Business Administration, Room 800, 1441 L St. NW, Washington, D.C. 20516 (202-653-5954).

(Catalog of Federal Domestic Assistance Programs, 59.012, Small Business Loans)

Dated: March 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-7559 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 06/06-0288]

Wesbanc Ventures, Ltd.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions as section 301(c) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Wesbanc Ventures, Ltd. with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1985).

The officers, directors and owners of the applicant are as follows:

Nytex Ventures, Inc., 806 Wycliffe Drive, Houston, Texas 77079—Corporate General Partner

Officers of Nytex: Stuart Schube—President & Treasurer; Priscilla Schube—Vice President; Frances L. Zweibach—Secretary & Assistant Treasurer

Management and Control of Wesbanc Ventures, Ltd.

Name, Title/Relationship, and Ownership

James M. Windham, 663 Thistlewood, Houston, TX 77079; Member/Board of Advisors, Member/Invest. Committee; 2.9970%

Brian K. Delaney, 12219 Pebblebrook, Houston, TX 77074; Member/Board of Advisors, Member/Invest. Committee; 2.5974%

George H. Armistead, Jr., 11746 Wickchester, Houston, TX 77073; Member/Invest. Committee; 2.3976%

David Brown, 4 Still Forest Dr., Houston, TX 77024; Member-Invest. Committee; None

David Pasternack, 10911 Kirwick, Houston, TX 77024; Member-Invest. Committee; None

E. H. Batey, 3305 Graybuck Rd., Auston, TX 78748; Member-Invest. Committee; None

Dr. Jake Lebeaux, 11434 Calico Lane, Houston, TX 77024; Member/Invest. Committee; None

A. Bohsali, 2 Clamore Court, Houston, TX 77024; Member-Invest. Committee; None

Stuart Schube, 806 Wyclkiffe Dr., Houston, TX 77079; Individual General Partner, Member/Board of Advisors, Member/Invest. Committee; .25%

Western Bancorporation, Inc., 5433 Westheimer at Alabama, Houston, TX 77056; Limited Partner (Class A); 79.92%

O.R. Lababedi, Monte Carlo Star Building, Apt. 154, Monaco; Limited Partner (Class A); None; 61.38% (by attribution)

S.R. Lababedi, Le Peu Pentu, Chemin Des Cystes, Ville France /s/ Mer 06230; Limited Partner (Class A); None; 15.34% (by attribution)

The Applicant, a Texas Limited Partnership, with its principal place of business at 2401 Fountainview, Suite 950, Houston, Texas 77057, will begin operations with $2,550,000 in Partnership capital.

The applicant will conduct its activities principally in the State of Texas.

As a small business investment company under section 301(c) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7555 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, licensees are hereby notified that effective April 1, 1985, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 12.145 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing ar interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96 221, March 31, 1980 (94 State. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated March 21, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7556 Filed 3-28-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 934]

Privacy Act of 1974; New System of Records

Notice is hereby given that the Department of State proposes to establish a new system of records pursuant to the provisions of the Privacy Act of 1974 [5 U.S.C. 552a(o)] and the Office of Management and Budget Circular No. A-108, Transmittal Memoranda Nos. 1 and 3. In accordance with paragraph 2f of Transmittal Memorandum No. 3, the Department requested OMB to grant a waiver of the sixty-day advance notice requirement in view of the top priority being accorded to the Department's upgrading the physical security of its installations on a worldwide basis in response to terrorist incidents and numerous specific security threats. The Department's report was filed with the Office of Management and Budget on March 22, 1985.

This new system is entitled "Security Access Control Records, STATE-54." The computerized access card-control system replaces the current I.D. card system and will be installed at entrances/exits, vehicle ramps, restricted and other sensitive areas throughout the Main State Building and, eventually, at all Department of State installations worldwide. In addition, this computerized access control system will include visitors to the Department's premises. Through the automation of the access records, Security Officers will be able to better manage, track, and control access to buildings and restricted areas under their jurisdiction, thereby resulting in substantial savings and significant improvements in the security efficiency and effectiveness of the Department. All badged individuals who have undergone or are undergoing security clearance, as well as visitors, will be the subjects of this system of records.

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Upon OMB's granting of the waiver of the sixty-day publication requirement, the Department intends to implement the new system thirty days after publication of this notice.

The proposed "Security Access Control System Records, STATE-54" will read as set forth below.

For the Secretary of State.

Dated: March 22, 1985.

Robert E. Lamb,

Assistant Secretary for Administration.

STATE-54

SYSTEM NAME:

Security Access Control Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 22201 C Street NW., Washington, D.C. 20520; Department of State domestic annexes, field offices, and missions; United States ebmassies, consulates, and missions overseas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Full-time permanent employees of the Department of State; visitors to the Department of State Main Building, to its domestic annexes, field offices, missions, and to United States ebmassies, consulates, and missions overseas; and all other individuals requiring access to official Department of State premises who have undergone or are undergoing security clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

For visitors: Name, temporary badge number, host's name, office symbol, room number, and telephone number; for all others: Name, date and place of birth, home address, employer, employer's address, home and office telephone numbers, Social Security Account Number, specific areas and times of authorized accessibility, escort authority, status and level of security clearance, issuing agency and issue date; and for all individuals: date and times of building entrance and exit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. Section 2658; Executive Order 10450; Executive Order 12356; and Section 506(a) of the Federal Records Act of 1950, as amended (44 U.S.C. 3101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For routine administrative, managerial, and security purposes by officials on a need-to-know basis in order to: Better track, manage, and control access to buildings and restricted areas under the jurisdiction of the Department of State; to determine the status of individuals entering Department of State premises; and to provide data requisite to investigations and security reports. The principal users of this information outside the Department of State are: Department of Treasury; U.S. Office of Personnel Management; Agency for International Development; U.S. Information Agency; Arms Control and Disarmament Agency; U.S. Secret Service; Immigration and Naturalization Service; Department of Defense; Central Intelligence Agency; Department of Justice; National Security Agency; Drug Enforcement Administration; any other Federal, state, or municipal law enforcement agency for law enforcement purposes; any other agency or Department of the Federal government pursuant to statutory intelligence responsibilities or other lawful purposes; and any other agency or Department of the Executive Branch having oversight or review authority with regard to investigative responsibilities. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register (42 FR 49699, September 27, 1977).**

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, computer media.

RETRIEVABILITY:

By individual name, badge number, and Social Security Accot Number (for others than visitors), as well as by each "category of record in the system."

SAFEGUARD:

All employees of the Department of State have undergone a background security investigation. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular *ad hoc monitoring of computer usage.*

RETENTION AND DISPOSAL:

Computerized information on individuals is maintained for a maximum of three years after date of access. Hard copy computer listings and reports are maintained for a maximum of six months after date of creation.

SYSTEM MANGER(S) AND ADDRESS:

Chief, Domestic Operations, Office of Security, Department of State, 2201 C Street NW., Washington, D.C. 20520 for Main State Building, domestic annexes, field offices and missions; Security Officers at respective U.S. embassies, consulates, and missions overseas.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Security Access Control System might contain records pertaining to them should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, D.C. 20520. The individual must specify that he/she wishes the records of the Security Access Control System to be checked. At a minimum, the individual must include: Date and place of birth; current mailing address and zip code; signature; and date(s) of access to Department of State installations, if possible.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

The individual, Department of State Security Records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-7596 Filed 3-28-85; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.629-1; Flutter Substantiation of Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This Notice announces the issuance of Advisory Circular (AC) 25.629-1, Flutter Substantiation of Transport Category Airplanes, which provides guidance material concerning the design requirements for transport category airplanes to preclude flutter and other aeroelastic phenomena.

DATE: Advisory Circular 25.629-1 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on January 4, 1985.

HOW TO OBTAIN COPIES: A copy of AC 25.629-1 may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, D.C. 20590.

Issued in Seattle, Washington, on March 14, 1985.

Leroy A. Keith,

Manager, Aircraft Certification Division Northwest Mountain Region.

[FR Doc. 85-7462 Filed 3-28-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement: Weeman Bridge to Winthrop City Park, Okanogan County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed highway project in Okanogan County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. P.C. Gregson, Division Administrator, Federal Highway Administration, Suite 501, Evergreen Plaza, 711 South Capital way, Olympia, Washington 98501, telephone (206) 753-9413. Mr. Clyde L. Slemmer, Project Development Engineer, Washington State Department of Transportation, Transportation Administration Building, Olympia, Washington 98504, telephone (206) 753-6155.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, will prepare a supplemental environmental impact statement (SEIS) on a proposal for the reconstruction or realignment of State Route 20, immediately west of Winthrop, Washington.

This document will supplement the Final Environmental Impact Statement (FEIS) titled Mazama to Winthrop, approved August 20, 1973. The proposed improvement is necessary to eliminate substandard horizontal and vertical alignment, eliminate roadside hazards, and improve safety. Alternatives under consideration include: (1) Construct approximately seven miles of two-lane highway within the existing highway corridor; and (2) Taking no action. A public hearing will be held during the public review period for the draft SEIS. Public notice will be given as to the time and place of the public hearing. The draft SEIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local review of Federal and Federally assisted program and projects apply to this program.)

Issued: March 20, 1985.

Richard C. Schimelfenyg,

Area Engineer, Olympia, Washington.

[FR Doc. 85-7594 Filed 3-28-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 26, 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: 1545-0429
Form Number: IRS Form 4506
Type of Review: Reinstatement
Title: Request for Copy of Tax Forms or Income Tax Account Information

OMB Number: 1545-0495
Form Number: IRS Form 4506-A
Type of Review: Reinstatement
Title: Request for Public-Inspection Copy of Exempt Organization Tax Return

Clearance Officer: 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.

Bureau of the Public Debt

OMB Number: 1535–0013
Form Number: PD 1048
Type of Review: Extension
Title: Application for Relief on Account of Loss, Theft, Destruction, Mutilation or Non-Receipt of United States Savings and Retirement Securities

OMB Number: 1535–0018
Form Number: PD 4882
Type of Review: Extension
Title: Applictaion for United States Savings Bonds—Series EE

Clearance Officer: Peter Lougesen, (202) 376–4902, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, D.C. 20226.

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. 85–7564 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Department of Veterans Benefits; Suspension of Cost Studies Schedule

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: A schedule of OMB Circular A–76 cost studies for the Department of Veterans Benefits' centralized transcription activities was published in the **Federal Register** on August 15, 1984 (49 FR 32706). This schedule has been suspended until further notice because of the guidance provided by the OMB Productivity Improvement Program memorandum, dated September 27, 1984, to the Members of the President's Council on Management Improvement.

FOR FURTHER INFORMATION CONTACT: James C. Allen, Chief, Space and Supply Management Division, Department of Veterans Benefits (232B), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–3255.

Dated: March 22, 1985.

By direction of the Administration.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85–7548 Filed 3–28–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 61
Friday, March 29, 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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Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2
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Securities and Exchange Commission	6

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, April 8, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Briefing on a Litigation Matter
2. Litigation Authorization; GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

This Notice Issued March 27, 1985.

Dated: March 27, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85–7670 Filed 3–27–85; 1:38 pm]

BILLING CODE 6750–06–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 25, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Capital Bank, North Bay Village, Florida, an insured State nonmember bank, for consent to merge, under its charter and title, with Central Bank, Delray Beach, Florida, and for consent to establish the sole office of Central Bank as a branch of the resultant bank.

Notice of acquisition of control (name and location of bank and name of acquiring party authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

Application of Sunshine State Bank, South Miami, Florida, for reconsideration of its application for consent to relocate its main office from 6200 Sunset Drive to 5975 Sunset Drive within South Miami, Florida.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Dated: March 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–7683 Filed 3–27–85; 2:17 pm]

BILLING CODE 6714–01–M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 3, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Recommendation by the Federal Financial Institutions Examination Council regarding supervisory policy on the sale of U.S. government guaranteed loans and sale premiums.

Discussion Agenda:

2. Proposed 1984 Federal Reserve priced services financial performance annual report.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7633 Filed 3–27–85; 11:08 am]

BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, April 3, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of cost and revenue data for priced Federal Reserve Bank services.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7634 Filed 3–27–85; 11:08 am]

BILLING CODE 6210–01–M

5

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, April 4, 1985.

PLACE: Room 532 (open); Room 540 (closed); Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to public:

(1) Oral Argument in Hospital Corporation of America, Docket No. 9161.

Portions closed to the public:

(2) Executive Session to follow Oral Argument in Hospital Corporation of America, Docket No. 9161.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892; Recording Message: (202) 3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–7617 Filed 3–27–85; 10:47 am]

BILLING CODE 6750–01–M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 10346 3/14/85).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, March 11, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting held on Monday, March 18, 1985, following the 2:30 p.m. open meeting.

Consideration of amicus participation.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above change 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.

March 25, 1985.

[FR Doc. 85–7658 Filed 3–27–85; 1:11 pm]

BILLING CODE 8010–01–M

federal register

Friday
March 29, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

New York NY85–3019

Modifications to General Wage Determination Decisions

Illinois:	
IL81–2004	Mar. 13, 1981.
IL85–5008	Feb. 8, 1985.
Kansas:	
KS84–4026	Apr. 27, 1984.
Minnesota:	
MN84–5015	May 25, 1984.
MN85–5006	Feb. 1, 1985.
Ohio:	
OH83–5122	Nov. 25, 1983.
OH83–5124	Dec. 2, 1983.
OH83–5127	Dec. 23, 1983.
Pennsylvania:	
PA81–3091	Dec. 28, 1981.
PA82–3011	Mar. 12, 1982.
PA82–3028	Sept. 10, 1982.
PA83–3051	Nov. 25, 1983.
PA82–3010	Mar. 15, 1982.
PA83–3053	Nov. 25, 1983.
PA84–3049	Dec. 21, 1984.
PA84–3042	Dec. 14, 1984.
PA84–3004	Feb. 17, 1984.
PA83–3052	Nov. 25, 1983.
PA85–3012	Mar. 8, 1985.
South Carolina:	
SC84–1018	June 22, 1984.
Texas:	
TX84–4112	Dec. 28, 1984.
TX84–4036	May 25, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

New York:	
NY84–3044 (NY85–3018)	Dec. 7, 1984.

Cancellation of General Wage Determination Decision

General Wage Decision numbers GA80–1062—Bibb County, Georgia and MO75–4070 Atchinson, Doniphan, Leavenworth & Wyandotte Cos.,

Kansas; Andrew, Atchinson, Boone, Buchanan, Callaway, Carroll, Chariton, Clay, Cole, Cooper, Franklin, Gasconade, Holt, Howard, Jackson, Lafayette, Moniteau, Montgomery, Osage, Platte, Ray, Saline, St. Charles, St. Louis & Warren Cos., Missouri; Nemaha & Richardson Cos., Nebraska are cancelled. Agencies with construction projects pending to which the cancelled decisions would have been applicable should utilize the project determination procedure by submitting form SF-308. See Regulations Part 1, 29 CFR, section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 6.6(c)(3)(i), the incorporation of the cancelled decisions in contract specifications, the opening of bids for which is within ten (10, days of the notice, need not be affected.

Signed at Washington, D.C. this 22nd day of March 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

NEW DECISION

STATE: NEW YORK
DECISION NO. NY85-3019

COUNTY: JEFFERSON
DATE: DATE OF PUBLICATION

DESCRIPTION OF WORK: BUILDING (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.21	3.16
BRICKLAYERS	16.54	2.21
CARPENTERS	14.78	2.255+ a
CEMENT MASONS	16.54	2.21
DRY WALL FINISHERS	12.83	1.80
ELECTRICIANS:		
Electricians	16.00	2.38+ 3.8%
Cable Splicers	16.25	2.38+ 3.8%
IRONWORKERS, Structural & Ornamental:		
Antwerp, Philadelphia, Leroy, Wilma, Champion	16.18	3.63
Remainder of County	15.85	5.60
LABORERS	11.92	2.20

	Basic Hourly Rates	Fringe Benefits
LABORERS	11.92	2.20
MASON TENDERS	10.03	
PAINTERS, Brush	12.18	2.55
PLUMBERS & PIPEFITTERS	15.81	3.02
ROOFERS	15.25	3.45
SHEET METAL WORKERS	13.75	
STEAMFITTERS	15.81	3.02
TILE SETTERS	16.54	2.21
TRUCK DRIVERS	9.82	
POWER EQUIPMENT OPERATORS		
Backhoe	16.98	4.25+b
Bulldozers	16.09	4.25+b
Crane	17.98	
Forklifts	16.09	4.25+b
Loaders	16.09	4.25+b
Rollers	16.09	4.25+b
Shovel	16.98	4.25+b

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a)(1)(ii).

FOOTNOTES:

PAID HOLIDAYS: A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. PAID HOLIDAYS: B, D, and E, provided the employee was on the payroll in the calander week preceeding the holiday or any day of the holiday and works the day after the holiday.

b. PAID HOLIDAYS: A through F, provided the employee has worked five consecutive working days before and the working day after the holiday.

MODIFICATIONS P. 1

DECISION NO.IL85-5008 - Mod# 2 (50 FR 5486 - February 8, 1985) Adams, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Clinton, DeKalb, Fulton, Greene Hancock, Henderson, Henry, Jersey, JoDaviess, Knox, La-Salle, Lee, Livingston, Logan, McDonough, McLean, Macoupin, Marshall, Mason, Menard, Mercer Monroe, Montgomery, Morgan, Ogle, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Stark, Stephenson, Warren, Washington, Whiteside, Winnebago & Woodford Counties, Illinois

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS:		
Area 1	$19.20	$3.905
BRICKLAYERS; CAULKERS;CLEANER; POINTERS & STONEMASONS:		
Area 9	16.36	
Area 16	15.88	2.81
CARPENTERS:		
Area 12:		
Carpenter; Soft Floor Layer	15.68	3.07
Piledriverman	16.18	3.07
CEMENT MASONS; PLASTERERS:		
Area 6:		
Cement Masons	16.03	1.50
ELECTRICIANS:		
Area 2	18.61	3.25+14%
Area 7	18.36	3.25+ 3.3%
PLUMBERS; PIPEFITTERS & STEAMFITTERS:		
Area 13	19.40	2.88
ROOFERS:		
Area 2	13.75	1.90

OMIT:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 6		
TRUCK DRIVERS:		
Area 2		

ADD:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 6	$17.41	$1.85+ 3.6%

TRUCK DRIVERS:
AREA DESCRIPTION:
Area I:
Marshall, Masons, Stark & Woodford (NW corner)
NOTE: Truck Drivers Area I is now included in Area I

DECISION NO. IL81-2004 - Mod #5 (46 FR 16818-March 13, 1981) Illinois, Indiana, Kentucky, Ohio and West Virginia

	Basic Hourly Rates	Fringe Benefits

CHANGE:

Area IV, Area V, and Area VI within the geographical jurisdiction of the St. Paul, Rock Island, and Chicago Districts, Corps of Engineers

	Basic Hourly Rates	Fringe Benefits
Leverman, engineer, mechanic, and boatman	$15.18	$4.00
Oiler and helper	12.39	4.00

DECISION NUMBER MN84-5015 - MOD. #4

(49 FR 22184 - May 25, 1984)
Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Omit:		
Electricians:		
Area 5:		
Sound Communications Installers from Mod. #2		
Add:		
Sound & Communications Installers:		
All Areas	$15.30	.86 + j & k

Footnotes:
i. 1 yr.'s service - 5 days' pd. vac.;
2 yrs.' service - 10 days' pd. vac.;
6 yrs.' service - 11 days' pd. vac.;
7 yrs.' service - 12 days' pd. vac.;
8 yrs.' service - 13 days' pd. vac.;
9 yrs.' service - 14 days' pd. vac.;
10 yrs.' service - 15 days' pd. vac.;
11 yrs.' service - 16 days' pd. vac.; &
12 yrs.' service - 17 days' pd. vac.
j. 9 paid holidays: New Year's Day; Memorial Day; 4th of July; Labor Day; Thanksgiving Day; Christmas Day & 1 Floating Holiday
k. 1/2 day of sick leave for each full month of employment not to exceed 6 days in a calendar year

DECISION NUMBER MN85-5006 - MOD. #4

(50 FR 4857 - February 1, 1985)
Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Building Construction:		
Area 5:		
Carpenters	$14.93	$1.18
Area 7:		
Carpenters & Soft Floor Layers	14.65	1.15
Carpenters; Piledrivermen:		
Site Preparation, Excavation, & Incidental Paving:		
Area 6	15.78	2.20
Area 10	15.78	2.20
Add:		
Sound & Communications Installers:		
All Areas	15.30	.86 + j k & l

Footnotes:
j. 1 yr.'s service - 5 days' pd. vac.;
2 yrs.' service - 10 days' pd. vac.;
6 yrs.' service - 11 days' pd. vac.;
7 yrs.' service - 12 days' pd. vac.;
8 yrs.' service - 13 days' pd. vac.;
9 yrs.' service - 14 days' pd. vac.;
10 yrs.' service - 15 days' pd. vac.;
11 yrs.' service - 16 days' pd. vac.; &
12 yrs.' service - 17 days' pd. vac.
k. 9 paid holidays: New Year's Day; Memorial Day; 4th of July; Labor Day; Thanksgiving Day; Christmas Day & 1 Floating Holiday
l. 1/2 day of sick leave for each full month of employment not to exceed 6 days in a calendar year

DECISION NUMBER OH83-5122 - MOD. #11

(48 FR 53254 - November 25, 1983)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters; Piledrivermen:		
Area 10	$16.30	$3.67

DECISION NUMBER OH82-5124 - MOD. #4

(48 FR 54422 - December 2, 1983)
Lucas County, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Glaziers	$16.14	2.72
Omit:		
Bricklayers; Marble Setters; & Stonemasons	17.365	3.29
Laborers:		
All Classifications & wage rates		
Add:		
Bricklayers; Marble Setters; & Stonemasons:		
Commercial Building	17.365	3.53
Residential	13.04	3.53
Laborers:		
Common	14.08	3.01
Plasterers' Tenders & Mixers	14.30	2.71

DECISION NUMBER OH83-5127 - MOD. #11

(48 FR 54903 - December 23, 1983)
Adams, Allen,...Wood and Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 17	$17.385	$3.53
Cement Masons:		
Area 1	18.11	1.05
Glaziers:		
Area 8	16.14	2.72
Plasterers:		
Area 1	18.11	1.05
Area 2	15.40	1.98
Area 6	17.60	1.40
Omit:		
Laborers:		
Area 21:		
All Classifications and wage rates		
Add:		
Laborers:		
Area 21:		
Common	14.08	3.01
Plasterers' Tenders & Mixers	14.30	2.71

DECISION NO. PA81-3091 - MOD. #12 (46 FR 62761 - December 28, 1981) Greene, Somerset & Potter Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS		
Greene & Somerset Cos.	16.10	5.57
CARPENTERS & SOFT FLOOR LAYERS		
Potter & Somerset Cos.	14.00	4.335
ELECTRICIANS:		
Greene & Somerset Cos.	17.72	3%+ 3.45
GLAZIERS:		
Greene & Somerset Cos.	15.73	5.45
LABORERS:		
Potter County		
Class 1	13.35	22%
Class 2	13.60	22%
Class 3	14.15	22%
Somerset County		
Class 1	11.92	2.86
Class 2	12.42	2.86
Class 3	12.52	2.86
Class 4	12.42	2.86
Class 5	11.99	2.86
LINE CONSTRUCTION:		
Potter County		
Lineman, dynamite man, heavy equipment operator	16.29	1.00+ 3 3/8%
Winch truck operator	11.59	1.00+ 3 3/8%
Groundman	10.30	3 3/8%
MILLWRIGHTS	15.22	43⅛%
PLASTERERS:		
Greene County	14.19	4.04
PLUMBERS:		
Remainder of Greene County	16.65	4.69
SHEET METAL WORKERS		
Greene & Somerset Cos.	16.49	4.96
STEAMFITTERS		
Greene County	16.65	4.74
ROOFERS:		
Greene & Somerset Cos.	17.34	4.10
TERRAZZO WORKERS		
Somerset County	15.10	5.36
TILE SETTERS		
Greene & Somerset Cos.	14.50	5.36

DECISION NO. PA82-3011 - MOD. #11 (47 FR 10963 - March 12, 1982) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Townships of E. Buffalo, Union & Lewisburg in Union County	15.65	1.70+ 3%
ELEVATOR CONSTRUCTORS	15.90	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.13	3.29+ a+b
ELEVATOR CONSTRUCTORS PROBATIONARY	7.95	
IRONWORKERS:		
Structural, Ornamental and Reinforcing Bradford & Tioga Cos.	14.40	3.10

DECISION NO. KS84-4026 - MOD. No. 5 (49FR 18217- April 27, 1984) Douglas, Jefferson, Leavenworth, Miami and Shawnee Counties, Kansas	Basic Hourly Rates	Fringe Benefits
CHANGE		
LINE CONSTRUCTION Zone 2		
Lineman	$16.20	$1.00+ 3-1/2
Cable Splicers	17.02	1.00+ 3-1/2
Powderman	13.34	1.00+ 3-1/2
Line Truck and Equipment Operator	13.34	1.00+ 3-1/2
Groundman	9.71	1.00+ 3-1/2
IRONWORKERS	14.25	4.25

DECISION NO. PA82-3029 - MOD. #11 (47 FR 29972 - September 10, 1982) Elk, Forest, McKean & Warren Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS		
Elk County	16.10	5.57
Forest County	19.54	3.38
CARPENTERS & SOFT FLOOR LAYERS:		
Elk, Forest all of McKean County except Kane and Bradford Twps.	14.00	4.335
ELECTRICIANS:		
Elk & McKean Counties	17.72	3.45+ 3%
GLAZIERS		
Elk County	15.73	5.45
Forest & Warren Counties	15.94	2.37
IRONWORKERS		
Elk & McKean Counties	14.59	5.38
LABORERS:		
Common laborers, carpenter tender, scaffold builder for masons, window cleaner, form stripper and mover, scaffold and mover, scaffold and runways, building materials handlers (Loading and Unloading), concrete pitman, puddler, mason tender	13.35	22%
Mechanical tampers (power) powered wheelbarrows and work work-lifts, sweepers and similar, mortar mixer, bell bottom man on furnaces and stacks, jackhammer man, concrete buster, wagon drill helper, concrete saw operator, blaster's helper, drill runner's helper (Includes drill mounted truck, track or similar) sheeters and shores, vibrator operators, power tamper operators, y-gun, burner-cutting torch, carryayable pumps, chain saw op., pipe layers all material conveyors and elevators, signal man, walk behind fork lift or similar, whacker, sand blaster, maintenance man, west brick buggies or similar, scaffold builder		

LABORERS: (CONT'D)	Basic Hourly Rates	Fringe Benefits
for plasterers' regardless of height, hod carrier, plaster tender, form cleaning machine operator, plaster applicating and/or pump machine operator, paving breaker, asphalt raker, lancer, berfix cutting tool, gunnite poeman, blacksmith, tool dresser (cable tool)	13.68	22%
Blasters, wagon drill operator, drill runner, gunnite nozzle man, grout machine operator, walk behind power roller and tamper, welder, driller (cable tools)	14.15	22%
Wrecking Laborers	13.35	22%
LINE CONSTRUCTION:		
Lineman, Dynamite Man, heavy equipment operators	16.29	1.00+3 3/8%
Winch truck operator	11.59	1.00+3 3/8%
Groundman	10.30	1.00+3 3/8%
MILLWRIGHTS:		
Elk, Forest & McKean Cos.	15.22	43⅛%
ROOFERS:		
Elk and Forest Cos.	17.34	4.10
SHEET METAL WORKERS	16.49	4.96
[illegible]		
LABORERS:		
Low Burner	13.45	[illegible]
Jackhammer Operator	13.45	[illegible]
High Burner	15.25	[illegible]
High Burner Helper	14.95	[illegible]

DECISION NO. PA83-3051 -	Basic Hourly Rates	Fringe Benefits
MOD. #7 (48 FR 53264 - November 25, 1983) Franklin County, Pennsylvania		
CHANGE:		
ASBESTOS WORKERS	17.91	2.04
PAINTERS: Brush Metal, Letterkenny, Hamilton, Green, South Hampton, Lurgan, Fanett, Shipensburg, Townships and Boroughs, Washington, Antrin, Hamilton, Guilford, Montgomery, Warren, Peters, St. Thomas and Quincy, Chambersburg, Twps.	12.22	1.30
CARPENTERS	14.00	4.335
DECISION NO. PA82-3010 -		
MOD. #16 (47 FR 9684 - March 15 1982) Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania		
CHANGE:		
ASBESTOS WORKERS: Centre, Huntingdon, Fulton and Mifflin Counties	17.91	2.04
CARPENTERS & SOFT FLOOR LAYERS	14.00	4.335
ELEVATOR CONSTRUCTORS	15.90	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS	70%JR	3.29+ a+b
ELEVATOR CONSTRUCTORS PROBATIONARY	50%JR	

DECISION NO. PA83-3053 -	Basic Hourly Rates	Fringe Benefits
MOD. #4 (48 FR 53268 - November 25, 1983) Blair County, Pennsylvania		
CHANGE:		
CARPENTERS	14.00	4.335
DECISION NO. PA84-3049 -		
MOD. #1 (49 FR 49825 - December 21, 1984) Luzerne County, Pennsylvania		
CHANGE:		
CEMENTS MASONS: Pittston, Yatesville, Lafin, Exeter, Wyoming Duryea, and Avoca	16.85	
PLUMBERS	15.24	4.45

DECISION NO. PA84-3042 -	Basic Hourly Rates	Fringe Benefits
MOD. NO. 2 (49 FR 48888 - December 14, 1984) Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania		
CHANGE:		
CARPENTERS & SOFT FLOOR LAYERS Zone 1	$14.00	4.335
ELECTRICIANS Zone 1	17.05	6.71
DECISION NO. PA84-3004 -		
MOD. NO. 5 (49 FR 6209 - February 17, 1984) Armstrong, Beaver, Butler, Fayette, Indiana, Washington, Allegheny & Westmoreland Counties, Pennsylvania		
CHANGE:		
CARPENTERS Zone 2	14.00	4.335
ELECTRICIANS Zone 2	17.05	6.71
DECISION NO. PA84-3058		
MOD. NO. 4 (48 FR 53364 - November 25, 1983) Lawrence & Mercer Counties, Pennsylvania		
CHANGE:		
ELECTRICIANS	17.05	6.71

DECISION NO. PA85-3012 -	Basic Hourly Rates	Fringe Benefits
MOD. #1 (50 FR 9568 - March 8, 1985) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
LABORERS: New Residential under 4 stories: To Read: LABORERS: Residential under 4 stories		

DECISION NO. SC84-1018-	Basic Hourly Rates	Fringe Benefits
Mod. #1 (49FR 25828-June 22,1984) Statewide South Carolina Heavy & Sewer & Water Lines (excluding Dam construction)		
Change: Boilermakers Tank Erection/Repair	$12.96	3.315

MODIFICATIONS P. 8

DECISION #TX84-4112-MOD#3
(49 FR 50557-December 28,1984)
Collin,Dallas,Denton,Ellis, Grayson,Hood,Hunt,Johnson, Kaufman,Palo Pinto,Rockwall, Tarrant & Wise Cos., Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Cement Masons:		
Zone 1	$13.15	$2.07
Zone 2	13.13	2.09
Painters: Zone 2		
Brush	16.31	1.47
Wall covering (except commercial vinyl): sandblasting, steel storage tanks, mechanical drywall, finishing tools	16.56	1.47
Steeple Jack (radio, TV towers, smoke stacks, breeching on power plants, chimney, water towers, flag poles atop bldgs. located closer to the edge of the bldg. than the height of the pole); toxic material (creosote, coal tar products or similar materials injurious to the skin	17.56	1.47
POWER EQUIPMENT Oper. - Zone 1		
Group 1	15.65	2.35
Group 2	14.65	2.35
Group 3	13.65	2.35
Group 4	12.25	2.35
Group 5	11.25	2.35
Roofers:		
Group 1	12.96	.035
Group 2	12.81	.035

DECISION #TX84-4036-MOD#5
(49 FR 22189-May 25, 1984)
Jefferson and Orange Cos, Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Electricians	$19.43	$1.435 +3%

POWER EQUIPMENT OPERATORS GROUP DEFINITIONS:
Group 1: Tower Cranes: all conventional cranes, derricks, power operated: hoist, motor driven 2 drums or more; piledrivers; hydraulic cranes over 50 tons.
Group 2: All backhoes; hydraulic cranes - 35 tons and over
Group 3: Wagon drills; hydraulic cranes, under 35 tons; concrete pump; loaders over 1 yd.; foundation drilling machines
Group 4: Material hoists; boom truck; placing boom; loaders 1 cu. yd. and under; gradall
Group 5: Box blade; pneumatic roller, self-propelled; forklifts; 1 drum hoist; winch trucks; dozers and similar type equipment

SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTIES: ST. LAWRENCE; LEWIS & JEFFERSON

DECISION NO. NY85-3018

DATE: DATE OF PUBLICATION

Supersedes Decision No. NY84-3044 dated December 7, 1984 in 49 FR 47964.

Description of Work: Building Construction in St. Lawrence and Lewis Counties only (does not include single family homes and apartments up to and including 4 stories), Heavy Construction (except water well drilling), and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.21	3.16
BOILERMAKERS	18.16	3.691
BRICKLAYERS; STONE MASONS; CEMENT MASONS; PLASTERERS; POINTERS; CAULKERS & CLEANERS; MARBLE, TILE & TERRAZZO WORKERS:		
Area 1	15.38	1.82
Area 2: Bricklayers, Stone Masons, Cement Masons, Plasterers, Pointers, Caulkers and Cleaners Marble, Tile & Terrazzo Workers	13.35	3.85
Area 3	11.75	3.55
	16.54	2.21
CARPENTERS:		
Area 1:		
Carpenters (Building)	14.02	1.775 +a
Millwrights	14.27	1.775 +a
Piledrivermen	14.17	1.775 +a
Carpenters (Heavy & Highway)	14.97	2.125 +b
Area 2:		
Carpenters (Building)	13.10	1.775
Millwrights	13.35	1.775
Piledrivermen	13.25	1.775
Carpenters (Heavy & Highway)	14.97	2.105 +b
CEMENT MASON (Heavy & Highway)		
Area 1	15.01	1.80+c
Area 2	14.60	2.20+c
Area 3	14.22	2.62+c
ELECTRICIANS:		
Electricians	16.00	2.38+ 3.8%
Cable Splicers	16.25	2.38+ 3.8%
GLAZIERS:		
Area 1	12.43	.81+f
Area 2	12.75	.86
Area 3	13.20	.86

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1:		
Class 1	16.18	3.63
Class 2	16.30	3.63
Class 3	16.43	3.63
Area 2:		
Class 1	14.03	3.62
Class 2	14.155	3.62
Class 3	14.28	3.62
Area 3:		
Class 1	15.85	5.60
Class 2	15.97	5.60
Class 3	16.10	5.60
LABORERS (Building):		
Class 1	11.92	2.20
Class 2	12.12	2.20
Class 3	12.32	2.20
Class 4	12.52	2.20
LABORERS (Heavy & Highway):		
Class 1	12.69	2.20+d
Class 2	12.89	2.20+d
Class 3	13.60	2.20+d
Class 4	13.29	2.20+d
LINE CONSTRUCTION: Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable Splicer	19.525	4.35+e +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

DECISION NO. NY85-3018

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION CONT'D		
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+e +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
PAINTERS:		
Area 1:		
Painters	12.43	.81+f
Paperhanging, Spray cup and Taping	12.93	.81+f
Sandblasting, Swing Scaffold, Boatswain Chair, Hanging Scaffold, Structural Steel	13.18	.81+f
Seamless Floor Material	12.93	.81+f
Area 2:		
Brush, Roll, Seamless Floor Application	12.18	2.55
Paperhanging, Paper Removal, Wall Covering, Taping	12.43	2.55
Swing Stage, Window Jacks, Setamcleaning, Hydro-waterblasting	12.53	2.55
Bosun Chair, Sandblasting, Steel Painting	12.88	2.55
Spray	12.68	2.55
Area 3:		
Brush; Roll	12.10	3.25
Taping	12.35	3.25
Spray; Epoxy (brush and roll application)	12.60	3.25
Structural Steel	12.70	3.25
Swing	12.75	3.25
Epoxy (Spray application)	12.80	3.25
Boatswain Chair	12.85	3.25
Sandblasting	12.95	3.25
Bridge	13.30	3.25
Sign	9.55	3.25
Repaint department stores, nursing homes, college dormitories, apartment complexes & residential high rises:		
Brush & Roller	10.29	3.25
Taping	10.50	3.25
Spray: Epoxy & Special coatings brush & roll application	10.71	3.25
Epoxy and special coatings spray application	10.88	3.25
Sandblasting	11.01	3.35
Boatswain chair	10.92	3.25
Swing	10.84	3.25
Structural steel	10.80	3.25
Bridge	11.30	3.25
Sign	8.12	3.25
PLUMBERS & STEAMFITTERS:		
Area 1	15.81	3.02
Service and repair jobs which do not exceed in the aggregate for all plumbing and HVAC labor and/or materials the sum of $120,000	7.95	3.02
Area 2	15.11	4.35
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Class 1	16.98	4.25+g
Class 2	16.09	4.25+g
Class 3	14.29	4.25+g
Class 4	17.48	4.25+g
Class 5	18.98	4.25+g
Class 6	17.98	4.25+g
Class 7	18.02	4.25+g

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY)		
Class 1	15.86	4.25+d
Class 2	15.32	4.25+d
Class 3	13.79	4.25+d
Class 4	12.44	4.25+d
ROOFERS	15.25	3.45
SHEET METAL WORKERS	17.12	5.045+ 3%
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS (Building - Except Ready-mix)		
Area 1:		
Jobs of $5,000,000 or less:		
Class 1	13.58	2.45
Class 2	13.73	2.45
Class 3	13.78	2.45
Class 4	13.98	2.45
TRUCK DRIVERS (Ready-mix): Highway):		
Area 1:		
Class 1	11.05	2.10+h
Class 2	10.70	2.10+h
TRUCK DRIVERS (Heavy & Highway):		
Area 1:		
Except Ready-mix:		
Class 1	13.74	2.20+d
Class 2	13.79	2.20+d
Class 3	13.84	2.20+d
Class 4	13.99	2.20+d
Class 5	14.14	2.20+d
Area 2:		
Class 1	13.49	2.45+d
Class 2	13.54	2.45+d
Class 3	13.59	2.45+d
Class 4	13.74	2.45+d
Class 5	13.69	2.45+d

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

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FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independece Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Paid Holidays: B, D and E, provided the employee was on the payroll in thecalendar week preceeding the holiday or any day of the holiday week proceeding the holiday and works the day after the holiday.

b. Paid Holidays: C & D, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll the week in which the holiday falls.

c. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

d. Paid Holidays: A through F, provided the employee has works the working day before the working day after the holiday.

e. Paid Holidays: A through F and Washingtom's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

f. Paid Holidays: B, C, D and F, provided the employee works the last working day prior to and the first working day following the holiday.

g. Paid Holidays: A through F, provided the employee has worked five consecutive working days before and the working day after the holiday.

h. Paid Holidays: A through F, provided the employee has worked any of the 5 working days immediately preceeding or any of the 5 workings days immediately following the holiday.

