

# Federal Register

Tuesday  
April 30, 1985

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## Selected Subjects

### **Air Pollution Control**

Environmental Protection Agency

### **Aviation Safety**

Federal Aviation Administration

### **Communications Common Carriers**

Federal Communications Commission

### **Disability Benefits**

Social Security Administration

### **Electronic Funds Transfer**

Fiscal Service

### **Elementary and Secondary Education**

Education Department

### **Fisheries**

National Oceanic and Atmospheric Administration

### **Government Employees**

Merit Systems Protection Board

Personnel Management Office

### **Government Procurement**

General Services Administration

### **Grant Programs—Energy**

Conservation and Renewable Energy Office

### **Hazardous Materials Transportation**

Research and Special Programs Administration

### **Hazardous Waste**

Environmental Protection Agency

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## Selected Subjects

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**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

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### **Savings and Loan Associations**

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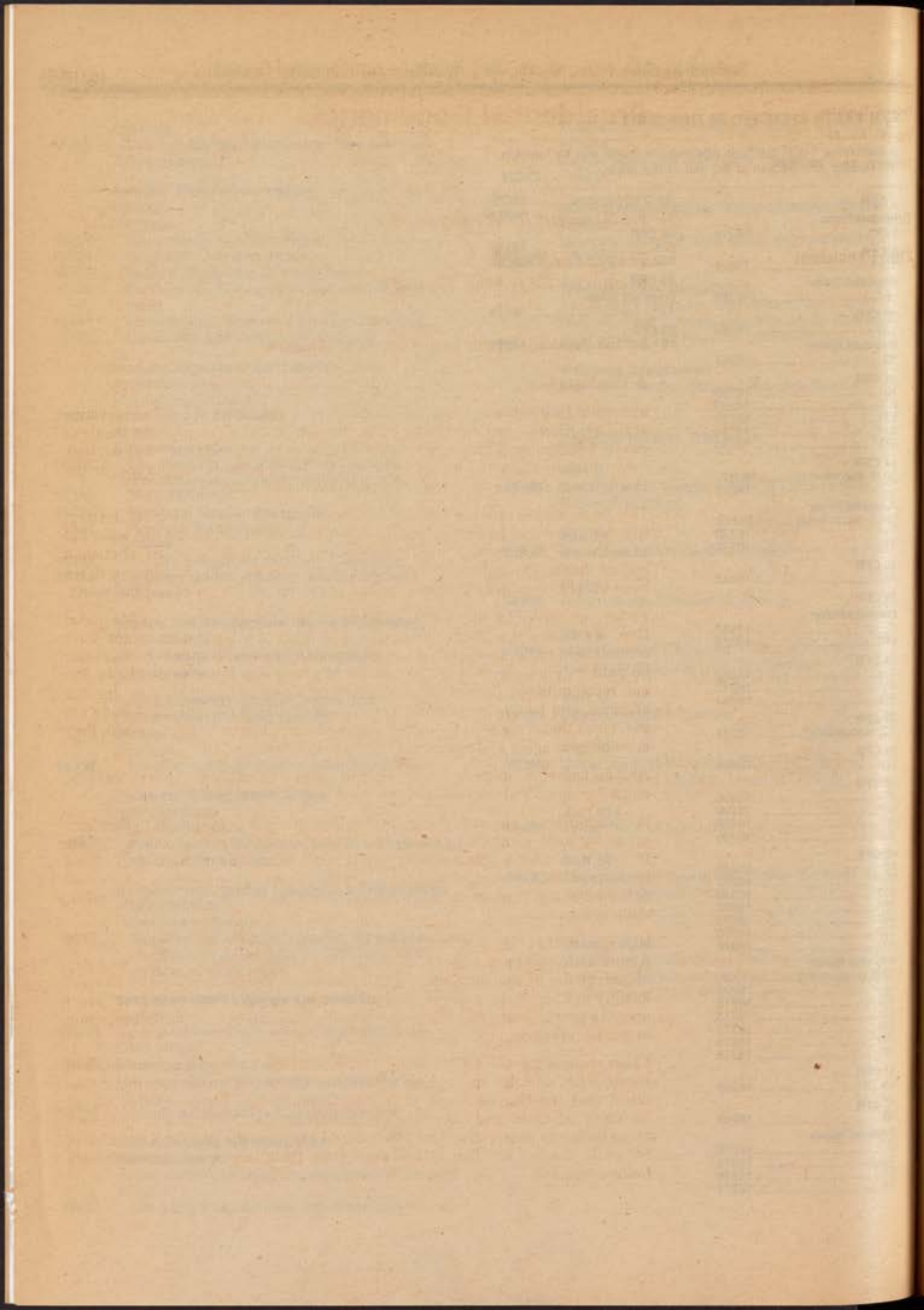
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Title 3—

The President

Proclamation 5330 of April 26, 1985

## Prayer for Peace Memorial Day, May 27, 1985

By the President of the United States of America

### A Proclamation

Memorial Day is the one day we set aside each year for a special observance of the sacrifices Americans have made throughout our history for the ideals of peace, freedom, and justice for all. It is fitting upon this occasion that we look forward with hope to the future and also back with remembrance to the commitment and bravery of previous generations of Americans.

This year, we observe the fortieth anniversary of the end of the most destructive war the world has ever known—a war the United States did not want but nevertheless fought with total commitment to protect the most cherished human ideals. Throughout that war, and in our foreign relations afterward, we have sought to achieve true and lasting peace for all the people of the world.

Today, our desire for peace is equally great. In our observances this Memorial Day, we honor the brave Americans who paid the highest price for their commitment to the ideals of peace, freedom, and justice. Our debt to them can be paid only by our own recommitment to preserving those same ideals. But our recommitment cannot be for ourselves alone. It must also be for our children, and for the generations yet to come. Peace, freedom, and justice are not things that were won for us two hundred years ago or forty years ago; they must be won again and again by each successive generation.

And so today, let us pray for peace; and let us remember those who gave so much for peace that the ideals of the West may survive.

In recognition of those Americans to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, Monday, May 27, 1985, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all local units of government, to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

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

Ronald Reagan

[FR Doc. 85-10607  
Filed 4-26-85; 3:59 pm]  
Billing code 3195-01-M

# Rules and Regulations

Federal Register

Vol. 50, No. 83

Tuesday, April 30, 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.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Voluntary Expedited Appeals Procedure

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board is adopting as final the previously published interim rules and extending the coverage of the voluntary expedited appeals procedure to the Board's regional offices not previously covered: New York, Philadelphia, Atlanta, St. Louis and Washington, DC. This expedited process is a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

**EFFECTIVE DATE:** April 30, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Paul E. Trayers, Legislative Counsel, Office of the Legislative Counsel, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Telephone: (202) 653-7175.

**SUPPLEMENTARY INFORMATION:**

**Backgrounds**

Upon publication of this notice, the interim rules of the Merit Systems Protection Board governing the voluntary expedited appeals procedure for resolving matters subject to the appellate jurisdiction of the Board are final. The interim rules were first published at 48 FR 11399 (March 18, 1983) and amended at 49 FR 26697 (June 29, 1984). On September 18, 1984 (49 FR 36495), the expiration date was

extended to December 17, 1984. On December 17, 1984 (49 FR 48906), the Board extended the expiration date to April 30, 1985; proposed extending the voluntary expedited appeals procedure to cover the remaining five regional offices; and invited interested parties to comment on use of the procedure.

#### Voluntary Expedited Appeals Procedure

The voluntary expedited appeals procedure (VEAP) is a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

Comments were received from four Federal agencies. Upon review, the Board has determined to adopt the interim rules as final. Technical changes have been made to the interim rules for the limited purpose of clarification. The significant comments received are discussed below.

Several commentators were concerned that the absence of a transcript in the expedited procedure would make later Board and court review difficult. Because the cases suitable for this procedure are routine and non-precedential, there is less of a need for a transcript for review purposes.

In order to invoke the expedited process initially, the parties, as well as a regional director or designee of the Board, must agree that the case is in fact appropriate for resolution under this process. And, the Board may convert the case to the formal appeals process in the event circumstances warrant, such as when it appears that discovery is required or novel issues are raised in the course of a proceeding. Requiring an official verbatim record of the proceeding would hamper the Board's ability to offer the parties an expedited, less costly procedure in the more routine cases.

In addition, proper use of the Joint Appeals Record (JAR) will provide the parties the opportunity to set forth the essential facts necessary to support the evidentiary basis of their respective positions. Presiding officials are required, under VEAP as well as the formal procedure, to issue initial decisions that identify all material

issues of fact, summarize the evidence on each issue sufficiently to disclose the evidentiary basis for the findings of fact, set forth those findings clearly and explain how any issues of credibility were resolved. *Spithaler v. OPM*, 2 MSPB 2 (1980).

Several commentators urged that the Board retain the voluntary nature of VEAP. No change in this regard was proposed and the final rules reflect that the appellant must elect and the agency must consent before a case may be processed under the expedited procedure.

One agency commented that difficulty has been encountered in assembling the Joint Appeals Record (JAR) jointly and effectively to narrow the disputed issues in the case. Through familiarity with the JAR, the parties will become more adept at narrowing issues. The parties need not agree on the issues in the case but are simply expected to recognize their differences and state them clearly prior to the hearing. If logistical problems arise or if the parties are unable, after significant good faith efforts, to submit a single pleading, the JAR may be submitted individually by the parties.

One commentator suggested that settlement procedures be expressly delineated. It is the Board's intent to keep the settlement process informal; standard procedures are not deemed necessary. The settlement process is strictly voluntary. The Board's presiding officials are available to assist the parties in settlement but discussions may be terminated at a party's request. Again, increased use of the expedited process will lead to familiarity with the settlement process.

Another commentator suggested that in order to avoid disruption, an appeal should not be subject to conversion to the formal appeals process absent mutual agreement of the parties. The Board is ultimately responsible for ensuring that the due process rights of the parties are satisfied. Therefore, the Board reserves the authority to determine whether a case should be removed from the expedited process. If circumstances arise which indicate a case is no longer routine, requires discovery, presents novel and complex factual or legal issues, or otherwise requires additional time for adjudication, the case will be converted to the formal appeals process. No disruption to the parties should result

from the conversion. The parties will simply be given additional time to present their case.

One comment dealt with delineating the type of case suitable for VEAP. The Board reiterates that only routine, non-precedential cases that do not require discovery are appropriate for resolution in the expedited process. It was also suggested that certain types of cases, such as mixed cases, performance-based actions, cases with intervenors or involving criminal conduct, be expressly excluded from this process. There is no apparent reason to exclude these cases if they are routine, nonprecedential and do not require discovery. If the parties and a regional director or designee agree that the case is routine and non-precedential, the case is suitable for resolution under VEAP. If the case becomes complicated, it may be converted to the formal appeals process.

One commentator suggested that the 15-day time limit from the date of the Board's acknowledgment order for the agency to consent to use the expedited process is too short; it was suggested that the rule be changed to allow for 15 days from receipt of the acknowledgment order. When an acknowledgment order is issued, the regional director or designee will often contact the agency by telephone. In addition, the 15-day time limit is extendable on request. It should be noted, however, that one of the advantages of the expedited process is that the parties can expect an expedient adjudication. In order to reap that benefit, the parties must cooperate to that end.

#### List of Subjects in 5 CFR part 1201

##### Government employees.

Accordingly, the interim regulations published on March 18, 1983 (48 FR 11399) and June 29, 1984 (49 FR 26697), at 5 CFR 1201.21, 1201.24 and 1201.25, and Subpart G, are made final rules. The regulations are further amended as set forth below.

#### PART 1201—PRACTICES

1. The authority for Part 1201 continues to read as follows:

Authority: 5 U.S.C. 1101 et seq., unless otherwise noted.

##### Subpart B—Hearing Procedures for Appellate Cases

2. Section 1201.21 and the undesignated center heading text preceding it are revised to read as follows:

#### Petitions for Review of Agency Action, Pleadings

##### § 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter appealable to the Board the agency shall provide:

- (a) Notice of the time limits for appealing to the Board and the address of the appropriate Board office for filing the appeal;
- (b) A copy of the Board's regulations;
- (c) A copy of the appeal from set forth in Appendix I or I-A of this part.
- (d) Notice of any applicable rights to a grievance procedure.
- (e) Notice of the opportunity to request the voluntary expedited appeals procedure set forth at § 1201.200 through § 1201.222, including a description of the procedure, as set forth in the Attachment to the appeal form in Appendix I-A.

3. Section 1201.24 is revised to read as follows:

##### § 1201.24 Content of petition for appeal, right to hearing.

(a) *Contents.* Petitions for appeal must be filed by the employee, his/her designated representative or a party properly substituted under § 1201.35. Petitions may use any format, including letter form, but must contain the following:

- (1) The name of the appellant and the acting agency;
- (2) The action taken by the agency and its effective date;
- (3) A request for hearing if desired;
- (4) A statement of the reasons why the appellant believes the agency action to be wrong;
- (5) A statement of the action the appellant would like the presiding official to order;
- (6) The name of the appellant's representative, if any;
- (7) Attachment of any relevant documents including the decision notice;
- (8) A statement as to whether the appellant or anyone acting on his/her behalf has filed a grievance or complaint with any agency regarding this matter;
- (9) Signature by the appellant and representative, if any. Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings;
- (10) A request, if an appellant desires, to have matter processed under the voluntary expedited appeals procedure set forth at §§ 12.1.200 through 1201.222.

(b) *Use of the form.* Completion of the form in Appendix I or I-A of this part shall constitute compliance with

paragraph (a) of this section and § 1201.31 if a representative is designated in the form.

(c) *Right to hearing.* Under 5 U.S.C. § 7710, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record. If the parties choose to utilize the voluntary expedited appeals procedure, the procedures for a hearing shall be in accordance with § 1201.205.

4. Section 1201.25 is revised to read as follows:

##### § 1201.25 Content of agency response, request for hearing.

(a) *Content.* Agency response to petitions for appeal shall contain the following:

- (1) The name of the appellant and the acting agency;
- (2) A statement of the agency action taken against the appellant and the reasons therefor;
- (3) A specific response to each allegation of the appellant's petition admitting, denying or explaining each in whole or in part;
- (4) All documents contained in the agency record of the proceeding;
- (5) Request for hearing and the reasons therefor;
- (6) A declination by the agency, if the voluntary expedited appeals procedure has been requested by the appellant and the agency declines to use the process; and
- (7) Designation of and signature by the authorized agency representative.