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AREA DESCRIPTIONS

BRICKLAYERS; STONE MASONS; CEMENT MASONS; PLASTERERS; POINTERS, CAULKERS & CLEANERS; MARBLE, TILE & TERRAZZO WORKERS:
Area 1: ST. LAWRENCE.
Area 2: LEWIS (Osceola, Lewis, West Turin, Leyden and Turin).
Area 3: JEFFERSON; LEWIS (Remainder of County).

CARPENTERS:
Area 1: ST. LAWRENCE; JEFFERSON.
Area 2: LEWIS.

CEMENT MASONS (HEAVY & HIGHWAY):
See "BRICKLAYERS," etc.

GLAZIERS:
See "PAINTERS & GLAZIERS."

IRONWORKERS:
Area 1: ST. LAWRENCE; LEWIS (North of a line drawn from the southern portion of the Jefferson County line east to the City of Ticonderoga); JEFFERSON (Antwerp, Philadelphia, Leroy, Wilna and Champion).
Area 2: LEWIS (Remainder of County).
Area 3: JEFFERSON (Remainder of County).

PAINTERS:
Area 1: ST. LAWRENCE (Brasher, Lawrence, Hopkintown, Clifton and Pierceville).
Area 2: ST. LAWRENCE (Remainder of County); JEFFERSON; LEWIS (Diana, Croghan, New Bremen, Watson, Greig, Martinsburg, Iowville, Denmark Harrisburg, Montague and Pinkney).
Area 3: LEWIS (Osceola, High Market, Lewis, Turin, West Turin, Leyden and Lyonsville).

PLUMBERS & STEAMFITTERS:
Area 1: LEWIS (Lewis, West Turin, Leyden and Lyonsdale).
Area 2: ST. LAWRENCE; JEFFERSON; LEWIS (Remainder of County).

TRUCK DRIVERS:

Area 1: LEWIS (Pickney, Harrisburg, Montague and Osceola).
Area 2: ST. LAWRENCE; JEFFERSON; LEWIS (Lewis, High Market, Martinsburg, Lowville, Watson, Greig, Turin, West Turin, Lyonsdale and Leyden).

CLASSIFICATION DESCRIPTIONS

IRONWORKERS

Class 1: Structural, Reinforcing, Ornamental, Machinery Movers & Riggers, Rodmen, Fence Erectors and Stone Derrickmen.
Class 2: Sheeter, Bucker-up.
Class 3: Sheeter.

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LABORERS (BUILDING CONSTRUCTION)

Class 1: General laborerers; Tending of masons, plasterers and cement finishers.
Class 2: Chain saw operators; Payment breakers; Scaffold builders; Mortar mixers, Pipelayers, Gas buggy, Vibrator; Air or electric tool operators; Sandblaster on construction clean-up; Potliners; Acetylene torch operator on demolition work.
Class 3: Rock Drilling.
Class 4: Blasters.

LABORERS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Laborers, drill helpers, outboard and hand boats.
Class 2: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operator (1 1/2 inch and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.
Class 3: All rock or drill machine operators (except quarry master and similar type, acetylene torch operators, asphalt raker, powderman.
Class 4: Blasters, form setters, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Class 1: Asphalt and blacktop roller; Automated concrete spreader (CMI or equivalent); Automated fine grade machine (CMI); Backhoe; Belt placer; Blacktop spreader (such as Barber Greene and Blaw Knox); Blacktop Plant (automated); Blast or rotary drill (truck or cat mounted); Boom truck; Cableway; Caisson auger; Carry-all scraper (self-loading); Central Mix plant (automated); Cherry picker over five (5) ton capacity; Compressors; Pump; Generator or welding machine (when used in a battery of not more than four (4); Crane, Crusher-rock; Derrick; Diesel power unit; Dragline; Dredge; Dual drum paver; Elevating grader (self-propelled or towed); Elevator hoist - two cage; Excavator - all purpose hydraulically operated; Fork lift (factory rating 15 ft. or more); Front end loader (4 c.y. and over) Gradall; Grader (power); Head tower (Saurman or equal); Hoist (2 or 3 drums); Locomotive; Maintenance engineer; Maintenance welder; Mine hoist; Mucking machine or mole; Overhead crane fixed permanent; Pile driver; Quarry Master or equivalent; Refrigeration equipment - for soil stablization; Shovel; Side boom; Slip form paver; Straddle buggy (Ross carrier, lumber carrier); Tractor drum belt type loader (Euclid loader); Trenching machine (Digging capacity of over 4 ft. depth); Truck crane operator; Tunnel shovel; Vibro or sonic hammer controls (when not mounted in proximity to the rig operator).

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POWER EQUIPMENT OPERATORS (CONTINUED)

Class 2: "A" Frame truck; Black top plant (non-automatic); Boring machine; Bulldozer; Cage hoist; Carry-all scraper; Central mix plant (non-automated); Cherry picker five (5) tons and under; Compressor (500 c.f. and over); Concrete paver (single drum over 16S); Concrete pump; Core boring machine; Drill rigs-tractor mounted; Elevator - as a material hoist; Fork lift (factory rating less than 15 ft.); Front end loader (under 4 cu. yds.); Gunnite machine; High pressure boiler (15 lbs. and over); Hoist (one drum); Hydraulic breaking hammer (Drop hammer); Kolman plant loader (screening gravel); Maintenance grease man; Mixer for stablized base - self-propelled (seaman mixer); Monorail machine; Parapet concrete or pavement grinder; post hole digger (truck or tractor mounted); Power sweeper (Wayne or similar); Pump 4" and over; Pump-crete or squeeze-crete; Road widener (front end of grader or self-propelled); Shell winder (motorized); Snorkel (overhead arms); Roller; Trenching machine (digging capacity of 4 ft. or less); Tugger hoist; Vibro tamp; Well drill; Well point system (submersible pumps when used in lieu of well-point system); Winch (motor driver); Winch cat; Winch truck.

Class 3: Compressor (under 500 cu. ft.); Concrete paver or mixer (under 16S); Concrete pavement spreader and finishers (not automated); Conveyor (over 12 ft.); Electric submersible pump (4" and over); Farm tractor with or without accessories; Fine grade machine (not automated); Fireman; Form tamper; Generator (2,500 watts and over); Hydraulic pump; Grout pump; Mechanical heaters - more than two (2) mechanical heaters or any mechanical heater or heaters whose combined output exceeds 640,000 BTU per hour (manufacturer's rating); Mulching machine; Oiler; Power driven welding machine - 300 amp. and over (other than all electric); Power heaterman (hay drier), Pump (under 4"); Revinius widner (road widener); Steam cleaner of Jenny; Tractor with or without towed accessories, post driver (truck or tractor mounted).

Class 4: Quad 9 Bulldozer or multibowl scraper.

Class 5: Crane or Derrick with a boom length over 300 ft. including jib.

Class 6: Crane or Derrick with a boom length over 150 ft. including jib, and on a piledriver with leads or boom length over 100 ft.

Class 7: Master mechanic.

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derrick (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader (4 c.y. and over), head tower (sauerman or equal), hoist (2 or 3 drum), Holland loader mine hoist, mucking machine or mole, over headcrane (gantry or straddle type), piledriver, power grader, quad 9, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self feeder), tug operator (except manned rented equipment); tunnel shovel.

Class 2: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum); Kolman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilazation), road widener, roller (all above subgrade), sea mule tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

Class 3: A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generator, pumps, welding machines, light plants (4 of any type of combination), concrete payment spreader and finishers, conveyor, drill-core, electric pump used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), grout pump gunite machine, hammers (hydraulic-self-propelled), hydra-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on spansaw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories vibratory compactor, vibro tamp, well point.

DECISION NO. NY85-3018

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY (CONTINUED)

Class 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet concrete or pavement grinder, power broom (towed), power heaterman, Bevinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS (BUILDING (Except Ready-mix)

Class 1: Truck drivers, parts chasers.

Class 2: Tractor trailer drivers, farm tractor and fuel truck drivers.

Class 3: Material check and receiver.

Class 4: Euclid driver.

TRUCK DRIVER (Ready-mix)

Class 1: Ready-mix driver.

Class 2: Truck driver.

TRUCK DRIVERS (HEAVY & HIGHWAY) (Except Ready-mix in Area 2)

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greases, truck tiremen and parts chaser

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loaded, and straddle (ross) carrier.

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

[FR Doc. 85-7267 Filed 3-28-85; 8:45 am]

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federal register

Friday
March 29, 1985

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Presence Sensing Device Initiation of Mechanical Power Presses; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-225]

Presence Sensing Device Initiation of Mechanical Power Presses

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to amend its standard for mechanical power presses, 29 CFR 1910.217, Subpart O, to allow (but not require) presence sensing device initiation (PSDI) on certain types of power presses. The amended standard would address not only the use of presence sensing devices, but would cover the entire mechanical power press safety system involved in operating in the PSDI mode. OSHA is also proposing to amend the related standard on definitions, 29 CFR 1910.211, Subpart O, as appropriate to support the revision to the mechanical power press standard.

OSHA's present standard, adopted as a consensus standard in 1971, does not permit PSDI, but rather requires that a mechanical power press operator physically initiate the stroke of a power press by using hand controls or a foot pedal. OSHA believes this prohibition on PSDI is technologically outdated. This proposed revision would allow a presence sensing device to initiate the stroke automatically when the operator's body is out of the danger zone. Such devices have been used safely in other countries for over 30 years and on an experimental basis in the United States since 1976.

DATE: Written comments, objections and requests for hearings on this proposal must be postmarked by June 27, 1985.

ADDRESS: Comments should be sent to Docket Officer, Docket No. S-225, Room N-3670, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-7894. Objections and requests for hearings should be sent to Carrol Burtner, Room N-3506, OSHA, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-7202.

FOR FURTHER INFORMATION CONTACT: James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N-3637, Washington, D.C. 20210, (202) 523-8148. This Notice of Proposed Rulemaking has been prepared by Carrol Burtner and Judy Goodrich of the Office of Mechanical Engineering Safety Standards.

SUPPLEMENTARY INFORMATON:

I. Background

A mechanical power press is a mechanically powered machine that shears, punches, forms, or assembles metal or other material by means of cutting, shaping, or combination dies attached to slides.

Presses are used for a variety of operations, including forging of metal and trimming of cast parts. The presses relevant to the proposed regulatory change are mechanical power presses used in the fabrication of metals parts. PSDI is more appropriate for presses that perform metal stamping operations

A press consists of a stationary bed or anvil, and a slide having a controlled reciprocating motion. The slide, called the ram, is equipped with special punches and moves downward into a die block which is attached to the rigid bed. The punches and the die block assembly are generally referred to as a "die set." The main function of a stamping press is to provide sufficient power to close and open the die set, thus shaping or cutting the metal part set on the die block. The metal part is fed into the die bock and the ram descends to perform the desired stamping operation. The danger zone for the operator is between the punches and the die block. This area is referred to as the "point of operation."

Other major components of a mechanical power press, apart from the frame, are the driving motor, the flywheel, the clutch and brake. The flywheel, a large rotating mass powered by the driving motor, transmits energy to the working elements by means of an eccentric (a mechanism which converts circular motion to linear motion), a crankshaft, or other means. The function of the clutch is to connect the rotating flywheel with the crankshaft causing the press to stroke.

The clutch on mechanical power presses is usually either a full-revolution clutch or part-revolution clutch. A full-revolution clutch transfers motion from the flywheel to the ram through a mechanical connector. The connection cannot be broken until one full revolution has been completed. A part-revolution clutch is also referred to as a friction clutch. Motion is transmitted by two pieces of material being pushed against one another. This type of clutch can be disengaged at any time.

The function of the brake is to stop the motion of the ram. The brake may be a constant-drag type (typical on a full-revolution clutch machine), or its may be engaged only while the clutch is disengaged (typical with part-revolution clutch machines). A brake may be a separate unit, or it may be incorporated in a combination unit with the clutch (applies only to friction clutches).

The feeding of the press is the process of placing material in or removing material from the point of operation. It is done by one of the following methods:

Automatic Feeding—the material or part being processed is placed within and removed from the point of operation by mechanical or machine-operated means. An operator is not required to initiate each stroke of the press.

Semiautomatic Feeding—the material or part being processed in placed within or removed from the point of operation by an auxiliary means *controlled* by the operator on each stroke of the press.

Manual Feeding—the material or part being processed is handled by the operator (with or without use of a grasping hand tool) on each stroke of the press.

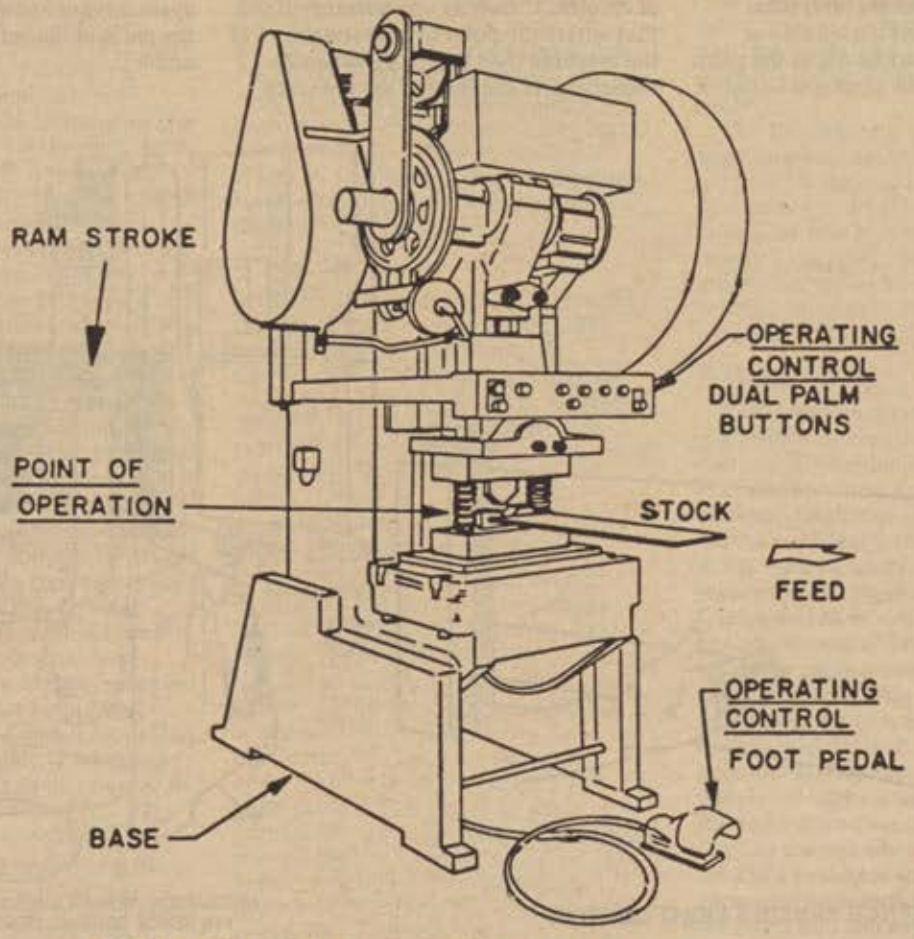
In manually-fed operations, tools can be used to place the part in the die bed such that the operator's hands need never be in the point of operation. This is known as "no-hands-in-dies" (NHID). Parts can also be fed without using tools. This latter method is referred to as "hands-in-die" (HID) because the operator's hands actually reach into the point of operation. *PSDI is mainly considered for manually-fed operations.*

Four means of cycle initiation are used for mechanical power presses: foot-switch, one-hand switch, two-hand control, and self-tripping utilizing a presence sensing device.

Current OSHA standards require that a mechanical power press operator *physically initiate* the stroke of a power press by making bodily contact with the operating control (normally a hand or foot control) to "tell" the press to stroke. A special and *overt* action of the operator is necessary for the press to stroke.

Figure 1 illustrates a common type of mechanical power press. Note the dual palm buttons and the foot pedal that require direct bodily contact in order to initiate the stroke of the press.

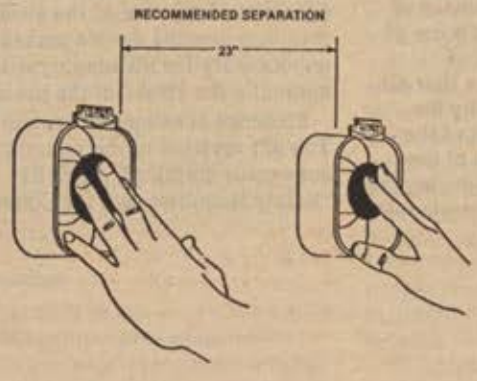
Figure 1



MECHANICAL POWER PRESS

Figures 2 and 3 offer different views of the two-hand palm buttons.

Figure 2



TWO-HAND CONTROL

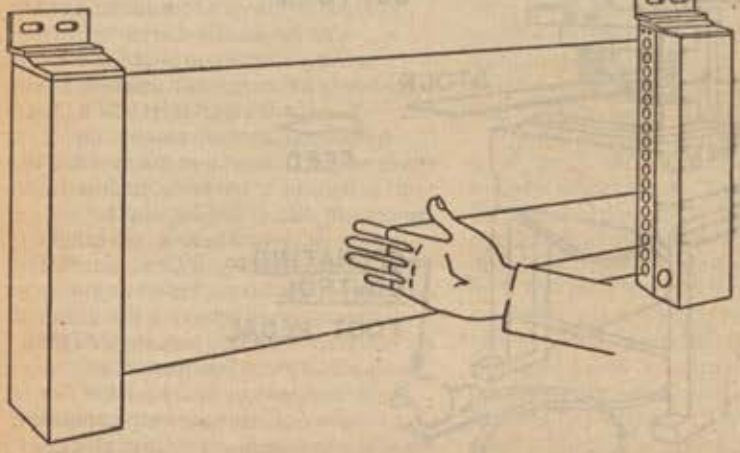
Figure 3



TWO-HAND CONTROL ON PEDESTAL

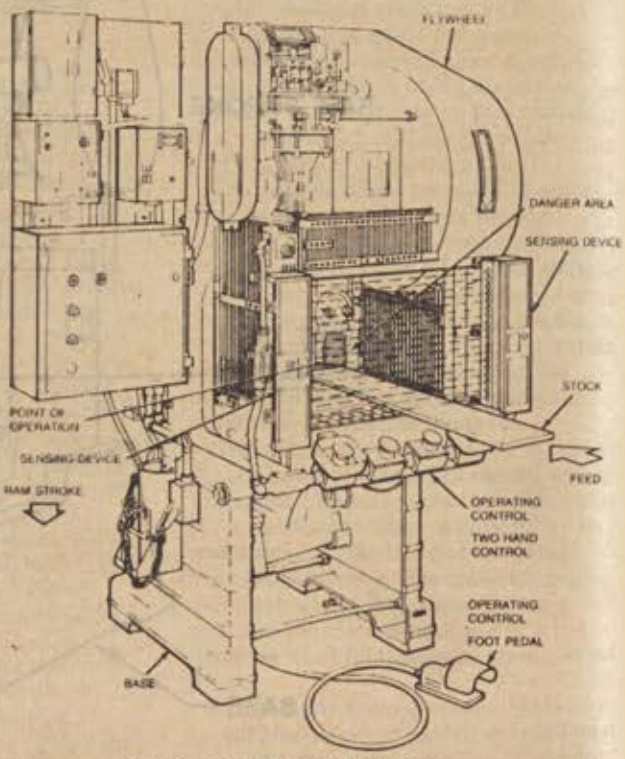
The purpose of having a two-hand control, spaced far enough apart so that one hand cannot operate both palm buttoms, is to prevent the employee from having his or her hands in the point of operation when the stroke is initiated.

Presence sensing devices are electronic units that sense the presence of an object, such as an operator's hand, that enters the point of operation area of the machine (See Figure 4). When an object enters the field of the presence sensing device, the system will prevent or stop the press from completing its cycle, in order to eliminate the hazard at the point of operation. (See Figures 4 and 5.)



PRESENCE SENSING LIGHT CURTAIN

Figure 4



MECHANICAL POWER PRESS WITH PRESENCE SENSING DEVICE

Figure 5

Presence sensing devices are permitted now as a safeguard to prevent operation of the press when the employee's hands or other part of the body are at the point of operation. However, present regulations do not permit the presence sensing device to initiate a stroke of the presss when it senses that no part of the body is obstructing the presence sensing field.

Presence sensing device initiation is a system which permits the presence sensing device to initiate the stroke of the press upon sensing that all parts of the body are clear of the point of operation. It further must sense that all parts of the body are sufficiently far away so that accidental action of the employee cannot expose parts of the body to the point of operation during the stroke, or alternately that the stroke of the press can be stopped if a part of the employee's body reenters the point of operation. Initiation of the stroke by the presence sensing device makes it unnecessary for the employee to initiate manually the stroke of the press.

Presence sensing devices are not new. The 971 revision of the voluntary consensus standard, ANSI B11.1, "Safety Requirements for Construction,

Care and Use of Mechanical Power Presses," permitted their use as safeguards, to stop the press if the employee placed part of his or her body in the point of operation during the stroke. However, the standard prohibited their use as a tripping means to initiate the press cycle. In 1982, ANSI again revised B11.1, but retained the prohibition against PSDI. In 1971, OSHA adopted the ANSI standard in its entirety as a Federal regulation (29 CFR 1910.217). This action changed the prohibition against using PSI from a voluntary consensus standard provision to a rule with which the employer was *required* to comply, regardless of preferences, capabilities or changes in technology. Thus, the current OSHA standard explicitly provides, at 29 CFR 1910.217(c)(3)(iii)(b), that a presence sensing device may not be used as a tripping means to initiate slide motion.

The ANSI standard adopted by OSHA in 1971 also contained a requirement of "no-hands-in-die." In 1974, through rulemaking under section 6(b) of the Act, OSHA revoked the no-hands-in-die requirement because evidence indicated it did not lead to greater safety and because of feasibility difficulties. OSHA added protection provisions when no-hands-in-die feeding is used, in order to increase safety (39 FR 41844) (Ex. 14).

At that time OSHA considered but rejected the possibility of deleting the prohibition against using presence sensing devices as a tripping mechanism on mechanical power presses. The rejection was based on the evidence available at the time and in part on the fact that while European countries which authorize this method have procedures and facilities for approval of the presence sensing devices, OSHA did not have the capability for such approval. However, OSHA further stated that the requirement might be reconsidered if a satisfactory means of approval and a regulation could be implemented. Also, new evidence indicating the safety of PSDI would of course lead to reconsideration of the earlier decision.

II. New Studies

Since that 1974 decision to retain the prohibition against using presence sensing devices as tripping mechanisms on mechanical power presses, an experimental variance and several studies have added much to the background information and understanding of operating presses with presence sensing devices. These studies and the variance operating results indicate the use of properly designed light curtain type presence sensing devices used in the PSDI mode to be extremely safe, and to have the added benefits of lessening operator fatigue, thus apparently resulting in greater productivity. The studies suggest that the OSHA requirement for manual tripping may be an unnecessary prohibition which imposes a burden on business and provides no increased safety to employees. The variance and the studies are discussed separately in the following paragraphs.

A. Experimental variance

OSHA granted a variance permitting the use of PSDI on an experimental basis to the Interlake Stamping Corporation of Willoughby, Ohio, on August 31, 1976 (41 FR 36703, August 31, 1976) (Ex. 15). It was the opinion of OSHA that the PSDI system might well prove to be an improved safety technique, based on a document submitted by the Swedish National Board of Industrial Safety. OSHA stated, "Their [the National Board] experience has shown no accidents related to the functioning of the light curtain in this mode. It further appears that the simplicity of the system would reduce worker fatigue, a recognized cause of industrial accidents, by eliminating the need for the press operator to manually operate a two-hand control, foot pedal, or other permissible tripping device. In addition, minimizing the operator's task would appear to eliminate an inclination to bypass or inactivate the safeguard. Thus accidents from these causes could be reduced or eliminated." (41 FR 36703, August 31, 1976) (Ex. 15).

The Interlake variance was designed to demonstrate a total safety system employing a light curtain type presence sensing device as a tripping mechanism, as it is used in other countries, and to validate the accident-free experience with this system. Detailed requirements were developed by Interlake to assure that the equipment would meet safety requirements equal to those contained in Swedish standards as well as pertinent OSHA standards. A light curtain type presence sensing device was used to function as a combined safeguard and tripping mechanism on five open back inclinable (OBI) mechanical power presses.

This light curtain device is part of a sophisticated control system which automatically checks all press systems between strokes. If any of the electronic or mechanical systems do not operate properly, the press will shut down without stroking. In addition, the press will automatically shut down if the brake does not stop the press within a pre-determined period, or if the operating rhythm is interrupted so that the press does not cycle within a pre-set time. Before the press can be operated again, necessary repairs or adjustments must be made, and special operating means must be actuated to restart the press.

The 1976 experimental variance has been renewed several times and is a very useful method for comparing the performance of PSDI to two-hand control or foot control initiation. In nearly a decade of continuous, carefully monitored use at Interlake, there have been no injuries in PSDI equipped presses.

B. Purdue Study

The Interlake Stamping Company variance was also the subject of a study done by the Purdue Research Foundation under a contract for the National Institute for Occupational Safety and Health (NIOSH) (Ex. 6, 7, 8, 9, 10). As a result of this study, the researchers at Purdue recommended to OSHA that the prohibition be lifted against the use of fail-safe cycle initiation using presence sensing light curtain devices. The rationale for this recommendation was based on the finding that the two-hand palm button actuator system was no more safe than the tested light curtain device at Interlake Stamping. Although the two devices are equally safe to the operator, the PSDI system also protects all other personnel such as maintenance or servicing personnel who may be exposed at the point of operation (danger zone). The two-hand palm button device protects only the operator.

The principal investigator of the Purdue study recommended (EX. 8) that ". . . the prohibition be lifted against the use of safe-fail self-tripping light curtain devices." This recommendatin was qualified by additional recommendations related to certification of the safety of light curtains, installation, operation, maintenance, inspection, and operator training.

C. Hauge Report

In 1982, OSHA contracted with Mr. Trygve Hauge, of Technology 80, Inc., to examine 29 CFR 1910.217 and to recommend appropriate revisions to the standards to allow PSDA. Hauge's report, "Self-Tripping of Mechanical Power Presses" (Ex. 1), contains supporting information and recommended revisions and additions to existing regulations.

Approximately 350 copies of the report were distributed in June 1983 to individuals and organizations that are members of pertinent voluntary consensus standards organizations; that

have participated in previous rulemaking relating to 29 CFR 1910.217; or that otherwise have demonstrated interest in the subject. Critical comments and suggestions were invited on the draft of changes to the standard. There were 55 public comments on the report. They have been entered into the record of this proposed rulemaking as Exhibits 4–1 through 4–55. The comments represent a broad range of viewpoints and generally are quite comprehensive, reflecting a great depth of understanding and thought on the subject. OSHA is most appreciative of the information provided by the commenters. The proposed standard includes many revisions to earlier drafts which have been made in reponse to the comments and suggestions which were received.

III. Basis for Proposal

A. General

OSHA has carefully considered the substantial new body of evidence. Based on that evidence and all the information available, it proposes to eliminate the prohibition on presence sensing device initiation set forth in 29 CFR 1910.217(c)(3)(iii)(b).

OSHA also proposes to add new definitions in § 1910.211 and new requirements in § 1910.217 to permit and regulate the use of PSDI. The new requirements would be placed in a single additional major paragraph in § 1910.217(h), in order to clarify and emphasize the necessary provisions. The requirements of the present regulation generally would not be affected by the addition of PSDI requirements, except paragraph (c)(3)(iii)(b), which would be amended to permit, *but not require*, the use of presence sensing devices as tripping means to initiate slide motion under the provisions of the new added paragraph (h), Presence Sensing Device Initiation.

The OSHA studies and experimental variance have shown that when used properly, PSDI is equally as safe for the operator as two-hand or foot control; provides additional safety for others at the point of operation; produces less operator fatigue; and can increase productivity. For these reasons, OSHA preliminarily concludes, pursuant to section 6(b)(8) of the Act, that the proposed amendments will better effectuate the purposes of the Act than the national consensus standard.

For these reasons, OSHA believes that the state-of-the-art in technological advancements should be recognized and should be permitted to be utilized in a manner consistent with, and protective of, worker safety and health.

B. Public Comments

Among the comments received in response to the preproposal draft that was circulated in June of 1983, were statements strongly in favor of the option to use PSDI. For example, Newport News Shipbuilding (Ex. 4–5) and Greenerd Press and Machine Company (Ex. 4–30) stated that the draft was acceptable as it was written. Others, including the American Metal Stamping Association (Ex. 4–2), Metal Building Manufacturers Association (Ex. 4–44), and Rockford Safety Equipment Co. (Ex. 4–43) specifically supported prompt action on the revision.

Some commenters requested that modifications be made. For example, the Travelers Insurance Companies (Ex. 4–20), the National Institute of Occupational Safety and Health (NIOSH) (Ex. 4–12) and Data Instruments, Inc. (Ex. 4–24) expressed their approval, particularly if certification of the system is taken into consideration. The State of California Department of Industrial Relations (Ex. 4–10) and the Wiremold Company (Ex. 4–55) had no objections if all of the systems were designed to operate as a unit.

Proper training on the safe use of the entire system was recommended by Cincinnati, Incorporated (Ex. 4–8), Scot Forge (Ex. 4–15), the Department of Labor of North Carolina (Ex. 4–35) and The Boeing Company (Ex. 4–51).

The Aluminum Company of America (Ex. 4–17) and the American Metal Stamping Association (Ex. 4–26) commented that more attention should be given to the requirements for proper maintenance of the entire system.

The public comments on the preproposal draft frequently suggested specific technical considerations for enhancing the safety of PSDI. OSHA has attempted to incorporate these suggestions by including a number of technical provisions in the proposed standard. OSHA believes the specificity of the provisions is appropriate for the highly technical nature of PSDI operation, and is necessary—in conjunction with the certification requirement—to assure worker safety.

The principal opposition in the comments received is that hands-in-die (HID) operations *of any type* should not be permitted for mechanical power presses. This was expressed by Peter Bosch (Ex. 4–13), United Auto Workers (Ex. 4–37), Minster Machine Company (Ex. 4–40), and the National Machine Tool Builders Association (Exs. 4–47, 4–48, 4–49). Other grounds for opposition to PSDI include the following: the accident exposure of the operator(s) when certain catastrophic failures of press components occur due to long-term fatigue or overloading (Niagara Machine Tool Works (Ex. 4–19)); the likelihood of improper and/or incompetent maintenance and repair (the Michigan Department of Labor (Ex. 4–7)); the possible lack of proper operator training and supervision (the North Carolina Department of Labor (Ex. 4–35) and Niagara Machine and Tool Works (Ex. 4–19)); and uncertainty whether proper selection and interfacing of subsystems would be accomplished and maintained when presses are converted to PSDI (the Rouselle Corporation (Ex. 4–41), Verson Steel Press Company (Ex. 4–38), the American National Standards Institute B11.1 Committee (Ex. 4–23), and the National Safety Council (Ex. 4–54)). OSHA has taken these concerns into consideration and has incorporated provisions into the proposed standard which address the concerns.

The persons who opposed PSDI because it allows hands-in-dies operation believe that hands-in-dies opertion will lead to more accidents than no-hands-in-dies (NHID) operations, since an operator's hands will be in the point of operation much more frequently. (PSDI can be used for NHID operations as well but it would be used more frequently for HID operations.) However, accidents are caused by factors such as fatigue, carelessness, and defeat of safeguards as well as by hand location. The statistics indicate that, overall, HID operations are as safe as NHID.

The analysis of § 1910.217(g) accident reports from 1977 to 1982 (Ex. 4–16) indicates that well over half (59 percent) of the reported accidents on part revolution mechanical power presses occurred in NHID operations—not HID operations.

Further examination of the § 1910.217(g) statistics confirms that human factors are the dominant cause of power press accidents. Only 4.5 percent of the accidents for the six-year period were attributed to the "Failure of Press" category, and eitht percent of the accidents were attributed to the "Repeat of Press" category (control failure). The "Failure of Press" category includes non-catastrophic failures, such as a brake's failure to hold the press slide when not adjusted for wear, and thus is also influenced by human factors. It should be noted that the fact that eight percent of the accidents are attributed to "Repeat of Press" is not surprising, as many press controls in industry may not meet § 1910.217(b)(13) "control

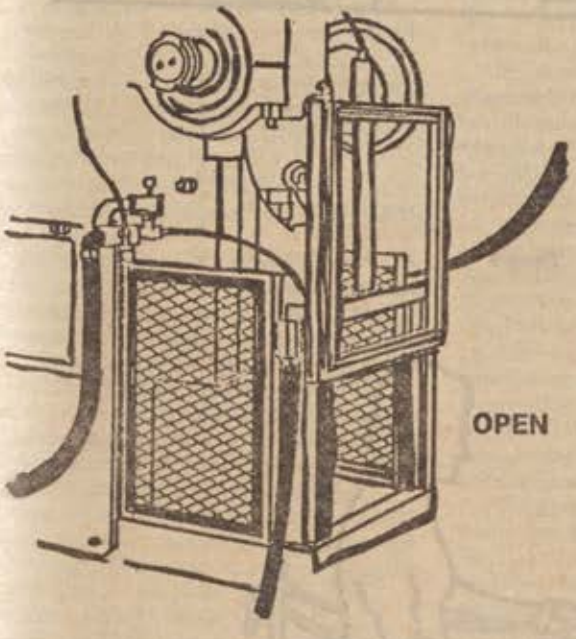
reliability" standards, which are required only for HID operations.

About 26 percent of the accidents during the six-year period occurred because of failure to use existing safeguards; over eight percent of the accidents were attributed to improperly adjusted safeguards; and over seven percent of the accidents were attributed to the fact that there was no safeguary in place at all. Point of operation injuries that occurred while operators were removing scrap or stuck parts from the die area accounted for over 18 percent of the total reported accidents for the priod.

OSHA does not have specific information regarding the comparative number of part revolution (the only type of press to be authorized for PSDI use) mechanical power presses operated with HID versus those operated with NHID. Thus, there is some uncertainty in the interpretation of the relative risk of HID versus NHID operations as composite categories. For example, if 59 percent of the total population of part revolution presses are operated with NHID and 41 percent with HID, then, statistically, the 59 percent of accidents reported with NHID operations and the 41 percent of accidents reported with HID operations would mean that the risk of accident in NHID and HID operations is essentially the same. If, on the other hand, part revolution presses are equally divided between HID and NHID operations, then approximately 44 percent *more* risk is associated with NHID operations than with HID operations (based on the 59/41 ratio). While there is greater exposure in HID operations, the accident records for the full spectrum of functions—operations, set-up, and maintenance—lead OSHA to believe that the risk in HID operations as a group is *not* greater than for NHID operations as a group.

In addition, OSHA believes that PSDI can increase safety at the point of operation of part revolution mechanical power presses when compared with currently permitted actuation means and safeguarding methods for HID operations. The integral nature of the actuation and guarding device reduces human factors risk because the press cannot be operated without the presence sensing device in the PSDI mode. Presence sensing devices do not have to be removed at the completion of the stroke in order to gain to the point of operation. Also, the devices do not physically obstruct or interest directly with operators, so there is less tendency for operators to void this safeguarding device than there is with other types of guards, such as gate devices which can be removed; pull-out devices that are strapped to the hands in order to pull them out with the movement of the ram, but which can get out of adjustment with no notice to the operator; or restraint devices that restrict the movement of the hands (see Figures 6, 7, 8, and 9 for clarification of these terms).

GATE DEVICES FOR POINT OF OPERATION GUARDS



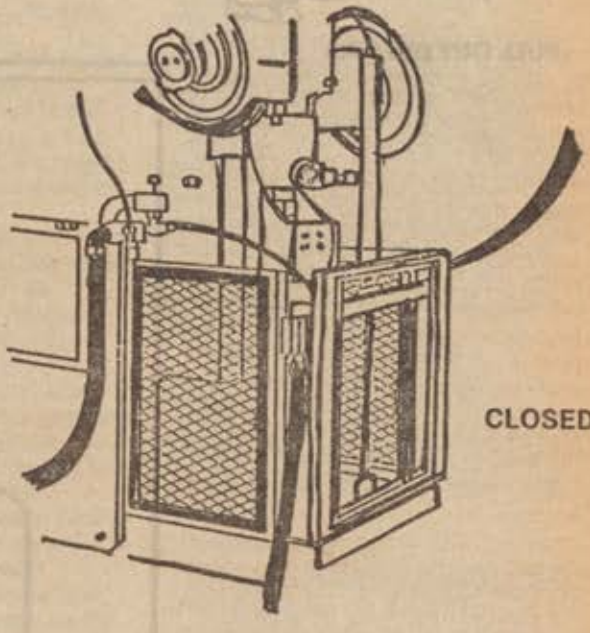


Figure 6

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Figure 7

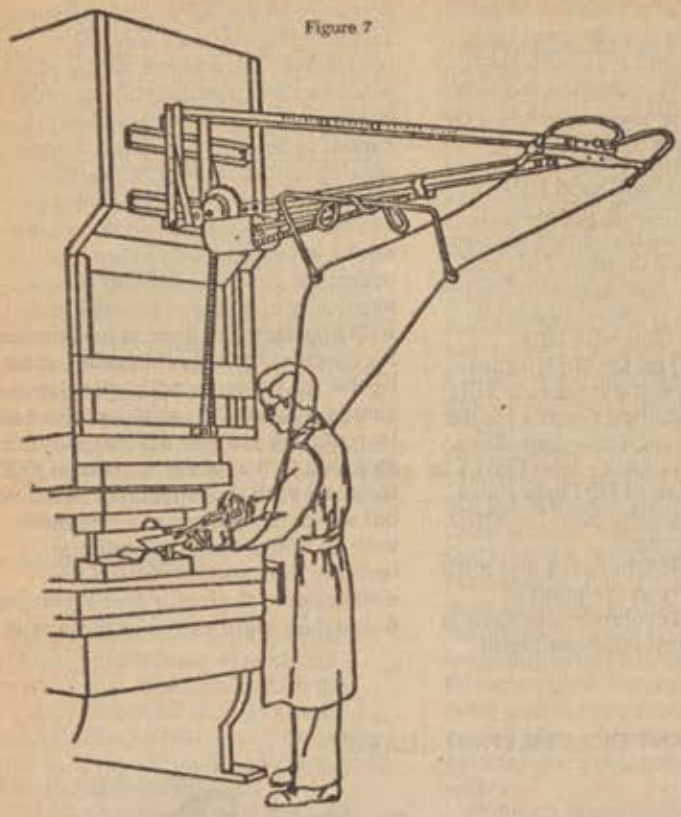
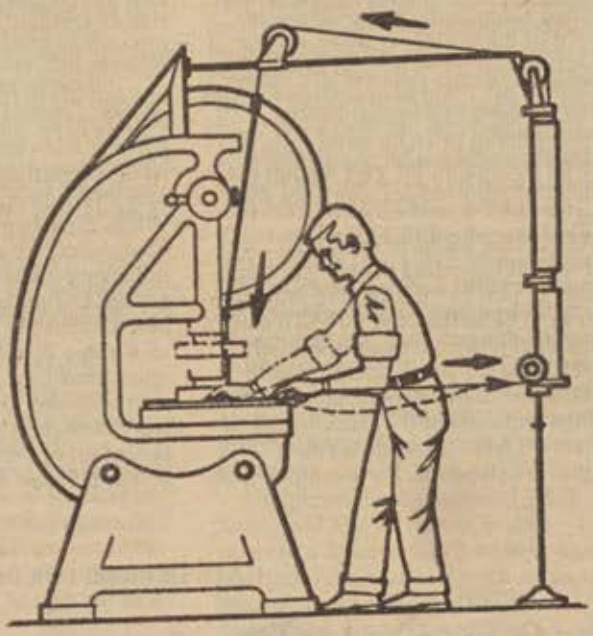
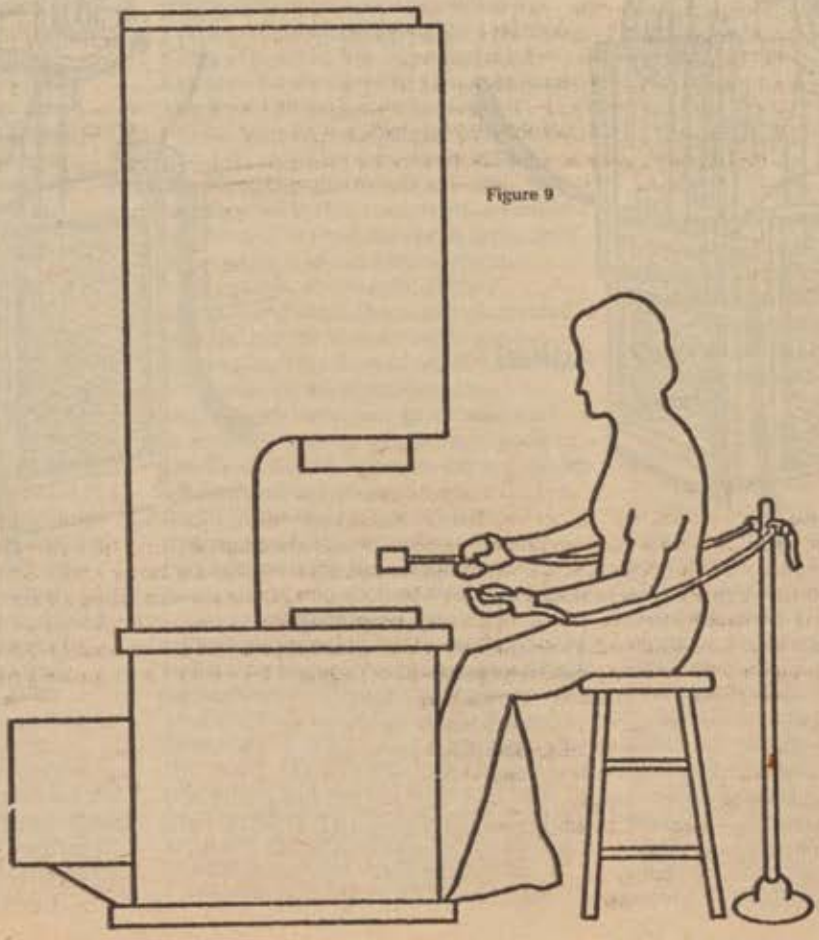


Figure 8



PULL OUT DEVICES

Figure 9



RESTRAINT DEVICE

BILLING CODE 4510-26-C

Presence sensing devices protect all personnel who intrude into the point of operation, as opposed to pull-outs, two hand controls, and restraints, which protect only the operator. Personnel who violate § 1910.217(d)(1)(ii) by attempting to remove scrap or stuck parts with their hands rather than with tools are also protected by PSDI.

In summary, OSHA believes that the risk of injury at the point of operation of part revolution mechanical power presses is not greater for PSDI operations than for other currently allowed operations, whether HID or NHID. Indeed, careful implementation of PSDI has the potential to increase safety.

It is beyond the scope of this rulemaking to amend existing standards for HID operations, except as they relate to PSDI. However, OSHA believes that certain requirements for PSDI should be more stringent than the present requirements governing HID operations, in which presence sensing devices are used as safeguards. Further public comment is requested on this subject.

C. Certification Requirement

OSHA first considered nearly 10 years ago permitting the use of PSDI as now proposed. At that time, however, OSHA determined that the procedures and facilities necessary both to insure proper use of PSDI and to protect employees adequately did not exist. Thus, OSHA concluded at that time that implementation of PSDI was administratively infeasible (39 FR 41844) (Ex. 14).

Since that time, the Agency has continued to explore the development of a recognition system for equipment, materials and installations that would be administratively workable and that would take advantage of recent developments by others in organizing and evaluating product certification systems. As a result of this exploration process, on March 6, 1984, OSHA proposed revisions to 29 CFR Parts 1907 and 1910 covering OSHA recognition of testing-related agencies and certification programs (49 FR 8326) (Ex. 17). The Agency stated: "Since OSHA is not testing or certifying organization, OSHA believes that the most appropriate means to provide assurance to employers and workers, and to itself, that specific equipment or materials will conform with the Agency's requirements is to require valid testing data and valid certifications" (49 FR 8327)(Ex. 17).

"Certification" of equipment and materials refers to the process which results in a formal attestation—after appropriate testing, quality-controlled production, and periodic inspection—that a product meets specific standards for safety.

OSHA proposed to define "third-party certification program" as an organized system which (1) uses a validating laboratory other than one controlled by either the manufacturer or the buyer, and (2) validates the certification for safety of equipment, materials, or services, by means of tests, examinations, periodic inspections and the authorized use of its controlled marks (49 FR 8327) (Ex. 17).

The Agency proposes to rely upon third-party certification as the appropriate method to assure the safe use of PSDI authorized power presses.

OSHA believes that the "OSHA-recognized third-party certification program" outlined in the March 6, 1984, proposal, entitled "Safety Testing or Certification of Certain Workplace Equipment and Materials"—specifically Subparts A, C, D and I in proposed Part 1936—would be a feasible administrative mechanism for promoting the safe use of PSDI.

(That rulemaking procedure is not yet completed. The available part of the record in that proceeding (Docket S–110) will be made a part of this rulemaking proceeding concerning PSDI.)

OSHA requests that interested parties comment on whether the third-party certification program described in the March 6, 1984, proposal is appropriate for PSDI or whether an alternate type of third-party certification program would be more appropriate.

It is possible that the third-party certification system being developed in Docket No. S–110 may not yet be effective at the time that the Agency publishes a final rule on PSDI at the conclusion of this rulemaking proceeding. Accordingly, OSHA also requests that interested parties comment concerning an appropriate interim approach to third-party certification in the event that (1) the third-party certification system developed in Docket No. S–110 is not final at the time when OSHA promulgates its final rule governing the use of PSDI and (2) that approach appears most appropriate for PSDI.

IV. Specific Provisions of the Proposal

1. Definitions.

(a) Section 1910.211(d)(11) "*Device*". This definition would be revised in the proposed standard to require that the presence sensing device provide a stop signal to the press control so that stroking cannot be initiated or will be stopped when any part of an operator's body or any other object intrudes into the presence sensing field. This broadening of the definition would make it more appropriate for PSDI, and would consider the need to detect hand tools and other objects in the sensing field.

(b) Section 1910.211(d)(12) "*Presence sensing device*". As with the definition of "Device," above, this definition would be revised to cover any part of the operator's body or any other object within the presence sensing field.

(c) Section 1910.211(d)(61) "*Presence sensing device initiation*". The term "self-tripping" frequently has been used to describe the activation mode when a presence sensing device is used to cycle the press. OSHA believes that the term "self-tripping" is a misnomer; the press does not trip itself. A special and overt action of the operator is necessary for the press to stroke, i.e., the operator must enter and leave the light curtain sensing field a prescribed number of times before the press will stroke. OSHA believes that the most directly descriptive term is "presence sensing device initiation" (PSDI), and uses that term for this proposed regulation. The presence sensing device initiates the stroke of the press when the operator completes the prescribed work sequence.

(d) Section 1910.211(d)(62) "*Safety system*". This new definition would establish the concept of a "safety system" as a functionally complete, certifiable, total system for PSDI. The definition enlarges upon the control reliability concept in the current standard, for applicability to the PSDI mode of operation, such that a single failure or single human error will not cause injury due to point of operation hazards.

(e) Section 1910.211(d)(63) "*Authorized person*". This new definition would clarify the term "authorized person" as one to whom the authority and responsibility to perform a specific assignment has been given by the employer.

2. Revisions.

(a) Section 1910.217(c)(3)(iii)(b). This revision proposes to modify the current prohibition on slide motion initiation to permit PSDI if it is used in total conformance with the proposed new paragraph (h) of this section.

(b) Section 1910.217(h)(1) *General.* In paragraph 1910.217(h), OSHA proposes to state the additional requirements which must be fulfilled in order to accomplish PSDI on a mechanical power press which is in conformance with the other applicable requirements of § 1910.217. In addition, in order that all pertinent requirements for PSDI would

be contained in one location in the section, those portions of the current standard which specifically are applicable for PSDI would be referenced in appropriate portions of § 1910.217(h). OSHA believes this would facilitate the understanding of the requirements for PSDI, and would aid in identification of the total system concept required for PSDI use. While such references are intended to enhance emphasis, convenience and understanding in relating the new provisions to the existing standard, it should be noted that other portions of the existing standard continue to be applicable, and it is not OSHA's intent to exclude the applicability of other provisions. Paragraph (h)(1)(ii) defines the additive nature of the paragraph (h) requirements to other portions of § 1910.217.

Not all requirements of paragraphs (a) through (g) of § 1910.217 apply to all mechanical power presses. Some of the requirements are general, but others are directed at specific types (full or part revolution) of mechanical power presses and some requirements are directed at specific operator controls and guarding methods for a particular type of press. For example, paragraph (c)(5) is clearly invoked for presence sensing device initiation modes that use hands-in-die feeding, because the presence sensing device is the guarding method on such operations. It would not be invoked by presence sensing initiation if parts are fed manually with tools. Since the intent of the provision is to supplement the requirements of paragraphs (a) through (g), proposed paragraph (h)(1)(ii) would include the applicable requirements of § 1910.217 (a) through (g) for all presses used in the PSDI mode of operation.

In paragraph 1910.217(h)(1)(iii), OSHA proposes to continue the prohibition on PSDI on full revolution mechanical power presses. OSHA believes that full revolution presses are not suitable for PSDI use. By definition, a full revolution clutch, when tripped, cannot be disengaged until the crankshaft has completed a full revolution and the press slide has completed a full stroke. The capability of a press to be stopped at any point in the down stroke of the slide is considered essential for the safe operation of a press in the PSDI mode.

In paragraph 1910.217(h)(1)(iv), OSHA proposes also to continue to prohibit PSDI on presses with a configuration which would allow a person to insert his or her body completely into the bed area. For safe PSDI operation, some part of an operator's body must remain in the presence sensing device field or be protected by supplemental safeguarding when any part of the operator's body is in the point of operation.

(c) Section 1910.217(h)(2) *Brake and clutch requirements.* There are a number of factors which indicate the need for more stringent provisions for brake and clutch systems in the PSDI mode. Among these are the greater operator speed and smaller margin for operator error. For these reasons, the proposed standard includes limits on types of brakes, a requirement for demonstrating high torque capability, and a requirement for assuring non-interleaving of brake springs.

In paragraph 1910.217(h)(2)(i), it is proposed to prohibit flexible steel band brakes and mechanical linkage actuated brakes or clutches on presses used in the PSDI mode. OSHA believes that fast and consistent stopping are critical to safety in the PSDI mode. The prohibited types of brakes and clutches have been shown by experience not to possess a long-term reliability against structural failure, as compared to other types, and therefore are not considered acceptable.

Paragraph 1910.217(h)(2)(ii) would define a high torque capability which OSHA believes will ensure fast and consistent stopping time. Average values of stopping times at three different positions of crankshaft angular position are to be compared with the average value of the top stopping time. The high torque capability would be demonstrated by conformance with the proposed 125 percent limit of variation from the top stopping time.

In paragraph 1910.217(h)(2)(iii), OSHA proposes to prohibit brake springs of interleaving design. In the event of a break in a spring, OSHA believes this and other provisions of the paragraph will reduce the possibility of significantly increasing the stopping time beyond the normal brake stopping capability.

(d) Section 1910.217(h)(3) *Pneumatic systems.* OSHA considers fast and consistent stopping capability to be critical to PSDI safety. Variations in stopping time may be caused by such factors as air valve failure, and mechanical variations due to air cleanliness, pressure, moisture, and lubrication. Paragraph 1910.217(h)(3) addresses such pneumatic system failures and other conditions which could affect the stopping time of a press in the PSDI mode. It also highlights some of the provisions of the current standard which are applicable to pneumatic systems in PSDI operations. Finally, it prescribes the correct adjustment of air counterbalance systems for the die weight used in order to maintain the stopping time.

(e) Section 1910.217(h)(4) *Flywheels and bearings.* Paragraph (h)(4) would address designs of flywheels and bearings which could cause unintended and uncontrolled press strokes in the event of bearing seizure. OSHA believes it is particularly necessary to inspect, lubricate, and maintain such flywheels and bearings in a manner to preclude such bearing seizures.

(f) Section 1910.217(h)(5) *Brake monitoring.* Since fast and consistent stopping capability is critical to PSDI safety, paragraph (h)(5)(i) emphasizes the applicable provisions of the current standard which relate to brake monitoring of presses used in the PSDI mode. The brake monitor should ensure that increases in press stopping time over a period of use do not exceed the time used to develop the safety distance for the press set-up established in accordance with paragraph (h)(9)(v). Paragraph (h)(5)(i) would require that the brake monitor must be adjusted to prevent successive stroking of the press in the event that stopping time increases to such an extent that the safety distance no longer complies with paragraph (h)(9)(v).

Should it be necessary to adjust the brake monitor once the system has been certified, paragraph (h)(5)(ii) would require that the adjustment, as well as any corresponding increase of the safety distance, should only be done with the prior approval of the OSHA-recognized third party certification program prescribed in § 1910.217(h)(11). OSHA believes that the basis for the certification of the PSDI safety system would be invalid without such approval. However, a site visit would not be necessary as the certification program could evaluate the adjustment by a review of the documentation. Therefore, such approval would not constitute a recertification.

Paragraph (h)(5) (ii) and (iii) address the need to control those factors which extend stopping time and to limit the increase in stopping time to a maximum of 10 percent. OSHA believes the 10 percent limit is reasonable, and reflects the potential for increases in stopping times over the down stroke of the press.

(g) Section 1910.217(h)(6) *Cycle control and control system.* The PSDI reliance upon the control system to initiate safe press operation places a particular burden upon the controls to function properly and to be understood and properly used by the operator.

Paragraph (h)(6)(i) identifies applicable provisions of the current standard which relate to cycle control systems of presses used in the PSDI mode.

Paragraph (h)(6)(ii) would require a means of monitoring the crankshaft rotary position indicating device. The monitor would stop slide motion and prevent successive strokes if the position indicating device were to become decoupled or if the monitor itself were to fail. OSHA believes this is necessary in order to ensure that the control system reflects the true position of the crankshaft, so that an operator is not exposed to point of operation hazards which are not actually being controlled by the control system.

Paragraph (h)(6)(iii) proposes that the press' mode selection include a capability to detect and indicate more than one interruption of the presence sensing field, i.e., removal and/or feeding of the part or stock by more than one intrusion through the field. Such a capability would be under the control and supervision of the employer in order to prevent unauthorized manipulations of the press.

Paragraph (h)(6)(iv) proposes a capability for PSDI set-up and resetting which would require the operator to take some overt action, in addition to the PSDI mode selection, before operation of the press by means of PSDI could be started. OSHA believes this overt action, combined with the warning indicator which would be required by paragraph (h)(6)(v), would alert the operator to the set-up status of the PSDI mode.

Should the press not stroke for a significant time interval, for example, when an operator leaves the work station or is distracted for some reason, OSHA believes the PSDI mode should automatically deactivate and should require reactivation before operation of the press by means of PSDI can be resumed. Paragraph (h)(6)(vi) would require a timer, manually adjustable to a maximum of 15 seconds, which would deactivate the PSDI if the press did not stroke within that time interval. OSHA believes the 15-second limit is an appropriate idle period without requiring deactivation and subsequent reactivation. A special tool would be required to adjust the timer; its use would be limited to authorized persons in order to prevent misuse.

Similarly, in paragraph (h)(6)(vii), deactivation of the PSDI mode from any other cause, such as activation of the red color stop control required by paragraph 1910.217(b)(7)(ii) of this section, or interrupting the presence sensing field, opening an interlock, or reselection of the number of intrusions required to cycle the press, would also require resetting of the set-up/reset means. OSHA believes this is necessary in order to ensure operator awareness of PSDI status.

Paragraph (h)(6)(viii) would require an automatic means to prevent initiation or continued activation of the PSDI mode unless the press drive motor is energized in the forward direction of crankshaft rotation. This is considered necessary in order to ensure that all intended safety controls are operable in the PSDI mode, and that an operator is not exposed to a downstroke for which the control system does not function.

Paragraph (h)(6)(ix) would require control design to preclude any movement of the slide caused by operation of the controls, such as power on, power off, use of the selector switches, or making the checks for proper operation as required by paragraph (h)(6)(xiv) of this section. This is considered necessary in order to prevent unexpected slide movement from unwanted output in transitory conditions.

Paragraph (h)(6)(x) would require the integration of all control system components and subsystems in a manner to provide total control system compliance with the requirements of this section. While control system components and subsystems individually may meet pertinent provisions, it is necessary that they function as an integrated system, and that there be complete integration of the control reliability and other existing provisions with the PSDI control provisions.

Paragraph (h)(6)(xi) proposes that, when there is more than one operator of a press in the PSDI mode, each operator must be protected by a separate, independently functioning presence sensing device, and that each device and control arrangement must meet the requirements of the standard.

Paragraph (h)(6)(xii) would require that when a press is equipped for PSDI operation, the presence sensing devices must provide effective safeguarding in all other production modes as well as PSDI. This ensures that the presence sensing device remains operable, and, even if other appropriate safeguards are provided, enhances the reliability for safe operation in other production modes.

Supplemental safeguarding is considered necessary where access to the point of operation is not protected by the PSDI presence sensing device. Paragraph (h)(9)(viii) would address the requirements for such safeguarding. Paragraph (h)(6)(xiii) would require interlocks when supplemental guards are provided, which would prevent stroke initiation or stop a stroke in process if any supplemental guard fails or is deactivated. Such interlocks are considered necessary to ensure that no part of an operator's body is in the point of operation during a stroke if a supplemental guard is not in operation.

Paragraph (h)(6)(xiv) would address requirements for automatic self-checking of the control system at least once each cycle and before the initial PSDI stroke. OSHA believes this is necessary in order to ensure proper functioning of the control system for each PSDI cycle.

Paragraph (h)(6)(xv) would require provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section, but would prohibit die-setting in the PSDI mode. "Inch" operation, as defined by paragraph 1910.211(d)(39), means that the stroke moves a short distance to permit set up or adjustment, but is not for production operations. OSHA believes it is necessary to assure that a die-setting mode is provided on presses which are equipped for PSDI, and that die-setting be prohibited in the PSDI mode, because die-setting should be under the complete manual control of the die-setter.

OSHA believes PSDI operation may be accomplished safely only in a single stroke application. Single stroke control is consistent with the production process, and is consistent with the intention of the anti-repeat provision of the standard by automatically preventing more than one stroke. Paragraph (h)(6)(xvi) would permit only a single stroke per command.

Paragraph (h)(6)(xvii) would require that controls with internally stored programs meet the control reliability requirements of the current standard, and that they default to a safe condition in the event of any failure within the system. This paragraph also would prohibit the use of programmable controllers. OSHA believes that controls with internally stored programs can be safely used but that programmable controllers are unacceptable because of their potential for manipulation to an unsafe condition.

(h) Section 1910.217(h)(7) *Environmental requirements.* OSHA believes the control system could be exposed to operating stresses as well as environmental conditions which would impair its capability to perform as intended. This paragraph would also enhance the effectiveness of the certification requirements in paragraph (h)(11).

(i) Section 1910.217(h)(8) *Safety system.* In this paragraph, OSHA proposes requirements for a safety system, to include all elements which

operate together to prevent the worker from receiving injury. The concept would expand upon "control reliability" to assure safety in operational as well as malfunction modes. This provision requires that a single human error or machine failure not lead to a point of operation accident. The proposed standard reflects OSHA's belief in the need to consider the total system, including all components and subsystems and their integration and interfaces with the operator and the environments, to ensure the safety of PSDI. The provision emphasizes the fact that PSDI should not be attempted merely by the addition of a presence sensing device to an existing press, without the necessary consideration of the total safety system. The concept of a total system for safety also would enhance the effectiveness of the certification requirements in paragraph (h)(11).

(j) Section 910.217(h)(9) *Safeguarding the point of operation.* Paragraph (h)(9)(i) would emphasize the applicability of the requirements in the current standards relating to safeguarding the point of operation.

Paragraph (h)(9)(ii) would limit the implementation of PSDI to presence sensing devices of the light curtain (photo-electric) type. OSHA believes that the only current presence sensing devices suitable for stroke initiation are the light curtain type. However, any emergent technology which demonstrates equivalent or superior performance capability could be considered in the future.

OSHA is particularly interested in information regarding experience in the use of light curtain type presence sensing devices for initiation or activation of other types of machinery or equipment. Relevant data concerning the design, operation, maintenance, training requirements, etc., for such use of the devices is solicited.

Paragraph (h)(9)(iii) would limit the individual sensing field of a presence sensing device used to initiate strokes in the PSDI mode to cover not more than one side of the press. OSHA believes the use of mirrors or other techniques to "bend" the field of a light curtain reduces the reliability of the device for stroke initiation. Since separate devices and controls would be required for any additional operator of a press, no more than one side of a press should be covered with any one sensing field, in order to prevent accidental stroke initiation which could injure the operator.

"Object sensitivity" describes the capability of a presence sensing device to detect an object in the sensing field, expressed as the linear measurement of the smallest interruption which can be detected at any point in the field. Minimum object sensitivity describes the largest acceptable size of the interruption in the sensing field.

Paragraph (h)(9)(iv) would limit the minimum object sensitivity of light curtains used to initiate strokes in the PSDI mode, and would limit the number and size of blanked areas in the sensing field of such light curtains. OSHA believes that object sensitivity is more critical for PSDI than for point of operation guarding. Limiting the object sensitivity so that the minimum object size to be deteted by a sensing field is not greater than 1¼ inches (31.75 mm) is necessary to assure fast and reliable detection capability as well as reliable and consistent light curtain stroke initiation. "Blanking" is a form of blocking of the light curtain pattern to allow the feeding of stock or parts. It removes a portion of the sensing field from operation, creating a blind spot which does not sense the presence of any object or any part of the operator's body. If blanking is introduced into the sensing field, a maximum size of two inches (50.8 mm) is considered reasonable. Minimum object sensitivity and blanking must be considered in evaluating the penetration distance necessary to assure detection of the operator's fingers or hand. Graph h–1 depicts the relationship between penetration distance and minimum object sensitivity or blanking size. The derived penetration distance would be added in the calculation of the safety distance as required in paragraph (h)(9)(v) of this section. OSHA particularly requests public comment on the proposed size limits for object sensitivity and blanking, and on the use of the graph which relates the limits to the penetration depth factor.

The safety distance—the distance from the sensing field to the point of operation—proposed for PSDI in paragraph (h)(9)(v) would revise the safety distance required in the current standard, by prescribing the use of a higher hand speed constant, modification and extension of the stopping time element, and inclusion of the penetration depth factor. OSHA believes these more stringent provisions are necessary for safe PSDI operation, for the reasons discussed in the following paragraphs.

The hand speed constant represents the average speed of the movement of an operator's hand over the distance between the presence sensing field and the point of operation. The movement includes both acceleration to a maximum speed and deceleration to zero speed or stop. In the case of PSDI, the operator's hand is moving at the time the sensing field is interrupted, as contrasted with two-hand control where the operator's hand is moving from a full stop. Therefore, the average hand speed would be greater with PSDI. OSHA believes the hand speed constant may be more critical for PSDI than for guarding alone, and the higher hand speed constant is necessary for PSDI. Thus, OSHA proposes to use a hand speed constant of 100 inches/sec (2.54 m/s) rather than the current constant of 63 inches/sec (1.6 m/s).

Even comparing PSDI with foot-operated controls, OSHA believes the higher hand speed constant is necessary because of the higher hand speed possible when the operator does not have to exert any special effort to initiate slide motion other than handling the stock or part.

Several studies have been made in Europe to determine average hand speed. A report by Peter Knauss, published in 1974 (referenced in Ex. 1), stated that an average hand speed of 63 inches/sec (1.6 m/s), based on measurements made at simulated press stations, has been used as a guideline in West Germany since 1935. Knauss explained that measurements under simulated conditions might not be the same as those in a real life situation where the operator might be inhibited by the awareness of danger.

Knauss cited five studies that reported average hand speeds ranging from 55 inches/sec (1.4 m/s) to 114 inches/sec (2.9 m/s). This range was attributed to such factors as whether the hand was in motion or started from a still position, and the length of the distance covered.

A Dutch study found average reach speeds, starting with the hand in motion, of about 79 to 98 inches/sec (2.0 to 2.5 m/s), for a safety distance of about 9.8 to 19.7 inches (250 to 500 mm), as might be conventional for modern presses.

The Phase II report on the Safety Study of OSHA's Experimental Variance on Self-Tripping of Power Presses (Ex. 10) reported that a simulation study done in Japan found two types of maximum hand velocities: 56.3 inches/sec (1.43 m/s) for a hand whose initial velocity was zero; and 72.5 inches/sec (1.84 m/s) for a hand whose initial velocity was not zero. Table I (Ex. 10, p.31) shows the variation in safety distance arising from diffferent stopping times for both the hand speeds determined by the Japanese study as well as for the higher hand speed determined by a Swedish study. The Table demonstrates the interrelationship of hand speed, stopping time, and safety distance.

TABLE I.—COMPARISON STUDY OF SAFETY DISTANCES FOR LIGHT-CURTAIN UNIT VERSUS HAND-SPEED TIME

Total stopping time in millisec	Safety distance in MM		
	*Swedish study [1]	**Japanese study [2]	
		A	B
50	150	72	92
75	185	107	138
100	250	143	184
125	310	179	230

* Average hand-speed 2.5 m/s.
** Average hand-speed for "A" 1/43 m/s (initial hand velocity zero). Average hand-speed for "B" 1.84 m/s (initial hand velocity zero).
[1] Adopted from National Swedish Board, 1974.
[2] Adopted from Fukaya *et al*, 1982.

Other studies made in England and France have demonstrated that the human hand can reach speeds of 161 to 177 inches/sec (4.1 to 4.5 m/s) (Ex. 5, p. 31).

Because of the numerous studies and the wide range of findings, considerable controversy has resulted on the hand speed constant.

In consideration of the various factors involved, OSHA proposes that a hand speed constant of 100 inches/sec (2.54 m/s) be used in determining the safety distance for PSDI. A number of the studies do support this hand speed constant.

For example, the study by NIOSH (contract #210–80–0034 (Ex. 9)), recommends that the National Swedish Board of Industrial Safety Acts law of 1974 be followed because of the Swedish experience with the safe use of 100 inches/sec (2.54 m/s) when using the PSDI mode on mechanical power presses.

Public comment is particularly invited on this important subject, in view of the wide range of available data to be used in determining the hand speed constant and the impact of the constant on the safety distance required for PSDI operation.

The current standard determines the stopping time of the press as that which is measured at approximately the 90 degree position of crankshaft angular rotation. The method proposed for calculating safety distance for PSDI would consider the separate elements of the stopping time: i.e., the press stopping time (defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism); the presence sensing device response time; the response time of all interposing control elements between the presence sensing device and the clutch/brake operating mechanism; the increase in stopping time allowed by the brake monitor for brake wear; and the increase in stopping time necessary to reflect hand penetration time.

The stopping time elements in the proposed minimum safety distance formula must be identified in order to determine each subsystem's reaction time contribution to the total time. This would also enhance the effectiveness of the certification requirements in paragraph (h)(11).

The press stopping time would be computed by taking averages of multiple measurements at each of three positions (45°, 60°, 90°) of crankshaft angular rotation; the longest of the three averages would be the stopping time figure to be used in determining the safety distance. OSHA believes this method assures that the press stopping time takes into account variations arising from crankshaft rotaton position.

As discussed earlier, the penetration depth factor would be introduced into the safety distance calculation in order to allow for possible penetration of an operator's fingers or hand through the field before detection occurs. Graph h–1 shows the relationship of the penetration depth to the minimum object sensitivity or blanking size. It represents the maximum distance the fingers or hand could penetrate through the minimum object sensitivity setting or the blanked area before being detected. It is based on the study, "The Application of Photo-Electric Safety Systems to Machinery, Draft-British Standards Specification for Electro-Sensitive Safety Systems for Industrial Machinery," by the British Standards Institute GEL/120 Committee, January 4, 1983, in which presence sensing devices with object sensitivity values ranging from 5/8 inch (16 mm) to 2½ inches (64 mm) were tested using male and female operators. The values selected for the graph are the 95th percentile penetration figures resulting from the study. OSHA believes the graph presents a reasonable penetration depth factor, which is a necessary component in the determination of safety distance.

In paragraph (h)(9)(vi), the presence sensing device location would be required either to be set at each tool change, or to be fixed in location to provide the required safety distance for all tooling set-ups. OSHA believes either method would ensure the necessary safety distance. Where the adjustable set-up is used, paragraph (h)(9)(vii) would require the use of a special tool available only to authorized persons. OSHA believes this is necessary in order to prevent unauthorized changes in the presence sensing device location which might place the sensing field too close to the point of operation and, thus, result in exposure of the operator to injury at the point of operation.

Paragraph (h)(9)(viii) would require supplemental safeguarding to protect all areas of access to the point of operation not protected by the PSDI presence sensing device. Such supplemental safeguarding would be limited to either additional light curtain presence sensing devices or to other types of guards meeting the standard. Such supplemental safeguarding would be required to be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position—such as during die-setting. If a light curtain presence sensing device is used as a supplemental safeguard, it could not be used to initiate a press stroke but would be required to meet the requirements of the standard, including the new safety distance requirements proposed in paragraph (h)(9)(v). OSHA believes this is necessary because when a worker is operating a press in a PSDI mode he or she will be capable of higher hand speeds and the new safety distance requirements will also be appropriate for the supplemental safeguards.

Paragraph (h)(9)(ix) would require the installation of barriers or supplemental light curtain presence sensing device safeguards to prevent the situation where personnel could pass completely through the PSDI presence sensing device sensing field. OSHA believes that, without such safeguards, there is a potential for triggering a stroke initiation by inadvertent interruption of the field while the operator is still on the point of operation side of the presence sensing device.

Paragraph (h)(9)(x) proposes that hand tools be designed, either by tool handle thickness or tool length, to ensure that the intrusion of the sensing field of the PSDI presence sensing device by the use of a hand tool or an operator's hand will be detected during the entire period of hand tool use. This would be required to be suitable for any safety distance determined by the press set-ups. Stroke initiation while a hand tool is in the point of operation could seriously injure the operator by fly-back of the tool or its parts, or by forcing the operator's hand against the press or another object.

(k) Section 1910.217(h)(10) *Inspection and maintenance.* Paragraph (h)(10)(i) proposes that a test rod, with accompanying instructions for its use, be provided to ensure the object sensitivity capability of the presence sensing device and to facilitate appropriate inspection and maintenance.

Paragraph (h)(10(ii) would list the specific checks at the beginning of each shift or whenever a die change is made which OSHA believes are necessary to ensure that the designed safety features are fully operational. They would include: tests of the PSDI and supplemental safeguarding; checks of the safety distance; and verification of the correct counterbalance adjustment.

Paragraph (h)(10(iii) reflects OSHA's belief in the necessity to inspect, lubricate, and maintain flywheels and bearings in order to preclude bearing seizures and possible uncontrolled press strokes.

Paragraph (h)(10(iv) would require periodic inspections of clutch and brake mechanisms in accordance with the press manufacturer's recommendations. OSHA believes that compliance with the manufacturer's recommendations should ensure continued full operational capability of the clutch and brake mechanisms.

Paragraph (h)(10(v) provides that any condition of failure, non-compliance, or improper adjustment which may be revealed by the checks specified in proposed paragraphs (h)(10)(ii), (iii), or (iv) must be corrected before any further operation of the press is attempted.

Paragraph (h)(10(vi) would require that the employer ensure the competence of personnel who would care for, inspect, or maintain presses equipped for PSDI operation, through initial and periodic training. OSHA believes the continuing inspection, care, and maintenance of the presses is critical to the continuing safety of the operator.

(l) Section 1910.217(h)(11) *Safety system certification.* This paragraph would require certification of the PSDI safety system by an OSHA-recognized third-party certification program. In a separate rulemaking action (49 FR 8326), March 6, 1984 (Ex. 17), OSHA is proposing revisions to 29 CFR Parts 1907 and 1910 for new regulations covering OSHA recognition of testing-related agencies and certification programs. OSHA believes that the OSHA-recognized third-party certification program outlined in that proposal, or a similar approach, presents a feasible administrative mechanism for assuring the PSDI safety systems are designed, installed and maintained in accordance with all requirements of this section. Such independent certification—including design certification, installation certification, and annual recertification—provides a visible, recognizable method for verifying such compliance.

Paragraph (h)(11) (i), (ii), and (iii), respectively, would contain the general requirements for the three levels of certification. Because of the technical nature of the standard, and the dependence on the certification process to verify compliance with the standard, the certification requirements are supplemented by two appendices. Appendix A would provide the mandatory requirements pertinent to each provision in the section, and would identify the responsibilities of the employer, the manufacturer, and the certification program. Appendix B would provide nonmandatory guidelines which would assist employers, manufacturers and others in understanding and implementing the requirements. OSHA believes these appendices would provide clearer delineation and understanding of the requirements. Comments are particularly invited on the appendices.

Paragraph (h)(11)(iv) would require notification to the OSHA-recognized third-party certification program in the event a component or subsystem of the safety system fails or is modified, removed or replaced. Recertification would be required, except where the component or subsystem is replaced by one of the same manufacture and design as the original, or where the replacement is demonstrated by similarity analysis to be equivalent to the original. OSHA believes this is necessary in order to ensure the same level of safety as was intended by the original certification.

Paragraph (h)(11)(v) would require that the employer and the certification program keep certain records of the installation certification and all recertifications. Similarly, paragraph (h)(11)(vi) would require that a label be affixed to the press, containing as a minimum the press serial number, the minimum required safety distance, the identification of the certification program, and the date of certification. OSHA believes the retention of this information and the provision of the label are necessary for the continuing effectiveness of the certification program, and for the proper evaluation of a PSDI operation by an OSHA compliance or consultation representative.

Paragraph (h)(11)(vii) would require that the employer notify the certification program of any point of operation injury while a press is used in the PSDI mode. A copy of the report currently required by paragraph (g) of the standard would suffice. OSHA believes such reporting is necessary in order to monitor the continuing effectiveness of the certification process.

(m) Section 1910.217(h)(12) *Die Setting and Work Set-Up.* This paragraph would address requirements for die setting and work set-up on presses used in the PSDI mode. Paragraph (h)(12)(i) would require conformance with current requirements as well as with the proposed requirements for PSDI. Paragraph (h)(12)(ii) would prohibit the use of PSDI for the actual die setting or set-up. Paragraph (h)(12)(iii) would require checks of the safety distance, supplemental safeguarding, and slide counterbalance adjustment following each die change. It would also require a special tool, available only to authorized personnel, for adjustment of the PSDI presence sensing device.

OSHA believes these requirements are necessary in order to assure that die setting and work set-up are accomplished safely and without degrading the safety of the PSDI operations.

(n) Section 1910.217(h)(13) *Operator training.* This paragraph would supplement the training required by the present standard by requiring additional training for the operator of a press used in the PSDI mode. OSHA recognizes the importance of operator training, and believes that the additional specific training for PSDI operation is necessary in order to ensure operator understanding and capability to perform PSDI safety.

(o) *Appendix A—Requirements for Certification of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses.* This Appendix would provide the mandatory requirements for certification of the safety system. Specific requirements would be included for each level of certification and for each applicable portion of the standard. Requirements for the certification program, the employer, and the manufacturer would be identified separately.

As discussed earlier, the proposed requirement for certification results from public comments on the preproposal draft standard. The comments were specific and detailed with respect to the nature and extent of the certification process which would be necessary to accomplish PSDI safely. In preparing the proposed provisions for certification, OSHA sought advice from outside consultants. Mr. Sergio Concha of Paser Associates, in conjunction with OSHA staff and other consultants, developed the major portion of the proposed requirements in Appendix A.

The proposed requirements attempt to provide a degree of specificity which can be utilized as a basis for demonstrating and evaluating the capability of a safety system to satisfy

the requirements of the standard for safe PSDI.

OSHA requests public comment on the provisions proposed in Appendix A. A number of the quantitative limits are based on theoretical or empirical considerations rather than actual test data or experimental findings. Examples of these provisions include the following: the definition of full stop or no movement of the slide or ram as deceleration of 0.0625 in/sec ^{2} (1.59 mm/sec ^{2}) or less; the provision calling for the accuracy of test instruments which measure reaction times to be within 0.0001 seconds; and the requirement for operation of the brake and/or clutch to be operated for a number of cycles simulating at least two consecutive hours of normal operation with one broken spring.

Public comment is also requested on certification and test procedures which would ensure the safety of the integrated safety system, and yet not place undue restraints on either innovation in the development of new PSDI safety systems, or the retrofitting of existing press installations. Comments on the use of manufacturer's development testing and the other provisions in paragraph E of Appendix A are particularly requested.

OSHA would prefer a less detailed certification system if it would fulfill the proposed requirements of the standard.

(p) *Appendix B—Guidelines for Certification of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses.* This Appendix would provide nonmandatory guidelines to assist employers, manufacturers, and their representatives in accomplishing the certification process. It would supplement the provisions of the standard and the mandatory requirements in Appendix A. Public comments and suggestions are invited on this and other approaches which would enhance the understanding and implementation of the certification of the safety system.

(q) *Appendix C—Supplementary Information.* This Appendix would provide supplementary information to assist in the understanding of paragraph (h) of this section. Public comments and suggestions are invited on the Appendix.