(b) *Request for hearing.* The agency may request a hearing on the appeal which may be granted at the discretion of the presiding official.

5. 5 CFR Part 1201, Subpart G is revised to read as follows:

#### Subpart G—Voluntary Expedited Appeals Procedure

##### General

Sec.  
1201.200 Scope and policy.

##### Election of and Filing for Voluntary Expedited Appeals Procedure

- 1201.201 Election of voluntary expedited appeals procedure.
- 1201.202 Filing of request for voluntary expedited appeals procedure; contents; time limits.
- 1201.203 Joint appeals record.
- 1201.204 Procedures for cases involving allegations of discrimination.

##### Presiding Official and Hearing

- 1201.205 Selection and authority of presiding official.
- 1201.206 Hearing.

## Sec.

## Parties and Witnesses

- 1201.207 Witnesses.  
1201.208 Intervenors.

## Evidence

- 1201.209 Service of documents.  
1201.210 Admissibility.  
1201.211 Production of evidence or witnesses by request of presiding official.  
1201.212 Stipulations.  
1201.213 Official notice.

## Sanctions

- 1201.214 Sanctions.

## Hearing Procedure; Settlement; Expedited Initial Decision

- 1201.215 Burden of proof.  
1201.216 Closing the record.  
1201.217 Settlement.  
1201.218 Expedited Initial Decision.

## Petitions for Review

- 1201.219 Petitions for Review  
1201.220 Standard of Review  
1201.221 Final Decision  
1201.222 Judicial Review.

Authority: 5 U.S.C. 7701(j).

## Subpart G—Voluntary Expedited Appeals Procedure

## General

## § 1201.200 Scope and policy.

The rules in this subpart apply to the voluntary expedited appeals procedure (VEAP) of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

## Election of and Filing for Voluntary Expedited Appeals Procedure

## § 1201.201 Election of voluntary expedited appeals procedure.

(a) The appellant may request that his/her case be processed under the voluntary expedited appeals procedure at the time of filing a petition for appeal. In the event the appellant has not elected VEAP at the time of filing, appellant will be allowed 10 days from the date of the Board's acknowledgment order to elect the alternate procedure. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) If an appellant elects VEAP in the petition for appeal, notice of that election will be served on the agency in the Board's order of acknowledgment. If an appellant elects VEAP during the 10-day period following the

acknowledgment order, the Board will notify the agency of that election. Within 15 days from the date of the Board's order, the agency will file either a consent to use the voluntary expedited process and a designation of representative form or a declination. Included in the consent will be a brief summary of facts and legal issues raised in the appeal. In the event the agency declines to use the expedited process, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the process.

(c) The regional director or designee of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under the voluntary expedited appeals procedure or the formal MSPB procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The regional director or designee also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in an expedited process.

## § 1201.202 Filing of request for the voluntary expedited appeals procedure; contents; time limits.

(a) The filing, time limits and content requirements of the petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22–1201.26 of Subpart B, unless these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgment, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case or decline to use the process.

## § 1201.203 Joint appeals record.

(a) Within 30 days from the date of the Board's order of acknowledgment, the parties will file a Joint Appeals Record including, but not limited to:

- (1) Each Party's statement of issues;
- (2) Each Party's statement of position with respect to those issues limited to three pages;
- (3) Requests for hearing;
- (4) Witness lists, including a statement of the anticipated testimony of each witness;
- (5) Any objections to the appearance of any witness requested by the opposing party;

(6) The agency response required by § 1201.25; and

(7) Two dates, mutually agreed upon by the parties for the hearing, no later than 15 days beyond the day the Joint Appeals Record is to be received by the Regional Office.

(b) The parties must submit all known relevant material in the Joint Appeals Record. Evidence may not be submitted at the hearing unless the presiding official determines that good cause is shown for the late submission.

## § 1201.204 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the voluntary expedited appeals procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under VEAP.

## Presiding Official and Hearing

## § 1201.205 Selection and authority of presiding official.

(a) The regional director will appoint the presiding official taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The presiding official shall have the authority to rule on parties' procedural requests. However, the presiding official shall issue the expedited initial decision no later than 60 days from the date of the Board's order of acknowledgment.

(c) The presiding official shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the presiding official will follow the regulations under 5 CFR Part 1201, Subpart B.

## § 1201.206 Hearing.

(a) If the appellant requests a hearing, or if the presiding official approves any agency request for a hearing, the hearing will be scheduled no later than 15 days following the due date or receipt of the Joint Appeals Record, whichever is earlier.

(b) The hearing will be informal. Election of VEAP constitutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

**Parties and Witnesses.****§ 1201.207 Witnesses.**

Every Federal agency will make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. Witnesses are on official duty status when providing such statements or testimony.

**§ 1201.208 Intervenors.**

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

**Evidence****§ 1201.209 Service of documents.**

Any documents submitted to the presiding official shall be served upon all parties to the proceeding.

**§ 1201.210 Admissibility.**

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant materials in their submissions.

**§ 1201.211 Production of evidence or witnesses by request of presiding official.**

The presiding official may request the production of information or witnesses if he or she has a reasonable basis to believe that it will be germane to the case.

**§ 1201.212 Stipulations.**

The parties may stipulate to any matter of fact.

**§ 1201.213 Official notice.**

The presiding official, on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of providing the fact noticed.

**Sanctions****§ 1201.214 Sanctions.**

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with a request.* If a party fails to comply with a presiding official's request for information or witnesses within the party's control which the presiding official believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such request from introducing evidence concerning or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; or

(4) Strike any part of the submissions of the party failing to comply with such request dealing with the subject matter of the request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with his or her request.

**Hearing Procedure; Settlement; Expedited Initial Decision****§ 1201.215 Burden of proof.**

Section 1201.56 of Subpart B applies.

**§ 1201.216 Closing the record.**

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the presiding official.

(b) When a hearing is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the Joint Appeals Record.

(d) Once the record is closed, no additional evidence or argument will be accepted unless, in the presiding official's discretion, he or she determines that the party seeking such admission has shown that new and material evidence has become available which was not readily available prior to the closing of the record.

**§ 1201.217 Settlement.**

(a) *Settlement discussion.* Informal settlement of the dispute will be raised by the presiding official with the parties prior to the hearing or, if no hearing is requested, within 15 days after the filing of the Joint Appeals Record. Prohibitions against ex parte communications during

settlement discussions will be waived by the parties. If either party does not wish to discuss settlement or the matter cannot be settled informally, the presiding official will proceed with the adjudication of the case. At any time until the issuance of an expedited initial decision the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without a decision on the merits of the case, upon notification to the presiding official, the settlement agreement will be the final and binding resolution of the appeal and the presiding official will dismiss the appeal with prejudice.

(1) If the agreement is offered into the record by the parties and reviewed by the presiding official for legality and lack of fraud, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement;

(2) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

**§ 1201.218 Expedited initial decision.**

(a) If settlement is not reached, the presiding official will adjudicate the appeal and issue a written decision within 15 days after the record is closed but no later than 60 days from the date of the Board's order of acknowledgment. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

(b) Expedited initial decisions are not precedential.

(c) This expedited initial decision will become final after 35 days and is binding upon the parties if no petition for review is filed or the Board does not reopen on its own motion pursuant to § 1201.117.

**Petitions for Review****§ 1201.219 Petitions for review.**

(a) Any party may file a petition for review with the Board of the expedited initial decision before it becomes final.

(b) Petitions for review must be filed within 35 days from the date of the decision. Supportive briefs must accompany the petitions for review and be limited to 15 pages. Opposition briefs must be received by the Board within 15 days from the date of the Board's forwarding of a copy of the petition for review to the opposing party and be limited to 10 pages. The record shall close at the time the brief in opposition is scheduled to be received by the Board.

§ 1201.220 **Standard of review.**

Section 1201.115 of Subpart B shall apply.

§ 1201.221 **Final decision.**

The Board will issue a final decision no later than 35 days from the date the file is certified as complete for review.

§ 1201.222 **Judicial review.**

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

6. Appendix I-A to Part 1201 (Title 5 C.F.R., January 1, 1985 edition) is republished with minor technical changes for the convenience of the reader as follows:

BILLING CODE 7400-01-M

## APPENDIX I-A



## UNITED STATES MERIT SYSTEMS PROTECTION BOARD

AGENCY USE ONLY

## APPEAL

**INSTRUCTIONS:** The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

**WHERE TO FILE**—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

## PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

## PART I. APPELLANT IDENTIFICATION

1. NAME (Last, first, middle)	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS (Number and street, city, state, and ZIP code)	4. HOME PHONE (Include area code)
	5. OFFICE PHONE (Include area code)

## PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE AGENCY ACTION YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

6A. VOLUNTARY EXPEDITED APPEALS PROCEDURE. FOR A MATTER APPEALABLE TO THE BOARD, ANY APPELLANT MAY ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE AS AN ALTERNATIVE TO THE FORMAL MSPB APPEALS PROCESS. (A detailed explanation of the Voluntary Expedited Appeals Procedure is attached to this form.) PLEASE CHECK ONE OF THE BOXES BELOW.

YES, I ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

NO, I DO NOT ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

7. NAME AND ADDRESS OF ACTING AGENCY (Including Bureau, or other Division as well as street address, city, state, and ZIP code)			8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
			9. GRADE AT TIME OF ACTION	10. SALARY AT TIME OF ACTION \$ PER
11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? <input type="checkbox"/> NO <input type="checkbox"/> YES	12. TYPE OF APPOINTMENT <input type="checkbox"/> Temporary <input type="checkbox"/> Applicant <input type="checkbox"/> Permanent <input type="checkbox"/> Term	13. TYPE OF SERVICE <input type="checkbox"/> Competitive <input type="checkbox"/> Excepted	14. LENGTH OF GOVERNMENT SERVICE	15. LENGTH OF SERVICE WITH ACTING AGENCY
16. ARE YOU RETIRED? <input type="checkbox"/> NO <input type="checkbox"/> YES	16A. IF YES, DATE OF RETIREMENT (Month, day, year)		17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY? <input type="checkbox"/> NO <input type="checkbox"/> YES	
18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED (Month, day, year) (Attach copy)	19. DATE FINAL DECISION NOTICE RECEIVED (Month, day, year)	20. EFFECTIVE DATE OF ACTION (Month, day, year)		



21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? (Explain briefly)

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

NO  YES (Attach copy)

23A. IF YES, DATE FILED (Month, day, year)	23B. PLACE FILED (Agency and location)	23C. HAS DECISION BEEN ISSUED? <input type="checkbox"/> NO <input type="checkbox"/> YES
23D. IF YES, DATE ISSUED (Month, day, year)	23E. NAME OF ISSUING OFFICIAL	23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY?

NO

YES (Attach copy)

25A. IF YES, DATE FILED (Month, day, year)	25B. PLACE FILED (Agency and location)	25C. HAS THERE BEEN A DECISION? <input type="checkbox"/> NO <input type="checkbox"/> YES
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PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENT YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?
 NO  YES
IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE \_\_\_\_\_ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THE APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. YOUR SIGNATURE 27C. DATE 27D. REPRESENTATIVE'S SIGNATURE (if any) 27E. DATE

27F. REPRESENTATIVE'S ADDRESS 27G. REPRESENTATIVE'S EMPLOYER

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAME AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

Table with 2 columns: A. NAME, B. RELATIONSHIP TO CASE. Multiple rows for listing witnesses.

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29. TENURE OF SUB-GROUP 30. SERVICE COMPUTATION DATE 31. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU?
 NO  YES
32. TITLE OF OFFERED POSITION 33. GRADE OF POSITION OFFERED 34. SALARY OF POSITION OFFERED
\$ PER
35. LOCATION OF OFFERED POSITION 36. DID YOU ACCEPT THIS POSITION?
 NO  YES

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE (Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)

(Continue on the next page)

37. (Continued from Page 3.)

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.

SIGNATURE OF APPELLANT

DATE SIGNED

### Attachment to Appendix I-A— Voluntary Expedited Appeals Procedure

Employees or applicants for employment who are entitled to file and appeal before the Board may elect the voluntary expedited procedure as an alternative to the formal Board procedures. The goal of this expedited process is the issuance of a nonprecedential decision in routine cases within 60 days of the election of the voluntary expedited appeals procedure.

If an employee or an applicant for employment elects to use this alternative procedure, the employing agency will be allowed to elect or decline the procedure as well. In the event the employing agency does not wish to use the expedited procedure, the appeal will be processed in accordance with the existing Board procedures.

If the agency also elects the voluntary expedited appeals procedure, the regional director will review the summary of the case filed by the agency and determine whether the case is appropriate for the expedited procedure. The standards used in making this determination will be the routine, non-precedential nature of the appeal as well as workload requirements and availability of resources in the regional office.

If the case is processed under this expedited process, the parties will be notified by an Order of Acknowledgment of their obligation to file a Joint Appeals Record containing statements of issues and positions with respect to those issues, requests for hearing, witness lists, the agency's file and two dates agreed upon by the parties of the hearing. A presiding official specially trained in informal dispute resolution will contact the parties during this time to ensure that the parties understand their obligations and help promote an environment conducive to informal settlement.

In the event settlement is not achieved, a hearing, if requested will be held at the *employment site* within 15 days from the date the Joint Appeals Record is due. The presiding official will then issue an expedited initial decision no later than 15 days from the close of the hearing. If no hearing is requested, a decision on the record will be issued no later than 60 days from the date of the Board's acknowledgment order.

Any party may file a petition for Board review of the expedited initial decision 35 days from the date of the decision. The criteria for review are the same under both the voluntary expedited appeals procedure and the formal appeals procedure.

Dated: April 25, 1985.  
For the Board.

Robert E. Taylor,  
Clerk of the Board.

[FR. Doc. 85-10473 Filed 4-29-85; 8:45 am]

BILLING CODE 7400-01-M

### FEDERAL RESERVE SYSTEM 12 CFR Parts 207, 220, 221 and 224

#### Regulations G, T, U and X; Securities Credit Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective February 12, 1985 and will serve to give notice to the public about the changed status of certain stocks.