VI. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Assessment

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be performed for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

Consistent with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Assessment for the proposed revisions to the OSHA standard governing mechanical power presses. This standard would amend the present standard for mechanical power presses (29 CFR 1910.217) to allow employers to voluntarily adopt presence sensing device initiation (PSDI) on mechanical power presses. Presence sensing devices initiate the mechanical stroke of a power press automatically after the operator's hands and arms leave the danger zone. OSHA's present standard for mechanical power presses, 29 CFR 1910.217, Subpart O, adopted as a consensus standard in 1971, does not permit presence sensing device initiation. Rather, it requires that a mechanical power press operator physically initiate the stroke of a power press by using hand controls or a foot pedal. This proposed revision would allow, but not require, a presence sensing device to initiate the stroke automatically when the operator's body is out of the danger zone. The amended standard, if adopted, would address not only the use of presence sensing devices, but also the entire safety system of the presses operating with these devices.

The regulatory impact assessment describes the industries and workers affected by the standard, the current use and productivity gains associated with PSDI technology, the costs of compliance with the proposed standard, the forecasts of the adoption of the PSDI by U.S. industry, and the net benefits to the United States from PSDI technology.

The proposed standard applies to mechanical power presses, a type of equipment widely distributed throughout the various metalworking industries, and especially used in Fabricated Metal Products (SIC 34), Machinery, Excluding Electrical (SIC 35), and Electrical and Electronic Equipment (SIC 36). The regulatory impacts are greatest for Metal Forgings and Stampings (SIC 346), the industry that makes the most intensive use of mechanical power presses. Within this group, Automotive Stampings (3465), Crowns and Closures (3466), and Metal Stampings, not elsewhere classified (3469), are the primary users of mechanical power presses. A variety of industries outside the metalworking industries will also be affected somewhat by the regulation. According to McGraw-Hill's 1983 *Inventory of Metalworking Equipment*, 13 percent of all machine tools (a category of equipment that includes mechanical power presses) are used outside the metalworking industries.

Effects of the Proposal

Worker Population

The estimated number of employees covered by the proposed standard is 73,000, based upon employment data. Two occupational groups, "punch and stamping press operators" and "job and die setters," have the highest number of employees now operating manually fed presses that could be converted to PSDI technology. According to the 1982 *Handbook of Labor Statistics*, published by the Bureau of Labor Statistics, there were 96,000 employees in the former occupational group and 74,000 in the latter, for a total fo 170,000 workers. This total includes operators of non-mechanical presses and die setters who do not manually feed the presses. Assuming that only 60 percent of the first group and 20 percent of the second group work on manually fed power presses results in an estimated population of 58,000 "press operatives" and 15,000 "job and die setters," or a total of 73,000 workers, who would be covered by the proposed standard.

Benefits and Costs

The current regulatory environment prohibits the use of PSDI on mechanical power presses. OSHA estimates that allowing employers to convert existing presses to PSDI systems will result in productivity gains of (a weighted average of) 24.3 percent per press. This gain can be used to determine that the addition of PSDI technology to an existing press will free, on average, $8,160 worth of resources to the U.S. economy per year. When multiplied by OSHA's estimate of 19,875 likely mechnical press conversions, a total annual savings of $162 million to the economy is derived after all such conversions.

The net saving to the U.S. economy from the conversion of exisitng presses is the excess of national saving over the national cost of converting existing mechanical power presses to PSDI technology in accord with the proposed standard. This cost includes the cost of converting the existing equipment to PSDI technology, of certifying, of inspecting and maintaining the PSDI systems, and training workers. OSHA estimates this cost at $65 million per year after all such conversions. Hence,

the net saving from the conversion of existing presses in $97 million after all such conversions, which are estimated to occur over a four-year period.

OSHA estimates an annual total saving of $2.04 million to the economy from the introduction of new presses with PSDI systems. This assumes 250 new presses with PSDI systems each year. The annual net saving associated with new presses is $1.662 million. This amount is derived by subtracting the incremental cost of new presses with PSDI technology from the total annual savings. The incremental cost of the new presses amounts to $338,000, which includes the cost of equipping newly manufactured presses with PSDI technology, of performing installation certification, of inspecting and maintaining the PSDI systems, and of providing worker training.

The present value of the net gain from this standard for 1985–1994 is $535.4 million, assuming a 10-percent interest rate and a 15-year equipment life. This period represents the first 10 years that the standard will be in effect.

The Assistant Secretary for OSHA concludes that this action cannot be considered major as defined by Section 1(b) of Executive Order 12291. Nevertheless, OSHA has completed a Preliminary Regulatory Impact Analysis for this standard and intends to complete a Final Regulatory Impact Analysis before issuing a final standard.

Technological Feasibility

OSHA is required to assess the technological feasibility of new regulations prior to their promulgation. The proposed standard removes OSHA's prohibition against the use of PSDI on mechanical power presses, but does not require the use of this technology. The safety equipment and work practices contained in the proposed OSHA standard have been demonstrated to be technologically feasible. Under a 1976 OSHA-granted variance, one U.S. multi-plant, metal stamping firm has utilized PSDI technology in a manner consonant with the operational requirements of the proposed standard. A significant portion of U.S. firms using manually fed mechanical power presses are capable of retrofitting them with PSDI technology to implement the proposed measure. This conclusion is based on a comparison of current industry practices with the requirements of the proposed standard.

Impacts on Small Firms

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [U.S.C. 601 et seq.]), OSHA is required to consider the impact of the proposed regulation on small entities.

As a result of this review, the Assistant Secretary certifies that the proposed regulation would not have an adverse impact upon a significant number of small entities that use mechanically powered presses.

The proposed standard is not expected to have any differential adverse impacts on small firms, as any increased relative costs attributable to non-engineering provisions of the standard are likely to be more than offset by relative cost savings derived from technological factors. These costs savings for small firms with fewer than 20 employees would result from the generally more recent vintage of small firms compared with large ones and the fact that the required investment for retrofitting presses with presence sensing devices usually increases with the age of the equipment.

These costs savings may be diminished to some extent, however, because a large firm should be able to distribute the overhead costs associated with certification, information, and timing among more employees than would a small firm.

International Trade Impacts

Pursuant to Executive Order 12291, OSHA is also required to consider the impact of this standard on U.S. trade balance. The promulgation of the proposed standard may have a positive impact of the U.S. trade balance for fabricated metal products.

Foreign competition in both U.S. manufacturing and finished products markets has contributed to the recent decreased demand for U.S. contract stamping services. Some foreign countries allow PSDI operations, while others have generally lower wage rates.

The increase in productivity associated with the use of PSDI systems should improve the competitive position of U.S. parts and equipment manufacturers. Their estimated productivity gains are from 10 to 60 percent, with a weighted average gain of 24.3 percent. These gains should mean lower production costs for certain final products of U.S. manufacturers.

The trade impact of the proposed standard, although positive for the U.S., likely will be small. Foreign competition affects only a portion of the U.S. stamping market—that is, mainly automotive manufacturers. Because automotive stamping operations are largely automated, however, the proposed standard will have little effect on domestic or foreign sales of U.S. automobiles.

Recordkeeping

The proposed standard contains a "collection of information" (recordkeeping) requirement for power press equipment pertaining to certification of the installation of such equipment as well as to all recertifications of the safety system of each PSDI-equipped press (29 CFR 1910.217(11)(v)). Although the proposed standard allows employers to choose not to use presses equipped with PSDI, and hence to avoid any recordkeeping relative to PSDI, OSHA has estimated that the standard would require a one-time expenditure of about 10 hours of recordkeeping per press in a typical metal stamping operation. All of these recordkeeping hours would occur during the first year an existing press is converted to PSDI or a new press with PSDI is put in place.

Recurring recordkeeping costs associated with training or annual recertification are estimated to be negligible. Over the next 10 years, OSHA estimates that a total of 22,375 PSDI presses, or an average of 2,238 per year, will be covered by recordkeeping requirements, amounting to a total of 22,380 recordkeeping hours per year.

VII. Environmental Impact Assessment—Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance regulations (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact and that the revisions are categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA Compliance regulations.

The proposed revisions to 29 CFR 1910.217 would allow the use of presence sensing devices to initiate the stroke of mechanically powered presses after the operator is out of the danger zone. The provisions of the proposal focus on reducing accidents or injuries by the proper use and handling of equipment, by means of work practices and procedures, by certification of equipment, by worker training, as well as by changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use

of land, or other aspects of the environment.

VIII. Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and the regulations issued pursuant thereto (5 CFR Part 1320) [See 48 FR 13666, March 31, 1983], OSHA certifies that it has submitted the information collection requirements contained in this proposed revision to its current standards to the Office of Management and Budget (OMS) for review under Section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, D.C. 20503.

IX. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by June 27, 1985, and submitted in quadruplicate to the Docket Officer, Docket No. S–225, Room N–3670, U.S Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Written submissions must clearly identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons who desire that OSHA hold an oral hearing on the proposal may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to Carrol Burtner, Room N–3506, OSHA, U.S. Department of Labor, Washington, D.C. 20210. They must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be postmarked by June 27, 1985;

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be abducted at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

X. List of Subjects in 29 CFR Part 1910

Mechanical power presses, Presence sensing device initiation, Light curtains, Certification, Training, Occupational safety and health, Safety.

XI. Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend § 1910.211 and § 1910.217 of 29 CFR Part 1910 as set forth below.

Signed at Washington, D.C., this 20th day of March 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

PART 1910 [AMENDED]

1. It is proposed to amend § 1910.211 by revising paragraphs (d)(11)(ii) and (d)(12) and by adding new paragraphs (d)(61), (d)(62) and (d)(63) to read as follows:

§ 1910.211 Definitions.

* * * * * *

(d) * * *

(11) * * *

(ii) Prevents the initiation of a stroke, or stops a stroke in progress, when there is an intrusion through the sensing field by any part of the operator's body or by any other object.

(iii) * * *

(12) "Presence sensing device" means a device designed, constructed and arranged to create a sensing field or area that signals the clutch/brake control to deactivate the clutch and activate the brake of the press when any part of the operator's body or any other object is within such field or area.

* * * * * *

(61) "Presence sensing device initiation" means an operating mode of indirect manual initiation of a single stroke by a presence sensing device when it senses that work motions of the operator, related to feeding and/or removing parts, are completed and all parts of the operator's body or hand tools are safely clear of the point of operation.

(62) "Safety system" means the integrated total system, including the pertinent elements of the press, the controls, the safeguarding, and their interfaces with the operator and the environment, designed, constructed and arranged to operate together as a unit, such that a single failure or single human error will not cause injury to personnel due to point of operation hazards.

(63) "Authorized person" means one to whom the authority and responsibility to perform a specific assignment has been given by the employer.

2. It is proposed to amend § 1910.217 by revising paragraph (c)(3)(iii)(B) and by adding a new paragraph (h) and Appendices A–C. The revisions and additions would read as follows:

§ 1910.217 Mechanical power presses.

* * * * * *

(c) * * *

(3) * * *

(iii) * * *

(B) The device may not be used as a tripping means to initiate slide motion, except when used in total conformance with paragraph (h) of this section.

* * * * *

(h) *Presence sensing device initiation (PSDI).—(1) General.* (i) The requirements of paragraph (h) shall apply to all part revolution mechanical power presses used in the PSDI mode of operation.

(ii) The applicable requirements of paragraphs (a) through (g) of this section also shall apply to all presses used in the PSDI mode of operation, whether or not cross referenced in paragraph (h). Such cross-referencing of specific requirements from paragraphs (a) through (g) is intended only to enhance convenience and understanding in relating the new provisions to the existing standard, and are not to be construed as limiting the applicability of other provisions in paragraph (a) through (g) of this section.

(iii) Full revolution mechanical power presses shall not be used in the PSDI mode of operation.

(iv) Mechanical power presses with a configuration which enables a person to insert his or her body completely into the bed area shall not be used in the PSDI mode of operation.

(2) *Brake and clutch requirements.* (i) Presses with flexible steel band brakes or with mechanical linkage actuated brakes or clutches shall not be used in the PSDI mode.

(ii) Brake systems on presses used in the PSDI mode shall have sufficient torque so that each average value of stopping times (Ts) for stops initiated at approximately 45 degrees, 60 degrees, and 90 degrees, respectively, of crankshaft angular position, shall be not more than 125 percent of the average value of the stopping time at the top crankshaft position. Compliance with this requirement shall be determined by using the heaviest upper die to be used on the press.

(iii) Where brake engagement and clutch release is effected by spring action, such spring(s) shall operate in compression on a rod or within a hole or tube, and shall be of non-interleaving design.

(3) *Pneumatic systems.* (i) Air valve and air pressure supply/control.

(A) The requirements of paragraphs (b)(7)(xiii), (b)(7)(xiv), (b)(10), (b)(12) and (c)(5)(iii) of this section apply to the pneumatic systems of machines used in the PSDI mode.

(B) The air supply for pneumatic clutch/brake control valves shall incorporate a filter, an air regulator, and, when necessary for proper operation, a lubricator.

(C) The air pressure supply for clutch/brake valves on machines used in the PSDI mode shall be regulated to pressures less than or equal to the air pressure used when making the stop time measurements required by paragraph (h)(2)(ii) of this section.

(ii) Air counterbalance systems.

(A) Where presses that have slide counterbalance systems are used in the PSDI mode, the counterbalance system shall also meet the requirements of paragraph (b)(9) of this section.

(B) Counterbalances shall be adjusted in accordance with the press manufacturer's recommendations to assure correct slide attachment (upper die) weight for all operations performed on presses used in the PSDI mode.

(4) *Flywheels and bearings.* Presses whose designs incorporate flywheels running on journals on the crankshaft or back shaft, or bull gears running on journal mounted on the crankshaft, shall be inspected, lubricated, and maintained as provided in paragraph (h)(10) of this section to reduce the possibility of unintended and uncontrolled press strokes caused by bearing seizure.

(5) *Brake monitoring.* (i) Presses operated in the PSDI mode shall be equipped with a brake monitor that meets the requirements of paragraphs (b)(13) and (b)(14) of this section. In addition, the brake monitor shall be adjusted during installation certification to prevent successive stroking of the press if increases in stopping time cause an increase in the safety distance above that required by paragraph (h)(9)(v) of this section.

(ii) Once the PSDI safety system has been certified, adjustment of the brake monitor shall not be done without the prior approval by a third-party certification program of both the brake monitor adjustment and the corresponding adjustment of the safety distance. When brake wear or other factors extend press stopping time beyond the limit permitted by the brake monitor, adjustment, repair, or maintenance shall be performed on the brake or other press system element that extends the stopping time.

(iii) The brake monitor setting shall allow no more than a 10 percent increase in the longest stopping time for the press, measured at the top of the stroke.

(6) *Cycle control and control systems.* (i) The control system on presses used in the PSDI mode shall meet the applicable requirements of paragraphs (b)(7), (b)(8), (b)(13), and (c)(5) of this section.

(ii) The control system shall incorporate a means of dynamically monitoring for decoupling of the rotary position indicating device drive from the crankshaft. This monitor shall stop slide motion and prevent successive press stroke of decoupling occurs, or if the monitor itself fails.

(iii) The mode selection means of paragraph (b)(7)(iii) of this section shall have at least one position for selection of the PSDI mode. Where more than one interruption of the light sensing field is used in the initiation of a stroke, either the mode selection means must have one position for each function, or a separate selection means shall be provided which becomes operable when the PSDI mode is selected. Selection of PSDI mode and the number of interruptions/withdrawals of the light sensing field required to initiate a press cycle shall be by means capable of supervision by the employer.

(iv) A PSDI set-up/reset means shall be provided which requires an overt action by the operator, in addition to PSDI mode selection, before operation of the press by means of PSDI can be started.

(v) An indicator visible to the operator and readily seen by the employer shall be provided which shall clearly indicate that the system is set-up for cycling in the PSDI mode.

(vi) The control system shall incorporate a timer to deactivate PSDI when the press does not stroke within the period of time set by the timer. The timer shall be manually adjustable, to a maximum time of 15 seconds, by the use of a special tool available only to authorized persons. Following a deactivation of PSDI by the timer, the system shall make it necessary to reset the set-up/reset means in order to reactivate the PSDI mode.

(vii) Reactivation of PSDI operation following deactivation of the PSDI mode from any other cause, such as activation of the red color stop control required by paragraph (b)(7)(ii) of this section, interruption of the presence sensing field, opening of an interlock, or reselection of the number of sensing field interruptions/ withdrawals required to cycle the press, shall require resetting of the set-up/reset means.

(viii) The control system shall incorporate an automatic means to prevent initiation or continued operation in the PSDI modes unless the press drive motor is energized in the forward direction of crankshaft rotation.

(ix) The control design shall preclude any movement of the slide caused by operation of power on, power off, or selector switches, or from checks for proper operations as required by (h)(6)(xiv) of this section.

(x) All components and subsystems of the control system shall be designed to operate together to provide total control system compliance with the requirements of this section.

(xi) Where there is more than one operator of a press used for PSDI, each operator shall be protected by a separate, independently functioning, presence sensing device. The control system shall require that each sensing field be interrupted the selected number of times prior to initiating a stroke. Further, each operator shall be provided with a set-up/reset means that meets the requirements of paragraph (h)(6) of this section, and which must be actuated to initiate operation of the press in the PSDI mode.

(xii) When a press is equipped for PSDI operation, the presence sensing device(s) shall be active as a guarding device in all production modes.

(xiii) The control system shall incorporate interlocks for supplemental guards, if used, which will prevent stroke initiation or will stop a stroke in progress if any supplemental guard fails or is deactivated.

(xiv) The control system shall perform checks for proper operation of all cycle control switches and contacts at least once each cycle, and for correct status of control elements after power "on" and before the initial PSDI stroke.

(xv) The control system shall have provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section. Die-setting shall not be done in the PSDI mode.

(xvi) The control system shall permit only a single stroke per initiation command.

(xvii)Controls with internally stored programs shall meet the requirements of paragraph (b)(13) of this section, and shall default to a predetermined safe condition in the event of any failure within the system. Programmable controllers shall not be used.

(7) *Environmental requirements.* Control components shall be selected, constructed, and connected together in such a way as to withstand expected operational and environmental stresses, at least including those outlined in Appendix A. Such stresses shall not so affect the control system as to cause unsafe operation.

(8) *Safety system.* (i) Mechanical power presses used in the PSDI mode shall be operated under the control of a safety system which, in addition to meeting the applicable requirements of paragraphs (b)(13) and (c)(5) and other applicable provisions of this section, shall function such that a single failure or single human error shall not cause injury to personnel from point of operation hazards.

(ii) The safety system shall be designed, constructed and arranged as an integral total system, including all elements of the press, the controls, the safeguarding, and their interfaces with the operator and that part of the environment which has effect on the protection against point of operation hazards.

(9) *Safeguarding the point of operation.* (i)The point of operation of presses operated in the PSDI mode shall be safeguarded in accordance with the requirements of paragraph (c) of this section, except that the safety distance requirements of paragraph (h)(9)(v) of this section shall be used for PSDI operation.

(ii) PSDI shall be implemented only by use of light curtain (photo-electric) presence sensing devices which meet the requirements of paragraph (c)(3)(iii)(c) of this section.

(iii) Individual sensing fields of presence sensing devices used to initiate strokes in the PSDI mode shall cover only one side of the press.

(iv) Light curtains used for PSDI operation shall have minimum object sensitivity of 1-1/4 inches (31.75 mm) or less. Where light curtain object sensitivity is user-adjustable, either discretely or continuously, design features shall limit the minimum object sensitivity adjustment to 1-1/4 inches (31.75 mm) or less. Where blanking is introduced into the sensing field, it shall be limited to no more than one blanked area, with a maximum size of two inches (50.8 mm).

(v) The safety distance (Ds) from the sensing field of the presence sensing device to the point of operation shall be greater than or equal to the distance determined by the formula:

$$Ds = 100\ in/sec\ (2.54m/s) \times (Ts + Tp + Tr + 2Tm) + Dp$$

Where:

Ds = Minimum safety distance.

Ts = Longest press stopping time, in seconds, computed by taking averages of multiple measurements at each of three positions (45 degrees, 60 degrees, and 90 degrees) of crankshaft angular position; the longest of three averages is the stopping time to use. (Ts is defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism(s).)

Tp = Longest presence sensing device response time, in seconds.

Tr = Longest response time, in seconds, of all interposing control elements between the presence sensing device and the clutch/brake operating mechanism(s).

Tm = Increase in the stopping time at the top of the stroke, in seconds, allowed by the brake monitor for brake wear. The time increases allowed shall be limited to no more than 10 percent of the longest stopping time measured at the top of the stroke.

Dp = Penetration depth factor, required to provide for possible penetration through the presence sensing field by fingers or hand before detection occurs. The penetration depth factor shall be determined from Graph h–1 using the larger of the minimum object sensitivity or the blanking size.

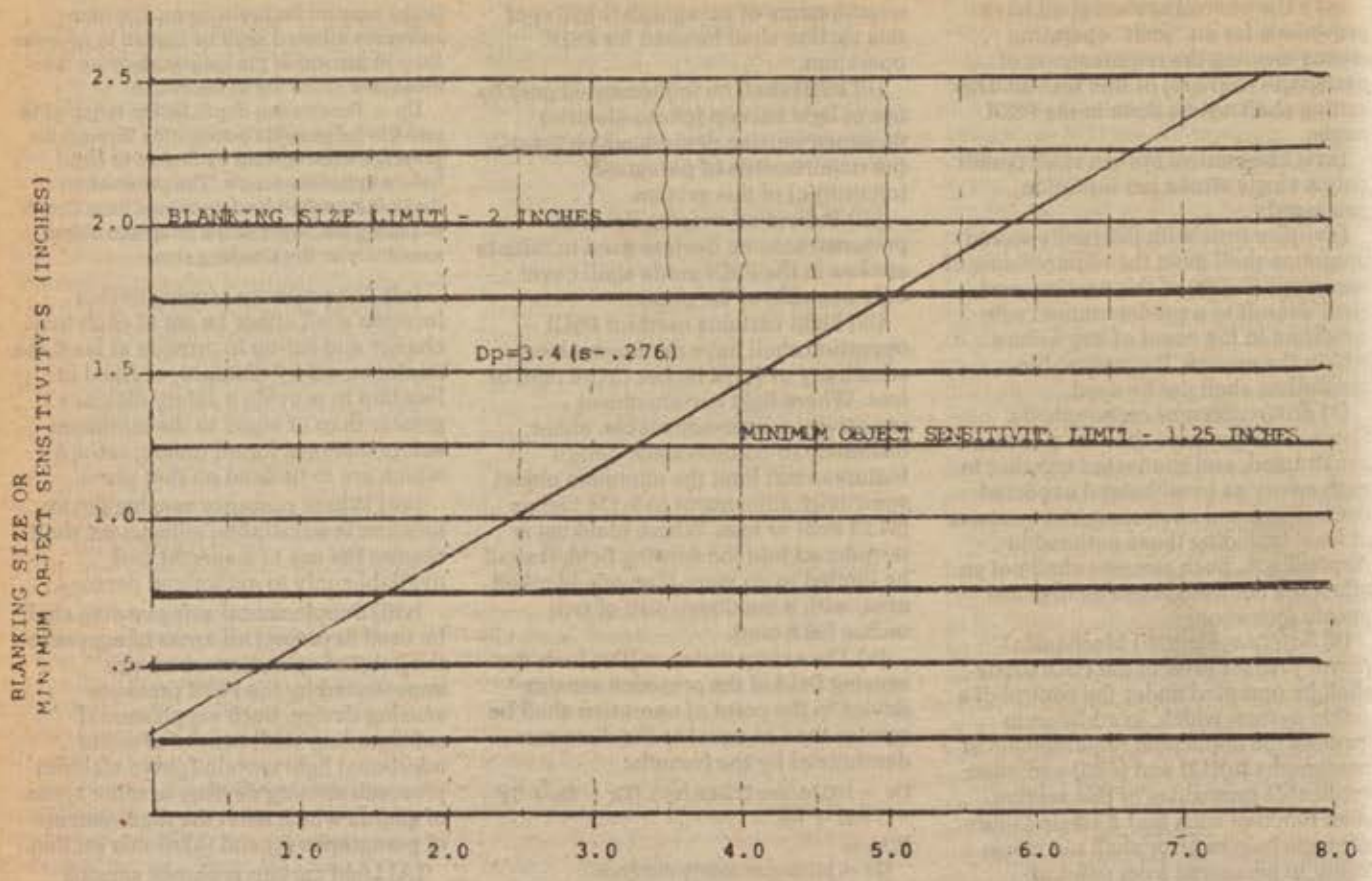
(vi) The presence sensing device location shall either be set at each tool change and set-up to provide at least the minimum safety distance, or fixed in location to provide a safety distance greater than or equal to the minimum safety distance for all tooling set-ups which are to be used on that press.

(vii) Where presence sensing device location is adjustable, adjustment shall require the use of a special tool available only to authorized persons.

(viii) Supplemental safeguarding shall be used to protect all areas of access to the point of operation which are unprotected by the PSDI presence sensing device. Such supplemental safeguarding shall consist of either additional light curtain (photo-electric) presence sensing devices or other types of guards which meet the requirements of paragraphs (c) and (h) of this section.

(A) Light curtain presence sensing devices used as supplemental safeguarding shall not initiate a press stroke, and shall conform to the requirements of paragraph (c)(3)(iii) and other applicable provisions of this section, except that the safety distance shall comply with paragraph (h)(9)(v) of this section.

(B) Guards used as supplemental safeguarding shall conform to the design, construction and application requirements of paragraph (c)(2) of this section, and shall be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position.



GRAPH h-1

(ix) Barriers shall be fixed to the press frame or bolster to prevent personnel from passing completely through the sensing field, where safety distance or press configuration is such that personnel could pass through the PSDI presence sensing field and assume a position where the point of operation could be accessed; without detection by the PSDI presence sensing device. As an alternative, supplemental light curtain presence sensing devices used only in the safeguard mode; may be provided. If used, these devices shall be located so as to detect all operator locations and positions not detected by the PSDI sensing field, and shall prevent stroking or stop a stroke in process when any supplemental sensing field(s) are interrupted.

(x) Hand tools. Where tools are used for feeding, removal of scrap, lubrication of parts, or removal of parts that stick on the die in PSDI operations:

(A) The minimum diameter of the tool handle extension shall be greater than the minimum object sensitivity of the light curtain (photo-electric) presence sensing device(s) used to initiate press strokes; or

(B) The length of the hand tool shall be such as to ensure that the operator's hand will be detected for any safety distance required by the press set-ups.

(10) *Inspection and maintenance.* (i) Any press equipped with light curtain (photo-electric) presence sensing devices for use in PSDI, or for supplemental safeguarding on presses used in the PSDI mode, shall be equipped with a test rod of diameter specified by the presence sensing device manufacturer to represent the minimum object sensitivity of the sensing field. Instructions for use of the test rod shall be noted on a label affixed to the presence sensing device.

(ii) The following checks shall be made at the beginning of each shift or whenever a die change is made.

(A) A check shall be performed using the test rod according to the presence sensing device manufacturer's instructions to determine that the presence sensing device used for PSDI is operational.

(B) The safety distance shall be checked for compliance with (h)(9)(v) of this section.

(C) A check shall be made to determine that all supplemental safeguarding is in place. Where light curtain presence sensing devices are used for supplemental safeguarding, a check for proper operation shall be performed using the test rod according to the presence sensing device manufacturer's instructions.

(D) A check shall be made to assure that the barriers and/or supplemental light curtain presence sensing devices required by paragraph (h)(9)(ix) of this section are operating properly.

(E) A check shall be made to verify correct counterbalance adjustment for die weight according to the press manufacturer's instructions, when a press is equipped with a slide counterbalance system.

(iii) When presses used in the PSDI mode have flywheel or bullgear running on crankshaft mounted journals and bearings, or a flywheel mounted on back shaft journals and bearings, periodic inspections following the press manufacturer's recommendations shall be made to ascertain that bearings are in good working order, and that automatic lubrication systems for these bearings (if automatic lubrication is provided) are supplying proper lubrication. On presses with provision for manual lubrication of flywheel or bullgear bearings, lubrication shall be provided according to the press manufacturer's recommendations.

(iv) Periodic inspections of clutch and brake mechanisms shall be performed according to the press manufacturer's recommendations.

(v) When any check of the press, including those performed in accordance with the requirements of paragraphs (h)(10)(ii), (iii) or (iv) of this section, reveals a condition of noncompliance, improper adjustment, or failure, the press shall not be operated until the condition has been corrected by adjustment, replacement, or repair.

(vi) It shall be the responsibility of the employer to ensure the competence of personnel caring for, inspecting, and maintaining power presses equipped for PSDI operation, through initial and periodic training.

(11) *Safety system certification.* (i) Design certification. The design of the safety system required for the use of a mechancial power press in the PSDI mode shall be certified prior to installation by an OSHA-recognized third-party certification program to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section.

(ii) Installation certification. After a mechanical power press has been equipped with a safety system whose design has been certified in accordance with paragraph (h)(11)(i) of this section, and prior to using the press in the PSDI mode, the safety system installation shall be field inspected and certified by an OSHA-recognized third-party certification program to meet all applicable requirement of paragraphs (a) through (h) and Appendix A of this section.

(iii) Annual recertification. The safety system on a mechanical power press used in the PSDI mode shall be field inspected and recertified annually by an OSHA-recognized third-party certification program to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section. Any press whose safety system has not been certified or recertified within the proceeding 12 months shall be removed from service until the safety system is recertified.

(iv) The employer shall notify the OSHA-recognized third-party certification program within five days whenever a component or a subsystem of the safety system fails or is modified, removed or replaced. The safety system shall be recertified, except when the component or subsystem is replaced by one of the same manufacture and design as the original, or determined by the third-party certification program to be equivalent by similarity analysis, as set forth in Appendix A.

(v) Records of the installation certification and all recertifications shall be maintained for each safety system equipped press by the OSHA-recognized third-party certification program and the employer. The records shall include the manufacture and model number of each component and subsystem, the calculations of the safety distance as required by paragraph (h)(9)(v) of this section, and the stopping time measurements required by paragraph (h)(2)(ii) of this section. The records shall be made available to OSHA upon request.

(vi) A label shall be affixed to the press as part of each installation certification and recertification. The label shall indicate the press serial number, the minimum safety distance (Ds) required by paragraph (h)(9)(v) of this section, the identification of the OSHA-recognized third-party certification program, and the date the certification is issued.

(vii) The employer shall notify the OSHA-recognized third-party certification program within five days of the occurrance of any point of operation injury while a press is used in the PSDI mode. A copy of the report required by paragraph (g) of this section may be used for this purpose.

(12) *Die setting and work set-up.* (i) Die setting on presses used in the PSDI mode shall be performed in accordance with paragraphs (d) and (h) of this section.

(ii) The PSDI mode shall not be used for die setting or set-up. An alternative manual cycle initiation and control means shall be supplied for use in die setting which meets the requirements of paragraph (b)(7) of this section.

(iii) Following a die change, the safety distance, the proper application of supplemental safeguarding, and the slide counterbalance adjustment (if the press is equipped with a counterbalance) shall be checked and maintained by authorized persons whose qualifications include knowledge of the safety distance, supplemental safeguarding requirements, and the manufacturer's specifications for counterbalance adjustment. Adjustment of the PSDI presence sensing device shall require use of a special tool available only to the authorized person.

(13) *Operator training.* The operator training required by paragraph (f)(2) of this section shall be provided to the employee before the employee initially operates the press and as needed to maintain competence, but not less than annually thereafter. It shall include instruction relative to the following items for presses used in the PSDI mode.

(i) The manufacturer's recommended test procedures for checking operation of the presence sensing device. This shall include the use of the test rod required by paragraph (h)(10)(i) of this section.

(ii) The safety distance required.

(iii) The operation, function and performance of the PSDI mode.

(iv) The requirements for hand tools that may be used in the PSDI mode.

(v) The severe consequences that can result if he or she attempts to circumvent or by-pass any of the safeguard or operating functions of the PSDI system.

Appendix A to § 1910.217—Requirements for Certification of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Purpose

The purpose of the certification of safety systems for presence sensing device initition (PSDI) of mechanical power presses is to assure that the safety systems are designed, installed, and maintained in accordance with all applicable requirements of 29 CFR 1910.217 (a) through (h).

Scope

The certification process shall utilize an independent third-party certification program recognized by OSHA in accordance with the final procedures specified at FR in 29 CFR Part 1936.

While the employer is responsible for assuring that the certification requirements in § 1910.217(h)(11) are fulfilled, the certification of PSDI safety systems may be initiated by manufacturers, employers, and/or their representatives. The term "manufacturers"

refers to the manufacturer of any of the components of the safety system.

Summary

The certification of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with the safety requirement in 29 CFR 1910.217 (a) through (h). The certification shall be performed in a sequential manner and shall verify that the safety system complies with the OSHA safety requirements as follows:

A. Design Certification

1. The parts, components and subsystems used shall be defined by part number or serial number, as appropriate, and by manufacturer to establish the configuration of the system.

2. The identified parts, components and subsystems shall be certified to be able to withstand the functional and operational environments of the PSDI safety system.

3. The total system design shall be certified to be able to comply with all OSHA safety requirements.

B. Installation Certification

The operational requirement of the PSDI safety system and its installation in a place of employment may vary for each application. The certification of the PSDI safety system must, therefore, certify that the specific application design and operating procedure meet the operational requirements, including the certification of installation drawings and place of employment environment. The certification is completed when the installation is inspected to verify that it was accomplished according to the approved installation drawings. The PSDI safety system may not be placed in operation until completion of this inspection.

C. Recertification

The system will remain under certification for one year, at which time it shall be recertified by field inspection to be in a non-degraded condition. Recertification shall also be required each time the system hardware is changed, modified, or refurbished; the operational conditions are changed (including environmental, application or facility changes); or a failure of a critical component has occurred.

Certification Requirements

A. Certification Program Requirements

The OSHA-recognized third-party certification program shall certify that: (1) the design of components, subsystems and assemblies meets OSHA performance requirements; (2) the performance of combined subsystems meets OSHA's operational requirements; and (3) the hardware and software are approved and ready for intended use.

B. Certification Program Level of Risk Evaluation Requirements

The OSHA-recognized third-party certification program shall evaluate the design and operation of the safety system by determining the degree of conformance with the following:

1. The safety system shall have the ability to sustain a single failure or a single human error and not cause injury to personnel from point of operation hazards. Acceptable design features shall demonstrate, in the following order or precedence, that:

a. No single failure points may cause injury; or

b. Redundancy, comparison, and/or diagnostic checking exists for the critical items that may cause injury, and the electrical, electronic, electromechanical and mechanical parts and components are selected so that they can withstand operational and external environments. The safety factor and/or derated percentage shall be specifically noted and complied with.

2. Compliance with the general design specifications established by the manufacturer:

a. *Environmental Limits.* (1) Temperature
(2) Relative humidity
(3) Vibration
(4) Fluid compatibility with other materials
b. *Design Limits.* (1) Power requirements
(2) Power transient tolerances
(3) Compatibility of materials used
(4) Material stress tolerances and limits
(5) Stability to long term power fluctuations
(6) Sensitivity to signal acquisition
(7) Repeatability of measured parameter
(8) Operational life of components in cycles, hours, or both
(9) Electromagnetic tolerance to:
a. Specific operational wave lengths
b. Externally generated wave lengths

C. *Employer Certification Requirements.* 1. The operational requirements for a particular application established by the employer shall be submitted to the OSHA-recognized third-party certification program by the employer or by the employer's representative.

2. The documentation submitted to the certification program shall contain a listing of equipment to be used, and certification of the parts, components, subsystems and assemblies of the PSDI safety system.

3. Employer documentation required to certify the installation of a PSDI safety system at the place of employment shall consist of a demonstration that:

a. The proposed system complies with the operational requirements of paragraphs 1910.217 (a) through (h) as applicable;

b. The PSDI safety system shall be maintained in a non-degraded condition;

c. Provisions have been made to recertify the PSDI safety system(s) at least annually; and

d. The employer's operator training program, meeting the requirements of §§ 1910.217 (f)(2) and (h)(13), is in effect when the PSDI safety system is certified operational.

4. Installation Tests Certification.

The certification program, in coordination with the employer, shall design and conduct test and inspections on the installation of a PSDI safety system to comply with the following requirements:

Paragraphs 1910.217(h)(1)(iii); (iv)
Paragraphs 1910.217(h)(2)(i)
Paragraphs 1910.217(h)(3)(i)(B); (ii)(B)
Paragraphs 1910.217(h)(6)(iii); (iv); (v); (vi); (xi); (xiii); (xv)
Paragraphs 1910.217(h)(9)(i); (ii); (iii); (v); (vi); (vii); (viii); (ix)

D. *Manufacturer's Certification Requirements.* 1. The manufacturer or the manufacturer's representative shall submit to the certification program the documentation necessary to demonstrate that the PSDI safety system is in compliance with the design requirements of paragraphs 1910.217 (a) through (h) as applicable, by means of analysis, tests, or combination of both, establishing that at least the following certification requirements may be fulfilled:

a. *Design Certification.* (1) Definitions.

For the purpose of demonstrating compliance with the reaction time required by § 1910.217(h), the tests shall use the following definitions:

Reaction time is the time, in seconds, it takes the signal, required to activate/deactivate the system, to travel through the system, measured from the time of signal initiation to the time the function being measured is completed.

Full stop or no movement of the slide or ram shall be when the deceleration of the moving body is 0.625 in/sec^2 (1.59 mm/s^2) or less.

Function completion for electrical, electromechanical and electronic devices shall be when the circuit produces a change of state in the output element of the device.

When the change of state is motion, the measurement shall be made at the completion of the motion.

Test signal generation. The generation of the test signal introduced into the system for measuring reaction time shall be such that the initiation time can be established with an error of less than 0.5 percent of the reaction time measured.

Test instrument accuracy. The instrument used to measure reaction times shall be calibrated and certified to be accurate to within 0.0001 seconds.

(2) Compliance with paragraphs 1910.217(h)(2)(ii) and (h)(5)(iii).

For compliance with these requirements, the average value of the stopping time, T_s, shall be the arithmetic mean of at least 25 stops for each stop angle initiation measured with the brake and/or clutch unused, 50 percent worn, and 90 percent worn. A correlation of the brake and/or clutch degradation based on the above tests shall be made and documented. The results shall document the conditions under which the brake and/or clutch will and will not comply with the requirement. Based upon this determination, a scale shall be developed to indicate the allowable 10 percent of the stopping time at the top of the stroke for slide or ram overtravel due to brake wear. The scale shall be marked to indicate that brake adjustment and/or replacement is required. The explanation and use of the scale shall be documented.

The test specification and procedure shall be submitted to the certification program for review and approval prior to the test. The certification program representative shall witness at least one set of tests.

(3) Compliance with paragraph 1910.217(h)(9)(v).

Each reaction time required to calculate the Safety Distance shall be documented in separate reaction time tests. These tests shall specify the acceptable tolerance band

sufficient to assure that tolerance build-up will not render the safety distance unsafe.

Integrated test of the press fully equipped to operate in the PSDI mode shall be conducted to establish the total system reaction time.

These integrated tests shall be conducted with simulated brake degradation of 0 percent, 50 percent, and 90 percent. The test results shall be used to document the safety distance settings for 0 percent, 50 percent and 90 percent brake degradation as well as brake monitor settings.

The tests specification and procedures shall be submitted to the certification program prior to the tests.

(4) Compliance with paragraph 1910.217(h)(2)(iii).

The brake and/or clutch shall be operated for a number of cycles simulating at least two consecutive hours of normal operation with one broken spring.

The test shall be considered successful when:

(a) The torque is greater than 75 percent of the torque developed by the brake/clutch unit when operated without on spring;

(b) The visual and laboratory analysis of the spring housing or rod does not show damage sufficient to degrade the structural integrity of the unit; and

(c) The springs does not show any tendency to interleave.

The test specifications and procedure shall be submitted to the certification program for review and approval prior to the test.

(5) Compliance with § 1910.217[h](7).

Tests which are conducted by the manufacturers of electrical, electromechanical and electronic parts and components (relays, resistors, capacitors, transistors, hybrid and electronic "chips" with established functions) and which establish stresses, life, temperature and loading limits shall be considered acceptable provided that the tests used to determine these characteristics were performance and sanctioned by specifications issued by NEMA, EIA, IEEE, IEC, and/or ASTM, as appropriate.

Electrical and/or electronic cards or boards assembled with discreet components shall be considered a subsystem an shall require separate testing for manufacturing proficiency as follows:

(a) Ambient temperature variation from −20 °C to +50 °C.

(b) Ambient relative humidity of 99 percent.

(c) Vibration of 45G for 1 milisecond per stroke when the item is to be mounted on the press frame.

(d) Electromagnetic interference for wavelengths of 600–800 nanometers, 900–1200 nanometers, 60 Hz harmonics, and any other frequency generated within the system.

(e) Electrical power supply variations of ±15 percent.

The manufacturer shall specify the test requirements and procedures from existing test issued by NEMA, EIA, ASTM, IEEE, EIA, IEC, and/or U.S. Department of Defense, as appropriate.

Tests designed by the manufacturer shall be submitted to the certification program for review and approval prior to the tests. The certification program representative shall witness at least one set of each of these tests.

(6) Compliance with paragraph 1910.217(h)(9)(iv).

The manufacturer shall design a test to demonstrate that the prescribed minimum object sensitivity of the presence sensing device is met.

The test specifications and procedures shall be submitted to the certification program for review and approval prior to the tests.

(7) Compliance with paragraph 1910.217(h)(9)(x).

The manufacturer shall design a test(s) to establish the hand tool extension diameters allowed for variations in minimum object sensitivity response.

The test(s) shall document the range of object diameter sizes which will produce both single and double break conditions.

The test(s) specifications and procedures shall be submitted to the certification program for review and approval prior to the tests.

b. Integrated Tests Certification

The manufacturer shall design a set of integrated tests to demonstrate compliance with the following requirements:

Paragraphs 1910.217(h)(6) (ii); (iii); (iv); (v); (vi); (vii); (viii); (ix); (xi); (xii); (xiii); (xiv); (xv); (xvii)

The integrated test specifications and procedures shall be submitted to the certification program for review and approval prior to the test. The certification program representative shall witness at least one set of tests.

c. Analysis

The manufacturer shall submit to the certification program the technical analysis such as Hazard Analysis, Failure Mode and Effect Analysis, Stress Analysis, Component and Material Selection Analysis, Fluid Compatability, and/or other analyses which may be necessary to demonstrate compliance with the following requirements:

Paragraphs 1910.217(h)(6) (i); (ii); (h)(2) (ii); (iii)
(h)(3) (i) (A) and (C); (ii)
(h)(5) (i); (ii); (iii)
(h)(6) (i); (iii); (iv); (vi); (viii); (ix); (x); (xi); (xii); (xiii); (xiv); (xv); (xvi); (xvii)
(h)(7) (i); (ii)
(h)(9) (iv); (v); (viii); (ix); (x)
(h)(10) (i); (ii)

E. Types of Tests Acceptable for Certification

Test results obtained from development testing may be used to certify the design. Development tests specifications, procedures and results shall be submitted to the certification program for evaluation prior to acceptance of test results as basis for certification. The test results shall provide the engineering data necessary to establish confidence that the hardware and software will meet specifications, the manufacturing process will produce an acceptable product, and the data acquired was used to establish processes, procedures, and test levels supporting subsequent hardware design, production, installation and maintenance.

Development testing usually includes: (1) standard laboratory testing to support material selection; (2) component, breadboard, and subsystem testing to identify failure modes and effects of environments and design tolerances on performance; and (3) tests which acquire data from integrated systems to identify operational characteristics and procedures.

1. *Life Certification.* Environmental and operational design life certification is a requirement that must be individually specified for each component or assembly, considering its design, criticality and maintenance requirement. Life certification may be achieved by test, analysis, or a combination thereof.

2. *Fluid-Compatibility Certification.* Certification of the hardware requires certification of compatibility of all associated fluids. Fluid certification may be achieved by test, analysis or combination thereof.

3. *Test Specifications, Procedures and Reports.* The manufacturer shall prepare a test specification, test procedure and test report for each test in the manufacturer's testing program, and shall review and approve those generated as a part of test programs of suppliers. All test specifications, procedures, and results shall be subject to review by the certification program. As a minimum, these documents shall include the following:

a. *Test specifications* shall state test objectives, the test item, number of specimens to be tested, environmental and performance conditions, testing time or cycles, allowable maintenance and adjustments, logging requirements, manner of analysis of utilization of test results, retest requirements, allowable failures per test, and definition of failure.

b. *Test procedures* shall provide for certification program participation, steps to be accomplished in detail and sequence, test equipment and calibration requirements, layout and interconnection of equipment, and safety practices (for equipment and personnel) to be observed.

c. *Test reports* shall reference the test procedure used, shall include the pertinent test specification as an appendix, and shall satisfy other criteria on content and format as may be prescribed. Reports of each test shall be issued as early as practicable following completion of testing, but preliminary reports or test results shall be available upon completion of the test.

Appendix B to § 1910.217—Guidelines for Certification of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Objectives

This section provides employers, manufacturers, and their representatives, with nonmandatory guidelines for use in developing certification documents. Employers and manufacturers are encouraged to recommend other approaches if there is a potential for improving safety and reducing cost. The guidelines apply to certification activity from design evaluation through the completion of the installation test and the annual recertification tests.

General Guidelines

A. The certification process should confirm that hazards identified by hazard analysis,

(HA), failure mode effect analysis (FMEA), and other system analyses have been eliminated by design or reduced to an acceptable level through the use of appropriate design features, safety devices, warning devices, or special procedures. The certification process should also confirm that residual hazards identified by operational analysis provide for safety of personnel and hardware by incorporating caution, warning, and safety instructions.

B. The objective of the certification program is to demonstrate and document that the system satisfies specification operational requirements for safe operations.

Quality Control Commitment

The inherent attributes of a certified generic and application specific design may be maintained only if the quality of the system and its parts, components and subsystem is consistently controlled. Implicit in the certification process is the commitment of each manufacturer supplying parts, components, subsystems, and assemblies to maintain the quality of product, and the commitment of employers to maintain the system in a non-degraded condition.

Analysis Guidelines

A. Certification of hardware design below the system level should be accomplished by test and/or analysis. Certification of performance requirements should use analysis wherever practical, to minimize or eliminate tests.

B. Analytical methods may be used in lieu of, in combination with, or in support of tests to satisfy specification requirements.

C. Analyses may be used for certification when existing data are available or when test is not feasible.

D. Similarity analysis may be used in lieu of tests where it can be shown that the article is similar in design, manufacturing process, and quality control to another article that was previously certified in accordance with equivalent or more stringent criteria. If previous design, history and application are considered to be similar, but not equal to or more exacting than earlier experiences, the delta or partial certification tests should concentrate on the areas of changed or increased requirements.

Analysis Reports

The analysis reports should identify: (1) the basis for the analysis; (2) the hardware or software items analyzed; (3) conclusions; (4) safety factors; and (5) limit of the analysis. The assumptions made during the analysis should be clearly stated and a description of the effects of these assumptions on the conclusions and limits should be included.

Certification by similarity analysis reports should identify, in addition to the above, application of the part, component or subsystem for which certification is being sought as well as data from previous usage establishing adequacy of the item. Similarity should not be accepted when the internal and external stresses on the item being certified are not defined.

Usage experience should also include failure data supporting adequacy of the design.

Testing Guidelines

A. Component, subsystem, and system testing are an integrated program; i.e., tests for individual components, subsystems or systems are tailored to that system's operational requirements, considering all testing performed from development through installation.

B. All test data can be used in satisfying certification requirements to achieve the basic objective of acquiring adequate confidence at minimum cost.

C. Pass-fail criteria or acceptance tolerance bands based on design requirements must be specified for all tests. Acceptance tolerance bands at the manufacturer's component or subsystem level should be tighter than allowable operational tolerance bands. Individual testing on all levels should prove that the aggregate tolerance bands for the integrated system will be within specifications.

D. The tolerance band for a given specification value should include: calibrated instrumentation accuracy; facility and support equipment stimuli tolerance; test specimen tolerance or expected variation from specimen to specimen; external environment (pressure, temperature, humidity, etc.); test influence variations; and component aging. Statistical approaches that consider all the combined tolerances affecting system accuracy may be used. Generally, the tolerance limits should start with tight tolerances at the beginning of the manufacturing and testing cycle and gradually broaden to allow for tolerance build-up in the integrated system.

E. As a general guideline, off-limit testing (including destructive tests) should not be required. However, off-limit testing should be considered when:

1. Design margins are relatively small with respect to off-nominal hazard conditions;
2. Uncertainty exists in the definition of the design criteria;
3. Single point failure modes exists; or
4. Failure mode analysis indicates that a credible probability of associated hardware failures could create an off-limit condition.

Testing of this nature is usually, but not necessarily, conducted during development. It must be considered if major hardware failure occurs or is anticipated for any one particular application.

F. Trend data gathered during the certification program should establish a data base to be used to support maintenance operations on the system during normal operations.

G. A failure or unsatisfactory condition encountered during certification testing should be corrected prior to certification.

H. Testing which uses computer systems as a portion of the test should utilize a data processing system which has been previously accepted.

I. Interface control certification. Functional interfaces should be verified by integrated tests combined with hardware acceptance and installation, i.e., checkout prior to ship and functional checkout prior to operations. Selected physical interfaces should be verified by measurement prior to system acceptance. The necessary documentation that defines and controls the methods to be used to measure the physical interfaces should be defined for each application.

Test Survival—Determination

A functional test to determine whether the certification test hardware is performing within specification tolerance should be conducted after each environmental exposure if equipment is not subjected to functional operation during the certification test.

Incipient Failure—Inspection

Those components requiring post-test disassembly to uncover incipient failure modes and latent defects should be identified and results documented.

Test Facilities and Equipment

The test facilities and equipment, including associated data acquisition and reduction equipment, should be suitable for the purpose of the test, properly configured, and should bear evidence of valid and current calibration.

Unattained Test Requirements

Unattained test requirements which affect performance criteria and test environments should require resolution prior to teardown of the test set up. If the parameter is controlled by the technical performance requirement, a special variance may be required.

Certification Data Package

The data which should be available to the certification program is identified in the following Data Package Matrix. This Matrix should be used as a check list to select the data that should be submitted to the certification program. The data should be tailored to each manufacturer depending upon his/her contribution to the total system. For instance, the supplier of a part (springs) should not be required to have item 6, nor items 10 through 15 shown in the Data Matrix. The total data package should be maintained by the manufacturer. Further, certain data should be deliverd to the employer, and some data should be retained by the certification program. The matrix columns labelled "MANUFACTURER," "EMPLOYER," and "C.P." (Certification Program) identify the data which should be in the possession of each.

DATA PACKAGE MATRIX

Data	Manufacturer	Employer	C.P.
1. Non conformances	X		
2. Failures and resolutions	X		
3. Corrective actions	X		
4. Calibration curves	X	X	
5. Variances	X		X
6. Certified hardware list	X	X	X
7. Life and cycles	X	X	X
8. Analyses reports	X		X
9. Test results	X		
(a) Certification tests	X		X
(b) Acceptance test	X		
(c) Installation test	X	X	X
(d) Off-limits test	X	X	X
10. Tolerance buildup	X		
11. As built drawing and schematics	X	X	X
12. Installation drawings and schematics	X	X	X
13. Operational instructions	X	X	X
14. Maintenance instructions	X	X	X
15. Certification statement	X	X	X

Recertification

Hardware recertification should be required:

A. Every twelve (12) months after installation;

B. When design or manufacturing process changes have been made which affect function, reliability or safety;

C. When inspections, tests, and applications change, or when other data indicate that a more severe environment or operating condition exists than that to which the equipment was originally tested and certified;

D. When the manufacturing source is changed; or

E. When changes are made in specifications, manufacturing processes or procurement sources for any fluids or materials.

Appendix C to § 1910.217—Supplementary Information

This appendix provides nonmandatory supplementary information and guidelines to assist in the understanding and use of 29 CFR 1910.217(h) to allow presence sensing device initiation (PSDI) of mechanical power presses.

1. *General.*

OSHA intends that PSDI continue to be prohibited where state-of-the-art technology will not allow it to be done safely. Only *part revolution* type mechanical power presses are approved for PSDI. Similarly, only presses with a configuration such that a person's body cannot completely enter the bed area are approved for PSDI.

2. *Brake and clutch.*

Flexible steel band brakes do not possess a long-term reliability against structural failure as compared to other types of brakes, and therefore are not acceptable on presses used in the PSDI mode of operation.

Fast and consistent stopping times are important to safety for the PSDI mode of operation. Consistency of braking action is enhanced by high brake torque. The requirement in paragraph (h)(2)(ii) defines a high torque capability which should ensure fast and consistent stopping times.

Brake design parameters important to PSDI are high torque, low moment of inertia, low air volume (if pneumatic) mechanisms, non-interleaving engagement springs, and structural integrity which is enhanced by over-design. The requirement in paragraph (h)(2)(iii) reduces the possibility of significantly increased stopping time if a spring breaks.

As an added precaution to the requirements in paragraph (h)(2)(iii), brake adjustment locking means should be secured. Where brake springs are externally accessible, lock nuts or other means may be provided to reduce the possibility of backing off of the compression nut which holds the springs in place.

3. *Pneumatic systems.*

Elevated clutch/brake air pressure results in longer stopping time. The requirement in paragraph (h)(3)(i)(*C*) is intended to prevent degradation in stopping speed from higher air pressure. Higher pressures may be permitted, however, to increase clutch torque to free "jammed" dies, provided positive measures are provided to prevent the higher pressure at other times.

4. *Flywheels and bearings.*

Lubrication of bearings is considered the single greatest deterrent to their failure. The manufacturer's recommended procedures for maintenance and inspection should be closely followed.

5. *Brake monitoring.*

The approval of brake monitor adjustments, as required in paragraph (h)(5)(ii), is not considered a *recertification*, and does not necessarily involve an on-site inspection by a representative of the certification program. It is expected that the brake monitor adjustment normally could be evaluated on the basis of the effect on the safety system certification documentation retained by the certification program.

Use of a brake monitor does not eliminate the need for periodic brake inspection and maintenance to reduce the possibility of catastrophic failures.

6. *Cycle control and control systems.*

The PSDI set-up/reset means required by paragraph (h)(6)(iv) may be initiated by the actuation of a special momentary pushbutton or by the actuation of a special momentary pushbuttom and the initiation of a first stroke with two hand controls.

7. *Environmental requirements.*

It is the intent of paragraph (h)(7) that control components be provided with inherent design protection against operating stresses and environmental factors affecting safety and reliability.

8. *Safety system.*

The safety system provision continues the concept of paragraph (b)(13) that the probability of two independent failures in the length of time required to make one press cycle is so remote as to be a negligible risk factor in the total array of equipment and human factors. The emphasis is on an integrated total system including all elements affecting point of operation safety.

It should be noted that this does not require redundancy for press components such as structural elements, clutch/brake mechanisms, plates, etc., for which adequate reliability may be achieved by proper design, maintenance, and inspection.

9. *Safeguarding the point of operation.*

The intent of paragraph (h)(9)(iii) is to prohibit use of mirrors to "bend" a single light curtain sensing field around corners to cover more than one side of a press. This prohibition is needed to increase the reliability of the presence sensing device in initiating a stroke only when the desired motion has been completed.

"Object sensitivy" describes the capability of a presence sensing device to detect an object in the sensing field, expressed as the linear measurement of the smallest interruption which can be detected at any point in the field. Minimum object sensitivity describes the largest acceptable size of the interruption in the sensing field. A minimum object sensitivity of 1¼ inches (31.75 mm) means that a 1¼-inch (31.75mm) diameter object will be continuously detected at all locations in the sensing field.

In deriving the safety distance required in paragraph (h)(9)(v), all stopping time measurements should be made with clutch/brake air pressure regulated to the press manufacturer's recommended value for full clutch torque capability. The stopping time measurements should be made with the heaviest upper die that is planned for use in the press. If the press has a slide counterbalance system, it is important that the counterbalance be adjusted correctly for upper die weight according to the manufacturer's instructions. While the brake monitor setting is based on the stopping time it actually measures, i.e., the normal stopping time at the top of the stroke, it is important that the safety distance be computed from the longest stopping time measured at any of the indicated three downstroke stopping positions listed in the explanation of Ts. The use in the formula of twice the stopping time, Tm, increase allowed by the brake monitor for brake wear allows for greater increases in the downstroke stopping time than occur in normal stopping time at the top of the stroke.

10. *Inspection and maintenance.*

[Reserved]

11. *Safety system certification.*

Mandatory requirements for certification of the PSDI safety system are provided in Appendix A to this standard. Nonmandatory supplementary information and guidelines relating to certification of the PSDI safety system are provided in Appendix B to this standard.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Airplane Cabin Fire Protection; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24073; Amdt. 121-185]

Airplane Cabin Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes equipment requirements to improve cabin fire protection for passenger-carrying transport category airplanes operated under Part 121. This amendment requires that each lavatory be equipped with a smoke detector system, or equivalent, which provides warning to the cockpit or to the passenger cabin crew. It requires that each lavatory trash receptacle be equipped with a fire extinguisher which discharges automatically upon occurrence of a fire in the receptacle. It increases the number of hand fire extinguishers required to be installed in the passenger cabins of airplanes with passenger seating capacities greater than 60 and requires that at least 2 of the hand fire extinguishers installed in each airplane have Halon 1211, or equivalent, as the extinguishing agent. This amendment is the result of investigations of in-flight fires and an inspection survey of the U.S. air carrier fleet which indicated the need for an increase in protection against in-flight fires.

EFFECTIVE DATE: April 29, 1985.

FOR FURTHER INFORMATION CONTACT: Henri Branting, Technical Analysis Branch (AWS-120), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; Telephone (202) 426-8382.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1984, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) No. 84-5 (49 FR 21010; May 17, 1984). The notice proposed to improve in-flight cabin fire protection for passenger-carrying transport category airplanes operated under Part 121. The notice proposed that each lavatory and galley be equipped with a smoke detector and that each lavatory trash receptacle be equipped with an automatic fire extinguisher. In addition, the notice proposed to increase the number of hand fire extinguishers for certain airplanes and to require at least two Halon 1211 extinguishers in each airplane. ("Halon 1211" is a product name for the extinguishing agent bromochlorodifluoromethane.)

The proposals in the notice were the result of investigations of two recent aircraft cabin fires which indicated that additional measures are needed to enhance protection against such fires. One of the fires occurred near Cincinnati, Ohio, on June 2, 1983, and resulted in 23 fatalities. The other occurred at Tampa International Airport in Florida on June 25, 1983, and resulted in evacuation of the airplane with no injuries or loss of life. Following the fires, the FAA conducted an inspection survey of the fire containment capabilities of lavatory trash receptacles in the U.S. air carrier fleet. The survey was conducted to determine the effectiveness of previous FAA actions, discussed below, to correct deficiencies in fire protection and to determine whether or not the corrective actions adequately serve the objectives and provide adequate fire safety. The survey revealed that the fire containment capabilities of trash receptacles may be compromised by the wear and tear typical of service. Considering the seriousness of in-flight cabin fires, an expanded approach to fire protection was considered necessary.

After an in-flight cabin fire several years ago aboard a Varig airliner, which originated in a lavatory area, the following corrective actions were taken. The FAA issued an airworthiness directive (AD 74-09-08, Docket No. 13603), applicable to all transport category airplanes. The AD requires 1,000-hour periodic inspections, and repairs as necessary, of all lavatory trash receptacles to ensure fire containment capability. The AD also requires preflight briefings informing passengers not to smoke in lavatories, the installation of ashtrays near lavatory entrances, and the installation of no-smoking signs on each side of lavatory doors. Subsequent to issuance of the AD's 14 CFR 25.853 was amended to incorporate these requirements for ashtrays and no-smoking signs. Section 121.571 requires that passengers be given preflight briefings regarding smoking. Three additional AD's (AD 74-21-03, AD 75-02-04, and AD 75-02-05; Docket Nos. 73-NW-12, 74-WE-10, and 74-WE-11, respectively) were issued for specific airplane models requiring inspection and repair of lavatory electrical components and modification of lavatory trash receptacles to ensure fire containment. Together, the AD actions were intended to eliminate likely ignition sources, end smoking in lavatories, and provide fire-safe trash receptacles in the event that fire occurs in a receptacle despite these precautions. As indicated by the investigations of the Cincinnati and Tampa fires and the subsequent inspection survey, additional measures are necessary to ensure an adequate level of fire safety. These additional measures were proposed in Notice 84-5.

Notice 84-5 proposed regulations which would require, within 1 year after the effective date of the regulations, that transport category airplanes operating under Part 121 be equipped with smoke detectors in galleys and lavatories. The notice explained that galleys have the highest incidence of flame, smoke, and overheat conditions in the passenger cabin and that lavatories are sensitive from a fire detection standpoint because they are often unattended, they are closed from view by a door, and they contain ventilation systems designed to keep odors, and thus sensory smoke warnings, away from the passenger cabin. The galley and lavatory detector systems would be required to provide a warning light in the cockpit or a warning light or audio warning in the passenger cabin which provides a clear and unmistakable signal, readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the flight. The notice explained that because the smoke detectors are intended to enhance the present ability of the flight attendants to visually detect fires in the cabin and not serve as primary detectors such as those used in isolated cargo compartments, it would be unnecessary for the detectors to meet all of the performance and environmental requirements in Technical Standard Order (TSO) C1b, which are applicable to the type of primary detectors used in isolated cargo compartments. The notice explained that a commercially available smoke detector, such as the type commonly used in residential buildings, which is demonstrated to serve its intended function as installed, could be considered adequate.

The proposals would require that each lavatory trash receptacle be equipped with a built-in automatic fire extinguisher which discharges automatically into the receptacle upon occurrence of a fire in the receptacle. This extinguisher could be a small extinguishant-charged bulb with a thermal fuse plug, of the type currently installed in trash receptacles in numerous transport category airplanes.

Notice 84-5 explained that the lavatory smoke detectors and automatic fire extinguishers would be in addition to the fire containment capability currently required for lavatory trash

receptacles because, as indicated by the recent inspection survey, fire containment capability is subject to deterioration in service, and additional measures of fire protection are necessary. Notice 84–5 proposed to require that at least two Halon 1211 hand fire extinguishers be installed in the airplanes. Halon 1211 extinguishers have been demonstrated superior in range, accuracy, and knockdown capability in combatting fires. The notice also proposed to increase the number of hand fire extinguishers required by § 121.309 to be located in the passenger compartments of transport category airplanes. The proposed requirements would be consistent with existing airworthiness regulations for passenger capacities up to 200. For capacities greater than 200, the proposals would require 1 additional extinguisher for each increment, or fractional increment, of 100 passengers.

Public Participation

This amendment is based on Notice 84–5. All interested parties have been given an opportunity to participate in the making of this amendment, and due consideration has been given to all matters presented. Except for the changes discussed below, this amendment and the reasons for the adoption are the same as those stated in Notice 84–5.

Discussion of Comments

One hundred and four comments were received in response to Notice 84–5, representing the views of aircraft and equipment manufacturers, aircraft operators, aircraft crew organizations, fire protection experts, consumer interest groups, foreign airworthiness authorities, and private individuals. About 50 of these comments are from private individuals. The vast majority of the comments support the safety objectives of the notice. In addition to these comments, 372 letters expressing similar support were received from private individuals shortly before publication of the notice. These letters are contained in the docket.

Several commenters contend certain requirements proposed in the notice should not be applicable to the smaller transport category airplanes weighing less than 75,000 pounds or seating less than 50 or 60 passengers, depending on the view of the commenter. Several of these commenters say that for such airplanes smoke detectors are not necessary in lavatories and galleys, and one commenter believes automatic fire extinguishers are not necessary for lavatory trash receptacles. The commenters contend that in the relatively smaller cabins, the galleys and lavatories, and thus the potential ignition sources, are in close proximity to crewmembers, passengers, and firefighting equipment, and that this makes fire detection faster and mitigates the potential fire hazard. One commenter points out that the smaller airplanes generally are used on short routes and that on these airplanes lavatories are used infrequently.

The FAA does not agree that the requirements should not be applicable to the smaller transport category airplanes used in Part 121 operations. As discussed later, the requirement for galley detectors is not adopted. The requirements proposed in Notice 84–5 were prompted by cabin fires occurring in passenger airplanes typically used in Part 121 operations and by the findings of an inspection survey of the air carrier fleet. As a result, these requirements were developed to mitigate cabin fire potential and are directed at airplanes being operated under Part 121. Lavatories in these airplanes, regardless of airplane size and how frequently the lavatories are used, are sensitive from the standpoint of detection and control of a fire because of this relative isolation and ventilation characteristics. Smoke detectors, automatic lavatory trash receptacle extinguishers, and Halon 1211 extinguishers are appropriate fire safety improvements for all passenger airplanes operating under Part 1211, regardless of size.

The majority of commenters support the requirement for smoke detectors in lavatories. One commenter opposed contends it would be better to treat the problem of wear and tear of trash receptacles and ensure fire containment capability than to require the installation of smoke detectors and automatic trash receptacle fire extinguishers.

The FAA does not agree. As explained in the notice, an expanded approach to fire safety is necessary in addition to the effort directed to the wear and tear problem. Several commenters in favor of lavatory smoke detectors point out that in addition to providing early warning and thus additional time to combat a fire, lavatory smoke detectors would benefit safety by tending to deter unauthorized tobacco smoking and intentionally set fires within lavatories.

One commenter believes the intended function of lavatory smoke detectors should be clarified. The commenter points out that the notice intends lavatory smoke detectors as a backup or supplemental fire detection means to sensory detection by passengers or crewmembers, rather than a primary detection means. The commenter contends lavatory detectors, as backup or supplemental equipment, should not be required to be operative for aircraft dispatch and should be covered in the airplane minimum equipment list.

Smoke detectors are intended to enhance detection by cabin occupants of hazardous fire conditions within lavatories. The trash receptacle is the critical ignition hazard potential in a lavatory because of its highly combustible contents which are susceptible to ignition by objects discarded by passengers. Detectors should provide warning commensurate with the ignition hazard early enough in the fire sequence to permit a timely response by a crewmember.

The FAA agrees lavatory smoke detectors may be included in the airplane minimum equipment list. Detectors are not specifically designated as "backup" or "supplemental" equipment items. A smoke detector is significant to cabin fire safety and should whenever practical be operative for flight. Since lavatory smoke detectors do not have an immediate or critical bearing on safety of flight, temporary inoperability of a detector would not warrant interruption of a flight schedule to return the aircraft to a repair station. A lavatory smoke detector should not remain inoperative indefinitely. Detectors should be checked frequently for proper operation; and if a detector is found inoperative, it should be repaired or replaced at the first practical opportunity, such as arrival of the aircraft at the first suitable facility. During interim scheduled flights, temporary loss of the detector might be offset by increased monitoring of the affected lavatory, or other compensating measures.

The comments on proposed § 121.308(a) indicate a wide range of views on the way a smoke detector should provide warning. The proposal would require each smoke detector to provide a warning light in the cockpit or a light or aural warning in the passenger cabin readily detectable by a flight attendant, taking into consideration flight attendant positioning throughout the flight. One commenter believes the part of this requirement pertaining to the positioning of flight attendants during flight should be clarified. Several commenters contend there should be warning in both the cockpit and passenger cabin. Others oppose installation of warning devices in the cockpit. Several commenters contend the warning mode of single-station residential-type detectors is intended for

buildings and may not be suitable for aircraft cabins. Residential detectors must provide an 85 decibel warning 10 feet from the detector station. Commenters say that this might not be heard above the ambient cabin noise and that to overcome this problem, the detectors would require modification to provide remote warning. Several commenters believe the familiar audio warning of a residential smoke detector might unduly alarm passengers and suggest alternate alarms for the passenger cabin such as a silent alarm, public address system chimes, or a coded cabin lighting response. One commenter suggests a central annunciator and control panel wired to smoke detectors located throughout the cabin. One commenter reports several air carriers have already installed residential type smoke detectors in the lavatories of their airplanes on a trial basis and that the detector alarms can be heard throughout adjacent areas of the passenger cabins. The commenter points out that these detectors would satisfy the rule.

A number of different warning means might be used for cabin smoke detectors to serve the purpose delineated in Notice 84–5. The notice explains that the purpose of the detectors is to enhance the present ability of flight attendants to visually detect fires. The rule would require that the means by which each detector provides warning takes into account the positioning of flight attendants during flight. This is to prevent placement of an alarm in an isolated area of the cabin which might result in an undue delay in detection. While a detector need not provide an alarm discernible throughout the entire passenger cabin, it should at least provide an alarm to a passenger seating area, flight attendant station, or work area frequently attended by one or more cabin crewmembers during flight. Public address system chimes or a conspicous coded cabin lighting response suggested by commenters might be a means of providing warning. A silent alarm or remote panel annunciation might be satisfactory if these are shown to be adequately monitored during flight. A single-station residential-type detector might be satisfactory for use in a lavatory if it is shown to provide a clearly discernible alarm above ambient cabin noise in an appropriate area of the cabin with the lavatory door closed. The FAA finds no reason to believe the warning mode of a residential-type detector would unduly alarm passengers in a cabin attended by trained crewmembers. If modification of a residential detector is necessary to achieve the necessary warning level, the modification would be considered an essential part of the detector from the standpoint of inclusion in the airplane minimum equipment list. A requirement for a combined passenger cabin and flight-deck warning is not warranted, and the decision to install a flight-deck warning device should be left to the operator.

Notice 84–5 explains that since cabin smoke detectors would not be primary detection systems, the detectors would not necessarily have to meet TSO–C1b, Cargo and Baggage Compartment Smoke Detection Instruments, and that commercially available residential-type detectors might be adequate. This issue regarding the adequacy of residential-type smoke detectors in aircraft cabins drew a wide range of responses from many experts in the field of fire protection. Many commenters contend residential smoke detectors would not serve adequately in aircraft cabins. Commenters contend that residential detectors are not designed and evaluated for use in aircraft and that because the environment of an aircraft cabin is different from that of a building, residential detectors might not have the reliability necessary for their function in an aircraft. Several commenters say residential detectors would require frequent inspections and increased maintenance costs. One commenter says that any kind of detector, including the residential type, should be approved only after proven effective in aircraft cabins.

Commenters cite several reasons that they believe might make residential detectors unreliable for aircraft. They point out that detector location within a lavatory would be critical because ventilation airflow might divert smoke and prevent detection. There might be a different airflow pattern for each type of lavatory and aircraft model. One commenter points out that the small space within a lavatory might not allow adherence to guidelines regarding detector distance from walls and ceiling. Commenters say detectors might be adversely affected by static electricity in and around the aircraft, aircraft RF, structural vibration, exposure to a wide range of temperatures, altitude changes, and changes in the surrounding air mass. Several commenters point out that residential detectors are vulnerable to tampering by passengers and that the removable batteries are subject to pilferage.

Several commenters see no major reason why residential or commercial building-type smoke detectors should not be used in aircraft cabins. One commenter reports that the several air carriers that have installed residential detectors in lavatories on a trial basis have had varied results and that the predominant experience indicates residential detectors are commercially available that have the degree of reliability necessary to serve the intended purpose without uneconomical maintenance costs.

Several commenters point out that both the ionization and optical-type detectors appear likely candidates for aircraft cabins. Other types of detectors suggested by commenters include a carbon monoxide detector, such as the type installed in many general aviation airplanes, a fire detector, and a temperature sensor. Numerous commenters point out that residential detectors are the ionization type and caution that use of this type in aircraft cabins might result in an unacceptable number of nuisance alarms. The commenters point out that an ionization detector is sensitive and might be triggered by substances found in the normal aircraft cabin environment such as aerosol hair sprays and tobacco smoke drawn into a lavatory from the passenger area.

Commenters contend numerous nuisance alarms might in the long run act as a detriment to safety by instilling in the cabin crew an attitude of disrespect and inattention toward the alarm. Several commenters contend cabin smoke detectors should be restricted to the optical type which would have less tendency toward nuisance alarms.

Considering all comments pro and con, the intention in the notice to allow use of residential detectors is appropriate. Commenters favoring the use of residential detectors cite specific cases of the detector's being successfully used in aircraft. Although commenters opposed to residential detectors give reasons why they believe the detectors would be inadequate, there is no indication of technical problems which cannot be accounted for or resolved if a sufficient amount of lead time is allowed in the rule. Many operators apparently may choose residential detectors as a means of satisfying the rule. Since comments indicate a number of technical issues must be resolved for individual detector installations, the rule as adopted allows an additional 6 months in the compliance period, making a total of 18 months, to allow added time for initial qualification screening of detectors, prototype installation testing, and service reliability trials. While all residential detector models available on

the market might not be suitable for aircraft, some might, and operators should have the opportunity to explore the market and evaluate the wide range of detectors available. There is no indication in the comments that there is basis for either blanket exclusion or approval of detectors. Each detector installation must be approved on individual merit. Effects of lavatory size, ventilation airflow, and aircraft RF can be considered during the design evaluation and approval. Simple smoke tests can ascertain whether or not a detector performs its intended function as installed. Static electricity, cabin altitude, and outside air characteristics may be no more adverse in a pressurized aircraft cabin than in many buildings, and problems such as these can be addressed during service trials. Vibration, temperature, unauthorized tampering, and battery pilferage, as affecting continued detector operation, are matters of maintenance. The FAA recognizes, as several commenters points out, that residential detectors might require frequent inspections and increased maintenance. The FAA does not agree that nuisance alarms will be a detriment to safety. The rule as adopted allows the placement of alternative detection devices in alternate locations to minimize the effect of nuisance alarms to the flightcrews, provided these are found equivalent to smoke detectors. To be considered equivalent, an alternative device must provide timely detection comparable to a smoke detector.

Numerous commenters believe cabin smoke detectors should be required to meet a uniform standard. Commenters variously contend the detectors should meet TSO-C1b or standards applicable to commercial building detectors, or that a new standard or TSO should be established specifically for cabin detectors. Several commenters believe a new standard need not be as restrictive or stringent as TSO-C1b. One commenter offers a standard based on the environmental criteria in Radio Technical Commission for Aeronautics Document No. RTCA/DO-160A. Several commenters believe a uniform standard is not necessary. These commenters point out that cabin detectors are not primary devices, as are cargo compartment smoke detectors, and cite the favorable experience several air carriers have had in selecting and utilizing detectors in the absence of a uniform standard. They point out carriers have differing views on the feasibility of various types of detectors. They say whole certain residential detectors have adequate reliability and can satisfy the requirement, this does not necessarily hold true for residential detectors in general and some detectors might pose high maintenance costs in the long run. They believe the choice between inexpensive residential detectors and the more sophisticated types should be left to the carriers based on economic considerations.

A uniform standard should not be established now. Comments indicate different detector types offer different advantages for aircraft cabins. There is no clear indication as to what a uniform standard should be or whether such a standard is necessary for safety. Once the smoke detectors accumulate an adequate service history, their effectiveness, reliability, and maintenance will be brought into perspective and the FAA and industry should be in a position to decide whether or not a uniform standard should be established. The rule should now permit operators the flexibility to develop designs based on economic considerations.

One commenter questions the applicability of flammability requirements to materials used in the construction of commercially available smoke detectors. The commenter believes materials in detectors should be covered by the small parts exclusion of § 25.853(b)(3).

The FAA agrees. Unless some circumstance or design feature unforeseen at this time requires otherwise, materials used in the construction of the relatively small commercially available smoke detectors would not contribute significantly to the propagation of a fire and would be covered by the small parts exclusion of § 25.853(b)(3).

One commenter points out it might be feasible to install a single smoke sensor in the collective outflow ventilation system for several lavatories and provide a single warning annunciation for the lavatories. The commenter suggests that the wording of the rule not exclude this.

The FAA agrees in principle. The objective of the rule is to enable the crew to readily locate the lavatory in which there is a fire. A separate smoke detector and alarm for each lavatory would be one means of achieving this. A single detector serving several lavatories with a common alarm could be considered acceptable if it is shown that under typical operating conditions a person responding to the alarm can be expected to locate the affected lavatory without undue delay. The rule as adopted accommodates this concept.

Although most commenters recognize the value of smoke detectors in lavatories and favor their use, very few favor the use of detectors in galleys, except in lower lobe galleys. Numerous commenters give reasons they believe obviate the need and make smoke detectors in galleys impractical. They point out main deck galleys are located near passengers and are principal work areas for flight attendants. Because of this, galleys are under effective surveillance, and any fire occurring in them will be detected quickly by sight or smell by nearby persons. Commenters say service experience proves this, and they point out that galley fires have never been catastrophic. They say that galleys, by design, have a high fire containment capability and that heat sources such as coffee makers and ovens are metal enclosed. The commenters point out that many galleys, especially smaller ones, are not equipped to handle heated foods and beverages and do not contain equipment likely to cause fire. Commenters point out a number of problems which they say would tend to make smoke detectors ineffective and a nuisance in main deck galleys. They point out that the precise detector location would be very critical in providing a reliable early fire warning. Heat, smoke, and vapors from normal cooking or tobacco smoke from a nearby passenger seating area could trigger a smoke detector and alarm passengers and interrupt crew duties. Atmospheric fog entering an open service door during galley restocking could trigger a detector. One commenter points out that because galley detectors would be exposed to smoke, grease, and oils associated with cooking and not found elsewhere in the cabin, galley detectors would require additional attention and maintenance.

The FAA agrees with the commenters that smoke detectors should not be required for galleys, as proposed in the notice. The comments present a clear distinction between the practicality and benefits of detectors installed in isolated lavatories and those installed in galleys located near passenger areas. Considering the comments, while smoke detectors should be installed in lavatories, they are not warranted for galleys in general. The issue of smoke detectors for isolated lower lobe galleys is discussed below. The rule as adopted does not require smoke detectors in galleys.