**EFFECTIVE DATE:** May 14, 1985.

**FOR FURTHER INFORMATION CONTACT:** Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

**SUPPLEMENTARY INFORMATION:** Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions was filed with the original of this document. This List supersedes the last complete List which was effective February 12, 1985 (50 FR 4495, January 31, 1985). The List includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U and X (12 CFR 207, 220, 221 and 224, respectively). It also includes, as a result of an amendment to the margin regulations (49 FR 35756, September 12, 1984), any stock designated under an SEC rule as qualified for trading in a national market system (NMS Security). The List of Marginable OTC Stocks, as it is now called, is a composite of the List of OTC Margin Stocks and all NMS securities. Additional OTC securities may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of

their designation. The names of these securities are available at the Board and the Securities and Exchange Commission and will be subsequently incorporated into the Board's next quarterly List. Copies of the current List may be obtained from any Federal Reserve Bank.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

#### List of Subjects

##### 12 CFR Part 207

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting requirements, Securities.

##### 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirement, Investments, National Market System (NMS Security); Reporting requirements, Securities.

##### 12 CFR Part 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, Securities, National Market System (NMS Security), Reporting requirements.

##### 12 CFR Part 224

Banks, banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements; Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with § 207.2(k) and 6(c) of Regulation G, § 220.2(s) and 17(c) of Regulation T, and § 221.2(j) and 7(c) of Regulation U, there

is set forth below a listing of additions to and deletions from the Board's List:

#### Additions to the List

- AST RESEARCH, INC.  
No par common
- A.T.&E. CORPORATION  
\$.01 par common
- ACTMEDIA, INC.  
\$.01 par common
- ADIA SERVICES, INC.  
\$.25 per common
- AID AUTO STORES, INC.  
\$.01 par common
- ALTRON INCORPORATED  
\$.05 per common
- AMERICAN BANK OF CONNECTICUT  
\$1.00 par common
- AMERICAN ECOLOGY CORPORATION  
No par common, \$1.00 stated value
- AMERICAN EXPLORATION COMPANY  
\$.05 per common
- AMERICAN LAND CRUISERS, INC.  
\$.01 par common
- ANDOVER CONTROLS CORPORATION  
\$.01 par common
- APPLIED DATA COMMUNICATIONS, INC.  
\$.01 par common
- ASSOCIATED COMPANIES, INC.  
No par common
- BALDWIN & LYONS, INC.  
No par common
- BANKNORTH GROUP, INC.  
\$1.00 par common
- BARRICK RESOURCES CORPORATION  
No par common
- BEGLEY COMPANY  
\$1.66% par common
- BLACK INDUSTRIES, INC.  
\$1.00 par common
- BOOTH, INC.  
\$.50 par common
- BRIDGFORD FOODS CORPORATION  
\$1.00 par common
- BRITTON LEE, INC.  
No par common
- CCX NETWORK, INC.  
\$2.00 par common
- CVB FINANCIAL CORP.  
No par common
- CALIFORNIA JOCKEY CLUB  
Paired certificates
- CANAL-RANDOLPH LIMITED PARTNERSHIP  
Units of Limited Partnership
- CAPITOL TRANSAMERICA CORPORATION  
\$1.00 par common
- CARDIS CORPORATION  
\$.75 par common
- CARLSBERG CORPORATION  
\$.25 par common
- CENTRAL PENNSYLVANIA SAVINGS ASSOCIATION  
\$1.00 par common
- CENTRAL RESERVE LIFE CORPORATION  
No par common, \$.50 stated value
- CENTRAL WISCONSIN BANKSHARES, INC.  
\$5.00 par common
- CENTURY PAPERS, INC.  
\$1.00 par common
- CHARTER FEDERAL SAVINGS AND LOAN ASSOCIATION (Virginia)  
\$.01 par common
- CHEROKEE GROUP, THE  
No par common
- CHIEF AUTOMOTIVE SYSTEMS, INC.  
\$.10 par common
- CITIZENS SAVINGS & LOAN, F.A. (Virginia)  
\$1.00 par common
- COLONIAL GAS COMPANY  
\$1.80 cumulative convertible preferred
- COLUMBIA FEDERAL SAVINGS BANK (Washington)  
\$1.00 par common
- COLUMBUS MILLS, INC.  
\$1.00 par common
- COMMERCE BANCORP, INC. (New Jersey)  
\$6.25 par common  
Series A, no par cumulative convertible preferred
- COMMUNITY SHARES LTD.  
\$.10 par common
- COMP-U-CHECK, INC.  
\$.10 par common
- COMPUSAVE CORPORATION  
\$.01 par common
- COMPUTER SYNERGY, INC.  
\$.001 par common
- COMSTOCK GROUP, INC.  
\$.25 par common
- CONSOLIDATED-TOMOKA LAND CO.  
\$1.00 par common
- CONSUMERS FINANCIAL CORPORATION  
No par common
- CONVENIENT FOOD MART, INC.  
\$.10 par common
- COURIER DISPATCH GROUP, INC.  
\$.001 par common
- CROWN AUTO, INC.  
\$.25 par common
- CYBERTEK COMPUTER PRODUCTS, INC.  
No par common
- DNA PLANT TECHNOLOGY CORPORATION  
\$.01 par common
- DATAMARINE INTERNATIONAL, INC.  
\$.01 par common
- DECOM SYSTEMS, INC.  
No par common
- DEVRY, INC.  
\$.10 par common
- DURAKON INDUSTRIES, INC.  
No par common
- DYCOM INDUSTRIES, INC.  
\$.33 1/3 par common
- EMPI, INC.  
\$.10 par common
- ENERGYNORTH, INC.  
\$1.00 par common
- ENVIRONMENTAL TECTONICS CORPORATION  
\$.10 par common
- EQUION CORPORATION, THE  
\$1.00 par common
- EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.  
\$.01 par common
- F & M NATIONAL CORPORATION  
\$2.00 par common
- FIDELCOR, INC.  
Series A, \$1.00 par convertible preferred
- FINANCIAL SECURITY SAVINGS AND LOAN ASSOCIATION (Florida)  
Class A, \$5.00 par common
- FIRST COMMERCIAL BANCORP  
No par common
- FIRST FEDERAL SAVINGS BANK OF MONTANA  
\$.01 par common
- FIRST INTERSTATE CORPORATION OF WISCONSIN  
\$10.00 par common
- FIRST NATIONAL BANCORP (Georgia)  
\$6.25 par common
- FIRST NATIONAL CORPORATION (California)  
No par common
- FIRST SECURITY CORPORATION OF KENTUCKY  
\$6.25 par common
- FREEDOM FEDERAL SAVINGS BANK (Illinois)  
\$.01 par common
- GALOOB, LEWIS TOYS, INC.  
No par common
- GENEVE CAPITAL GROUP, INC.  
\$.10 par common
- GRAPHIC MEDIA, INC.  
\$.01 par common
- GREY ADVERTISING INC.  
\$1.00 par common
- GUARANTY COMMERCE CORPORATION  
\$10.00 par common
- HAMMOND COMPANY, THE  
No par common
- HETRA COMPUTER AND COMMUNICATIONS INDUSTRIES, INC.  
\$.01 par common
- HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF ATLANTA  
\$1.00 par common
- HOUSTON OIL FIELDS COMPANY  
Series C, 1.375% cumulative convertible preferred
- IBI SECURITY SERVICE, INC.  
Class A, \$.10 par common
- IEC ELECTRONICS CORPORATION  
\$.05 par common
- II MORROW, INC.  
\$1.00 par common

IPC COMMUNICATIONS, INC. Class A, \$.01 par common	\$.01 par common	\$\$.10 par common
IMATRON INC. No par common	NATIONAL SHOES, INC. \$1.00 par common	SECOND NATIONAL BUILDING, INC. LOAN, INC. (Maryland) \$1.00 par common
Warrants (expire 08-02-88)	NATURE'S SUNSHINE PRODUCTS, INC. No par common	SERVAMATIC SYSTEMS, INC. No par common
INFORMATION SCIENCE INCORPORATED \$.01 par common	NEW YORKER MAGAZINE, INC., THE \$5.00 par common	SIGMA RESEARCH, INC. No par common
INFORMATION SOLUTIONS, INC. \$.001 par common	NORTHWESTERN STATES PORTLAND CEMENT COMPANY \$10.00 par common	SKY EXPRESS, INC. \$.01 par common
INMED CORPORATION \$.01 par common	OIL-DRI CORPORATION OF AMERICA \$.10 par common	SOFTWARE PUBLISHING CORPORATION No par common
INTECH INCORPORATED \$.20 par common	OLD NATIONAL BANCORP (Indiana) No par common	SPECIALTY COMPOSITES CORPORATION \$.01 par common
INTERNATIONAL HOLDING CAPITAL CORPORATION \$1.00 par common	OPTROTECH LTD. Ordinary Shares, IS 1.4 par value	SPECTRUM GROUP INC. \$.01 par common
INTERPHASE CORPORATION No par common	PACIFIC WESTERN BANCSHARES No par common	STANDARD COMMERCIAL TOBACCO COMPANY, INC., THE \$.20 par common
INTERTRANS CORPORATION No par common	PAGE AMERICA GROUP, INC. \$.01 par common	STANFORD TELECOMMUNICATIONS, INC. No par common
ITEL CORPORATION Warrants (expire 09-15-89)	PANATECH RESEARCH AND DEVELOPMENT CORPORATION \$.01 par common	SUNAIR ELECTRONICS, INC. \$.10 par common
KEANE, INC. \$.10 par common	PERFECT FIT, INC. \$.01 par common	SUNSTATES CORPORATION \$1.00 par common
KEYSTONE FINANCIAL, INC. \$2.00 par common	PETROMINERALS CORPORATION \$.10 par common	SUSQUEHANNA BANCSHARES, INC. \$5.00 par common
KREISLER MANUFACTURING CORPORATION \$.50 par common	PHOENIX MEDICAL TECHNOLOGY, INC. No par common	SYMBION, INC. \$.01 par common
KUSTOM ELECTRONICS, INC. \$.10 par common	PIEDMONT BANKGROUP, INCORPORATED \$5.00 par common	SYMBOLICS, INC. \$.01 par common
LIDLAW TRANSPORTATION LIMITED Class B, no par common	PIONEER FEDERAL SAVINGS AND LOAN ASSOCIATION (Virginia) \$1.00 par common	TECHNALYSIS CORPORATION \$.10 par common
LESCO INC. No par common	PLASMINE CORPORATION, THE \$.10 par common	TOPSY'S INTERNATIONAL, INC. Class A, \$.10 par common
MAGNA INTERNATIONAL INC. Class A, no par subordinate voting shares	PREFERRED SAVINGS & LOAN ASSOCIATION (North Carolina) \$2.50 par common	UNION BANCORP INC. (Michigan) \$1.00 par common
MARKET FACTS, INC. \$1.00 par common	PRESENTIAL LIFE CORPORATION \$.01 par common	UNION FEDERAL SAVINGS & LOAN ASSOCIATION (California) No par common
MASSACHUSETTS COMPUTER CORPORATION \$.01 par common	PRODIGY SYSTEMS, INC. \$.01 par common	U.S. HEALTH, INC. \$.25 par common
McGRATH RENT CORPORATION No par common	PUBCO CORPORATION \$.40 par common	UNITED TOTE, INC. \$.01 par common
MECHTRON INTERNATIONAL CORPORATION \$.10 par common	QUAREX INDUSTRIES, INC. \$.05 par common	UNITED VERMONT BANCORPORATION \$.50 par common
MESABA AVIATION, INC. \$.01 par common	QUINTEL CORPORATION No par common	VALLEY NATIONAL BANCORP (New Jersey) No par common
MID-AMERICA BANCORP No par common	REAL ESTATE INVESTMENT TRUST OF CALIFORNIA No par shares of beneficial interest	VARI-CARE, INC. \$.01 par common
MID-AMERICAN NATIONAL BANK AND TRUST COMPANY (Ohio) \$10.00 par common	REID-ASHMAN, INC. No par common	VERMONT FINANCIAL SERVICES CORP. \$1.00 par common
MIDWEST COMMERCE CORPORATION No par common	RESERVE OIL AND MINERALS CORPORATION \$1.00 par common	VOIT CORPORATION \$.0005 par common
MODERN CONTROLS INC. \$.10 par common	RESTAURANT MANAGEMENT SERVICES, INC. \$.10 par common	WAVERLY PRESS, INC. \$2.00 par common
MUTUAL SAVINGS LIFE INSURANCE COMPANY \$1.00 par common	ROCKY MOUNT UNDERGARMENT CO., INC. \$.01 par common	WESTERN CAPITAL INVESTMENT CORPORATION \$1.00 par common
NASHVILLE CITY BANK AND TRUST COMPANY \$4.00 par common	RULE INDUSTRIES, INC. \$.01 par common	WILAND SERVICES, INC. \$.10 par common
NATIONAL PIZZA COMPANY	SCIENTIFIC COMMUNICATIONS, INC.	

WISCONSIN SOUTHERN GAS  
COMPANY, INC.

\$5.00 par common

## WYSE TECHNOLOGY

No par common

## ZEHNTEL, INC.

\$.01 par common

## Deletions From List

*Stocks Removed for Failing Continued  
Listing Requirements*

## BOWLINE CORPORATION

\$.02 par common

## COLUMBIA DATA PRODUCTS, INC.

\$.01 par common

## COMPUTER USAGE COMPANY

\$.25 par common

## CRIME CONTROL, INC.

No par common

## DAVID JAMISON CARLYLE

CORPORATION, THE

\$.01 par common

ECONO-THERM ENERGY SYSTEMS  
CORPORATION

\$.15 par common

EXCALIBUR TECHNOLOGIES  
CORPORATION

\$.01 par common

## FIRST COINVESTORS, INC.

\$.05 par common

GREAT EASTERN ENERGY AND  
DEVELOPMENT CORPORATION

\$.10 par common

HARWYN INDUSTRIES  
CORPORATION

\$.10 par common

## HOE, R. &amp; CO., INC.

\$.01 par common

MAGNETIC INFORMATION  
TECHNOLOGY, INC.

\$.01 par common

## S.A.L. COMMUNICATIONS, INC.

\$.01 par common

## SPEX GROUP, INC.

\$.01 par common

## STANDARD LOGIC, INC.

\$.025 par common

SYSTEMS & COMPUTER  
TECHNOLOGY CORPORATION

\$.01 par common

TELARAM COMMUNICATIONS  
CORPORATION

\$.01 par common

TRANSIERRA EXPLORATION  
CORPORATION

\$.10 par common

UNIVERSAL VOLTRONICS  
CORPORATION

\$.05 par common

## VITALITY UNLIMITED, INC.

\$.03 par common

*Stocks Removed for Listing on a  
National Securities Exchange or Being  
Involved in an Acquisition*

## BITCO CORPORATION

\$.100 par common

CAROLINA CASUALTY INSURANCE  
COMPANY

\$1.00 par common

## CENVILL DEVELOPMENT CORP.

CENVILL PROPERTIES INC.