Several commenters believe smoke detectors should be required for lower lobe galleys. Commenters say lower lobe galleys, unlike main deck galleys located near passengers, are critical

from the standpoint of fire safety because they contain a number of ignition sources and combustible materials and are not always occupied during flight.

Lower lobe galleys warrant added attention to fire safety because of their unique features. The FAA gives special consideration during the type certification process to ensure that a lower lobe galley has a level of fire protection appropriate for its design configuration. As a result, most lower lobe galleys are equipped with either smoke detectors or heat sensors, depending on galley design. Fire protection of lower lobe galleys is adequately addressed within current regulations and certification procedures, and an additional specific requirement for smoke detectors is not necessary.

Several commenters contend § 121.308(b) should define objective requirements which allow alternate means of trash receptacle fire protection rather than specifically require automatic fire extinguishers. Several commenters believe a fire detection system which alerts the crew in time to extinguish a receptacle fire would be equivalent to an automatic extinguisher.

The automatic extinguisher is intended to provide suppression response during the critical early stages of fire. The rule is objective to the extent it leaves the details of compliance up to the operator, without requiring any particular equipment, although small charged-bulb extinguishers generally are used for this. The rule also requires an early detection capability which would allow the crew to respond to the fire, as suggested by the commenter.

One commenter contends that the primary means of fire protection for a trash receptacle is the fire containment capability required of the receptable and that the automatic fire extinguisher need not be required for aircraft dispatch since it is essentially a backup or supplemental device. The commenter points out that the automatic extinguishers used in the fleet require periodic inspection and maintenance to ensure they remain in a charged condition.

Under the proposals, fire protection consists of fire containment by receptacles, suppression by automatic extinguishers in early stages of fire, rapid detection by smoke detectors, and hand extinguishers. An automatic extinguisher is not specifically designated as a "backup" or "supplemental" device. It is significant to cabin fire protection and should be operative for flight whenever practical. As in the foregoing discussion of smoke detectors, automatic extinguishers may be included in the airplane minimum equipment list. Since automatic extinguishers do not have an immediate or critical bearing on safety of flight, temporary inoperability of an extinguisher would not warrant interruption of a flight schedule to return the aircraft to a repair station. Automatic extinguishers should be checked periodically for proper charge and if an extinguisher is found inoperative, it should be repaired or replaced at the first practical opportunity, such as arrival of the aircraft at the first suitable facility. Interim measures should be taken to compensate for the temporary loss of the extinguisher.

Several commenters contend the 1-year compliance period proposed in § 121.308(b) should be extended. One commenter points out that major transport category airplane manufacturers currently are quoting a delivery wait of nearly 1 year for trash receptacle extinguisher kits. The commenter says a compliance period of 3 years would be necessary to provide lead time to allow operators to procure and install this equipment during regulatory scheduled maintenance checks.

The FAA agrees allowance should be made for the 1-year delivery delay which was not anticipated in the proposal. The rule as adopted allows and added year in the compliance period, making the period a total of 2 years. The installation of automatic extinguishers in receptacles is a relatively simple matter involving little design effort, and the 3 years suggested by the comment would not be necessary.

One commenter points out that a pressurized automatic fire extinguisher located in a trash receptacle should have provisions to prevent it from exploding in a fire since an explosion might damage the fire containment capability of the receptacle.

By virtue of basic design, the type of extinguisher used inside trash receptacles would relieve extinguisher pressure in the event of fire. Extinguishers are typically constructed with fusible discharge plugs designed to release the pressurized extinguishant into the receptacle at a relatively low plug temperature.

One commenter contends § 121.308(b) should be revised to require that the automatic fire extinguisher discharge both in and adjacent to the trash receptacle. The commenter recommends that the extinguisher use a Halon agent. Another commenter, while not recommending any particular agent, does believe a required extinguishing agent should be specified in the regulation.

The FAA does not agree that the rule should require that the extinguisher discharge into areas adjacent to the trash receptacle. The extinguisher required by this rule is intended to counter potential ignition hazards within the receptacle, which are mostly objects discarded by passengers. The space within the receptacle is sealed for fire containment and permits an effective discharge of the extinguisher. The FAA also does not agree that a specific extinguishing agent should be required by the rule since any of several agents might be effective when discharged into the confines of a trash receptacle.

One commenter contends the term "waste" used in § 121.308(b) should be clarified since the term might be misunderstood as including toilet waste tanks as well as trash receptacles. The rule does not need clarification. The term "waste" is used as it is used in Part 25 without apparent confusion. Under current regulations, waste receptacles do not include toilet waste tanks.

One commenter says studies of automatic extinguishers used in commercial building trash receptacles indicate that factors critical to extinguisher effectiveness are trash quantity and receptacle door position. The commenter recommends that design and testing criteria be developed for lavatory receptacles and that the automatic extinguishers be certified by an independent fire safety laboratory. The commenter points out that no automatic receptacle extinguisher has been certified.

The FAA recognizes that overstuffing of receptacles with trash might prevent closure of the receptacle door and reduce the fire safety level of the receptacle. This is one of the conditions the proposals in Notice 84–5 seek to counter. Although an automatic extinguisher would be most effective in a tightly sealed receptacle, it would provide a rapid suppression response in the critical early stages of a fire, regardless of door position and receptacle sealing. This fire protection would be supplemented by rapid detection by a smoke detector and extinguishment by hand extinguishers. The FAA has responsibility for approval of fire exinguishers for installation in aircraft and considers current regulations and certification practices adequate for this. The FAA recognizes the competence of experienced fire safety laboratories and the value of testing and certification of fire extinguishers by these laboratories. Advisory Circular 20–42c states that

FAA accepts certification by certain laboratories as one of the means of ascertaining the acceptability of fire extinguishers for use in aircraft. Although certification of automatic fire extinguishers by an independent laboratory is not required by regulations, the FAA would consider whatever efforts and contributions independent laboratories might wish to make in this area.

Several commenters contend § 121.309(c)(2) regarding hand fire extinguishers for class E cargo compartments introduces a new accessibility requirement for class E compartments which is redundant with current requirements for class B compartments.

The rule does not introduce a new accessibility requirement since it is applicable only to those class E cargo compartments that are accessible to crewmembers during flight. The rule bears no relationship to the accessibility requirements for class B compartments since all class B compartments must be accessible during flight.

Section 121.309(c)(2) requires that at least one hand fire extinguisher be located in each upper and lower lobe galley. Section 121.309(c)(4) requires that a certain number of extinguishers be uniformly distributed in the passenger compartment. One commenter believes the reference to upper lobe galleys includes those galleys on the main deck and that the rule should not require an extinguisher in each main deck galley, but rather in the vicinity of each main deck galley. Several commenters point out that extinguishers installed in galleys should be counted also as those required to be distributed in the passenger compartment.

The rule does not consider an upper lobe galley as one located on the main passenger deck, but rather one located above the main deck. Therefore, it does not specifically require that an extinguisher be installed in each main deck galley although this might be an acceptable location if chosen by the operator. Extinguishers installed in galleys located in the passenger compartment might also count as those required by § 121.309(c)(4), depending on the particular cabin configuration.

One commenter contends § 121.309(c)(4) should not specify the number of required hand fire extinguishers based on aircraft passenger capacity. The commenter says the rule should require that each cabin be evaluated individually to ensure that an appropriate fire extinguisher is located near each potentially high-risk fire area.

The basic structure of the fire extinguisher requirements should not be revised. The rule extends existing fire extinguisher requirements, which are based on passenger capacity, to airplanes with larger seating capacities and does not change the basic concept of the requirements which have been standard practice for certification of numerous airplanes. There is no indication that this practice is inappropriate or in need of revision.

Section 121.309(c)(5) requires that at least two of the required hand fire extinguishers installed in the airplane contain Halon 1211 as the extinguishing agent. One commenter contends the rule should require performance criteria for the extinguishing agent rather than require a specific product.

The FAA disagrees. The value of performance criteria established by fire safety organizations for hand extinguishers is recognized. These criteria are used to rate type and quantity of extinguisher agent for various classes of fires and have played a large part in shaping the accepted practices used in selecting extinguishers for aircraft cabins. Compared to other agents used in aircraft extinguishers, Halon 1211 has demonstrated such unique and superior performance characteristics for the aircraft cabin environment that it can serve conveniently as a comparative standard for selection. A disadvantage of using performance criteria in this case is that it would tend toward added costs for findings of compliance.

Several commenters point out that recent developments have resulted in hand fire extinguishers which have the performance of a Halon 1211 extingaisher but which use a mixture predominately of Halon 1211 together with a lesser amount of some other gas as the propellent. The commenters say that the rule should not limit the agent strictly to Halon 1211 and that it should be revised to allow use of the new type extinguishers.

The FAA agrees. The rule as adopted is revised to allow the use of extinguishers which are equivalent in performance to Halon 1211 extinguishers. To be considered equivalent, an extinguisher must have agent discharge characteristics and extinguishing performance equivalent to a Halon 1211 extinguisher of comparable size.

One commenter contends § 121.309(c)(5), in requiring Halon 1211, appears to contradict Advisory Circular No. 20-42C, Hand Fire Extinguishers for Use in Aircraft, which lists Halon 1301 as an extinguishing agent suitable for aircraft cabins. Several commenters believe the regulation should not exclude Halon 1301 from the aircraft cabin and should allow Halon 1301 as an alternate to Halon 1211. One commenter points out that for a Halon 1211 extinguisher to have a numerical rating for a class A Fire, the extinguisher must weigh at least 9 pounds, which would make it cumbersome for use in an aircraft cabin.

This rule does not contradict the advisory circular. The advisory circular points out the merits of both Halon 1301 and Halon 1211. Unlike Halon 1301, which discharges from the extinguishers as a gas, Halon 1211 discharges mostly as a liquid stream which has been demonstrated to be superior in combating class A fires. The FAA does not consider Halon 1301 a suitable alternate to Halon 1211 for class A fires. The minimum numerical rating for a class A extinguisher is based on extinguishment tests of fires considerably more severe than those expected in an aircraft cabin. Under current regulations, extinguisher agents used in an aircraft cabin must be appropriate for the types of fires expected to occur, but the quantities of agents need not meet a numerical rating.

One commenter recommends that one of the required Halon 1211 fire extinguishers installed in the cabin be fitted with a discharge hose rather than a fixed nozzle. The commenter cites a series of tests of small hand extinguishers which showed that a discharge hose tends to prevent improper extinguisher positioning by a novice user. The commenter also points out that a discharge hose is more effective in reaching underseat fires.

There is not sufficient justification of the recommendation to warrant establishment of a new requirement for discharge hoses. While a discharge hose might be of advantage in certain fire situations, there is no information indicating a rule is warranted which would require retrofit of the numerous Halon 1211 extinguisher installations which have already been made in the fleet on a voluntary basis. The Halon 1211 extinguishers required by this rule are intended for use by crewmembers trained in combatting fires and in the proper use and handling of fire extinguishers. This rule is based, in part, on a series of full-scale extinguishment tests which demonstrated the adequacy of Halon 1211 extinguishers without discharge hoses in combatting severe seat fires.

One commenter contends the proposed requirements specified for the hand fire extinguisher and smoke detector would not provide sufficient

protection against a potential fire in an isolated lower lobe galley. The commenter believes a full face mask with an oxygen bottle should be installed for crewmembers and that the hand fire extinguisher should be a Halon 1211 extinguisher.

For type certification, aircraft with lower lobe galleys are equipped with portable protective breathing equipment for use by crewmembers in combatting fires within the galleys. Hand fire extinguishers installed in lower lobe galleys should not be limited to the Halon 1211 type. Halon 1211 extinguishers have been found to be very effective against certain types of fires which might occur in the passenger cabin. The requirement for lower lobe galley extinguishers should allow selection of extinguishers which are found most suitable for the type of fires likely to occur in the galleys, including Halon 1211 extinguishers, if appropriate.

Several commenters are concerned over the amount of time allowed for compliance with various requirements of § 121.309(c) since no compliance period is specified. The requirement that each hand fire extinguisher for use in a passenger compartment be designed to minimize the hazard of toxic gas concentrations added in § 121.309(c)(1) has been contained for some time in § 25.853(a)(3), is already met by airplanes in service, and is being added for consistency with the existing airworthiness regulations. New § 121.309(c)(2) and revised § 121.309(c)(4), as adopted, allow a 6-month compliance period. Under existing §§ 25.851(a)(5) and 121.309(c)(3), there is no regulatory upper limit to the passenger capacity which could be served by an airplane cabin equipped with three hand fire extinguishers. Section 121.309(c)(4), as amended, requires that at least three hand fire extinguishers be located in the passenger compartment of an airplane with a passenger seating capacity of 61 through 200 and establishes additional hand fire extinguisher requirements for each increment of 100 passenger seats thereafter. This reflects the current general fleetwide practice regarding the installation of fire extinguishers in the larger airplanes, many of which are equipped with an even greater number of extinguishers than specified in the amendment. To the extent that any airplanes are not so equipped, the amendment provides for a 6-month compliance period for hand fire extinguisher installation.

Regulatory Evaluation

Several commenters address the cost estimates used in Notice 84-5 to analyze the smoke detector proposal. They contend the costs of smoke detector installations could be higher than FAA estimates, depending on the type of detector used.

The FAA estimates in the notice were based on a residential-type smoke detector which would satisfy the proposed requirements. The higher costs cited by several commenters reflect the more sophisticated smoke and/or fire detection systems typically used in isolated and unoccupied areas of the aircraft which are more critical from the standpoint of fire detection. Although such systems may be voluntarily installed by operators to comply with the rule, they are not specifically required by the rule. Notice 84-5 explains that lavatory smoke detectors are intended to enhance the present ability of occupants to visually detect fires. As discussed previously, comments indicate that operators will be able to meet this objective using residential detectors and thereby avoid the higher costs of the more sophisticated equipment. One commenter points out that the variations in cost estimates submitted by various operators are due, in part, to the different and somewhat limited experiences of the operators with lavatory smoke detectors. Based upon the comments, the FAA finds that the minimum compliance cost estimates in Notice 84-5 are reasonable.

One commenter contends the FAA costing estimates are not pertinent to the installation of automatic fire extinguishers in lavatory trash receptacles of aircraft with passenger capacities less than 50 or with only one lavatory. The commenter says FAA cost estimates appear to be based only on larger types of aircraft used in long range operations.

The unit cost of each fire extinguisher is independent of the type of aircraft in which the extinguisher is installed. The compliance cost per aircraft is proportional to the number of lavatories aboard the aircraft. Therefore, operators of smaller aircraft will not be disproportionately burdened by this rule in comparison to operators of larger aircraft.

One commenter states that the FAA in its cost-benefit analysis should take into account depreciation and investment tax credits which might be available for the equipment changes and, further, that the analysis should consider that the cost per passenger is small when spread over a very large number of enplanements. Cost-benefit methodology attempts to measure social or economic costs and benefits, reflecting the actual resources utilized and saved as a result of a particular regulatory action. Depreciation and tax credits are accounting concepts which, although relevant for determining the financial condition of a particular business, are not considered in a study of social costs and benefits.

Further, the FAA cost-benefit study estimated the total costs and benefits of the various fire safety measures advanced in this rulemaking. However, the FAA agrees that the cost per enplanement of complying with this rule will be very small.

The Regulatory Evaluation which has been placed in the docket contains a complete cost-benefit analysis of the rule. No comments have been received which indicate that the cost-benefit analysis developed in support of Notice 84-5 is not appropriate. No major changes have been made to the cost-benefit analysis discussed in detail in the notice. Briefly, the FAA estimates that there is an 82 percent probability that the lavatory smoke detector amendment will result in benefits equal to or greater than the $5.9 million total compliance costs and that there is an 86 percent probability that the lavatory trash receptacle fire extinguisher amendment will result in benefits equal to or greater than the $3.7 million compliance costs. The non-adoption of the proposed smoke detector requirement for aircraft galleys eliminates the $3.9 million compliance cost previously estimated to result from that proposal. For reasons discussed earlier, the FAA finds there would be little, if any, benefit derived from installation of smoke detectors in main deck galleys. Deletion of this proposal, however, would not diminish the anticipated benefits of the remaining amendments. The FAA estimates that the amendment requiring two Halon 1211 fire extinguishers in Part 121 aircraft will not result in any net costs to operators because the fuel savings attributable to the lighter weight Halon extinguishers will quickly offset the purchase cost. Finally, the expanded regulation stipulating the number and location of hand fire extinguishers which must be carried aboard Part 121 aircraft reflects current industry practice and is therefore not expected to impose additional costs.

Conclusions

Under the terms of the Regulatory Flexibility Act (the Act), the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. This action is not expected to affect a substantial number

of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

This regulatory action is not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers; industry; or Federal, State, or local government agencies. Accordingly, it has been determined that this is not a major regulatory action under Executive Order 12291. In addition, this regulatory action will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Since this regulatory action concerns a matter on which there is substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A regulatory evaluation of this action, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Smoking, Transportation, Common carriers.

Adoption of the Amendment

Accordingly, Part 121 of the Federal Aviation Regulations [14 CFR Part 121] is amended as follows, effective April 29, 1985.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By adding a new § 121.308 to read as follows:

§ 121.308 Lavatory fire protection.

(a) After October 29, 1986, no person may operate a passenger-carrying transport category airplane unless each lavatory in the airplane is equipped with a smoke detector system or equivalent that provides a warning light in the cockpit or provides a warning light or audio warning in the passenger cabin which would be readily detected by a flight attendant, taking into consideration the positioning of flight attendants throughout the passenger compartment during various phases of flight.

(b) After April 29, 1987, no person may operate a passenger-carrying transport category airplane unless each lavatory in the airplane is equipped with a built-in fire extinguisher for each disposal receptacle for towels, paper, or waste located within the lavatory. The built-in fire extinguisher must be designed to discharge automatically into each disposal receptacle upon occurrence of a fire in the receptacle.

2. By amending § 121.309(c) by revising paragraphs (c)(1), (2), and (3); by redesignating present paragraphs (c)(2) and (3) as (c)(3) and (4), respectively; and by adding new paragraphs (c)(2) and (5), as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) * * *

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used and, for passenger compartments, must be designed to minimize the hazard of toxic gas concentrations.

(2) After April 29, 1985, at least one hand fire extinguisher must be provided and conveniently located for use in each class E cargo compartment which is accessible to crewmembers during flight, and at least one must be located in each upper and lower lobe galley.

(3) At least one hand fire extinguisher must be conveniently located on the flight deck for use by the flightcrew.

(4) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than 6 but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in each airplane accommodating more than 30 passengers. After April 29, 1985, at least 2 hand fire extinguishers must be conveniently located and uniformly distributed in the passenger compartment of airplanes having a passenger seating capacity of 60 or less and for the passenger compartment of each airplane having a passenger seating capacity of more than 60, there must be at least the following number of hand fire extinguishers conveniently located and uniformly distributed throughout the compartment:

Minimum Number of Hand Fire Extinguishers

Passenger seating capacity:	
61 through 200	3
201 through 300	4
301 through 400	5
401 through 500	6
501 through 600	7
601 or more	8

(5) After April 29, 1986, at least two of the required hand fire extinguishers installed in the airplane must contain Halon 1211 (bromochlorodifluoromethane) or equivalent as the extinguishing agent.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1355(a), 1421 through 1430, and 1502]; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983])

Issued in Washington, D.C., on March 26, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-7538 Filed 3-26-85; 2:29 pm]

BILLING CODE 4910-13-M

federal register

Friday
March 29, 1985

Part V

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1985; Solicitation of Applications

Public Law 89
March 29, 1965

Part V

Department of Agriculture

Cooperative State Research Service

Designated Research Grants Program for Fiscal Year 1965; Solicitation of Applications

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1985; Solicitation of Applications

Rangeland Research Grants Program

Notice is hereby given that under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) is anticipating awarding six to ten project grants for certain areas of rangeland research. The total amount expected to be available for this program during Fiscal Year 1985 is approximately $480,150. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The award of any grants is contingent upon the availability of funds.

Under this program the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

For purposes of this program in Fiscal Year 1985, the CSRS is adopting the Administrative Provisions governing the Special Research Grants Program, 7 CFR Part 3400 (excluding §§ 3400.1, 3400.3(a), and the last sentence of Section 3400.4(c)(11)), found at 50 FR 5497, February 8, 1985. These provisions set forth procedures to be followed when submitting grant proposals, and rules governing the evaluation of proposals and the award of grants. Copies of these provisions and of the Research Grant Application Kit may be obtained by writing to the address listed below or by calling (202) 475-5049.

Each application submitted under this program must include an original and nine copies of the required forms and certifications contained in the Research Grant Application Kit. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. All copies of each proposal should be mailed in one package if at all possible. Due to the volume of proposals received, applications submitted in several packages are very difficult to identify. If copies of a proposal must be mailed in more than one package, the number of packages should be marked on the outside of each. It is important that *all packages be mailed at the same time.* Also, please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Research Grant Application Kit and instructions contained in 7 CFR Part 3400. If applicable, the research grant proposal should state that the 50 percent non-Federal funding requirement will be met.

Each research grant application must be submitted by the time limit set below to: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 010, Justin Smith Morrill Building, 15th and Independence Avenue, S.W., Washington, D.C. 20251.

To be considered for funding during Fiscal Year 1985, proposals must be received in the Grants Administrative Management Office by the close of business on May 15, 1985.

For reasons set forth in 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officals.

Specific Areas of Research to be Supported in Fiscal Year 1985

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as intergrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage of rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangeland including the control of undesirable species of plants. The Fiscal Year 1985 program will give special consideration to the manipulation of range plant communities for management of competition from undesirable plants, with emphasis on biological strategies.

If necessary, further information may be obtained from Dr. Charles B. Rumburg, CSRS–USDA; telephone: (202) 447–6074.Q02

SUPPLEMENTARY INFORMATION: It has been determined that, because of the need to implement these programs so that rangeland research can be initiated in the late spring or early summer of 1986, compliance with the notice and public procedure provisions of 5 U.S.C. 553, as made applicable to this solicitation by Departmental Policy, 36 FR 13804 (1971), is impracticable and contrary to the public interest. Further, this action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this Notice establishes the procedures and criteria under which the recipients of Rangeland Research grants in Fiscal Year 1985 will be selected, and the terms and conditions under which such grants will be administered, it does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule have been approved under OMB Document No. 0525–0001. In addition, this regulation will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). No regulatory analysis is required.

Done at Washington, D.C., this 5th day of March 1985

J. Patrick Jordan,

Administrator, Cooperative State Research Services.

[FR Doc. 85–7581 Filed 3–28–85; 8:45 am]

BILLING CODE 3410-22-M

Federal Register

Friday
March 29, 1985

Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Prospective Payment System for Hospital Inpatient Services; Redesignation of Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-317-F]

Medicare Program; Prospective Payment System for Hospital Inpatient Services; Redesignation of Rules

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule redesignates the prospective payment regulations under a new Part 412. The purpose is to provide more adequate space for the complex policies and procedures that currently are compressed into eight sections (42 CFR 405.470 through 405.477). Locating these rules in a separate part makes them easier to use and facilitates amendment or expansion.

EFFECTIVE DATE: The redesignation of the rules is effective April 29, 1985.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

SUPPLEMENTARY INFORMATION: Amendments, additions or corrections to the prospective payment regulations have been published on January 3, 1984 (49 FR 234), June 1, 1984 (49 FR 23010), August 31, 1984 (49 FR 34728), and October 15, 1984 (49 FR 40167). The regulations are long and complex, and difficult to use. The purpose of this redesignation, therefore, can best be explained by describing the results.

A. The number of sections is increased from 8 to 48. This means that the table of contents contains 48 (instead of 8) section titles to help users locate the particular content of interest to them.

B. The number of paragraphs is greatly increased. The captions of paragraphs and of major paragraph subdivisions (printed in italics), help users to get an overview of each section and to locate particular content within the text.

C. The number of designation levels is reduced from up to 6 to 2 or 3 in most sections. This means that internal cross references are much shorter—for instance, "(b)(2)(i)" instead of "(b)(3)(ii)(B)(*1*)", and "(a)(4) or (a)(5)" instead of "(g)(1)(iii)(A) or (g)(1)(iii)(B)". This in turn, means that there is less potential for error and that users can find the cited portions more quickly and easily. Changes that require more specific explanation are discussed below:

Subpart A—General Provisions

1. In § 412.1(b), we substituted "certain facilities" for the listing of facilities subject to special treatment. This is consistent with changes made in the content of § 405.476 by amendments published on August 31, 1984 (49 FR 34728).

2. In § 412.8, we updated the schedule of publication of documents relating to the determination of prospective payment rates for fiscal year 1984.

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System

1. We reorganized the content to present first the criteria for the excluded hospitals, followed by the criteria for the distinct part units that are excluded.

In § 412.23(b)(2), we brought together the content of § 405.471(d) and § 405.471(c)(1)(ii) because they deal with the same subject, a criterion for exclusion as a rehabilitation hospital.

3. In § 412.29, we removed a list of conditions because it was identical to the list presented in § 412.23.

Subpart C—Conditions for Payment Under the Prospective Payment System

1. In § 412.42(c)(4), we stated the requirements contained in the cited (c)(1), (c)(2), and (c)(3), so that the reader understands the sentence without having to refer back to the other paragraphs.

2. In § 412.44, we changed the date in the introductory statement because it was changed by section 2347 of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

In § 412.63(b), we removed a group of definitions because they were identical to those presented in § 412.62(f). Reference to the latter section serves the purpose.

Subpart E—Determination of Transition Period Payment Rates

In § 412.72(b)(1), we added a brief description of cited §§ 405.1803 and 405.1807.

Subpart G—Special Treatment of Certain Facilities

In § 412.92(a)(2), we removed definitions that were identical to those presented in § 412.62(f). In paragraph (b) of that section, where the terms are used, reference is made to § 412.62(f).

Subpart H—Payments to Hospitals Under the Prospective Payment System

In § 412.125(b), we specified the costs that are contained in the cited sections.

We also made the following editorial changes throughout Part 412:

- Consistent use of "before" rather than "before" alternating with "prior to".
- Changing "which" to "that" when the latter is the appropriate term.
- Consistent use of "based on" with nouns and "on the basis of" with verbs.
- Elimination of words that are not needed in a part that deals exclusively with prospective payments for inpatient hospital services furnished to Medicare beneficiaries.

Regulatory Impact Statement

Since this rule makes no substantive changes in current regulations, there is no need for the analysis required by Executive Order 12291 for rules that have a significant impact on the economy.

In addition, because this rule does not require a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(b)), it is not subject to the requirements for regulatory flexibility analysis imposed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612).

Information Collection Requirements

Section 412.118(d)(2) contains information collection requirements that OMB has not yet approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511). We are seeking approval of these information collection requirements, and will publish the OMB approval number in the **Federal Register** after approval is obtained.

Waiver of Notice of Proposed Rulemaking

Because this rule makes no substantive changes in the regulations that it redesignates, we find that notice of proposed rulemaking is unnecessary.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organization (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers,

Reasonable charges, Reporting and recordkeeping requirements, Rural areas, Prospective payment system, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science sanitoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment referral centers, Renal transplantation centers, Sole community hospitals.

REDESIGNATION TABLE FOR 42 CFR 405.470 THROUGH 405.477

Old paragraph	New paragraph or section
405.470(a)(1)	412.1(a)
405.470(a)(2)	412.1(b)
405.470(b)(1)	412.2(a)
405.470(b)(2)	412.2(b)
405.470(b)(3)	412.2(c)
405.470(b)(4)	412.2(d)
405.470(b)(5)	412.2(e)
405.470(c)(1)	412.4(a)
405.470(c)(2)	412.4(b)
405.470(c)(3)	412.4(c)
405.470(c)(4)	412.4(d)
405.470(d)(1)	412.6(a)
405.470(d)(2)	412.6(b)
405.470(e)(1)	412.8(a)
405.470(e)(2)	412.8(b)
405.471(a)(1)	412.20(a)
405.471(a)(2)	412.20(b)
405.471(b)(1)	412.22(a)
405.471(b)(2)	412.22(b)
405.471(b)(3)	412.22(c)
405.471(c)(1)	412.23(a)
405.471(c)(2)	412.23(b)
405.471(c)(3)	412.23(c)
405.471(c)(4)(i)	412.25(a)
405.471(c)(4)(ii)	412.27
405.471(c)(4)(iii)	412.29
405.471(c)(4)(iv)	412.32
405.471(c)(5)	412.23(d)
405.471(c)(6)	412.23(e)
405.471(c)(7)	412.23(f)
405.471(c)(8)	412.23(g)
405.471(d)	412.23(b)(8)
405.471(e)(1)	412.30(a)
405.471(e)(2)	412.30(b)
405.471(f)	412.25(b)
405.472(a)(1)	412.40(a)
405.472(a)(2)	412.40(b)
405.471(b)(1)	412.42(a)(2)
405.472(b)(1)(i)	412.42(a)(2)(i) and 412.42(b)
405.472(b)(1)(ii)	412.42(b)(2)
405.472(b)(1)(iii)	412.42(c)
405.472(b)(1)(iv)	412.42(d)
405.472(b)(1)(v)	412.42(e)
405.472(b)(1)(vi)	412.42(f)
405.472(b)(2)	412.42(g)
405.472(b)(3)	412.42(a)(1)
405.472(c)	412.44
405.472(d)(1)	412.45
405.472(d)(2)	412.46
405.472(e)	412.48
405.472(f)	412.50
405.472(g)	412.52
405.473(a)(1)	412.60(a)
405.473(a)(2)	412.60(b)
405.472(a)(3)	412.60(c)
405.472(a)(4)	412.60(d)
405.472(b)(1)	412.62(a)
405.473(b)(2)	412.62(b)
405.473(b)(3)	412.62(c)
405.473(b)(4)	412.62(d)
405.473(b)(5)	412.62(e)
405.470(b)(6)	412.62(f)
405.473(b)(7)	412.62(g)
405.473(b)(8)	412.62(h)
405.473(b)(9)	412.62(i)
405.473(b)(10)	412.62(j)
405.473(b)(11)	412.62(k)
405.472(c)(1)	412.63(a)
405.473(c)(2)	412.63(b)
405.473(c)(3)	412.63(c)
405.473(c)(4)	412.63(d)
405.473(c)(5)	412.63(e)
405.473(c)(6)	412.63(f)
405.473(c)(7)	412.63(g)
405.474(a)(1)	412.70(a)
405.474(a)(2)	412.70(b)
405.474(a)(3)	412.70(c)
405.474(a)(4)	412.70(d)
405.474(b)(1)	412.70(a)
405.474(b)(2)(i)	412.71(b)
405.474(b)(2)(ii)	412.71(c)
405.474(b)(3)(i)	412.71(d)
405.474(b)(3)(i)(A)	412.72(a)(1)
405.474(b)(3)(i)(B)	412.72(a)(2)
405.474(b)(3)(i)(C)(1)	412.72(a)(3)(i)
405.474(b)(3)(i)(C)(2)	412.72(a)(3)(ii)
405.474(b)(i)(D)	412.72(a)(4)
405.474(3)(i)(E)	412.72(a)(5)
405.474(b)(3)(ii)	412.72(b)
405.474(b)(4)	412.73(a)
405.474(b)(5)	412.73(b)
405.474(b)(6)	412.73(c)
405.474(b)(7)	412.73(d)
405.474(b)(8)	412.74(e)
405.474(c)(1)	412.74(a)
405.474(c)(2)	412.74(b)
405.474(d)	412.76
405.475(a)(1)	412.80(a)
405.475(a)(2)	412.80(c)
405.475(b)	412.80(d)
405.475(c)(1)	412.82(a)
405.475(c)(2)	412.82(b)
405.475(c)(3)	412.62(c)
405.475(c)(4)	412.82(d)
405.475(d)(1)	412.84(a)
405.475(d)(2)	412.84(b)
405.475(d)(3)	412.84(c)
405.475(d)(4)	412.84(d)
405.475(d)(5)	412.84(e)
405.475(d)(5)	412.84(f)
405.475(e)	412.80(e)
405.476(a)	412.90
405.476(b)(1)	412.92(b)(1) and (b)(2)
405.476(b)(2)	Removed as duplicative of § 405.473(b)(6)
405.476(b)(3)(i)	412.92(b)(4)
405.476(b)(3)(ii)	412.92(a)
405.476(b)(4)&(b)(5)	412.92(c)
405.476(b)(6)	412.92(b)(3)
405.476(c)	412.92(d)
405.476(d)	412.92(e)
405.475(e)	412.98
405.476(f)(1)	412.94(a)
405.476(f)(2)	412.94(b)
405.476(g)(1)	412.96(a)
405.476(g)(1)(i)&(ii)	412.96(b)
405.476(g)(1)(iii)	412.96(c)
405.476(g)(2)(i)	412.96(d)
405.476(g)(2)(ii)	412.96(e)
405.476(g)(3)	412.96(f)
405.476(h)	412.100
405.476(i)(1)	412.102(a)
405.476(i)(2)	412.102(b)
405.476(j)(1)	412.104(a)
405.476(j)(2)	412.104(b)
405.477(a)	412.110
405.477(b)	412.112
405.477(c)	412.113
405.477(d)(1)&(d)(2)(i)	412.115
405.477(d)(2)(ii)	412.118(a)
405.477(d)(2)(iii)	412.118(b)
405.477(d)(2)(iv)	412.118(c)
405.477(d)(2)(v)	412.118(d)
405.477(d)(2)(vi)(A)	412.118(e)
405.477(d)(2)(vi)(B)	412.118(e)
405.477(d)(2)(vi)(C)	412.118(f)
405.477(e)(1)	412.120(a)
405.477(e)(2)	412.120(b)
405.477(e)(3)	412.120(c)
405.477(f)	412.125

42 CFR Chapter IV is amended by redesignating §§ 405.470 through 405.477 as a new Part 412 and correcting all internal cross references accordingly. The undesignated center heading preceding §§ 405.470 through 405.477 is removed. Newly designated Part 412 reads as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

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Sec.

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412.2 Basis of payment.
412.4 Discharges and transfers.
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Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System

412.20 Hospital services subject to the prospective payment system.
412.22 Excluded hospitals and hospital units: General rules.
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412.25 Excluded distinct part hospital units: Common requirements.
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412.62 Federal rates for fiscal year 1984.
412.63 Federal rates for fiscal years after Federal fiscal year 1984.

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412.92 Special treatment: Sole community hospitals.
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412.102 Special treatment: Hospitals reclassified as rural.
412.104 Special treatment: Hospitals with high percentage of ESRD discharges.

Subpart H—Payments to Hospitals Under the Prospective Payment System

412.110 Total Medicare payment.
412.112 Payments determined on a per case basis.
412.113 Payments determined on a reasonable cost basis.
412.115 Additional payments.
412.118 Determination of indirect medical education costs.
412.120 Reductions to total payments.
412.125 Effect of change of ownership on payments under the prospective payment system.

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

Subpart A—General Provisions

§ 412.1 Scope of part.

(a) *Purpose.*

This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

(b) *Summary of content.*

This subpart describes the basis of payment for inpatient hospital services under the prospective payment system, and sets forth the general basis of this system. Subpart B sets forth the classifications of hospitals that are included in and excluded from the prospective payment system, and sets forth requirements governing the inclusion or exclusion of hospitals in the system as a result of changes in their classification. Subpart C sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment system. Subpart D sets forth the basic methodology by which prospective payment rates are determined. Subpart E describes the transition rate-setting methods that are used to determine transition payment rates during the first three years of the prospective payment system. Subpart F sets forth the methodology for determining additional payments for outlier cases. Subpart G sets forth rules for special treatment of certain facilities. Subpart H describes the types, amounts, and methods of payment to hospitals under the prospective payment system.

§ 412.2 Basis of payment.

(a) *Payment on a per discharge basis.* Under the prospective payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to Medicare beneficiaries. The prospective payment rate for each discharge (as defined in § 412.4) is determined according to the methodology described in Subpart D, E, or G of this part, as appropriate. An additional payment is made, in accordance with Subpart F of this part, for cases that have an atypically long length of stay or are extraordinarily costly to treat.

(b) *Payment in full.*

(1) The prospective payment amount paid for inpatient hospital services is the total Medicare payment for the inpatient operating costs (as described in paragraph (c) of this section) incurred in furnishing services covered by the Medicare program.

(2) The full prospective payment amount, as determined under Subpart D, E, or G of this part, is made for each stay during which there is at least one Medicare payable day of care. Payable days of care, for purposes of this of paragraph (b)(2), include the following:

(i) Waiver of liability days payable under § 405.330 of this chapter.

(ii) Guarantee of payment days, as authorized under § 409.68 of this chapter, for inpatient hospital services furnished to an individual whom the hospital has reason to believe is entitled to Medicare benefits at the time of admission.

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

(1) Operating costs for routine services (as described in § 405.452(b) of this chapter), such as the costs of room, board, and routine nursing services;

(2) Operating costs for ancillary services, such as radiology and laboratory services furnished to hospital inpatients;

(3) Special care unit operating costs (intensive care type unit services, as described in § 405.452(b) of this chapter); and

(4) Malpractice insurance costs related to services furnished to inpatients.

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(1) Capital-related costs, and an allowance for return on equity, as described in §§ 405.414 and 405.429 of this chapter.

(2) Direct medical education costs, for those approved education programs described in § 405.421 of this chapter.

(3) Costs for direct medical and surgical services of physicians in teaching hospitals exercising the election in § 405.521 of this chapter.

(4) Kidney acquisition costs incurred by certified renal transplantation centers.

(5) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, costs of qualified nonphysician anesthetists' services.

(e) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates, hospitals will receive payments for the following:

(1) Outlier cases, as described in Subpart F of this part.

(2) The indirect costs of graduate medical education, as specified in Subparts F and H of this part.

(3) Costs excluded from the prospective payment rate under paragraph (d) of this section, as provided in § 412.115.

(4) Bad debts of Medicare beneficiaries, as provided in § 412.115(a).

(5) ESRD beneficiary discharges if such discharges are ten percent or more of the hospital's total Medicare discharges, as provided in § 412.104.

§ 412.4 Discharges and transfers.

(a) *Discharges.* A hospital inpatient is considered discharged when any of the following occurs:

(1) The patient as formally released from the hospital. (Release of the patient to another hospital as described in paragraph (b) of this section will not be recognized as a discharge for the purpose of determining payment under the prospective payment system.)

(2) The patient dies in the hospital.

(3) The patient is transferred to a hospital or unit that is excluded from the prospective payment system under Subpart B of this part.

(b) *Transfers.* Except as provided under paragraph (a)(3) of this section, a discharge of a hospital inpatient is not counted for purposes of the prospective payment system when the patient is transferred—

(1) From one inpatient area or unit of the hospital to another area or unit of the hospital;

(2) From the care of a hospital paid under this section to the care of another such hospital; or

(3) From the care of a hospital paid under this section to the care of another hospital—

(i) That is excluded from the prospective payment system because of participation in an approved statewide cost control program or demonstration; or

(ii) Whose first cost reporting period under the prospective payment system has not yet begun.