Paired Certificates, \$.01 par common

## CHARTERCORP

\$.625 par common

CONTINENTAL INFORMATION  
SYSTEMS CORPORATION

\$.03 par common

## CONWED CORPORATION

\$.50 par common

## DYSAN CORPORATION

No par common

ELECTRONICS MODULES  
CORPORATION

\$.10 par common

ENGINEERED SYSTEMS &  
DEVELOPMENT CORPORATION

\$.01 par common

FIRST NATIONWIDE FINANCIAL  
CORPORATION

\$.10 par common

## GENERAL HOMES CORPORATION

\$.01 par common

## INDEPENDENCE BANCORP, INC.

\$.250 par common

INTERNATIONAL THOROUGHbred  
BREEDERS, INC.

\$.10 par common

KEYSTONE CAMERA PRODUCTS  
CORPORATION

\$.02 par common

LIBERTY FEDERAL SAVINGS AND  
LOAN ASSOCIATION

(Pennsylvania)

\$.100 par common

## MARK IV INDUSTRIES, INC.

\$.01 par common

## MEDIFLEX SYSTEMS CORPORATION

\$.01 par common

## MINNESOTA FABRICS, INC.

\$.05 par common

NORTHEASTERN BANCORP, INC.  
(Pennsylvania)

\$.10.00 par common

## POSI-SEAL INTERNATIONAL, INC.

\$.01 par common

## RADICE CORPORATION

No par common, \$.20 stated value

REHAB HOSPITAL SERVICES  
CORPORATION

\$.01 par common

ROYAL INTERNATIONAL OPTICAL  
CORPORATION

\$.10 par common

## SHOREWOOD CORPORATION, THE

\$.100 par common

## SIERRA SPRING WATER COMPANY

\$.01 par common

## SPENDTHRIFT FARM, INC.

No par common

TENNESSEE NATURAL RESOURCES,  
INC.

\$.100 par common

## TEXAS ENERGIES, INC.

\$.10 par common

## UNITED MICHIGAN CORPORATION

\$.500 par common

## VIDEO CORPORATION OF AMERICA

\$.01 par common

WARNER ELECTRIC BRAKE &  
CLUTCH COMPANY

\$.100 par common

WESTERN MARINE ELECTRONICS  
COMPANY, INC.

\$.01 par common

## XIDEX MAGNETICS CORPORATION

No par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR § 265.2(c)(18)), April 29, 1985.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 85-10211 Filed 4-29-85; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL HOME LOAN BANK BOARD

## 12 CFR Part 571

[No. 85-291]

Accounting Policy Relating to  
Acquisition, Development and  
Construction Loans

Dated: April 18, 1985.

AGENCY: Federal Home Loan Bank  
Board.

ACTION: Final rule.

**SUMMARY:** The Federal Home Loan Bank Board is adopting a statement of accounting policy relating to acquisition, development and construction loans to be used by all insured institutions when preparing reports or financial statements for filing with the Board or the Corporation. By adopting this statement of policy, the Board is notifying the public that insured institutions are expected to apply the "Notices to Practitioners" that have been issued by the American Institute of Certified Public Accountants ("AICPA") that describe factors to be considered when determining whether a transaction characterized as an acquisition, development and construction loan is in fact a loan or whether, in substance, it is a real estate investment or a joint venture.

**EFFECTIVE DATE:** April 29, 1985.

**FOR FURTHER INFORMATION CONTACT:** Douglas J. McEachern, Professional Accounting Fellow, Office of Examinations and Supervision (202-377-6392), or James H. Underwood, Attorney, Corporate and Securities Division, Office of General Counsel (202-377-6649), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** By Board Resolution No. 84-579, dated October 19, 1984 (49 FR 43557; Oct. 30, 1984), the Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), proposed to adopt a statement of policy concerning the regulatory accounting for certain real estate activities. Issuance of a proposed policy in this area was in response to the increasing activity by insured institutions in acquisition, development and construction ("ADC") loans in an environment that lacked authoritative accounting guidance. The Board and the accounting profession found that the accounting for ADC transactions varied in practice. In response, the AICPA's Accounting Standards Executive Committee ("AcSEC"), in November 1983, and the Savings and Loan Committee, in November 1984, issued two notices to practitioners addressing ADC transactions. The first notice, published in the *Journal of Accountancy*, specifies certain characteristics that generally exist in real estate activities that may be classified as loans in contrast to those that should be classified as investments or joint ventures. The second notice dealt primarily with the "personal guarantee" issue inherent in some ADC transactions and secondarily indicated that the first notice applied to purchased participations in ADC transactions and highlighted the fact that some profit participation arrangements may be oral rather than included as part of the transaction documentation.

While the guidance provided by the AICPA is perceived as helpful, the Board is concerned that, since AICPA "Notices to Practitioners" are not considered to be a primary accounting source, some institutions do not necessarily feel required to follow them. The resulting lack of standardization and failure of some institutions to apply appropriate accounting principles to these transactions has led to confusion and has created obstacles in the monitoring and examination techniques employed by the Board to ensure the safety and soundness of insured institutions. The Board therefore proposed to adopt the "Notices to Practitioners" as its accounting policy in this area.

The Board received 51 comment letters on the proposal: 31 comments were received from insured institutions, 9 from trade groups, 2 from law firms, 4 from other regulatory bodies, 3 from accounting firms, one from the AICPA and one from the Financial Accounting Standards Board ("FASB"). While quite

a few of the letters supported the Board's action in this area, a number of commenters made suggestions and raised additional issues which are discussed below. After consideration of the comments and other available information, the Board has decided to adopt the statement of policy with modifications as described.

#### Discussion of Comments

##### *Establishment of Generally Accepted Accounting Principles ("GAAP") by the Board*

A number of commenters took exception to language in the proposed statement of policy that was interpreted as an attempt by the Board to establish GAAP. The Board recognizes and acknowledges that since 1973 the FASB has been the organization in the private sector designated to establish standards of financial accounting and reporting. It is and was the Board's intention to rely upon the private sector to establish GAAP.

To avoid any confusion or misunderstanding regarding the scope or applicability of this statement of policy, the Board has made the following modifications to the proposal:

(1) The wording of the prefatory language of § 571.17 (to be codified at 12 CFR 571.17) has been modified to state, "the accounting treatment described . . . is to be used by all insured institutions when preparing reports or financial statements for filing with the Board or the Corporation".

(2) The wording in the proposed policy statement that set forth the required accounting for financial statements prepared in accordance with GAAP has been deleted.

##### *Failure To Incorporate All Factors in the November 1983 AICPA "Notice to Practitioners"*

A number of commenters noted that the proposed statement of policy failed to incorporate all criteria included in the November 1983 "Notice to Practitioners". The proposal omitted the following factors which tend to change the nature of the risks and rewards of an arrangement that otherwise may be similar to a real estate investment.

The borrower has substantive equity investment in the project that is not funded by the lender. The investment may be in the form of cash payments by the borrower or contribution by the borrower of land (without considering value expected to be added by future development or construction) or other contributed assets or, during construction, a reasonable compensation for the builder's efforts not funded by the lender . . .

The lender has recourse to substantive net assets of the borrower other than the ADC

project, or the borrower has provided an irrevocable letter of credit to the lender for the full amount of the loan and the entire term of the loan.

A take-out commitment for the full amount of the financial institution's loan(s) has been obtained from a substantial, independent third party. Take-out commitments often are conditional. If so, the conditions must be reasonably attainable.

Noncancelable sales contracts or lease commitments are currently in effect that, on completion of the project, will provide sufficient net cash flow to service normal loan amortization, that is, principal and interest.

The Board agrees with the commenters that all the criteria included in the notice should be included in its statement of policy dealing with this subject. Accordingly, the final policy statement incorporates the omitted factors with the one modification described in the following paragraph.

In November 1984, the AICPA Savings and Loan Committee published a "Notice to Practitioners on ADC Loans" in the *CPA Letter*. This notice provided, among other things additional guidance to be considered when assessing personal guarantees that may be included in ADC transactions. This guidance, which the Board has additionally determined to include in its policy, was as follows:

. . . Some ADC arrangements might include personal guarantees of the borrowers or third parties. The enforceability of such guarantees in the applicable jurisdiction (of the borrower or third party) should be considered. Also, business reasons that might preclude the financial institution from pursuing such guarantees should be assessed. Those business reasons could include the length of time required to enforce a personal guarantee. Even if the guarantee is legally enforceable, there is a presumption that a guarantee should not affect the accounting unless it is normal business practice in that jurisdiction to enforce guarantees on similar transactions. The financial statements and other pertinent information of the guarantors should be considered in determining the value of such guarantees . . .

##### *Criticism of Criteria Contained in the November 1983 AICPA "Notice to Practitioners"*

A number of commenters were concerned that the Board was adopting flawed criteria to be used when assessing the proper classification of ADC transactions. Other commenters stated that the proposed statement of policy contained ambiguities and should be replaced with specific rules or guidelines that could be used when structuring transactions or when reviewing particular classifications.

While sensitive to these concerns, the Board does not want to develop specific



regulatory criteria to be used by insured institutions when assessing whether a particular ADC transaction is a loan, joint venture or real estate investment. It is the Board's belief that this process should be left to the accounting standard-setting bodies.

#### *Controlling or Regulating Real Estate Loan Transactions*

Certain commenters objected to adoption of policies in this area on the grounds that the Board was attempting to regulate or control the substance of ADC transactions through the proposed policy statement, and thus to "trigger" the Board's restrictions on direct investments by insured institutions.

The Board did not, nor does it now, intend to control regulate or limit, through this policy statement, the involvement by insured institutions in ADC transactions. The purpose of the policy statement was and continues to be the codification of guidance to be used when assessing the proper classification of ADC transactions.

The Board regulatorily limits the real estate investment capacity of federally chartered institutions and has recently imposed a supervisory-review threshold and minimum regulatory net-worth requirement on direct investment (defined as investments in service corporations, operating subsidiaries, real estate and equity securities). To the extent that real estate investments are incorrectly classified as loans, the intent of the Board's regulation of real estate investments will be frustrated. Adoption of this statement of policy will assist in minimizing inconsistent balance-sheet classifications and income recognition in connection with these arrangements.

The proposed policy statement was intended to put into regulatory format the accounting guidance that had been developed by the accounting profession and to state that there was no substantive difference between the Board's regulatory treatment and GAAP with regard to these transactions: if an ADC transaction is deemed to be a loan in accordance with GAAP, it would be classified in the same manner for regulatory purposes.

While the classification will be the same, the regulatory and GAAP accounting for the transaction may still differ. For example, an insured institution may recognize loan fees as set forth in 12 CFR 563.23-1(g)(3)(i)(b):

... two and one-half percent of the amount of the loan, if the loan is for the purpose of construction. . . .

For GAAP, the AICPA *Audit and Accounting Guide—Savings and Loan*

*Associations* (1979) provides the following guidance:

Saving and loan associations usually receive fees for originating loans in-house. The normal origination fee is essentially a reimbursement for the costs of the underwriting process of obtaining appraisals, processing the loan application, reviewing legal title to the real estate and other procedures. Origination fees, to the extent they are a reimbursement for such costs, should be recognized in income at the time the loans are made, since the cost of the services are normally charged to expense as incurred. . . .

Other differences may arise between regulatory and GAAP accounting for these transactions. Such differences would not, however, extend to the classification of these transactions.

#### *Accounting for the Sale of Equity Kickers*

The proposed policy statement addressed accounting for the sale of residual profit interests ("equity kickers") in ADC transactions. In general, proceeds from the sale of a right to share in residual profits would be credited to the investment if the transaction were classified as an investment; the proposal was silent as to the accounting for the sale of the equity kicker when the transaction is classified as either a loan or a joint venture.

This section of the policy statement has been deleted as unnecessary, because of the evolving GAAP guidelines in this area. Consistent with the general guidance in the notices, it is anticipated that the accounting treatment for proceeds from the sale of an equity kicker in connection with a loan would be deferred and recognized on the "level yield" method as additional interest over the life of the loan; for investments generally, if sold for cash they would be recognized at the date of sale and if sold for other consideration, recognition would depend upon the nature of the consideration; for joint ventures, the accounting would depend upon the particular transaction. If necessary, further clarification of these matters may be furnished in Board staff memoranda.

#### *Examiner Challenge of Classification Decisions*

Concern was raised by commenters that the adoption of this statement of policy would lead to examiner challenges of the classification decisions made by insured institutions in consultation with their independent public accountants. The Board wants to take this opportunity to restate its belief that the classification of ADC

transactions is best left to the insured institution and its independent public accountant. The Board does expect, however, that classification decisions made by the institutions will be documented by reference to the criteria included in the AICPA "Notices to Practitioners" and in the policy statement being adopted today. The Board further expects examiners to review this documentation just as they review other decisions and classification issues during the examination process. Should a question arise as to the classification of specific transactions, the Board expects its Supervisory Agents to review the examiner's comments and discuss the issue with the institution and its independent public accountants.

#### *Market Value Versus Net Realizable Value*

The November 1983 AICPA "Notice to Practitioners" contains the following comment:

If the risks and rewards are deemed to be similar to those a loan, interest should be recognized as income as specified in the loan agreement, subject to recoverability under the net realizable value test. . . .

For other regulatory purposes, the Board has adopted a "market value" approach to the valuation of real estate. This concept as applied by the Board is, in some cases, in conflict with the net realizable value ("NRV") test referred to above. To avoid a conflict with the Board's longstanding approach to real estate valuation, the Board has decided to replace the NRV test in the AICPA "Notice to Practitioners" with the market-value concept outlined in staff memorandum R 41b "Appraisal Policies and Practices of Insured Institutions and Service Corporations" (March 12, 1982). Further, the Board intends that market-value test to be applied to all potential classifications of ADC transactions: loan, joint venture and real estate investment. The text of the statement of policy has been modified accordingly.