(c) *Payment in full to the discharging hospital.* The hospital discharging an inpatient (under paragraph (a) of this section) is paid in full, in accordance with § 412.2(b).

(d) *Payment to a hospital transferring an inpatient to another hospital.* (1) A hospital that transfers an inpatient under the circumstances described in paragraph (b)(2) or (b)(3) of this section, is paid a per diem rate for each day of the patient's stay in that hospital, not to exceed the amount that would have been paid under Subparts D and E of this part if the patient had been discharged to another setting. The per diem rate is determined by dividing the appropriate prospective payment rate (as determined under Subparts D and E of this part) by the average length of stay for the specific Diagnosis-Related Group (DRG) into which the case falls.

(2) However, if a discharge is classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital is paid in accordance with § 412.2(b).

(3) Effective with discharges occurring on or after October 1, 1984, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliers as described in Subpart F of this part.

§ 412.6 Cost reporting periods subject to the prospective payment system.

(a) *Initial cost reporting period.*

(1) Each subject hospital is paid under the prospective payment system for inpatient hospital services effective with the hospital's first cost reporting period beginning on or after October 1, 1983.

(2) The hospital is paid the applicable prospective payment rate for each discharge occurring on or after the first day of its first cost reporting period subject to the prospective payment system.

(3) If a discharged beneficiary was admitted to the hospital before the first day of the hospital's first cost reporting period subject to prospective payment, the reasonable costs of services furnished before that day are reimbursable under the cost reimbursement provisions of Subpart D of Part 405 of this chapter. For such discharges, the amount otherwise payable under the applicable prospective payment rate is reduced by the amount paid on a reasonable cost basis for inpatient hospital services furnished to that beneficiary during the hospital stay. If the amount reimbursed under reasonable cost exceeds the prospective payment amount, the reduction is limited to the prospective payment amount.

(b) *Changes in cost reporting periods.* HCFA will recognize a change in a hospital's cost reporting period made after November 30, 1982 only if the change has been requested in writing by the hospital and approved by the intermediary in accordance with § 405.453(f)(3) of this chapter.

§ 412.8 Publication of schedules for determining prospective payment rates.

(a) *Initial prospective payment rates.* Initial prospective payment rates (for the period October 1, 1983 through September 30, 1984) were determined in accordance with documents published in the **Federal Register** on September 1, 1983 (48 FR 39838), and January 3, 1984 (49 FR 324).

(b) *Annual publication of schedule for determining prospective payment rates.*

(1) For periods beginning after September 30, 1984, HCFA will publish annual notices setting forth the methodology and data used, including the percentage increase factor, to determine prospective payment rates applicable to discharges occurring during the Federal fiscal year beginning on or after October 1 of that year.

(2) HCFA will propose changes in the methods, amounts, and factors used to determine prospective payment rates in a **Federal Register** notice published for public comment not later than the June 1 before the beginning of the Federal fiscal year in which the proposed changes would apply.

(3) HCFA will publish a **Federal Register** notice setting forth final methods, amounts, and factors for determining prospective payment rates not later than the September 1 before the Federal fiscal year in which the rates would apply.

(4) If HCFA does not meet the September 1 publication date requirement of this paragraph, the prospective payment rates in effect on September 1 of the year in question will apply unchanged for the following Federal fiscal year.

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System

§ 412.20 Hospital services subject to the prospective payment system.

(a) Except for services described in paragraph (b) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid for under the prospective payment system.

(b) Inpatient hospital services will not be paid for under the prospective payment system under any of the following circumstances:

(1) The services are furnished by a hospital (or distinct part hospital unit) explicitly excluded from the prospective payment system under §§ 412.23, 412.25, 412.27, 412.29, and 412.32.

(2) The services are emergency services furnished by a nonparticipating hospital in accordance with § 405.152 of this chapter.

(3) The services are paid for by an HMO or competitive medical plan (CMP) that elects not to have HCFA make payments directly to a hospital for inpatient hospital services furnished to the HMO's or CMP's Medicare enrollees, as provided in § 417.240(d) and § 417.586 of this chapter.

§ 412.22 Excluded hospitals and hospital units: General rules.

(a) *Criteria.* A hospital will be excluded from the prospective payment system if it meets the criteria for one or

more of the excluded classifications described in § 412.23.

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section, all excluded hospitals (and excluded distinct part hospital units, as described in §§ 412.23 through 412.29 and § 412.32) are reimbursed under the cost reimbursement rules set forth in Subpart D of Part 405 of this chapter, and will be subject to the ceiling on the rate of hospital cost increases described in § 405.463 of this chapter.

(c) *Special payment provisions.* The following classifications of hospitals are paid under special provisions and therefore are not generally subject to the cost reimbursement or prospective payment rules of this chapter.

(1) Veterans Administration hospitals.

(2) Hospitals reimbursed under State cost control systems approved under Part 403 of this chapter.

(3) Hospitals reimbursed in accordance with demonstrations projects authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)).

(4) Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

§ 412.23 Excluded hospitals: Classifications.

Hospitals that meet the requirements for the classifications set forth in this section may not be reimbursed under the prospective payment system.

(a) *Psychiatric hospitals.* A psychiatric hospital must—

(1) Be primarily engaged in providing, by or under the supervision of a psychiatrist, psychiatric services for the diagnosis and treatment of mentally ill persons; and

(2) Meet the conditions of participation for hospitals and special conditions of participation for psychiatric hospitals set forth in Subpart J of Part 405 of this chapter.

(b) *Rehabilitation hospitals.* A rehabilitation hospital must meet the following requirements:

(1) Have a provider agreement under Part 489 of this chapter to participate as a hospital.

(2) Except in the case of a newly participating hospital seeking exclusion for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, show that during its most recent 12-month cost reporting period, it served an inpatient population of whom at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(i) Stroke.

(ii) Spinal cord injury.

(iii) Congenital deformity.

(iv) Amputation.

(v) Major multiple trauma.

(vi) Fracture of femur (hip fracture).

(vii) Brain injury.

(viii) Polyarthritis, including rheumatoid arthritis.

(ix) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(x) Burns.

(3) Have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determined whether the patient is likely to benefit significantly from an intensive inpatient hospital program or assessment.

(4) Ensure that the patients receive close medical supervision and furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech therapy, social or psychological services, and orthotic and prosthetic services.

(5) Have a director of rehabilitation who—

(i) Provides services to the hospital and its inpatients on a full-time basis;

(ii) Is a doctor of medicine or osteopathy;

(iii) Is licensed under State law to practice medicine or surgery; and

(iv) Has had, after completing a one year hospital internship, at least two years of training or experience in the medical-management of inpatients requiring rehabilitation services.

(6) Have plan of treatment for each inpatient that is established, reviewed and revised as needed by a physician in consultation with other professional personnel who provide services to the patient.

(7) Use a coordinated multidisciplinary team approach in the rehabilitation of each inpatient, as documented by periodic clinical entries made in the patient's medical record to note the patient's status in relationship to goal attainment, and that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(8) A hospital that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this section, instead of showing that it has treated such a population during its most recent 12-month cost reporting period.

(c) *Alcohol/drug hospitals.* An alcohol/drug hospital will be excluded from the prospective payment system until October 1, 1985, if it meets the following requirements:

(1) Treats only patients whose admission to the hospital is required for diagnosis or treatment of alcohol or drug dependence, or both.

(2) Provides treatment using a multidisciplinary team consisting of at least—

(i) A doctor of medicine or osteopathy;

(ii) A registered nurse;

(iii) A certified alcohol/drug counselor; and

(iv) To the extent deemed necessary by the program director, other qualified health professionals (for example, clinical psychologists or social workers).

(3) Ensures that each inpatient is admitted on the authority of, and his or her care is under the direction of, a doctor of medicine or osteopathy who is a member of the hospital's medical staff.

(4) Has a program director to whom the governing body of the hospital has delegated responsibility for maintaining proper standards and assuring quality medical care. The director must be a doctor of medicine or osteopathy who has one year of post-medical school education, or equivalent clinical experience, in the alcohol/drug field, including at least six months of education or experience in an alcohol/drug treatment inpatient program.

(5) Has a full-time director of nursing services who is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing or with equivalent experience in alcohol/drug treatment.

(6) Has a written treatment plan for each inpatient that is established, reviewed, and revised as needed by the multidisciplinary team. The plan must include a medical assessment and a social/psychological assessment, a record of progress during the course of treatment, and a plan of treatment upon discharge.

(7) Involves inpatients in individual, group, and family educational or therapy programs and other medical or psychological approaches designed to treat the psychological and physical aspects of alcohol/drug dependence and to motivate them to use suitable community support and facilities for long-range rehabilitation.

(8) Coordinates its program with appropriate alcohol/drug abuse programs of other organizations

operating in the vicinity such as community mental health centers and Veterans Administration hospitals, voluntary programs such as halfway houses, recovery homes and the Salvation Army, and with self-help groups such as Alcoholics Anonymous, Al-Anon and Alateen.

(d) *Children's hospitals.* A children's hospital must—

(1) Have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) Be engaged in furnishing services to inpatients who are predominantly individuals under the age of 18.

(e) *Long-term care hospitals.* A long-term care hospital must—

(1) Have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) Have an average length of inpatient stay greater than 25 days—

(i) As computed by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period; or

(ii) If a change in the hospital's average length of stay is indicated, as computed by the same method for the immediately preceding six-month period.

(f) *Hospitals outside the 50 States or the District of Columbia.* A hospital is excluded from the prospective payment system if it is not located in one of the fifty States or the District of Columbia.

(g) *Hospitals reimbursed under special arrangements.* A hospital must be excluded from prospective payment for inpatient hospital services if it is reimbursed under special arrangement as provided in § 412.22(c).

§ 412.25 Excluded distinct part hospital units: Common requirements.

(a) *Basis for exclusion.*

In order to be excluded from the prospective payment system, a distinct part psychiatric, rehabilitation, or alcohol/drug unit must meet the following requirements:

(1) Be part of an institution that has in effect an agreement under Part 489 of this chapter to participate as a hospital.

(2) Have written admission criteria that are applied uniformly to both Medicare and non-Medicare patients.

(3) Have admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available.

(4) Have policies specifying that necessary clinical information is transferred to the unit when a patient of the hospital is transferred to the unit.

(5) Meet applicable State licensure laws.

(6) Have utilization review standards applicable for the type of care offered in the unit.

(7) Have beds physically separate from (that is, not commingled with) the hospital's other beds.

(8) Be serviced by the same fiscal intermediary as the hospital.

(9) Be treated as a separate cost center for cost finding and apportionment purposes.

(10) Use an accounting system that properly allocates costs.

(11) Maintain adequate statistical data to support the basis of allocation.

(12) Report its costs in the hospital's cost report covering the same fiscal period and using the same method of apportionment as the hospital.

(b) *Changes in the size of excluded units.* For purposes of exclusion from the prospective payment system under this section, the number of beds and square footage of each excluded unit will remain the same throughout each cost reporting period, and any change in the number of beds or square footage considered to be part of an excluded unit may be made only at the start of a cost reporting period.

§ 412.27 Distinct part psychiatric units: Additional requirements.

In order to be excluded from the prospective payment system, a distinct part psychiatric unit must meet the following requirements:

(a) Admit only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in the Third Edition of the American Psychiatric Association's Diagnostic and Statistical Manual, or in Chapter Five ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification.

(b) Furnish, through the use of qualified personnel, psychological services, social work services, psychiatric nursing, ocupational therapy, and recreational therapy.

(c) Maintain medical records that permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the unit, and that meet the following requirements:

(1) *Development of assessment/diagnostic data.* Medical records must stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the inpatient is treated in the unit.

(i) The identification data must include the inpatient's legal status.

(ii) A provisional or admitting diagnosis must be made on every inpatient at the time of admission, and must include the diagnoses of intercurrent diseases as well as the psychiatric diagnoses.

(iii) The reasons for admission must be clearly documented as stated by the inpatient or others significantly involved, or both.

(iv) The social service records, including reports of interviews with inpatients, family members, and others must provide an assessment of home plans and family attitudes, and community resource contacts as well as a social history.

(v) When indicated, a complete neurological examination must be recorded at the time of the admission physical examination.

(2) *Psychiatric evaluation.* Each inpatient must receive a psychiatric evaluation that must—

(i) Be completed within 60 hours of admission;

(ii) Include a medical history;

(iii) Contain a record of mental status;

(iv) Note the onset of illness and the circumstances leading to admission;

(v) Describe attitudes and behavior;

(vi) Estimate intellectual functioning, memory functioning, and orientation; and

(vii) Include an inventory of the inpatient's assets in descriptive, not interpretative fashion.

(3) *Treatment plan.*

(i) Each inpatient must have an individual comprehensive treatment plan that must be based on an inventory of the inpatient's strengths and disabilities. The written plan must include a substantiated diagnosis; short-term and long-term goals; the specific treatment modalities utilized; the responsibilities of each member of the treatment team; and adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out; and

(ii) The treatment received by the inpatient must be documented in such a way as to assure that all active therapeutic efforts are included.

(4) *Recording progress.* Progress notes must be recorded by the doctor of medicine or osteopathy responsible for the care of the inpatient, a nurse, social worker and, when appropriate, others significantly involved in active treatment modalities. The frequency of progress notes is determined by the condition of the inpatient but must be recorded at least weekly for the first two months and at least once a month thereafter and must contain recommendations for revisions in the

treatment plan as indicated as well as precise assessment of the inpatient's progress in accordance with the original or revised treatment plan.

(5) *Discharge planning and discharge summary.* The record of each patient who has been discharged must have a discharge summary that includes a recapitulation of the inpatient's hospitalization in the unit and recommendations from appropriate services concerning follow-up or aftercare as well as a brief summary of the patient's condition on discharge.

(d) Meet special staff requirements in that the unit must have adequate numbers of qualified professional and supportive staff to evaluate inpatients, formulate written, individualized, comprehensive treatment plans, provide active treatment measures and engage in discharge planning, as follows:

(1) *Personnel.* The unit must employ or undertake to provide adequate numbers of qualified professional, technical, and consultative personnel to—

(i) Evaluate inpatients;

(ii) Formulate written, individualized, comprehensive treatment plans;

(iii) Provide active treatment measures; and

(iv) Engage in discharge planning.

(2) *Director of inpatient psychiatric services; medical staff.* Inpatient psychiatric services must be under the supervision of a clinical director, service chief, or equivalent who is qualified to provide the leadership required for an intensive treatment program. The number and qualifications of doctors of medicine and osteopathy must be adequate to provide essential psychiatric services.

(i) The clinical director, service chief, or equivalent must meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

(ii) The director must monitor and evaluate the quality and appropriateness of services and treatment provided by the medical staff.

(3) *Nursing services.* The unit must have a qualified director of psychiatric nursing services. In addition to the director of nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each inpatient's active treatment program and to maintain progress notes on each inpatient.

(i) The director of psychiatric nursing services must be a registered nurse who has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing, or be qualified by education and experience in the care of the mentally ill. The director must demonstrate competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(ii) The staffing pattern must ensure the availability of a registered nurse 24 hours each day. There must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide the nursing care necessary under each inpatient's active treatment program.

(4) *Psychological services.* The unit must provide or have available psychological services to meet the needs of the inpatients. The services must be furnished in accordance with acceptable standards of practice, service objectives, and established policies and procedures.

(5) *Social services.* There must be a director of social services who monitors and evaluates the quality and appropriateness of social services furnished. The services must be furnished in accordance with accepted standards of practice and established policies and procedures. Social service staff responsibilities must include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(6) *Therapeutic activities.* The unit must provide a therapeutic activities program.

(i) The program must be appropriate to the needs and interests of inpatients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(ii) The number of qualified therapists, support personnel, and consultants must be adequate to provide comprehensive therapeutic activities consistent with each inpatient's active treatment program.

§412.29 Distinct part rehabilitation units: Additional requirements.

In order to be excluded from the prospective payment system, a distinct part rehabilitation unit must meet the following requirements:

(a) Except as provided in § 412.30, have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the conditions listed in § 412.23(b)(2).

(b) Have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(c) Ensure that the patients receive close medical supervision and furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech therapy, social services or psychological services, and orthotic and prosthetic services.

(d) Have a plan of treatment for each inpatient that is established, reviewed, and revised as needed by a physician in consultation with other professional personnel who provide services to the patient.

(e) Use a coordinated multidisciplinary team approach in the rehabilitation of each inpatient, as documented by periodic clinical entries made in the patient's medical record to note the patient's status in relationship to goal attainment, and that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(f) Have a director of rehabilitation who—

(1) Provides services to the unit and to its inpatients for at least 20 hours per week;

(2) Is a doctor of medicine or osteopathy;

(3) Is licensed under State law to practice medicine or surgery; and

(4) Has had, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

§ 412.30 Exclusion of new distinct part rehabilitation units and expansion of units already excluded.

(a) *New units.* If a hospital has not previously sought exclusion for any rehabilitation unit, and has obtained approval for added bed capacity under State licensure and under its Medicare certification, it may identify the new beds as a new rehabilitation unit for the first full 12-month cost reporting period during which the beds are used to furnish inpatient care. A unit that is comprised of some beds that were previously licensed and certified, and some new beds, will be recognized as a new rehabilitation unit only if the majority of beds are new. For the first cost reporting period in which a hospital seeks exclusion of a new rehabilitation unit, the hospital may provide a written certification that the inpatient population it intends the unit to serve meets the requirements of § 412.23(b)(2) instead of showing that it has treated

such a population during its most recent 12-month cost reporting period.

(b) *Expansion of excluded units.* If a hospital that has an excluded rehabilitation unit has obtained approval for added bed capacity, under State licensure and under its Medicare certification, and seeks to add the new beds to its existing excluded unit for the first full 12-month cost reporting period during which the new beds are used to furnish inpatient care, the hospital may provide a written certification that the inpatient population that the new beds are intended to serve meets the requirements of § 412.23(b)(2) instead of showing that those beds were used to treat such a population during the unit's most recent 12-month cost reporting period.

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

In order to be excluded from the prospective payment system until October 1, 1985, a distinct part alcohol/drug unit must meet the following requirements:

(a) Treat only patients whose admission to the unit is required for diagnosis or treatment of alcohol or drug dependence, or both.

(b) Provide treatment using a multidisciplinary team consisting of at least—

(1) A doctor of medicine or osteopathy;

(2) A registered nurse;

(3) A certified alcohol/drug counselor; and

(4) To the extent deemed necessary by the unit director, other qualified health professionals (for example, clinical psychologists or social workers).

(c) Ensure that each inpatient is admitted on the authority of, and his or her care is under the direction of, a doctor of medicine or osteopathy who is a member of the unit's medical staff.

(d) Have a director to whom the governing body of the hospital has delegated responsibility for maintaining proper standards and assuring quality medical care. The director must be a doctor of medicine or osteopathy who has one year of post-medical school education, or equivalent clinical experience, in the alcohol/drug field, including at least six months of education or experience in an alcohol/drug treatment inpatient unit.

(e) Have a full-time director of nursing services who is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing, or with equivalent experience in alcohol/drug treatment.

(f) Have a written treatment plan for each inpatient that is established, reviewed, and revised as needed by the multidisciplinary team. The plan must include a medical assessment and a social/psychological assessment, a record of progress during the course of treatment, and a plan of treatment upon discharge.

(g) Involve inpatients in individual, group, and family educational or therapy programs and other medical or psychological approaches designed to treat the psychological and physical aspects of alcohol/drug dependence and to motivate them to use suitable community support and facilities for long-range rehabilitation.

(h) Coordinate its program with appropriate alcohol/drug abuse programs of other organizations operating in the vicinity such as community mental health centers and Veterans Administration hospitals, voluntary programs such as halfway houses, recovery homes and the Salvation Army, and with self-help groups such as Alcoholics Anonymous, Al-Anon and Alateen.

Subpart C—Conditions for Payment Under the Prospective Payment System

§ 412.40 General requirements.

(a) A hospital must meet the conditions of this subpart to receive payment under the prospective payment system for inpatient hospital services furnished to Medicare beneficiaries.

(b) If a hospital fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, HCFA may, as appropriate—

(1) Withhold Medicare payment (in full or in part) to the hospital until the hospital provides adequate assurances of compliance; or

(2) Terminate the hospital's provider agreement.

§ 412.42 Limitations on charges to beneficiaries.

(a) *Prohibited charges.* A hospital may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system.

(b) *Permitted charges—stay covered.* A hospital receiving payment under the prospective payment system for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the following:

(1) The applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this chapter.

(2) Noncovered items and services, furnished at any time during a covered stay, unless they are excluded from coverage only on the basis of the following:

(i) The exclusion of custodial care under § 405.310(g) of this chapter (see paragraph (c) of this section for when charges may be made for custodial care).

(ii) The exclusion of medically unnecessary items and services under § 405.310(k) of this chapter (see paragraphs (c) and (d) of this section for when charges may be made for medically unnecessary items and services).

(iii) The exclusion under § 405.310(m) of this chapter of nonphysician services furnished to hospital inpatients by other than the hospital or a provider or supplier under arrangements made by the hospital.

(iv) The exclusion of items and services furnished when the patient is not entitled to Medicare Part A benefits under Subpart A of Part 408 of this chapter (see paragraph (e) of this section for when charges may be made for items and services furnished when the patient is not entitled to benefits).

(v) The exclusion of items and services furnished after Medicare Part A benefits are exhausted under § 409.61 of this chapter (see paragraph (e) of this section for when charges may be made for items and services furnished after benefits are exhausted).

(c) *Custodial care and medically unnecessary inpatient hospital care.* A hospital may charge a beneficiary for services excluded from coverage on the basis of § 405.310(g) of this chapter (custodial care) or § 405.310(k) of this chapter (medically unnecessary services) and furnished by the hospital after all of the following conditions have been met:

(1) The hospital (acting directly or through its utilization review committee) determines that the beneficiary no longer requires inpatient hospital care. (The phrase "inpatient hospital care" includes cases where a beneficiary needs a SNF level of care, but, under Medicare criteria, a SNF-level bed is not available. This also means that a hospital may find that a patient awaiting SNF placement no longer requires inpatient hospital care because either a SNF-level bed has become available or the patient no longer requires SNF-level care.)

(2) The attending physician agrees with the hospital's determination in

writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the medical review entity (that is, a PSRO, PRO or intermediary). Concurrence by the medical review entity in the hospital's determination will serve in lieu of the physician's agreement.

(3) The hospital (acting directly or through its utilization review committee) notifies the beneficiary (or person acting on his or her behalf) in writing that—

(i) In the hospital's opinion, and with the attending physician's concurrence or that of the medical review entity, the beneficiary no longer requires inpatient hospital care;

(ii) Customary charges will be made for continued hospital care beyond the second day following the date of the notice;

(iii) The medical review entity will make a formal determination on the validity of the hospital's finding if the beneficiary remains in the hospital after he or she is liable for charges;

(iv) The determination of the medical review entity made after the beneficiary received the purportedly noncovered services will be appealable by the hospital or the beneficiary under the appeals procedures that apply to medical review entity determinations affecting Medicare Part A payment; and

(v) The charges for continued care will be invalid and refunded if collected by the hospital, to the extent that a finding is made that the beneficiary required continued care beyond the point indicated by the hospital.

(4) If the beneficiary remains in the hospital after the appropriate notification, and the hospital, the physician who concurred in the hospital determination on which the notice was based, or medical review entity subsequently finds that the beneficiary requires an acute level of inpatient hospital care, the hospital may not charge the beneficiary for continued care until the hospital once again determines that the beneficiary no longer requires inpatient care, secures concurrence, and notifies the beneficiary, as required in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

(d) *Medically unnecessary diagnostic and therapeutic services.* A hospital may charge a beneficiary for diagnostic procedures and studies, and therapeutic procedures and courses of treatment (for example, experimental procedures) that are excluded from coverage under § 405.310(k) of this chapter (medically unnecessary items and services), even though the beneficiary requires continued inpatient hospital care, if those services are furnished after the beneficiary (or the person acting on his or her behalf) has acknowledged in writing that the hospital (acting directly or through its utilization review committee and with the concurrence of the intermediary) has informed him or her as follows:

(1) In the hospital's opinion, which has been agreed to by the intermediary, the services to be furnished are not considered reasonable and necessary under Medicare.

(2) Customary charges will be made if he or she receives the services.

(3) The intermediary will make a formal determination on the validity of the hospital's finding if the beneficiary receives the services.

(4) The determination of the intermediary is appealable by the hospital or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment.

(5) The charges for the services will be invalid and, to the extent collected, will be refunded by the hospital if the services are found to be covered by Medicare.

(e) *Services furnished on days when the individual is not entitled to Medicare Part A benefits or has exhausted the available benefits.* The hospital may charge the beneficiary its customary charges for noncovered items and services furnished on outlier days (as described in Subpart F of this part) for which payment is denied because the beneficiary is not entitled to Medicare Part A or his or her Medicare Part A benefits are exhausted. (1) If payment is considered for outlier days, the entire stay is reviewed and days up to the number of days in excess of the outlier threshold may be denied on the basis of nonentitlement to Part A or exhaustion of benefits. (2) In applying this rule, the latest days will be denied first.

(f) *Differential for private room or other luxury services.* The hospital may charge the beneficiary the customary charge differential for a private room or other luxury service that is more expensive than is medically required and is furnished for the personal comfort of the beneficiary at his or her request (or the request of the person acting on his or her behalf).

(g) *Review.* (1) The medical review entity or intermediary may review any cases in which the hospital advises the beneficiary (or the person acting on his or her behalf) of the noncoverage of the services in accordance with paragraph (c)(3) or (d) of this section. (2) The hospital must identify such cases to the medical review entity or intermediary in accordance with HCFA instructions.

§ 412.44 Medical review requirements: Admissions and quality review.

Beginning on November 15, 1984, a hospital must have an agreement with a Utilization and Quality Control Peer Review Organization (PRO) to have the PRO review, on an ongoing basis, the following:

(a) The appropriateness of the hospital's admissions, admission patterns, discharges, lengths of stay, transfers, and services furnished in outlier cases.

(b) The validity of the hospital's diagnostic and procedural information.

(c) The completeness, adequacy, and quality of the services furnished in the hospital.

§ 412.45 Medical review requirements: Admission pattern monitoring.

HCFA will prepare a report which compares a hospital's discharge rate for a quarter with the same hospital's discharge rate for the previous eight quarters. If the hospital's discharge rate increases significantly, the report is sent to the medical review entity for analysis.

(a) The medical review entity during the course of its analysis, may request information or records from the hospital, and may conduct on-site medical record review to determine if the increased discharges reflected medically necessary and appropriate admissions.

(b) If, as a result of analysis under paragraph (a) of this section, the medical review entity finds a pattern of unnecessary or inappropriate admissions, the medical review entity will intensify medical review activities.

§ 412.46 Medical review requirements: DRG validation.

(a) *Physician attestation.* The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to the principal diagnosis, secondary diagnoses, and names of major procedures performed. The information must be in writing in the medical record. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's signature:

"I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge."

(b) *Physician acknowledgement.* In addition, when the claim is submitted, the hospital must have on file a current

signed acknowledgement from the attending physician that the physician has received the following notice:

"**Notice to Physicians:** Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws."

The acknowledgement must have been completed within the year prior to the submission of the claim.

(c) *Sample reviews.* (1) The medical review entity will review, at least every three months, a random sample of discharges for the previous three-month period or the period since the last review, to verify that the diagnostic and procedural coding, used by the hospital for DRG assignment, is substantiated by the corresponding medical records.

(2) DRG validation must be done on the basis of a review of medical records and, at HCFA's discretion, may take place at the hospital or away from the hospital site.

(d) *Revision of coding.* (1) If the diagnostic and procedural information, attested to by the attending physician, is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding for the Medicare claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignments.

(2) If the information attested to by the physician as stipulated under paragraph (a) of this section is found not to be correct, the medical review entity will change the coding and assign the appropriate DRG on the basis of the changed coding.

§ 412.48 Denial of payment as a result of admissions and quality review.

(a) If HCFA determines, on the basis of information supplied by a medical review entity, that a hospital has misrepresented admissions, discharge, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits under Part A, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries, HCFA may as appropriate—

(1) Deny payment (in whole or in part) under Part A with respect to inpatient hospital services provided with respect to such an unnecessary admission or subsequent readmission of an individual; or

(2) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(b) When payment with respect to admission of an individual patient is denied under paragraph (a)(1) of this section, and liability is not waived in accordance with §§ 405.330 through 405.332 of this chapter—

(1) If the medical review entity is a PRO, notice and appeals are provided under procedures established by HCFA to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

(2) If the medical review entity is a PSRO, assuming review in accordance with § 463.26(c)(1) of this chapter, notice and appeals will be provided in accordance with regulations in Part 473 of this chapter, Hearings and Appeals on PSRO Determinations.

(3) If, in the absence of a PRO or PSRO, a fiscal intermediary acts as a medical review entity, notice and appeals will be provided in accordance with regulations in Subpart G of Part 405 of this chapter, Reconsiderations and Appeals under the Hospital Insurance Program.

(c) A determination under paragraph (a) of this section, related to a pattern of inappropriate admissions and billing practices that have the effect of circumventing the prospective payment system, will be referred to the Office of the Inspector General (OIG) for a determination in accordance with section 1866(b)(2) of the Act. The determination will be effective in the manner provided in section 1866(b)(3) and (4) of the Act, and regulations in Part 489 of this chapter, with respect to terminations of agreements, and will remain in effect until the OIG finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(d) Any party to a determination made by the OIG under paragraph (c) of this section, who is dissatisfied with that determination, is entitled to reasonable notice and opportunity for a hearing to the same extent as provided in section 205(b) of the Act and to judicial review of the final decision after hearing as provided in section 205(g) of the Act.

(e) The OIG will promptly notify each Medicaid agency of any determination made under paragraph (c) of this section.

§ 412.50 Furnishing of inpatient hospital services directly or under arrangements.

(a) The applicable payments made under the prospective payment system, as described in Subpart H of this part are payment in full for all inpatient hospital services, as defined in § 409.10, of this chapter, other than physicians' services to individual patients reimbursable on a reasonable charge basis (in accordance with the criteria of § 405.550(b) of this chapter).

(b) Except as provided in § 489.23 of this chapter, HCFA will not pay any provider or supplier other than the hospital for services furnished to a beneficiary who is an inpatient, except for physicians' services reimbursable under § 405.550(b) of this chapter.

(c) The hospital must furnish all necessary covered services to the beneficiary either directly or under arrangements (as defined in § 409.3 of this chapter).

§ 412.52 Reporting and recordkeeping requirements.

All hospitals participating in the prospective payment system must meet the recordkeeping and cost reporting requirements of §§ 405.406 and 405.453 of this chapter.

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.60 DRG classification and weighting factors.

(a) *Diagnosis-related groups.* HCFA will establish a classification of inpatient hospital discharges by Diagnosis-Related Groups (DRGs).

(b) *DRG weighting factors.* HCFA will assign, for each DRG, an appropriate weighting factor that reflects the estimated relative cost of hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(c) *Assignment of discharges to DRGs.* HCFA will establish a methodology for classifying specific hospital discharges within DRGs which ensures that each hospital discharge is appropriately assigned to a single DRG based on essential data abstracted from the inpatient bill for that discharge.

(1) The classification of a particular discharge will, as appropriate, be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established after study to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, and discharge status.

(2) Each discharge will be assigned to only one DRG (related, except as provided in paragraph (c)(3) of this section, to the patient's principal diagnosis) regardless of the number of conditions treated or services furnished during the patient's stay.

(3) When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill will be returned to the hospital for validation and reverification. HCFA's DRG classification system will provide a DRG, and an appropriate weighting factor, for the group of cases for which the unrelated diagnosis and procedure are confirmed.

(d) *Revision of DRG classification and weighting factors.* HCFA will adjust the classifications and weighting factors established under paragraphs (a) and (b) of this section, for discharges as necessary, but at a minimum for fiscal year 1986 and at least every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

§ 412.62 Federal rates for fiscal year 1984.

(a) *General rule.* HCFA will determine national adjusted DRG prospective payment rates, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under Subpart B of this part, and will determine regional adjusted DRG prospective payment rates for such discharges in each region, for which payment may be made under Medicare Part A. Such rates will be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as described in paragraphs (b) through (k) of this section.

(b) *Determining allowable individual hospital costs.* HCFA will determine the Medicare allowable operating costs per discharge of inpatient hospital services for each hospital in the data base for the most recent cost reporting period for which data are available.

(c) *Updating for fiscal year 1984.* HCFA will update each amount determined under paragraph (b) of this section for fiscal year 1984 by—

(1) Updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under paragraph (b) of this section and fiscal year 1983; and

(2) Projecting for fiscal year 1984 by the applicable percentage increase (as defined in § 405.463(c)(3) of this chapter) for fiscal year 1984.

(d) *Standardizing amounts.* HCFA will standardize the amount updated under paragraph (c) of this section for each hospital by—

(1) Adjusting for area variations in case mix among hospitals;

(2) Excluding an estimate of indirect medical education costs;

(3) Adjusting for area variations in hospital wage levels; and

(4) Adjusting for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(e) *Computing urban and rural averages.* HCFA will compute an average of the standardized amounts determined under paragraph (d) of this section for urban and rural hospitals in the United States and for urban and rural hospitals in each region.

(f) *Geographic classifications.* (1) For purposes of paragraph (e) of this section, the following definitions apply:

(i) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(ii) The term "urban area" means—

(A) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(B) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(iii) The term "rural area" means any area outside an urban area.

(iv) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an Executive Office of Management and Budget redesignation occurring after April 20, 1983.

(2) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(i) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(ii) If a hospital would receive a lower Federal rate because most of the hospitals are located in a census division with a lower Federal rate than the rate applicable to the census division in which the hospital is located, the payment rate will not be reduced for the hospital's cost reporting period beginning before October 1, 1984.

(iii) If an equal number of hospitals within the MSA or NECMA are located in each census division, such hospitals are deemed to be in the census division with the higher Federal rate.

(g) *Adjusting the average standardized amounts.* HCFA adjusts each of the average standardized amounts determined under paragraphs (c), (d), and (e) of this section by factors representing HCFA's estimates of the following:

(1) The amount of payment that would have been made under Medicare Part B for nonphysician services to hospital inpatients during the first cost reporting period subject to prospective payment were it not for the fact that such services must be furnished either directly by hospitals or under arrangements in order for any Medicare payment to be made after September 30, 1983 (the effective date of § 405.310(m) of this chapter).

(2) The amount of FICA taxes that would be incurred during the first cost reporting period subject to the prospective payment system, by hospitals that had not incurred such taxes for any or all of their employees during the base period described in paragraph (c) of this section.

(h) *Reducing for value of outlier payments.* HCFA reduces each of the adjusted average standardized amounts determined under paragraphs (c) through (g) of this section by a proportion equal to the proportion (estimated by HCFA) of the total amount of payments based on DRG prospective payment rates that are additional payments for outlier cases under Subpart F of this part.

(i) *Maintaining budget neutrality.* (1) HCFA adjusts each of the reduced standardized amounts determined under paragraphs (c) through (h) of this section as required for fiscal year 1984 so that the estimated amount of aggregate payments made, excluding the hospital specific portion (that is, the total of the Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for Federal fiscal year 1984) is not greater or less than 25 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1984 under the Social Security Act as in effect on April 19, 1983.

(2) The aggregate payments considered under this paragraph

exclude payments for per case review by a utilization and quality control peer review organization, as allowed under section 1866(a)(1)(F) of the Act.

(j) *Computing Federal rates for urban and rural hospitals in the United States and in each region.* For each discharge classified within a DRG, HCFA will establish a national prospective payment rate and a regional prospective payment rate for each region, as follows:

(1) For hospitals located in an urban area in the United States or in that region respectively, the rate equals the product of—

(i) The adjusted average standardized amount (computed under paragraphs (c) through (i) of this section) for hospitals located in an urban area in the United States or in that region; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(2) For hospitals located in a rural area in the United States or in that region respectively, the rate equals the product of—

(i) The adjusted average standardized amount (computed under paragraphs (c) through (i) of this section) for hospitals located in a rural area in the United States or that region; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(k) *Adjusting for different area wage levels.* HCFA will adjust the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (j) of this section which are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA will determine a national adjusted prospective payment rate for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and will determine a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A.

(2) Each such rate will be determined for hospitals located in urban or rural areas within the United States and within each such region respectively, as described in paragraphs (b) through (g) of this section.

(b) *Geographic classifications.* (1) For purposes of this section, the definitions set forth in § 412.62(f) apply.

(2) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(i) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(ii) A hospital that met the conditions specified in § 412.62(f)(2)(ii) and therefore did not receive a lower Federal rate that would have applied for cost reporting periods beginning before October 1, 1984, will receive the lower Federal rate applicable to all hospitals in the MSA or NECMA in which it is located effective with the hospital's cost reporting period that begins on or after October 1, 1984.

(iii) The higher Federal rate is payable to all hospitals in the MSA or NECMA if an equal number of hospitals within the MSA or NECMA are located in each census division.

(c) *Updating previous standardized amounts*—(1) *For fiscal year 1985.* HCFA will compute an average standardized amount for hospitals in urban areas and rural areas within the United States, and urban areas and rural areas within each region.

(2) Each of those amounts is equal to the respective adjusted average standardized amount computed for fiscal year 1984 under § 412.62(g)—

(i) Increased for fiscal year 1985 by the applicable percentage increase under § 405.463(c) of this chapter;

(ii) Adjusted by the estimated amount of Medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(iii) Reduced by a proportion equal to the proportion (estimated by HCFA) of the total amount of prospective payments that are additional payment amounts attributable to outlier cases under Subpart F of this part; and

(iv) Adjusted for budget neutrality under paragraph (e) of this section.

(3) For fiscal year 1986 and thereafter, HCFA computes, for urban and rural hospitals in the United States and for urban and rural hospitals in each region, average standardized amounts equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(i) Increased by the applicable percentage increase determined under paragraph (d) of this section;

(ii) Adjusted by the estimated amount of Medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements; and

(iii) Reduced by a proportion equal to the proportion (estimated by HCFA) of the amount of payments based on the total amount of prospective payments that are additional payment amounts attributable to outlier cases under Subpart F of this part.

(d) *Determining applicable percentage changes for fiscal year 1986 and following.* (1) The Secretary will determine for each fiscal year (beginning with fiscal year 1986) the applicable percentage change which will apply for purposes of paragraph (c)(2) of this section as the applicable percentage increase for discharges in that fiscal year.

(2) The percentage change will take into account amounts the Secretary believes necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

(3) In making this determination, the Secretary will consider the recommendations of the Prospective Payment Assessment Commission.

(e) *Maintaining budget neutrality for fiscal year 1985.* (1) For fiscal year 1985, HCFA will adjust each of the reduced standardized amounts determined under paragraph (c) of this section as required for fiscal year 1985 to ensure that the estimated amount of aggregate payments made, excluding the hospital-specific portion (that is, the total of the Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for fiscal year 1985) is not greater or less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the law as in effect on April 19, 1983.