#### *Regulatory Flexibility Analysis*

Pursuant to section 3 of the Regulatory Flexibility Act, Publ. L. No. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the policy.* These elements have been discussed elsewhere in the supplementary information.

2. *Small entities to which the policy would apply.* The rules would apply to all insured institutions.

3. *Impact of the policy on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in supplementary information.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the policy.

5. *Alternatives to the policy.* No other alternative would provide for consistency in accounting treatment of the covered activities.

The Board finds that observance of the 30-day delay of effective date of S.U.S.C. & SS3(d) and 12 CFR 508.14 is unnecessary because the Board action is adoption of a statement of policy, and because it is necessary for insured institutions to have policy guidance regarding accounting policies in this area as quickly as possible to avoid disruption and confusion.

#### List of Subjects in 12 CFR Part 571

Savings and loan associations, Federal Savings and Loan Insurance Corporation.

Accordingly, the Board hereby amends Part 571, Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

#### Subchapter D—Federal Savings and Loan Insurance Corporation

#### PART 571—STATEMENTS OF POLICY

Add a new § 571.17, as follows:

##### § 571.17 Accounting for acquisition, development and construction loans.

(a) The accounting treatment described in this section for acquisition, development and construction ("ADC") loans is to be used by all insured institutions when preparing reports or financial statements for filing with the Board or the Corporation.

(b) Insured institutions, to the extent that they have legal authority to do so, may engage in or purchase participations in ADC loans, including transactions originated by the institution and participations purchased, that may be structured as loans which have virtually the same risks and potential rewards as those of owners or joint venturers. Generally, in these transactions there is little or no borrower equity and the institution recognizes loan fees, interest and/or profits which are funded entirely by loan proceeds. This statement of policy sets forth the policy and general criteria for determining whether transactions are real estate investments, joint ventures or loans and specifies the accounting principles and procedures

that shall be used to account for such transactions in reports to, and financial statements filed with, the Board or the Corporation.

(c) These ADC transactions are usually structured so that the lender participates in the expected residual profit on the ultimate sale or use of the property. Expected residual profit is the amount of profit, whether called interest, fees, or another name, above a reasonable amount of interest and fees earned by the lender plus profit for the builder's efforts. Beyond the lender's participation in expected residual profits, these ADC arrangements usually have most of the following characteristics:

(1) The lender commits to provide all or substantially all necessary funds to acquire the property and to complete the project. The borrower has title to, but little or no equity in, the underlying property.

(2) The lender funds the loan commitment or origination fees or both by including them in the amount of the loan. Often, the transaction is structured to maximize the immediate or early recognition of such fees as income.

(3) The lender completely funds interest during the term of the loan by adding the interest to the loan balance.

(4) The loan is secured only by the ADC project. The lender has no recourse to other assets of the borrower, and the borrower does not guarantee the debt.

(i) While some ADC arrangements might include personal guarantees of the borrowers or third parties, the enforceability of such guarantees in the applicable jurisdiction (of the borrower or third party) should be considered.

Also, business reasons that might preclude the financial institution from pursuing such guarantees should be assessed. Those business reasons could include the length of time required to enforce a personal guarantee. Even if the guarantee is legally enforceable, there is a presumption that a guarantee should not affect the accounting unless it is normal business practice in that jurisdiction to enforce guarantees on similar transactions. The financial statements and other pertinent information of the guarantors should be considered in determining the value of such guarantees.

(5) In order for the lender to recover the investment in the project, the property must be sold to independent third parties, the borrower must obtain refinancing from another source or the property must be placed in service and generate sufficient net cash flow to service debt principal and interest.

(6) The arrangement is structured so that foreclosure during the project's

development is unlikely because the borrower is not required to fund any payments until the project is complete, and, therefore, the loan cannot become delinquent.

(d) The following factors tend to change the nature of the risks and rewards of an arrangement that otherwise may be similar to a real estate investment. These factors should be considered as indications that the risks and rewards to the lender are similar to those expected to be associated with a loan:

(1) The borrower has a substantive equity investment in the project that is not funded by the lender. The investment may be in the form of cash payments by the borrower or contribution by the borrower of land (without considering value expected to be added by future development or construction) or other contributed assets or, during construction, a reasonable compensation for the builder's efforts not funded by the lender.

(2) The lender has recourse to substantive net assets of the borrower other than the ADC project, or the borrower has provided an irrevocable letter of credit to the lender for the full amount of the loan and the entire term of the loan.

(3) A take-out commitment for the full amount of the financial institution's loan(s) has been obtained from a substantial independent third party. Take-out commitments often are conditional. If so, the conditions must be reasonably attainable.

(4) Noncancelable sales contracts or lease commitments are currently in effect that, on completion of the project, will provide sufficient net cash flow to service normal loan amortization, i.e., principal and interest.

(e) If, after considering all of the factors associated with a particular arrangement, the risks and rewards are deemed to be similar to those of an investment in real estate, the following guidance is to be followed:

(1) If the lender will receive a majority of the expected residual profit from the project (a determination of that fact will require a critical analysis of all the terms), the lender should account for the transaction and the income or loss from the arrangement as a real estate investment as specified by FASB Statement No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," and FASB Statement No. 66, "Accounting for Sales of Real Estate," unless other accounting is permitted by Board regulation.

(2) If the lender has less than a majority participation in the expected

residual profit, the entire arrangement may be in essence a real estate joint venture. Although the provisions of Statement of Position (SOP) No. 78-9, "Accounting for Investments in Real Estate Ventures," and FASB Statement No. 34, "Capitalization of Interest Cost," as modified by FASB Statement No. 58, "Capitalization of Interest Cost in Financial Statements that Include Investments Accounted for by the Equity Method," do not apply explicitly, they may nevertheless provide useful guidance.

(3) If the risks and rewards are deemed to be similar to those of a loan, interest should be recognized as income as specified in the loan agreement.

(4) The institution's loan and accrued interest, real estate investment or joint venture investment is subject to recoverability under the market-value concept discussed in the Board's staff memorandum R 41b, "Appraisal Policies and Practices of Insured Institutions and Service Corporations."

[Secs. 402, 403, 407, 48 Stat. 1250, 1257, 1260, as amended; 12 U.S.C. Secs. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943-48 Comp., p. 1071]

By the Federal Home Loan Bank Board.  
Jeff Sconyers,  
Secretary.

[FR Doc. 85-10408 Filed 4-29-85; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 85-ASW-12; Amdt. 39-5038]

#### Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH (MBB), Model BO-105 Series Helicopters

April 30, 1985.

AGENCY: Federal Aviation  
Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) requiring reinforcement of the vertical fin or certain MBB Model BO-105 series helicopters. Serious cracks have occurred in the tail fin of these helicopters. Reinforcement of the tail fins will prevent cracks and possible failure of the tail fin and resulting loss of directional control.

**DATES:** Effective April 28, 1985.

Compliance required within 50 hours' time in service after the effective date of this AD, unless already accomplished.

The Director of the Federal Register approved the incorporation by reference for this AD on April 28, 1985.

**ADDRESSES:** The applicable service information may be obtained from MBB Helicopter Corporation, P.O. Box 2349, West Chester, Pennsylvania 19380, telephone (215) 431-4150.

These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Chris Christie, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, or James H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2549.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that serious cracks and deformation may occur in the vertical fin of the MBB Model BO-105 series helicopters, Serial Numbers [S/N] S1 through S350. The cracks occur in the tail fin of the empennage, Part Number (P/N) 105-30101. The cracks may result in possible failure of the tail fin and resulting loss of directional control.

Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires compliance with Service Bulletin No. 30-13, Rev. 2, and No. 30-18, Rev. 3, within 50 hours' time in service after the effective date of the AD. Service Bulletin No. 30-13 applies to helicopters with S/N's S1 through S310, and Service Bulletin No. 30-18 applies to helicopters with S/N's S1 through S350 and should be complied with by March 31, 1985, according to the bulletin. The first bulletin provides for a fin reinforced vertical spar and adds external doubler plates. The second bulletin provides for a redesigned tail rotor gearbox mount and a reinforced upper area of the fin. Prior to or in conjunction with complying with Service Bulletin No. 30-18, Rev. 3, compliance with Service Bulletin No. 30-13, Rev. 2, must be accomplished on helicopters with S/N's S1 through S310.

The two service bulletins are incorporated by reference rather than repeat the extensive content of the bulletins in the AD. These bulletins will not be subject to frequent change.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for

making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves approximately 9 or 10 aircraft for an estimated total cost for both service bulletins of \$7,600 for each aircraft. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

#### Adoption of the Amendment

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

**MESSERSCHMITT-BOLKOW-BLOHM GmbH:** Applies to Model BO-105 series helicopters, S/N's S1 through S350, certificated in all categories, that are equipped with empennage P/N 105-30101.

Compliance is required within 50 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent cracks in the vertical fin spar and skins and possible failure of the vertical fin, accomplish the following modifications:

(a) For helicopters with S/N's S1 through S310, incorporate the tail fin modification and reinforcement specified in MBB BO-105 Service Bulletin No. 30-13, Rev. 2, dated April 24, 1978.

(b) For helicopters with S/N's S1 through S350, incorporate the gearbox mount and upper fin modification specified in MBB BO-105 Service Bulletin No. 30-18, Rev. 3, dated October 30, 1984.

(c) Aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where compliance may be accomplished.

(d) Equivalent means of complying with this AD must be approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part thereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies of the service bulletins upon request to MBB Helicopter Corporation, P.O. Box 2349, West Chester, Pennsylvania 19380. The documents

also may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

(Secs. 313(a), 601, and 603, 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]; 14 CFR 11.89)

This amendment becomes effective April 26, 1985.

Issued in Fort Worth, Texas, on April 2, 1985.

Richard L. Failor,

Acting Director, Southwest Region.

[FR Doc. 85-10394 Filed 4-26-85; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

[Docket No. 84-NM-98-AD; Amdt. 39-5049]

#### Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes which requires repetitive inspections and operational tests of the tailplane trim actuators. Incidents of broken actuator gears, damaged seals, and other in-service difficulties concerning the actuators have been reported. This action is necessary to prevent jammed control surfaces which could lead to hazardous flight conditions.

**EFFECTIVE DATE:** June 6, 1985.

**ADDRESSES:** The service bulletins specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Centre de, Avenue Didier Daurat, 31700 Blagnac, France. This information may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilité which mandates compliance with Airbus Industrie (AI) Service Bulletins A300-27-130 and A300-27-132, and Lucas Aerospace (LA) Service Bulletins

723-27-584 and 723-27-582. These service bulletins prescribe corrective action on in-service difficulties concerning the tailplane trim actuators.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections and operational tests of the tailplane trim actuators to prevent jamming control surfaces was published in the *Federal Register* on September 20, 1984 (49 FR 36862). The comment period closed on November 9, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. The manufacturer indicated that the AD should describe in more detail the required action of each service bulletin for each affected part. In this manner, operators of these airplanes can rapidly determine the type and magnitude of the mandated action. This has been done in the final document. The other commenter had no objection to the AD.

It is estimated that 33 U.S. registered airplanes will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be \$13,200.

For reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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

by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Models A300 B2 and B4 series airplanes, certificated in all categories. To detect failure of the trim actuators for the horizontal stabilizers, accomplish the following, unless previously accomplished:

A. Within 120 days after the effective date of this AD or upon reaching 4,000 flight hours time in service, whichever occurs later, perform a jamming detection test on actuators, part numbers: CHA723-30XX, CHA723-20XX, and CHA723-010 through CHA723-018, in accordance with the accomplishment instructions of Airbus Industrie (AI) Service Bulletin A300-27-132, Revision 4, dated October 30, 1981. Any actuator that malfunctions during the jamming detection test must be replaced before further flight.

B. Repeat the jamming detection test of paragraph A., above, as follows:

(1) On actuators, part numbers CHA723-30XX and CHA723-20XX, at intervals not to exceed 1,000 flight hours; and

(2) On actuators, part numbers CHA723-010 through CHA723-018, at intervals not to exceed 550 flight hours.

C. Within 120 days after the effective date of the AD or prior to the accumulation of 7,500 flight hours, whichever occurs later, overhaul actuators, part numbers CHA723-20XX and CHA723-010 through CHA723-018, and replace certain actuator's pinions and needle bearings listed in Lucas Aerospace (LA) Service Bulletin 723-27-584, dated January 5, 1980.

D. Within 120 days after the effective date of this AD or prior to the accumulation of 6,500 flight hours, whichever occurs later, perform an endoscopic inspection on actuators, part numbers CHA723-010 through CHA723-018, in accordance with the instructions of AI Service Bulletin A300-27-130, Revision 2, dated October 10, 1980 and LA Service Bulletin 723-27-582, Revision 1 dated July 27, 1979.

E. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

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

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Centre de, Avenue Didier Daurat, 31700 Blagnac, France. These

documents may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 6, 1985.

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

Issued in Seattle, Washington, on April 22, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-10391 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-NM-57-AD; Amdt. 39-5048]

#### Airworthiness Directive; Airotech, Inc. Force I(A) Harness/Container Assembly

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection for proper alignment of the parachute rip cord cable housing on Airotech, Inc., Force I(A) harness/container assembly. The AD is prompted by a report of improper rip cord housing alignment which could result in jamming during the rip cord pull.

**DATES:** Effective: May 13, 1985.

Compliance required within thirty days after the effective date of this AD, unless already accomplished.

**ADDRESSES:** The applicable engineering drawing may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM-173W; telephone (213) 536-6388. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

**SUPPLEMENTARY INFORMATION:** It has been reported that an Airotech Force I(A) reserve parachute container failed to open due to high rip cord pull forces. The rip cord cable housing was not aligned with the flap grommet,

preventing a straight line pull of the rip cord pin. In this situation, the rip cord pin could jam when entering the cable housing. Since this condition is likely to exist on other harness/container assemblies of the same type design, an airworthiness directive is being issued which requires the inspection of the rip cord cable housing to determine if it is satisfactorily aligned and, if not, install it with proper alignment.

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12991 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft equipment. It has been further determined that this document involves emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

#### List of Subjects in 14 CFR Part 39

Aviation safety, Parachute safety.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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

**Airotech, Inc.:** Applies to Airotech, Inc. Force I(A) harness/container assemblies. Compliance is required within thirty (30) days from the effective date of this AD, unless previously accomplished.

To prevent high rip cord pull forces due to jamming of the rip cord pin when it enters the cable housing, accomplish the following:

A. Inspect the installation of the rip cord cable housing to determine if it is installed in accordance with Airotech, Inc. drawing number FC-2B, revised April 25, 1984. If it is not in conformance, install in accordance with this drawing. Ripcord pin must be started into the end of the ripcord housing as

required by the note in current packing instructions.

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

This amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on April 22, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-10389 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 85-NM-01-AD; Amdt. 39-5047]

#### Airworthiness Directives; British Aerospace Model 125 800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of British Aerospace Model 125 800A series airplanes by individual priority letter. In addition, the AD is amended by changing the applicability statement; two airplanes are deleted from the requirements of the AD. This AD requires a one-time inspection of the electrical wires associated with the engine's fire bottle circuits and correction of wiring, if necessary. This action is prompted by the discovery that the electrical wiring of the engine fire protection system had been incorrectly installed. Fire extinguishing material may be discharged on the wrong engine.

**DATES:** Effective May 13, 1985.

This AD was effective earlier to all recipients of priority letter AD 85-01-05 dated January 15, 1985.

**ADDRESSES:** The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc. Librarian, Box 12414, Dulles International Airport, Washington, D.C.

20041 or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace 125 Service Bulletin 26-A25(253028) as mandatory. The manufacturer discovered that certain airplanes had the electrical wiring of the engine fire protection system incorrectly installed. Fire extinguishing material may be discharged on the wrong engine.

To correct this problem, the manufacturer issued Alert Service Bulletin 26-25 which prescribes a one-time inspection of the engine fire bottle electrical wiring and correction of this wiring, if improperly installed. Service Bulletin 26-A25(253028) provides more complete instructions than the Alert Service Bulletin but the burden to the operator does not change.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective by individual priority letters issued on January 15, 1985 to all known U.S. owners and operators of British Aerospace Model 125 800A Series Airplanes. These conditions still exist and an AD requiring the action mentioned above is hereby published in the Federal Register as an Amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed,

may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

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

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

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

**British Aerospace:** Applies to Model 125 800A series airplanes with manufacturer serial numbers 258003 through 258020, certificated in all categories. To detect the lack of engine fire protection caused by improper wiring which would result in the wrong fire bottle operating, accomplish the following, unless previously accomplished:

(A) Within ten (10) hours time in service after the effective date of this AD, inspect and rewire, if necessary, the electrical circuits of the engines' fire protection system, in accordance with the accomplishment instructions of British Aerospace 125 Service Bulletin 26-A25(253028), dated December 20, 1984.

(B) Special flight permits may be issued in accordance with FAR 21.197 and 12.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(C) Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from their manufacturer may obtain copies upon request to British Aerospace, Inc. Librarian, Box 12414, Dulles International Airport, Washington, D.C. 20041.

This amendment becomes effective May 13, 1985, and was effective earlier to those recipients of AD 85-01-05 dated January 15, 1985, distributed by priority letter.

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

Issued in Seattle, Washington, on April 22, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-10390 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 84-ASW-41; Amdt. 39-5043]

**Airworthiness Directive; Costruzioni Aeronautiche Giovanni Agusta S.p.A. Model A109A and A109A II Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Agusta Model A109A and A109A II series helicopters by individual letter. The AD requires an initial inspection and repetitive checks for cracks in the tail rotor blade grip. The AD is needed to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

**DATE:** Effective May 13, 1985, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84-13-06, issued June 29, 1984, which contained this amendment.

**Compliance schedule—**As prescribed in body of AD.

**ADDRESSES:** The applicable service information may be obtained from Agusta Aviation Corporation, NE Service Center, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154.

A copy of the service bulletin is contained in the Rules Docket at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** Harvey Chimerine, Brussels Aircraft Certification Office, Federal Aviation Administration, c/o American Embassy, APO New York 09667, or Sam Brodie, Helicopter Policy and Procedures Staff, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 877-2577.

**SUPPLEMENTARY INFORMATION:** On June 29, 1984, priority letter AD 84-13-06 was issued and made effective immediately as to all known U.S. owners and operators of Agusta Model A109A and A109A II series helicopters. The AD

requires an initial inspection and repetitive checks for cracks in the tail rotor blade grip. The AD is necessary to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letter issued June 29, 1984, to all known U.S. owners and operators of Agusta Model A109A and A109A II series helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The FAA has determined that this regulation only involves a cost per inspection of \$30 with a maximum of 50 affected rotorcraft for a total cost of \$1,500 per fleet inspection. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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

**Costruzioni Aeronautiche Giovanni Agusta S.p.A.**: Applies to Model A109A and A109A II series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent possible hazards in flight associated with cracking of the tail rotor blade grip accomplish the following:

- (a) Within the next 10 hours' time in service, inspect the tail rotor blade grip in accordance with Part 1 of Agusta Service Bulletin 109-51 or FAA-approved equivalent, and at each additional 25 hours' time in service accomplish the inspection of Part III of Agusta Service Bulletin 109-51 or FAA-approved equivalent.

(b) Prior to the first flight of each day, accomplish the airworthiness check of Part II of Agusta Service Bulletin 109-51 or FAA-approved equivalent. The check required by this AD may be performed by the pilot.

(c) Remove from service any tail rotor blade where cracking is found and replace with a serviceable part prior to next flight.

(d) An equivalent method of compliance with this AD may be used when approved by the Manager, Brussels Aircraft Certification Office. This amendment becomes effective May 13, 1985, as to all persons except those persons to whom it was made immediately effective by priority mail AD 84-13-06 issued June 29, 1984, which contained this amendment.

(Secs. 313(a), 601, and 603, 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. 97-448, January 12, 1983]; 14 CFR 11.89)

Issued in Fort Worth, Texas, on April 12, 1985.

**F. E. Whitfield,**

*Acting Director, Southwest Region.*

[FR Doc. 85-10392 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket Nos. 20421 and 83-CE-14-AD; Amdt. 39-5045]

#### Airworthiness Directives; Short Brothers and Harland, Ltd. Model SC-7, Series 2 and 3 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment rescinds Airworthiness Directives (AD) 80-13-04 (Amendment 39-3802) and 83-06-04 (Amendment 39-4592), applicable to Short Brothers and Harland, Ltd. Model SC-7, Series 2 and 3 airplanes. Subsequent to the issuance of the ADs, the FAA has learned that the conditions addressed by the United Kingdom's mandatory Dowty Rotol Service Bulletins, which were the basis for these two ADs, are design improvements in nature and do not address unsafe conditions. The withdrawal of these ADs is in the public interest and will not adversely affect the safety of the affected airplanes.

**EFFECTIVE DATE:** April 30, 1985.

Compliance: Not required.

**ADDRESSES:** Dowty Rotol Service Bulletins (S/B) No. 32-4M, dated September 5, 1978; S/B No. 32-4M, Revision 3, dated February 15, 1982; S/B No. 32-9M, dated February 15, 1982; and S/B No. 32-9M, Revision 2, dated June

22, 1983, applicable to this rescission may be obtained from Dowty Rotol Inc., Staverton West Sully Road, Post Office Box 5000, Sterling, Virginia 22170. 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. M. Cook, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. John Dow, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

#### SUPPLEMENTARY INFORMATION: A

proposal to amend Part 39 of the Federal Aviation Regulations by rescinding ADs 80-13-04 and 83-06-04 was published in the **Federal Register** on February 8, 1985 (50 FR 5397, 5398). These ADs require inspections and modifications of the main and nose landing gear on Short Brothers and Harland Ltd. Model SC-7 Skyvan Series 2 and Series 3 airplanes. The rescission proposal resulted from the FAA receiving Dowty Rotol S/B No. 32-4M, Revision 3, dated February 15, 1982, and S/B No. 32-9M, Revision 2, dated June 22, 1983, which establish the previous Service Bulletins, described below, as being design improvements in nature and not related to unsafe conditions.

More specifically, AD 80-13-04, Amendment 39-3802 (45 FR 39832) was issued to require crack inspections and modifications of the main and nose landing gear on Short Brothers and Harland Ltd. Model SC-7 Skyvan Series 2 and Series 3 airplanes in accordance with Dowty Rotol Service Bulletin (S/B) No. 32-4M, dated September 5, 1978.

AD 83-06-04, Amendment 39-4592 (48 FR 12342/43) was issued to require crack inspections and modifications of the main landing gear on Short Brothers and Harland Ltd. Model SC-7 Skyvan Series 3 airplanes in accordance with Dowty Rotol S/B No. 32-9M, dated February 15, 1982.

Subsequently, the manufacturer issued S/B No. 32-4M, Revision 3, dated February 15, 1982, and S/B No. 32-9M, Revision 2, dated June 22, 1983, which pertain to a design improvement only and do not correct unsafe conditions in the original type design.

The FAA examined the available information related to the issuance of the service bulletins, as revised, and the

mandatory classification of these bulletins by the United Kingdom. The FAA determined that the conditions addressed by these revised service bulletins, as well as ADs 80-13-04 and 83-06-04, which reference the original service bulletins, are design improvements in nature and do not pertain to unsafe conditions as required by Part 39 of the FARs. Therefore, the Agency issued the aforementioned NPRM.

No comments or objections were received on the proposal or the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately 13 U.S. registered airplanes affected by this amendment. The cost of compliance is estimated to be negligible to the private sector. Therefore, I certify that this action (1) is not a major rule under the provisions of 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 draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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 rescinding AD 80-13-04, Amendment 39-3802, and AD 83-06-04, Amendment 39-4592.

(Secs. 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. 97-448, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on April 30, 1985.

Issued in Kansas City, Missouri, on April 19, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-10393 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 271

[Docket No. RM80-53]

#### Ceiling Prices; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the Director, OPRR.

**SUMMARY:** Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of May, June and July, 1985. Section 101(b)(6) of the NGPA require that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

**EFFECTIVE DATE:** May 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Kenneth A. Williams, Director, OPRR, (202) 357-8500.

#### Order of the Director, OPRR

Publication of prescribed maximum lawful prices under the Natural Gas Policy Act of 1978, Docket No. RM80-53.

Issued April 14, 1985.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and

#### § 271.101 [Amended]

(a) \* \* \*

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in—		
			May 1985	June 1985	July 1985
B	102	New Natural Gas, Certain OCS Gas <sup>1</sup>	\$3.962	\$3.992	\$4.022
C	103(b)(1)	New Onshore Production Wells <sup>2</sup>	2.991	3.004	3.017
	103(b)(2)	New Onshore Production Wells <sup>2</sup>	3.477	3.498	3.520
E	105(b)(3)	Existing Intrastate Contracts	3.950	3.977	4.004
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas <sup>3</sup>	1.711	1.719	1.727
		Gas Produced from Tight Formations <sup>4</sup>	5.982	6.008	6.034
H	108	Stripper Gas	4.242	4.274	4.306
I	109	Not Otherwise covered	2.478	2.489	2.500

<sup>1</sup>Section 271.802(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is 2% higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

<sup>2</sup>The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

<sup>3</sup>Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

<sup>4</sup>Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of May, June and July, 1985 are issued by the publication of price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to May 1985 are found in the tables in §§ 271.101 and 271.102.

#### List of Subjects in 18 CFR Part 172

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

#### PART 271—[AMENDED]

1. Section 271.101(a) is amended by inserting the maximum lawful prices for May, June and July, 1985 in Tables I and II and inserting footnote numbers one and three in the text of Table I.

2. Section 271.102(c) is amended by inserting the inflation adjustment for the months of May, June and July, 1985 in Table III.



TABLE II.—NATURAL GAS CEILING PRICES: NGPA §§ 104 and 106(a)

[Subpart D, Part 271]

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		May 1985	June 1985	July 1985
Post-1974 gas	All producers	\$2.478	\$2.489	\$2.500
1973-1974 Biennium gas	Small producer	2.096	2.105	2.114
	Large producer	1.598	1.605	1.612
Interstate Rollover gas	All producers	.920	.924	.928
	Small producer	1.177	1.182	1.187
Replacement contract gas or recompletion gas	Large producer	.901	.905	.909
	Small producer	.596	.599	.602
Flowing gas	Large producer	.504	.506	.508
	Small producer	.700	.703	.706
Certain Permian Basin gas	Large producer	.619	.622	.625
	Small producer	.700	.703	.706
Certain Rocky Mountain gas	Large producer	.596	.599	.602
	Small producer	.700	.703	.706
Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	.565	.568	.571
	Other contracts	.522	.524	.526
Minimum rate gas <sup>1</sup>	All producers	.308	.309	.310

<sup>1</sup> Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

## § 271.102 [Amended]

TABLE III.—INFLATION ADJUSTMENT

Month of delivery 1985	Factor by which price in preceding month is multiplied
May	1.00447
June	1.00447
July	1.00447

[FR Doc. 85-10409 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 436 and 440

[Docket No. 85N-0012]

## Antibiotic Drugs; Sterile Amdinocillin; Correction

AGENCY: Food and Drug Administration.  
ACTION: Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the document that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile amdinocillin. This document makes editorial changes.

**EFFECTIVE DATE:** February 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4190.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 85-4587 appearing on page 7764 in the issue of Tuesday, February 26, 1985, the following corrections are made:

1. On page 7764, in the third column, under § 436.353 *High-performance liquid chromatographic assay for amdinocillin*, paragraph (b)(1) is redesignated as paragraph (b); the last sentence in redesignated paragraph (b) is revised to read "Record the peak responses and calculate the prescribed system suitability requirements as described for the system suitability test in paragraph (c) of this section."; paragraph (b)(2) is redesignated as paragraph (c); and paragraph (b)(2)(i) is redesignated as paragraph (c)(1).

2. On page 7765:

a. In the first column, the following corrections are made: "(iii) *Resolution factor*" is revised to read "(3) *Resolution factor*"; "(iv) *Coefficient of variation (relative standard deviation)*" is revised to read "(4) *Coefficient of variation (relative standard deviation)*"; and in the last line, "(b)(1)" is revised to read "(b)".

b. In the second column, the following corrections are made: "(ii) *Efficiency of the column*" is revised to read "(2) *Efficiency of the column*"; and the word "content" in two places in paragraph (a)(1)(i) under § 440.2a *Sterile amdinocillin* is revised to read "potency".

c. In the third column under § 440.2a *Sterile amdinocillin*, the following corrections are made: paragraph (a)(3)(i) is revised to read: "Results of tests and assays on the batch for amdinocillin potency, and if packaged for dispensing, amdinocillin potency and container content, sterility, pyrogens, moisture,

pH, crystallinity, and identity." and the heading for paragraph (b)(1) that reads "Amdinocillin content" is revised to read "Amdinocillin potency and container content."