(2) The aggregate payments considered under this paragraph exclude payments for per case review by a utilization and quality control peer review organization, as allowed under section 1866(a)(1)(F) of the Act.

(f) *Computing Federal rates for urban and rural hospitals.* For each discharge classified within a DRG, HCFA will establish for the fiscal year a national prospective payment rate and a regional prospective payment rate for each region as follows:

(1) For hospitals located in an urban area in the United States or that region

respectively, the rate equals the product of—

(i) The adjusted average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in an urban area in the United States or in that region; and

(ii) The weighting factor determined under § 412.60(b) for that DRG.

(2) For hospitals located in a rural area in the United States or that region respectively, the rate equals the product of—

(i) The adjusted average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a rural area in the United States or that region; and

(ii) The weighting factor (determined under § 412.60(b)) for that DRG.

(g) *Adjusting for different area wage levels.* HCFA will adjust the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (f) of this section which are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

Subpart E—Determination of Transition Period Payment Rates

§ 412.70 General description.

(a) *Basic rules.* (1) During the initial three-year transition period, payments to all hospitals paid under the prospective payment system will be based on a combination of the Federal prospective payment rates, as determined under Subpart D of this part, and hospital-specific rates determined under this subpart.

(2) For the first two years of the transition period, both portions of the payment rates will also be adjusted to ensure budget neutrality.

(3) At the end of the transition period (that is, for cost reporting periods beginning on or after October 1, 1986), payments will be based on the national prospective payment rates determined under Subpart D of this part, except for payments that may be made under the special treatment provisions of Subpart G of this part.

(b) *Payment amounts based on the hospital-specific portion and the Federal portion.* For discharges occurring in cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986, the Medicare transition payment rate for a particular covered discharge will equal a blend of the applicable portion of the hospital-specific rate, as determined under § 412.73, plus the applicable portions of the Federal national and regional prospective payment rates, as described in paragraph (c) of this section, and summarized in the Table. Payments to new hospitals will be based on the Federal national and regional prospective payment rates, as described in paragraph (d) of this section.

(c) *Amount of blended portions.* The blends of hospital-specific and Federal portions will be as follows:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the blend will be—

(i) 75 percent of the hospital-specific rate; and

(ii) 25 percent of the appropriate Federal prospective payment rate.

(2) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the blend will be—

(i) 50 percent of the hospital-specific rate; and

(ii) 50 percent of the appropriate Federal prospective payment rate.

(3) For cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the blend will be—

(i) 25 percent of the hospital-specific rate; and

(ii) 75 percent of the appropriate Federal prospective payment rate.

(4) The appropriate Federal prospective payment rate is a combined regional and national rate and changes with the Federal fiscal year. Beginning October 1, 1984, the combined rate is 75 percent regional and 25 percent national. Beginning October 1, 1985, the combined rate is 50 percent regional and 50 percent national. Effective October 1, 1986, the Federal prospective payment rate is 100 percent national.

TABLE—SUMMARY OF HOSPITAL-SPECIFIC AND FEDERAL PORTION PERCENTAGES FOR DETERMINING TRANSITION PAYMENT RATES

Cost reporting period beginning on or after	Hospital-specific portion percentage	Federal portion*
October 1, 1983	75	25
October 1, 1984	50	50
October 1, 1985	25	75
October 1, 1986		100

*Note: The Federal portion percentages are applied to the combined national or regional prospective payment rates, as appropriate, as determined under Subpart D of this part for the Federal fiscal year in which the discharge occurs.

(d) *Blended portions for new hospitals.* The prospective payment rates for new hospitals will be a blend of the Federal regional and national rates as follows:

(1) For discharges occurring on or after October 1, 1983, and before October 1, 1984, the prospective payment will equal the appropriate Federal regional rate.

(2) For discharges occurring on or after October 1, 1984 and before October 1, 1985, the prospective payment rate will be a blend of—

(i) 75 percent of the appropriate Federal regional prospective payment rate; and

(ii) 25 percent of the appropriate Federal national rate.

(3) For discharges occurring on or after October 1, 1985 and before October 1, 1986, the prospective payment rate will be a blend of—

(i) 50 percent of the appropriate Federal regional prospective payment rate; and

(ii) 50 percent of the appropriate Federal national prospective payment rate.

§ 412.71 Determination of base-year costs.

(a) *Base-year costs.* (1) For each hospital, the intermediary will estimate the hospital's Medicare Part A allowable inpatient operating costs, as described in § 412.2(c), for the 12-month or longer cost reporting period ending on or after September 30, 1982 and before September 30, 1983.

(2) If the hospital's last cost reporting period ending before September 30, 1983 is for less than 12 months, the base period will be the hospital's most recent 12-month or longer cost reporting period ending before such short reporting period, with an appropriate adjustment for inflation. (The rules applicable to new hospitals are set forth in § 412.74.)

(b) *Modifications to base-year costs.* Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base year inpatient operating costs, as necessary, to include malpractice insurance costs as described in § 405.452 of this chapter, and exclude the following:

(1) Nursing differential costs as described in § 405.430 of this chapter.

(2) Medical education costs as described in § 405.421 of this chapter.

(3) Capital-related costs as described in § 405.414 of this chapter.

(4) Kidney acquisition costs incurred by hospitals approved as renal transplantation centers as described in § 412.100. Kidney acquisition costs in the base year will be determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants covered by Medicare Part A during the base period.

(5) Higher costs that were incurred for purposes of increasing base-year costs.

(6) One-time nonrecurring higher costs or revenue offsets that have the effect of distorting base-year costs as an appropriate basis for computing the hospital-specific rate.

(7) Higher costs that result from changes in hospital accounting principles initiated in the base year.

(8) For cost reporting periods beginning October 1, 1984, and before October 1, 1987, the cost of qualified nonphysician anesthetists' services as described in § 412.113(c).

(c) *Hospital's request for adjustment of base-year costs.*

(1) Before the date it becomes subject to the prospective payment system, a hospital may request the intermediary to further adjust its estimated base-period costs to take into account the following:

(i) Services paid for under Medicare Part B during the hospital's base year that will be paid for under prospective payments. The base-year costs may be increased to include estimated payments for certain services previously billed as physicians' services before the effective date of § 405.550(b) of this chapter, and estimated payments for nonphysicians' services that were not furnished either directly or under arrangements before October 1, 1983 (the effective date of § 405.310(m) of this chapter), but may not include the costs of anesthetists' services for which a physician employer continues to bill under § 405.553(b)(4) of this chapter.

(ii) The payment of FICA taxes during cost reporting periods subject to the prospective payment system, if the hospital had not paid such taxes for all its employees during its base period and will be required to participate effective January 1, 1984.

(2) If a hospital requests that its base-period costs be adjusted under paragraph (c)(1) of this section, it must timely provide the intermediary with sufficient documentation to justify the adjustment, and adequate data to compute the adjusted costs. The intermediary will decide whether to use part or all of the data on the basis of audit, survey and other information available.

(d) *Intermediary's determination.* The intermediary will use the best data available at the time in estimating each hospital's base-year costs and the modifications to those costs authorized by paragraphs (b) and (c) of this section. The intermediary's estimate of base-year costs and modifications thereto is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as provided in § 412.72.

§ 412.72 Modification of base-year costs.

(a) *Bases for modification of base-year costs.* Base-year costs as determined under § 412.71(d) may be modified under the following circumstances:

(1) *Inadvertent omissions.*

(i) A hospital that becomes subject to the prospective payment system beginning on or after October 1, 1983 and before November 16, 1983 has until November 15, 1983 to request its intermediary to reestimate its base-period costs to take into account inadvertent omissions in its previous submissions to the intermediary related to changes made by the prospective payment legislation for purposes of estimating the base-period costs.

(ii) The intermediary may also initiate changes to the estimation—

(A) For any reason before the date the hospital becomes subject to prospective payment; and

(B) Before November 16, 1983, for corrections to take into account inadvertent omissions in the hospital's previous submissions related to changes made by the prospective payment legislation for purposes of estimating the base-period costs.

(iii) Such omissions pertain to adjustments to exclude capital-related costs and the direct medical education costs of approved educational activities and to adjustments specified in § 412.71(c).

(iv) The intermediary must notify the provider of any change to the hospital-specific amount as a result of the provider's request within 30 days of receipt of the additional data.

(v) Any change to base-period costs made under this paragraph (a)(1) will be made effective retroactively, beginning with the first day of the affected hospital's fiscal year.

(2) *Correction of mathematical errors of calculations.*

(i) The hospital must report mathematical errors of calculations to the intermediary within 90 days of the intermediary's notification to the hospital of the hospital's payments rates.

(ii) The intermediary may also identify such errors and initiate their correction during this period.

(iii) The intermediary will either make an appropriate adjustment or notify the hospital that no adjustment is warranted within 30 days of receipt of the hospital's report of an error.

(iv) Corrections of errors of calculation will be effective with the first day of the hospital's first cost reporting period subject to the prospective payment system.

(3) *Recognition of additional costs.*

(i) The intermediary may adjust base period costs to take into account additional costs recognized as allowable costs for the hospital's base year as the result of any of the following:

(A) A reopening and revision of the hospital's base-year notice of amount of program reimbursement under §§ 405.1885 through 405.1889 of this chapter.

(B) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under § 405.1821 or §405.1853 of this chapter that resolved a matter at issue in the hospital's base-year notice of amount of program reimbursement.

(C) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 of this chapter that resolved a matter at issue in the hospital's base-year notice of amount of program reimbursement.

(D) An administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 of this chapter that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base-year notice of amount of program reimbursement.

(ii) The intermediary will recalculate the hospital's base-year costs, incorporating the additional costs recognized as allowable for the hospital's base year. Adjustments to base-year costs to take into account these additional costs—

(A) Will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order or finding, or review decision; and

(B) Will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the revision, order or finding, or review decision.

(4) *Successful appeal.* The intermediary may modify base-year costs to take into account a successful appeal relating to modifications to base-year costs that were made under § 412.71(b). If a hospital successfully contests a modification to base-year costs—

(i) The intermediary will recalculate the hospital's base-year costs to reflect the modification determined appropriate as a result of the appeal; and

(ii) Such adjustments will be effective retroactively to the time of the intermediary's initial estimation of base-year costs.

(5) *Unlawfully claimed costs.*

The intermediary may modify base-year costs to exclude costs that were unlawfully claimed as determined as a result of criminal conviction, imposition of a civil judgment under the False Claims Act (31 U.S.C. 3729–3731), or a proceeding for exclusion from the Medicare program. In addition to adjusting base-year costs, HCFA will recover both the excess costs reimbursed for the base period and the additional amounts paid due to the inappropriate increase of the hospital-specific portion of the hospital's transition payment rates. The amount to be recovered will be computed on the basis of the final resolution of the amount of the inappropriate base-year costs.

(b) *Right to administrative and judicial review.*

(1) An intermediary's estimation of a hospital's base-year costs, and modifications, made for purposes of determining the hospital-specific rate, are subject to administrative and judicial review. Review will be available to a hospital upon receipt of its notice of amount of program reimbursement following the close of its cost reporting period, but only with respect to whether the intermediary followed the provisions of §§ 412.71 and 412.72. (Sections 405.1803 and 405.1807 of this chapter set forth the rules for intermediary determinations and notice of amount of program reimbursement and the effect of those determinations.)

(2) In any administrative or judicial review of whether the intermediary used the best data available at the time, as required by § 412.71(d), an intermediary's estimation will be revised on the basis of this review only if the estimation was unreasonable and clearly erroneous in light of the data available at the time the estimation was made.

(3) Specifically excluded from administrative or judicial review are any issues based on data, information, or arguments not presented to the intermediary at the time of the estimation.

§ 412.73 Determination of the hospital-specific rate.

(a) *Costs on a per discharge basis.* The intermediary will determine the hospital's estimated adjusted base-year operating cost per discharge by dividing the total adjusted operating costs by the number of discharges in the base period.

(b) *Case-mix adjustment.* The intermediary will divide the adjusted base-year costs by the hospital's 1981 case-mix index. If the hospital's case-mix index is statistically unreliable (as determined by HCFA), the hospital's base-year costs will be divided by the lower of the following:

(1) The hospital's estimated case-mix index.

(2) The average case-mix index for the appropriate classifications of all hospitals subject to cost limits established under § 405.460 of this chapter for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

(c) *Updating base-year costs.*

(1) *For Federal fiscal year 1984.* The case-mix adjusted base-year cost per discharge will be updated by the applicable updating factor, that is, the target rate percentage determined under § 405.463(c)(3) of this chapter, as adjusted for budget neutrality.

(2) *For Federal fiscal year 1985.* The amount determined under paragraph (c)(1) of this section will be updated by the applicable updating factor, as adjusted for budget neutrality.

(3) *For Federal fiscal year 1986.* The amount determined under paragraph (c)(2) of this section will be updated by the applicable updating factor, that is, the target rate percentage determined under § 405.463(c)(3) of this chapter.

(d) *Budget neutrality.*

(1) *Federal fiscal year 1984.* For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, HCFA will adjust the target rate percentage used under paragraph (c)(1) of this section. This adjustment will be based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payments based on the hospital-specific portion of the transition payment rates is neither greater nor less than 75 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1984 under the law in effect before April 20, 1983.

(2) *Federal fiscal year 1985.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, HCFA will adjust the target rate percentage used under paragraph (c)(2) of this section. This adjustment is based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payment based on the hospital-specific portion of the transition payment rates is neither greater nor less than 50 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the Social Security Act as in effect on April 19, 1983.

(e) *DRG adjustment.* The applicable hospital-specific cost per discharge will be multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount (target amount) for a particular covered discharge.

§ 412.74 Determination of transition payment rates for new hospitals.

(a) For purposes of this section, a new hospital is a hospital that meets either of the following requirements:

(1) The hospital—

(i) Is newly participating in the Medicare program (under previous and present ownership); and

(ii) Does not have a 12-month cost reporting period ending before September 30, 1983;

(2) The hospital is under new ownership and can document to the satisfaction of its intermediary that—

(i) Its base period reflects previous ownership and control under which the hospital's operation was deliberately phased out in expectation of sale or termination of operations;

(ii) Its occupancy rate during the current period is 150 percent of the occupancy rate during the base year;

(iii) Previous ownership and management took deliberate steps to curtail services in the base period by reducing operations, laying off or transferring employees to non-inpatient areas, reducing physician staff, and reducing inpatient admissions; and

(iv) The change in ownership and the corresponding growth in inpatient services and occupancy occurred between the base period and the first prospective payment period.

(b) For purposes of computing transition payment rates for a new hospital, HCFA will not use the hospital-specific portion of the prospective payment rate. Payments to new providers will be based solely on the Federal regional and national prospective payment rates, as described in § 412.70(d).

§ 412.76 Recovery of excess transition period payment amounts resulting from unlawful claims.

If a hospital's base-year costs, as estimated for purposes of determining the hospital-specific portion, are determined, by criminal conviction or imposition of a civil money penalty or assessment, to include costs that were unlawfully claimed, the hospital's base-period costs will be adjusted to remove the effect of the excess costs, and HCFA will recover both the excess costs reimbursed for the base period and the additional amounts paid due to the inappropriate increase of the hospital-specific portion of the hospital's transition payment rates.

Subpart F—Payment for Outliner Cases

§ 412.80 General provisions.

(a) *Basic rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA will provide for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if either of the following conditions is met:

(i) The beneficiary's length of stay (including days at the SNF level of care if a SNF bed is not available in the area) exceeds the mean length-of-stay for the applicable DRG by the lesser of the following:

(A) A fixed number of days, as specified by HCFA.

(B) A fixed number of standard deviations, as specified by HCFA.

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of the following:

(A) A fixed dollar amount (adjusted for area wage levels) as specified by HCFA.

(B) A fixed multiple of the Federal prospective payment rate. During the transition period, the Federal rate is a combination of the national rate and regional rate as follows:

Federal fiscal year	Regional rate percentage	National rate percentage
October 1, 1983	100	
October 1, 1984	75	25
October 1, 1985	50	50
October 1, 1986		100

(2) *Outlier cases in transferring hospitals.* HCFA will provide cost outlier payments to a transferring hospital that does not receive payment under § 412.2(b) for discharges specified in § 412.4(d)(2), if the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of the criteria specified in paragraph (a)(1)(ii) of this section.

(b) *Publication and revision of outlier criteria.* HCFA will issue threshold criteria for determining outlier payment in the annual notice of prospective payment rates published in accordance with § 412.8(b).

(c) *Relation to indirect medical education costs.* The outlier payment amounts will be included in total DRG revenue for purposes of determining payments for indirect medical education costs under § 412.118(b).

§ 412.82 Payment for extended length of stay cases (day outliers).

(a) If the hospital stay reflected by a discharge includes covered days of care beyond the applicable threshold criterion, the intermediary will make an additional payment, on a per diem basis, to the discharging hospital for those days. A special request or submission by the hospital is not necessary to initiate this payment. However, a hospital may request payment for day outliers before the medical review required in paragraph (b) of this section.

(b) The medical review entity (that is, a PSRO, PRO, or intermediary) must review and approve to the extent required by HCFA—

(1) The medical necessity and appropriateness of the admission and outlier services in the context of the entire stay; and

(2) The validity of the diagnostic and procedural coding.

(c) The per diem payment made under paragraph (a) of this section will be derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rate determined under Subpart D of this part by the mean length-of-stay for that DRG. The resulting amount will then be multiplied by the applicable Federal portion of the blend as follows:

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985	75
October 1, 1986	100

(d) Any days in a covered stay identified as noncovered reduce the number of days reimbursed at the day outlier rate but not to exceed the number of days that occur after the day outlier threshold.

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

(a) A hospital may request its intermediary to make an additional payment for inpatient hospital services that meet the criteria established in accordance with § 412.80(a)(2).

(b) The hospital must request additional payment within 60 days of receipt of the intermediary's initial determination of the prospective payment rate for the discharge.

(c) The hospital must request review of all services by a medical review entity. Payment cannot be made for nonapproved services. The entity, at the direction of HCFA, using the medical records and itemized charges, must determine whether:

(1) The admission was medically necessary and appropriate.

(2) Services were medically necessary and delivered in the most appropriate setting.

(3) Services were ordered by the physician, actually furnished, and not duplicatively billed.

(4) The diagnostic and procedural codings are correct.

(d) The intermediary will base the cost of the discharge on 72 percent of the billed charges for covered inpatient services. The cost will be adjusted further to exclude an estimate of indirect medical education costs, and to include the reasonable charges for nonphysician services billed by an outside supplier in accordance with § 489.23(c)(3) of this chapter.

(e) If any of the services are determined to be noncovered, the charges for these services will be deducted from the requested amount of reimbursement but not to exceed the amount claimed above the cost outlier threshold.

(f) The additional payment amount will be derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (d) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in § 412.82(c).

Subpart G—Special Treatment of Certain Facilities

§ 412.90 General rules.

(a) *Sole community hospitals.* HCFA may adjust the prospective payment rates determined under Subpart D or E of this part if a hospital, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, is the sole source of inpatient hospital services reasonably available in a geographic area to Medicare beneficiaries. If a hospital meets the criteria for such an exception under § 412.92(a), its prospective payment rates will be determined under § 412.92(d).

(b) *Hospitals involved extensively in treatment for and research on cancer.* HCFA may adjust the prospective payment rates determined under Subpart D or E of this part if a hospital is involved extensively in treatment for and research on cancer. Criteria for identifying such hospitals are set forth in § 412.94(a).

(c) *Referral center.* HCFA may make an adjustment to the prospective payment rates determined under Subpart D or E of this part if a hospital acts as a referral center for patients transferred from other hospitals. Criteria for identifying such referral centers are set forth in § 412.96.

(d) *Christian Science Sanatoria.* HCFA will adjust the prospective payment rates determined under Subpart D or E of this part if a hospital is a Christian Science sanatorium. Such a sanatorium's prospective payment rates will be determined in accordance with § 412.98.

(E) *Kidney acquisition costs incurred by hospitals approved as renal transplantation centers.* HCFA will pay for kidney acquisition costs incurred by renal transplantation centers on a reasonable cost basis. The criteria for this special payment provision are set forth in § 412.100.

(f) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA will adjust the rural Federal payment amounts for hospitals reclassified as rural, as defined in § 412.62(f). The criteria for this adjustment are set forth in § 412.102.

(g) *Hospitals that have a high percentage of ESRD beneficiary discharges.* HCFA will make an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1, 1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316 and 317 are excluded. The criteria for this additional payment are set forth in § 412.104.

§ 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located in a rural area (as defined in § 412.62(f)), and meets one of the following conditions:

(1) The hospital is located more than 50 miles from other like hospitals.

(2) The hospital is located between 25 and 50 miles from other like hospitals and meets one of the following criteria:

(i) No more than 25 percent of the residents or, if data on general resident utilization are not available, no more than 25 percent of the Medicare beneficiaries in the hospital's service area are admitted to other like hospitals for care;

(ii) The hospital has less than 50 beds and the PSRO or intermediary certifies that the hospital would have met the criteria in paragraph (a)(2)(i) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

(iii) Because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least one month out of each year.

(3) The hospital is located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least one month out of each year.

(b) *Classification procedures.* (1) *Request for classification as sole community hospital.*

(i) The hospital must make its request to its fiscal intermediary.

(ii) The intermediary will review the request and send the request, with its recommendation, to HCFA.

(iii) HCFA will review the request and the intermediary's recommendation and forwards its approval or disapproval to the intermediary.

(2) *Duration of classification.* An approved classification as a sole community hospital will remain in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved.

(3) *Cancellation of classification.*

(i) A hospital may at any time request cancellation of its classification as a sole community hospital, and be paid at rates determined under Subparts D and E of this part, as appropriate.

(ii) If a hospital requests that its sole community hospital classification be cancelled, it may not apply later for reclassification as a sole community hospital unless all hospitals within 50 miles of the facility have closed.

(4) *Automatic classification as a sole community hospital.* A hospital that has been granted an exemption from the hospital cost limits under § 405.460(e)(1) of this chapter before October 1, 1983, or whose request for the exemption was received by the appropriate intermediary before October 1, 1983, and was subsequently approved, will be automatically classified as a sole community hospital unless that classification has been cancelled under paragraph (b)(3) of this section, or there is change in the circumstances under which the classification was approved.

(c) *Terminology.* As used in this section—

(1) The term "*miles*" means the distance in miles measured over improved roads. An improved road for this purpose is any road which is maintained by a local, State, or Federal government entity and which is available for use by the general public.

(2) The term "*like hospital*" means a hospital furnishing short-term, acute care. HCFA will not evaluate comparability of specialty services in making determinations on classifications as sole community hospitals.

(d) *Determining prospective payment rates for sole community hospitals.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal 75 percent of the hospital-specific base payment rate (as determined under § 412.73) plus 25 percent of the appropriate regional prospective payment rate (as determined under Subpart D of this part).

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease during the transition period.*

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986, HCFA will provide for a payment adjustment for a sole community hospital in any cost reporting period during which the hospital experiences, due to circumstances as described in paragraph (e)(2) of this section, more than a five percent decrease in its total discharges of inpatients as compared to its immediately preceding cost reporting period.

(2) To qualify for a payment adjustment on the basis of a decrease in discharges, a sole community hospital must—

(i) Submit to the intermediary documentation demonstrating the size of the decrease in discharges, and the resulting effect on per discharge costs; and

(ii) Show that the decrease is due to extraordinary circumstances beyond the hospital's control. Such circumstances include unusual situations or occurrences externally imposed on the hospital, such as (but not limited to) strikes, fires, earthquakes, floods, inability to recruit essential physician staff, unusual prolonged severe weather conditions, or similar unusual occurrences with substantial cost effects.

(3) HCFA will determine a per discharge payment adjustment amount, including at least an amount reflecting the reasonable cost of maintaining the hospital's necessary core staff and services, on the basis of—

(i) The individual hospital's needs and circumstances, including minimum

staffing requirements imposed by State agencies;

(ii) The hospital's fixed (and semi-fixed) costs, other than those costs reimbursed on a reasonable cost basis under Subpart D of Part 405 of this chapter; and

(iii) The length of time the hospital has experienced a decrease in utilization.

§ 412.94 Special treatment: Cancer hospitals.

(a) *Criteria for classification as a cancer hospital.* HCFA classifies a hospital as a cancer hospital only if the hospital—

(1) Was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983;

(2) Demonstrates that the entire facility is organized primarily for treatment of and research on cancer (that is, the facility is not a subunit of an acute general hospital or university-based medical center); and

(3) Shows that at least 50 percent of its total discharges have a principal diagnosis that reflects a finding of neoplastic disease. (The principal diagnosis for this purpose is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital. For the purposes of meeting this definition, only discharges with ICD–9–CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect neoplastic disease.)

(b) *Payment.*

(1) A hospital meeting the criteria in paragraph (a) of this section may elect, during its first cost reporting period subject to the prospective payment system, to be reimbursed on a reasonable cost basis under Subpart D of Part 405 of this chapter, subject to the rate of increase limit under § 405.463 of this chapter.

(2) If the hospital elects reasonable cost reimbursement, it will continue to be reimbursed on that basis until it elects to enter the prospective payment system.

(3) A hospital that does not elect reasonable cost reimbursement before the end of its first cost reporting period subject to prospective payment, or that elects to enter the prospective payment system, may not again apply for an adjustment under this section.

§ 412.96 Special treatment: Referral centers.

(a) *Criteria for classification as a referral center: Basic rule.* HCFA classifies a hospital as a referral center only if the hospital is a Medicare participating acute care hospital and meets the applicable criteria of paragraph (b) or (c) of this section.

(b) *Criteria for cost reporting periods that begin before October 1, 1984.* (1) The hospital is located in a rural area (as defined in § 412.62(f)) and had 500 or more beds available for use; or

(2) The hospital shows that—(i) At least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital; and (ii) At least 60 percent of the hospital's Medicare patients live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries are furnished to beneficiaries who live more than 25 miles from the hospital.

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1984.* For cost reporting periods beginning on or after October 1, 1984, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located in a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.*

The hospital's case-mix meets one of the following criteria:

(i) In 1981 it was at least 1.03.

(ii) For the cost reporting period that ended in 1981, it was at least equal to the median urban case-mix index values in calendar year 1981 calculated by HCFA for the region in which the hospital is located.

(iii) For the hospital's first year under the prospective payment system, it is at least 1.1053, calculated using the DRG relative weights in effect during Federal fiscal year 1984.

(iv) For the hospital's first cost reporting period under the prospective payment system, it was at least equal to the adjusted median urban case-mix index values calculated by HCFA for initial cost reporting periods under the prospective payment system for the region in which the hospital is located.

(2) *Number of discharges.* For the hospital's cost reporting period ending in 1981 or its most recently completed cost reporting period, the hospital's number of discharges (excluding discharges from subprovider units) is—

(i) At least 6000; or

(ii) At least equal to the median number of discharges of urban hospitals for cost reporting periods ending in 1981 for the region in which the hospital is located.

(3) *Medical staff.* More than 50 percent of the hospital's active medical staff are specialists who meet one of the following conditions:

(i) Are certified as specialists by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.

(ii) Have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.

(iii) Have successfully completed a residency program in a medical specialty accredited by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.

(4) *Source of inpatients.* At least 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

(5) *Volume of referrals.* At least 40 percent of all inpatients treated at the hospital are referred from other hospitals or from physicians not on the hospital's staff.

(d) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of § 412.96(b)(1) will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index.

(e) *Payment to all other rural referral centers.* For cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area and meets the criteria of § 412.96(b)(2) or (c) will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index.

(f) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital still meets the criteria set forth in § 412.96 (b)(1), (b)(2), or (c). If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, the adjustment will be discontinued beginning on the first day of the hospital's next cost reporting period.

§ 412.98 Special treatment: Christian Science Sanatoria.

(a) *General rule.* If a Christian Science Sanatorium is not excluded from the prospective payment system under Subpart B of this part, HCFA will pay for inpatient hospital services furnished to a beneficiary by that sanatorium a predetermined fixed amount per discharge based on the sanatorium's historical inpatient operating costs per discharge.

(b) *Prospective payment rates.* For cost reporting periods beginning on or after October 1, 1983, the sanatorium's prospective payment rate will be equal to the amount that would constitute the sanatorium's target amount under § 405.463(c)(4) of this chapter if the institution were subject to the rate of increase ceiling specified in § 405.463 of this chapter instead of the prospective payment system. This amount will not be adjusted for the DRG weighting factor.

(c) *Outlier payments.* A Christian Science sanatorium is not eligible for outlier payments under Subpart F of this part.

§ 412.100 Special treatment: Renal transplantation centers.

(a) *Adjustments for renal transplantation centers.*

(1) HCFA will adjust the prospective payment rates determined under Subparts D and E of this part for hospitals approved as renal transplantation centers (described at §§ 405.2170 and 405.2171 of this chapter) to remove the estimated net expenses associated with kidney acquisition.

(2) Kidney acquisition costs will be treated apart from the prospective payment rate and reimbursement to the hospital will be adjusted in each reporting period to reflect an amount necessary to compensate the hospital for reasonable expenses of kidney acquisition.

(b) *Costs of kidney acquisition.* Expenses recognized under this section include costs of acquiring a kidney, from a live donor or a cadaver, irrespective of whether the kidney was obtained by the hospital or through an organ procurement agency. These costs include—

(1) Tissue typing, including tissue typing furnished by independent laboratories;

(2) Donor and recipient evaluation;

(3) Other costs associated with excising kidneys, such as donor general routine and special care services;

(4) Operating room and other inpatient ancillary services applicable to the donor;

(5) Preservation and perfusion costs;

(6) Charges for registration of recipient with a kidney transplant registry;

(7) Surgeons' fees for excising cadaver kidneys;

(8) Transportation;

(9) Costs of kidneys acquired from other providers or kidney procurement organizations;

(10) Hospital costs normally classified as outpatient costs applicable to kidney excisions (services include donor and donee tissue typing, work-up, and related services furnished prior to admission);

(11) Costs of services applicable to kidney excisions which are rendered by residents and interns not in approved teaching programs; and

(12) All pre-admission physicians services, such as laboratory, electroencephalography, and surgeon fees for cadaver excisions, applicable to kidney excisions including the costs of physicians services.

§ 412.102 Special treatment: Hospitals reclassified as rural.

Effective with cost reporting periods beginning or or after October 1, 1983, a hospital reclassified as rural, as defined in § 412.62(f), may receive an adjustment to its rural Federal payment amount for two successive cost reporting periods.

(a) *First year adjustment.* The hospital will have its rural average standardized amounts adjusted on the basis of an additional amount that equals two-thirds of the difference between the urban and rural standardized amounts reflecting the appropriate regional/national blend otherwise applicable to the cost reporting period for which the adjustment is made.

(b) *Second year adjustment.* If a hospital continues to be reclassified as rural, it will have its rural average standardized amounts adjusted on the basis of an additional amount that equals one-third of the difference between the urban and rural amounts reflecting the appropriate regional/national blend applicable to the cost reporting period for which the adjustment is made.

§ 412.104 Special treatment: Hospitals with high percentage of ESRD discharges.

(a) *Criteria for classification.* Effective with cost reporting periods that begin on or after October 1, 1984, HCFA will provide an additional payment to a hospital for inpatient dialysis provided to ESRD beneficiaries if the hospital has established that ESRD beneficiary discharges, excluding discharges classified into DRG No. 302 (Kidney Transplant), DRG No. 316 (Renal Failure) or DRG No. 317 (Admit for Renal Dialysis), constitute ten percent or more of its total Medicare discharges.

(b) *Additional payment.* A hospital that meets the criteria of paragraph (a) of this section will be paid an additional payment for each ESRD beneficiary discharge except those excluded under paragraph (a) of this section.

(1) The payment is based on the estimated weekly cost of dialysis and the average length of stay of ESRD beneficiaries for the hospital.

(2) The estimated weekly cost of dialysis is the average number of dialysis sessions furnished per week during the 12-month period that ended June 30, 1983 multiplied by the average cost of dialysis for the same period.

(3) The average cost of dialysis includes only those costs determined to be directly related to the dialysis service. (These costs include salary, employee health and welfare, drugs, supplies, and laboratory services.)

(4) The average cost of dialysis will be reviewed and adjusted, if appropriate, at the time the composite rate reimbursement for outpatient dialysis is reviewed.

(5) The payment to a hospital will be equal to the average length of stay of ESRD beneficiaries in the hospital, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRD beneficiary discharges except for those excluded under paragraph (a) of this section. This payment is made only on the Federal portion of the payment rate.

Subpart H—Payments to Hospitals Under the Prospective Payment System

§ 412.110 Total Medicare payment.

Under the prospective payment system, Medicare's total payment for inpatient hospital services furnished to a Medicare beneficiary by a hospital will equal the sum of the payments listed in §§ 412.112 through 412.115, reduced by the amounts specified in § 412.120.

§ 412.112 Payments determined on a per case basis.

A hospital will be paid on a per case basis the following amounts:

(a) The appropriate prospective payment rate for each discharge as determined in accordance with Subparts D, E, and G of this part.

(b) The appropriate outlier payment amounts determined under Subpart F of this part.

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital-related costs.* Payment for capital-related costs (as described in § 405.414 of this chapter) will be determined on a reasonable cost basis. For cost reporting periods beginning before October 1, 1986, the capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73.

(b) *Direct medical education costs.* Payment for the cost of approved medical educational activities as defined in § 405.421 of this chapter will be made on a reasonable cost basis (except with respect to activities defined in § 405.421(d) of this chapter). For cost reporting periods beginning before October 1, 1986, the costs of medical education must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the transition payment rate in Subpart E of this part.

(c) *Anesthesia services of hospital employed nonphysician anesthetists.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, payment will be determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) employed by the hospital or obtained under arrangements.

§ 412.115 Additional payments.

(a) *Bad debts.* An additional payment will be made to each hospital in accordance with § 405.420 of this chapter for bad debts attributable to deductible and coinsurance amounts related to covered services received by beneficiaries.

(b) *Indirect medical education costs.* An additional payment may be made to a hospital for indirect medical education costs attributable to an approved graduate medical education. Indirect medical education costs are determined in accordance with § 412.118.

§ 412.118 Determination of indirect medical education costs.

To determine the indirect medical education costs, HCFA will use the following procedures:

(a) *Basic data.* HCFA will determine for each hospital its—

(1) Ratio of full-time equivalent interns and residents to beds, excluding those interns and residents in anesthesiology who are employed to replace anesthetists; and

(2) Total revenue based on DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates), including outlier payments determined under Subpart F of this part.

(b) *Weighting for teaching activity.* Based on a comparison of the inpatient operating costs (as defined in § 412.2(c)) of all hospitals, HCFA will—

(1) Determine a factor, expressed as a percentage, representing the effect of teaching activity on operating costs in the same manner as for the limit on hospital inpatient operating costs in effect on January 1, 1983; and (2) Set an education adjustment factor at twice that percentage.

(c) *Determination of payment amount.* Each hospital's indirect medical education payment will be determined by multiplying the following three factors:

(1) Total DRG revenue, as determined under paragraph (a)(2) of this section.

(2) A factor representing each 0.1 increase in the hospital's ratio of full-time equivalent interns and residents to beds, as determined under paragraph (a)(1) of this section.

(3) The education adjustment factor determined under paragraph (b) of this section.

(d) *Count of interns and residents.* In order to have interns and residents included in the count under paragraph (a)(1) of this section, the following requirements must be met:

(1) The interns and residents must be enrolled in a teaching program approved under § 405.421 of this chapter (excluding those employed by the hospital, but furnishing services at another site).

(2) The hospital must submit quarterly reports to its fiscal intermediary. The reports must include the following information:

(i) A monthly listing of all interns and residents providing services during the month.

(ii) The social security number of each intern and resident.

(iii) The actual hours worked at the hospital during each month.

(3) No intern or resident will be counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she is providing services. When an intern or resident is working at more than one hospital, his or her time will be apportioned proportionately to each facility.

(4) Fiscal intermediaries must complete audits of cost reports verifying the correct count of interns and residents.

(e) *Limits on count of interns and residents.* Except for interns and residents furnishing services in more than one hospital, as provided in paragraph (d)(3) of this section, the number of full-time equivalent interns and residents under paragraph (a)(1) of this section must equal the sum of—

(1) Interns and residents providing services for 35 hours or more per week; and

(2) One-half of the total number of interns and residents providing services less than 35 hours per week (regardless of the number of hours worked).

§ 412.120 Reductions to total payments.

(a) *Deductible and coinsurance.* Subject to paragraph (a)(2) of this section, the total Medicare payments otherwise payable to a hospital will be reduced by the applicable deductible and coinsurance amounts related to inpatient hospital services as determined in accordance with §§ 409.82, 409.83, and 409.87 of this chapter.

(b) *Payment by workers' compensation, automobile medical, no-fault or liability insurance or an employer group health plan primary to Medicare.* If workers' compensation, automobile medical, no-fault, or liability insurance or an employer group health plan which is primary to Medicare pays in full or in part, the Medicare payment will be determined in accordance with the following guidelines:

(1) If workers' compensation pays, in accordance with the applicable provisions of §§ 405.316 through 405.321 of this chapter.

(2) If automobile medical, no-fault, or liability insurance pays, in accordance with the applicable provisions of §§ 405.322 through 405.325 of this chapter.

(3) If an employer group health plan which is primary to Medicare pays for services to ESRD beneficiaries, in accordance with the applicable provisions of §§ 405.326 through 405.329 of this chapter.

(4) If an employer group health plan which is primary to Medicare pays for services to employees age 65–69 and their spouses age 65–69, in accordance with the applicable provisions of §§ 405.340 through 405.344 of this chapter.

(c) *Part B payment to outside suppliers.* HCFA will reduce payments for inpatient hospital services to take into account 100 percent of the reasonable charges (before application of Medicare Part B deductible and coinsurance amounts) for nonphysician services furnished, to beneficiaries

entitled to benefits under Medicare Part A, by an outside supplier under § 489.23 of this chapter.

§ 412.125 Effect of change of ownership on payments under the prospective payment system.

When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply: (a) Payment for the operating costs of inpatient hospital services for each patient, including outlier payments, as provided in § 412.112, and payments for indirect medical education costs as determined under § 412.118, will be made to the entity that is the legal owner on the date of discharge. Payments will not be prorated between the buyer and seller.

(1) The owner on the date of discharge is entitled to submit a bill for all inpatient hospital services furnished to a beneficiary regardless of when the beneficiary's coverage began or ended during a stay, or of how long the stay lasted.

(2) Each bill submitted must include all information necessary for the intermediary to compute the payment amount, whether or not some of that information is attributable to a period during which a different party legally owned the hospital.

(b) Payment for capital-related costs and bad debts, as described in §§ 412.113(a) and 412.115(a), respectively, will be made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: January 15, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Aproved: February 21, 1985.

Margaret M. Heckler,

Secretary.

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