3. On page 7766, in the second column, last line in paragraph (b)(1)(iii)(d), "§ 436.353(b)(1)" is corrected to read "§ 436.353(b)".

Dated: April 19, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-10383 Filed 4-29-85; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 442

[Docket No. 85N-0011]

## Antibiotic Drugs; Sterile Ceftriaxone Sodium; Correction

AGENCY: Food and Drug Administration.  
ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ceftriaxone sodium (50 FR 9998; March 13, 1985). In the "Preparation of test solution" paragraph, a word was inadvertently omitted. This document corrects that error.

**EFFECTIVE DATE:** March 13, 1985.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 85-5772, appearing on page 9998 in the *Federal Register* of Wednesday, March 13, 1985, the following correction is made on page 10000, in the middle column: In § 442.55a *Sterile ceftriaxone sodium*, paragraph (b)(1)(iii)(b), eighth line, the word "activity" is inserted between "ceftriaxone" and "per".

Dated: April 19, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-10380 Filed 4-29-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[T.D. 8016]

Effect of Windfall Profit Tax  
Overpayments on Estimated Income  
Tax Payments

## Correction

In FR Doc. 85-7020, beginning on page 11853 in the issue of Tuesday, March 26, 1985, make the following correction:

On page 11855, second column, in the first line of "Par. 5.", "Section 1.6654-Z" should have read "Section 1.6654-2".

BILLING CODE 1505-01-M

## 26 CFR Part 1

[T.D. 8014]

Income Tax—Energy Investment  
Credit for Leased Qualified Intercity  
Buses

## Correction

In FR Doc. 85-7022, beginning on page 11852, in the issue of Tuesday, March 26, 1985, make the following correction:

On page 11853, second column, in the first line of the amendatory language, "Section 1.48-9(g)(8)" should have read "Section 1.48(q)(8)".

BILLING CODE 1505-01-M

## Fiscal Service

## 31 CFR Part 204

Allocation of Responsibilities and  
Liabilities Under Letter of Credit—  
Treasury Financial Communications  
System (LOC-TFCS)

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This Interim Rule contains the substance of a revised agreement between the Department of the Treasury ("Treasury") and financial institutions that wish to participate (or continue participating) in the Letter of Credit—Treasury Financial Communications System (LOC-TFCS). The purpose of the revision is to reduce the quantity of Federal regulation of financial institutions participating in this system and to obviate the need for individual agreements with each participating financial institution.

**DATES:** This Interim Rule is effective April 30, 1985. However, the Department

will consider comments from interested parties prior to issuance of a final rule. Comments must be received on or before July 1, 1985.

**ADDRESS:** All comments or inquiries should be mailed to Mr. Paul J. Gist, Manager, TFCS Programs Branch, Financial Management Service, U.S. Department of the Treasury, Treasury Annex # 1, PB-704, Washington, D.C. 20226.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale M. Walton, Senior Advisor—Payments Management, on (202) 634-5775.

**SUPPLEMENTARY INFORMATION:** LOC-TFCS is an electronic funds transfer system. It uses the Federal Reserve Communications System (FRCS) to deliver Federal funds under a Federal letter-of-credit arrangement. Ordinarily under LOC-TFCS, the recipient organization presents a request for funds to its financial institution. The financial institution reviews the request for funds and, if it is satisfied that the request was made by an appropriate individual(s) and is complete on its face, immediately thereafter transmits the request electronically to Treasury via the FRCS for payment pending Federal program agency review and approval. If the financial institution is not on-line to the FRCS, the financial institution will use a correspondent bank or local Federal Reserve bank or branch to transmit the request to Treasury. Treasury will either wire the payment no later than the next workday or wire notification that the request for funds has been rejected. The funds are transferred to the financial institution, which then credits the recipient organization's account. At this time, over 1,000 financial institutions offer this service to their customers.

Presently, the respective responsibilities and liabilities of the recipient organization's financial institution and Treasury are set forth in individual agreements between Treasury and each participating financial institution. As more and more financial institutions participate in this program, it will become increasingly impractical to execute individual written agreements.

Under the LOC-TFCS, Treasury presently uses a SF-1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, as a safeguard to ensure that financial institutions properly identify those individuals who are authorized to request funds on behalf of the recipient organization and/or authorized to withdraw funds from

the recipient organization's account. This notifies all interested parties that use of the SF-1194 will be eliminated in calendar year 1986. Treasury views this identification procedure as a matter between the recipient organization, its financial institution, and the respective Federal program agency.

All financial institutions that desire to participate in LOC-TFCS will be subject to the terms of this Interim Rule. Those that participate for the first time after the effective date of the Interim Rule will be subject to its terms immediately. Each financial institution that has signed an agreement with Treasury will become subject to the terms of the Interim Rule ninety (90) days after the effective date of the Interim Rule.

This Interim Rule has not been preceded by a Notice of Proposed Rulemaking (NPRM). Because this Interim Rule involves a matter relating to loans, grants, and contracts, it is not subject to the notice and comment and delayed effective date requirements of 5 U.S.C. 553.

The changes made by this Interim Rule will not have a direct impact on the general public. Rather, these changes will modify the relationship between Treasury and participating financial institutions. Thus, no matters of interest to the general public are likely to be raised. Moreover, to the extent that a NPRM would delay implementation of the substance of the Interim Rule, with a resultant increase in paperwork and a sustained high level of government regulation of banks participating in LOC-TFCS, the publication of a NPRM would be contrary to the public interest.

It has been determined that this Interim Rule is not a "major rule" as defined by Executive Order 12291, dated February 17, 1981. This determination is based on the fact that the Rule's purpose and effect is to reduce the regulatory and administrative burdens on recipient organizations' financial institutions.

Furthermore, because no notice of proposed rulemaking is required for this Interim Rule, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

## List of Subjects in 31 CFR Part 204

Banks, Banking, Electronic funds transfer, Federal Reserve system, Federal aid programs.

Therefore, title 31 CFR is amended by adding a new Part 204 to read as follows:

**PART 204—RESPONSIBILITIES AND LIABILITIES UNDER LETTER OF CREDIT—TREASURY FINANCIAL COMMUNICATIONS SYSTEM (LOC-TFCS)**

- Sec.  
204.1 Purpose.  
204.2 Scope.  
204.3 Applicability.  
204.4 Definitions.  
204.5 General Regulations.  
204.6 Sanctions.

Authority: 31 U.S.C. 321; 31 U.S.C. 3325; 31 U.S.C. 3332; 31 U.S.C. 6503.

**§ 204.1 Purpose.**

The purpose of this Part is to establish the terms of the contract that will be applicable to transactions involving the Letter of Credit—Treasury Financial Communications System (LOC-TFCS). It describes the responsibilities and liabilities of financial institutions participating in LOC-TFCS.

**§ 204.2 Scope.**

This Part applies to:

- (a) All financial institutions that begin participating in LOC-TFCS on or after the effective date of this Interim Rule, and  
(b) Those financial institutions that are presently participating in LOC-TFCS whose agreements are being terminated and who desire to continue to participate in LOC-TFCS.

**§ 204.3 Applicability.**

(a) All financial institutions that desire to participate in LOC-TFCS will ultimately be subject to the terms of this Interim Rule. Those that participate for the first time after the effective date of the Interim Rule shall be subject to its terms immediately. Each financial institution that has signed an agreement with Treasury shall be subject to the terms of the Interim Rule ninety (90) days after the effective date of the Interim Rule. This Interim Rule constitutes notice by Treasury that each existing agreement is terminated effective ninety (90) days after the effective date of this Interim Rule.

(b) A financial institution's acceptance and handling of a recipient organization's request for funds issued pursuant to this Part shall constitute its agreement to the provisions of this Part.

**§ 204.4 Definitions.**

In this Part,

- (a) "Federal program agency" means any entity of the Federal government that administers a program in connection with which Federal funds are spent.  
(b) "Letter-of-Credit method" means the method by which a recipient

organization receives payment by drawing against a commitment (certified by a responsible official of a Federal program agency) which specifies a dollar amount available.

(c) "Letter of Credit—Treasury Financial Communications System" or "LOC-TFCS" means the electronic funds transfer system whereby the letters of credit are maintained and serviced by the Department of the Treasury and payment to a recipient organization is made by electronic funds transfer. This system provides for Federal program agency pre-audit of cash advances made to recipient organizations and a fixed payment time.

(d) "Recipient organization" means any organization outside the Federal government (including any State or local government, educational institution, international organization and any other public or private organization or individual) receiving cash advances under a Federal grant or other program either directly from a Federal program agency or indirectly through another recipient organization.

(e) "Recipient organization financial institution" or "ROFI" means a bank, savings and loan, or other financial institution that the recipient organization uses to provide the LOC-TFCS services.

**§ 204.5 General Regulations.**

(a) A ROFI shall transmit requests for funds only when authorized, and in the amount requested, by the recipient organization.

(b) A ROFI shall exercise reasonable care in knowing its customers (*i.e.*, those individuals identified as having authority to request funds on behalf of the recipient organization and/or authorized to withdraw funds from the recipient's account) in accordance with commonly accepted business standards.

(c) A ROFI shall credit to the recipient organization's account the full amount of funds received from the United States Treasury in response to a request for funds on the same day the ROFI receives those funds.

(d) A ROFI shall provide notice of credit to the recipient organization on the same day the funds are credited to the recipient organization.

**§ 204.6 Sanctions.**

If the failure of a ROFI to act in accordance with § 204.5 of this Part causes Treasury to make an erroneous payment or if a ROFI fails to timely transfer a payment to a recipient organization, the ROFI shall be liable to Treasury for the amount of the erroneous payment and for interest on an untimely payment. Interest shall be

calculated at the weekly Federal funds rate published in the Federal Reserve Bulletin in Table A-27 entitled "Interest Rates, Money and Capital Markets" and shall be due for the entire period of time that the amount of the payment remains outstanding.

Dated: April 15, 1985.

Carole Jones Dineen,  
Fiscal Assistant Secretary.

[FR Doc. 85-10290 Filed 4-29-85; 8:45 am]  
BILLING CODE 4810-35-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[A-8-FRL-2625-7]

**Approval and Promulgation of State Implementation Plans; Call for CO SIP Revision for Provo, UT**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of State Implementation Plan (SIP) Inadequacy and Call for SIP Revision for Provo, Utah—Information Notice.

**SUMMARY:** EPA here gives notice that it has notified the Governor of Utah on December 19, 1984, that the Utah State Implementation Plan (SIP) for carbon monoxide (CO) for Provo, Utah (Utah County) is substantially inadequate to assure attainment and maintenance of the CO national ambient air quality standards (NAAQS). In a letter dated February 11, 1985, the Governor of Utah submitted a schedule for revision of the SIP for CO in Utah County. The schedule commits to a December 19, 1985 deadline for submittal of the required CO SIP.

**DATES:** SIP revisions are due within one year of the date EPA notified the State.

**ADDRESSES:** Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the schedule are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

**FOR FURTHER INFORMATION CONTACT:** Lee Hanley, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 293-1757.

## SUPPLEMENTARY INFORMATION:

## I. Background

The 1970 Clean Air Act Amendments established deadlines for attainment of the primary NAAQS and required States to adopt SIP's providing for attainment within the deadlines. In many areas of the country, the first SIP's failed to bring about timely attainment. In 1976, EPA found these plans inadequate under section 110(a)(2)(H), 42 U.S.C. 7410(a)(2)(H), and called for SIP revisions under section 110(c)(1)(C), 42 U.S.C. 7410(c)(1)(C). See e.g., 41 FR 28842 [July 13, 1976].

In 1977, Congress amended the Clean Air Act to address the problem of continuing nonattainment of the NAAQS. New section 107(d), 42 U.S.C. 7407(d), required each State to designate immediately all areas as either attaining the NAAQS, not attaining the NAAQS, or unclassifiable for lack of data. Section 107(d) further required EPA to review, modify, and promulgate these designations by February 1978. New section 110(a)(2)(I), 42 U.S.C. 7410(a)(2)(I), required each State to revise its SIP to prohibit major stationary source construction or modification after July 1, 1979, in any nonattainment area whose SIP did not meet the requirements of Part D of the amended Act. Section 172(a)(1) of that part required each nonattainment area SIP to "provide for" primary NAAQS attainment as soon as practicable, but no later than December 31, 1982. (These were called "Part D plans" because the requirement was in Part D of the amended Clean Air Act.) The 1977 Amendments, however, retained the authority in section 110(a)(2)(H) and 100(c)(1)(C) to issue notices of deficiency and calls for SIP revisions as an additional remedial mechanism.

By July 1, 1979, few of the over 400 nonattainment areas designated by EPA had in effect a SIP meeting the requirements of Part D. As a result, on July 2, 1979 (44 FR 39471), EPA published a regulation inserting the statutory construction ban into SIP's and automatically imposing the ban as of July 1, 1979, in each nonattainment area without an approved or promulgated Part D plan. EPA stated it would lift the ban when the necessary Part D provisions were in place.

Since 1979, EPA has approved, fully or conditionally, all portions of Part D plans for the majority of nonattainment areas with the 1982 attainment deadline. However, many of those areas continued to experience NAAQS violations after the 1982 deadline.

On February 3, 1983, EPA proposed two sets of findings for Part D plans for

nonattainment areas with the 1982 deadline (48 FR 4972). First, EPA proposed to find as a factual matter that many of these SIP's had failed to attain the NAAQS by the end of 1982. Second, EPA proposed that the legal consequences of such failures should be disapproval of the SIP and the imposition of a section 110(a)(2)(I) construction ban.

After evaluating the comments on these proposals, EPA issued a final policy notice on November 2, 1983. This notice revised the Agency's position on the legal consequences of a failure to meet the 1982 deadline (48 FR 50686). In that policy, EPA agreed with many past commenters that imposition of the section 110(a)(2)(I) ban was not a legal consequence in any case where EPA had previously fully or conditionally approved a State plan.

In that final policy, EPA, however, stated its intent to find inadequate any approved or conditionally approved Part D plan that failed to bring about attainment by 1982. For such inadequate plans pursuant to section 110(a)(2)(H) of the Act, EPA specified it would call for corrective SIP revisions. The Agency would take further action to impose construction bans under section 173(4) and funding restrictions under section 176(b) in any area that fails to submit a revision in a timely manner.

## II. Finding of Inadequacy

The Provo CO SIP was approved on December 21, 1983 (48 FR 56378), with a revision to the attainment date in the July 11, 1984 Federal Register (49 FR 28243). The approval was based on CO monitored levels for the base year 1980-1981 of a 2nd high 8-hour average of 12.5 ppm (14.4 mg/m<sup>3</sup>). According to the SIP, a 25% reduction on CO emissions was required, and the attainment date was established as February 1, 1986. The SIP further stated that based on Mobile 2 emission factors for typical winter conditions of a 35 °F and 25 mph for "all modes", a 40% reduction would be attained by 1987 under the Federal Motor Vehicle Emission Control program. Transportation controls were expected to result in an additional 1% reduction.

Since the approval of this SIP, CO levels in Provo have shown increased levels from the base year 1980-1981. Data indicate the following:

Year	Date of second high day	Second high 8-hour average
1980-1981	Base year	14.4 mg/m <sup>3</sup>
January 1982 to December 1982	Jan. 25, 1982	19.0 mg/m <sup>3</sup>

Year	Date of second high day	Second high 8-hour average
January 1983 to December 1983	Nov. 15, 1983	16.4 mg/m <sup>3</sup>

Based on the 1982 2nd maximum, a reduction of 51% in CO emissions would be required to meet the air quality standards. Calculations using the latest mobile emission factors (Mobil 3) indicate that the Federal Motor Vehicle Emission Control program will only result in a 37% CO reduction by the end of 1987. Even with the additional transportation measures, the Provo CO SIP will still not be capable of meeting the CO standard by 1987.

Mobile 3 suggests that a reduction in CO emissions of more than 50% can be obtained by the end of 1987 with the addition of an Inspection/Maintenance (I/M) program that includes anti-tampering measures for new cars. Such a program is presently operating in Salt Lake and Davis Counties. The main difference between Mobil 2 and Mobil 3 is that Mobil 3 has been adjusted for the level of tampering and fuel switching that EPA surveys have found is occurring nationwide.

## III. Call for SIP Revision

This finding of inadequacy requires Utah, pursuant to the provisions of section 110(a)(2)(H), to carry out their SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the CO NAAQS.

Under section 110(c), 42 U.S.C. 7410(c), EPA is extending a period of one year to the State of Utah to submit the necessary measures after receiving notification of the inadequacy. Failure to correct the inadequacy may result in possible sanctions; construction ban under section 173(4) and funding restrictions under section 176 and possibly section 316(b).

In a letter dated February 11, 1985, the Governor of Utah submitted a schedule for revision of the SIP for CO in Utah County. The schedule commits to a December 19, 1985 deadline for submittal of the required CO SIP.

## IV. Final Action

In EPA's view, this finding of inadequacy does not constitute final actions that are reviewable inasmuch as they are not ripe for review. The determinations will not be sufficiently concrete for judicial resolution until additional action is taken by EPA in reliance on them. Further, Utah will not suffer hardship from delaying review

because the findings do not have an immediate, direct and substantial impact. Also, Utah will have a later opportunity to obtain judicial review of the findings.

The 60-day time period for filing a petition for review under section 307(b) is tolled until EPA makes the findings ripe by taking additional action in reliance on them, such as imposing sanctions or promulgating revisions, because a time limitation on petitions for judicial review can only run against challenges ripe for review.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

**Authority:** Secs. 101, 107, 110, 116, 171-178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501-08, and 7601(a); sec. 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95-95, 91 Stat. 685 (August 7, 1977)).

Dated: April 10, 1985.

John G. Wells,

Regional Administrator.

[FR Doc. 85-10147 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 60

[AD-FRL-2804-4]

#### Standards of Performance for New Stationary Sources; Surface Coating of Metal Furniture

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; revision.

**SUMMARY:** The purpose of this action is to revise 40 CFR Part 60, Subpart EE, Standard of Performance for Surface Coating of Metal Furniture. The intended effect of this action is to exempt small metal furniture surface coating facilities using less than 3,842 liters (1,000 gallons) of coating per year from the provisions of the standard.

**EFFECTIVE DATE:** April 30, 1985.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of the revision. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** *Background Information Document:* In preparing this revision, EPA is relying partly on the background

information documents (BID's) for the metal furniture surface coating standards proposed on November 28, 1980 (45 FR 79390) and promulgated on October 28, 1982 (47 FR 49278). These documents may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Surface Coating of Metal Furniture—Background Information for Proposed Standards" (EPA-450/3-80-007a). The BID for the promulgated standard is EPA-450/3-80-007b.

**Docket.** A docket, No. A-84-15, containing information considered by EPA in developing the promulgated revision, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

**Docket A-79-47** containing information considered by EPA in development of the promulgated standards is also available for public inspection at the above address. A reasonable fee may be charged for copying.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Doug Bell or Ms. Shirley Tabler (919) 541-5624, Standards Development Branch, concerning regulatory decisions and the standard, and Mr. James Berry, (919) 541-5605, Chemicals and Petroleum Branch, concerning technical aspects of the industry. The address for both parties is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

#### SUPPLEMENTARY INFORMATION:

##### The Revision

Standards of Performance for Surface Coating of Metal Furniture were promulgated in the *Federal Register* on October 29, 1982 (47 FR 49278). In the absence of information indicating the need for a lower size cutoff, the new source performance standard (NSPS) was promulgated without provisions for exempting small metal furniture surface coating facilities. Subsequent to promulgation, it was determined that, although complying coatings and appropriate application equipment are available at reasonable cost for plants using 3,842 liters (1,000 gallons) or more of coating per year, it had not been specifically demonstrated that emission control technology is available at reasonable costs for smaller plants. This action exempts small metal furniture

coating operations, including industrial firms that periodically refinish metal furniture onsite, that use less than 3,842 liters (1,000 gallons) of coating (as applied) per year from the standards, provided purchase or inventory records or other data necessary to substantiate annual coating usage are maintained. This type of small operation will be investigated further during the 4-year review of the NSPS scheduled for 1986.

#### Summary of Environmental, Energy, and Economic Impacts

There are no economic or energy impacts associated with this action. The additional nationwide VOC emission reduction that would result if small operations were not exempted would be minimal (less than 150 Mg per year).

#### Public Participation

This revision was proposed in the *Federal Register* on October 16, 1984 (49 FR 40542). Public comments were solicited at the time of proposal. The proposal provided for a public hearing if anyone requested the opportunity to orally present data, views, or arguments concerning the proposed revision. No such requests were received. In addition, no comment letters were received during the public comment period which was from October 16, 1984, to December 10, 1984.

#### Significant Comments and Changes to the Proposed Revision

No comments on the proposed revision were received. No changes have been made to the final revision because the Agency's review of the proposed revision indicated that none were necessary.

#### Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

#### Miscellaneous

The effective date of this revision is April 30, 1985. Section 111 of the Clean Air Act provides that standards of

performance and revision thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal. Because EPA was not aware of the existence of facilities falling below this cutoff at the time it proposed the NSPS, the appropriate applicability date of this revision is November 29, 1980 (the date after proposal of the existing standard).

#### Office of Management and Budget Review

The requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* are not applicable because no information collection requirements result from this final revision.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final revision is not major because it exempts small operations from the existing standard and would result in none of the adverse economic effects set forth in Section I of the Order as grounds for finding a regulation or revision to be major. The final rule was submitted to the Office of Management and Budget for review as required under Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are included in Docket A-84-15. This docket is available for public inspection at EPA's central docket section that is listed under the ADDRESSES section of this notice.

#### Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on small business entities because it exempts certain small entities from the requirements of an existing standard. During the development of the background information document for the existing standard, the smallest model plant subjected to economic and other impact analyses used 3,842 liters (1,000 gallons) of coating per year. Small coating operations using less than 3,842 liters (1,000 gallons) of coating annually were not studied during the development of the existing standard and therefore are being exempted from the standard.

#### List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper

and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Authority: Secs. 111 and 301(a) of the Clean Air Act.

Dated: April 22, 1985.

Lee M. Thomas,  
Administrator.

#### PART 60—[AMENDED]

40 CFR Part 60 is amended by adding paragraph (c) to § 60.310 as follows:

##### § 60.310 Applicability and designation of affected facility

(c) Any owner or operator of a metal furniture surface coating operation that uses less than 3,842 liters of coating (as applied) per year and keeps purchase or inventory records or other data necessary to substantiate annual coating usage shall be exempt from all other provisions of this subpart. These records shall be maintained at the source for a period of at least 2 years.

[FR Doc. 85-10361 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 463

[OW-FRL-2826-6]

#### Plastics Molding and Forming Point Source Category Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: On December 17, 1984, the Agency published final effluent limitations guidelines, pretreatment standards and new source performance standards for the Plastics Molding and Forming Point Source Category. 40 CFR Part 463; 49 FR 49026. The applicability section for this regulation provides that processes used to regenerate cellulose and to produce a product from the regenerated cellulose are not subject to the Part 463 regulations. 40 CFR 463.1(g). That provision is correct and is not affected by today's notice.

However, the applicability section also states that processes used to regenerate cellulose and to produce a product from the regenerated cellulose are subject to effluent limitations

guidelines and standards for the Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category. That provision is not correct and is being deleted by today's correction notice. Processes used to regenerate cellulose and to produce a product from the regenerated cellulose are not currently subject to the Part 414 regulations for the Organic Chemicals Manufacturing Point Source Category and the Agency has not completed further rulemaking to establish additional effluent limitations guidelines and standards for the more expansive Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category. Any decisions regarding the future applicability of the organics regulations will be made as part of that rulemaking. Such a decision should not be made, and was not intended to be made, as part of the plastics molding and forming rulemaking.

To avoid any inference that the Agency intended to determine in the plastics molding and forming rulemaking the applicability of future organic chemical rules to processes used to regenerate cellulose and to produce a product from the regenerated cellulose, the Agency is today deleting such references from the plastics molding and forming rulemaking. These corrections involve deletion of two sentences from the December 17, 1984 preamble and one sentence from 40 CFR 463.1(g).

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Southworth at (202) 382-7150.

Dated: April 19, 1985.

Henry Longest II,  
Acting Assistant Administrator for Water.

#### PART 463—[CORRECTED]

The following corrections are made in FRL-2716-4 appearing on 49026 in the issue of December 17, 1984:

1. On page 49029 at the top of column three delete the sentence: "However, it is subject to the effluent limitations guidelines and standards for the organic chemicals, plastics, and synthetic fibers category."

2. On page 49044 in the second full paragraph of column one delete the sentence: "That process is subject to the regulations for the organic chemicals, plastics, and synthetic fibers (OCPSF) category."

##### § 463.1 [Corrected]

3. On page 49047, 40 CFR 463.1(g) is corrected by removing the sentence: " \* \* \* They are subject to the effluent limitations guidelines and standards for

the organic chemicals, plastics, and synthetic fibers category. \* \* \*

[FR Doc. 85-10366 Filed 4-29-85; 8:45 am]  
BILLING CODE 8560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Ch. 201

[FIRMR Temp. Reg. 12]

#### Establishing Integrated Records Management Provisions for the Federal Information Resources Management Regulation (FIRMR)

##### Correction

In FR Doc. 85-8517 beginning on page 14220 in the issue of Thursday, April 11, 1985, make the following corrections:

1. On page 14221, in the second column, in the nineteenth line from the bottom, "101-11.103.3" should read "101-11.103-3".

2. In the same column, in the twelfth line from the bottom, the entry should not be indented.

3. In the same column, in the second line from the bottom, "201-45.001" should read "201-2.001".

4. On the same page, in the third column, in the thirty-eighth line, "201-45.001" should read "201-2.001".

5. In the same column, in the forty-third line, "201-45.001" should read "201-2.001".

6. On page 14222, in the first column, under "FPMR sources", the thirty-third line, "101-1.808" should read "101-11.808".

7. In the same column, under "FIRMR sections", the forty-ninth line, "21-45.001" should read "21-2.001".

8. On page 14237, in the third column, in § 201-45.502(e), in the last line, "users" should read "user".

BILLING CODE 1505-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 85-149]

#### MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission addresses petitions for reconsideration of modifications made to the access charge plan on further reconsideration, published on March 2, 1984, at 48 FR 7610. The MO&O amends

the non-premium rate structure by eliminating flat-rate charges and requiring that all non-premium access services be billed on a usage-sensitive basis. This action is taken in order to eliminate unreasonable discrimination against smaller, newer carriers and to promote competition in the interexchange market.

**EFFECTIVE DATES:** Amendments to §§ 69.205, 69.206, and 69.207 will become effective on January 1, 1986.

Amendments to §§ 69.305, 69.501, and 69.502 will become effective May 30, 1985.

**FOR FURTHER INFORMATION CONTACT:** Thomas Sugrue or Sandra Eskin, (202) 632-9342.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 69

Access charges, Communications common carriers, Telephone.

##### Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I.

Adopted: March 28, 1985.

Released: April 23, 1985.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date; Commissioner Dawson dissenting and issuing a statement at a later date.

#### I. Introduction

1. In the *Third Report and Order* in this docket (*Access Charge Order*),<sup>1</sup> we adopted rules establishing a comprehensive system through which local telephone companies are to recover most of the costs of their facilities and services assigned to the interstate jurisdiction through the separations process.<sup>2</sup> The rules provide for the imposition of charges on interexchange carriers and end users who lease or use local exchange facilities that may be used to complete interstate or foreign telecommunications. These charges are assessed through tariffs filed by the exchange carriers with this Commission, which replace the variety of

compensation mechanisms through which interexchange carriers and other subscribers had been paying exchange carriers for interstate and foreign access services. In adopting this access charge plan, we sought to achieve a balance among the following four policy objectives: (1) Preservation of universal service; (2) elimination of unreasonable discrimination and undue preferences among rates for interstate services; (3) efficient use of the local network; and (4) prevention of uneconomic bypass.<sup>3</sup> In addition, we sought to maximize the opportunities for full and fair competition among interexchange carriers during the transition to "equal access," when the existing inequalities between the interconnection options offered interexchange carriers will be eliminated.<sup>4</sup> We did this in part by providing that AT&T would pay a premium access charge during this transition because the access it receives to the local exchange is superior to that available to other interexchange carriers ("OCCs").

2. In two orders on reconsideration in this proceeding, we reaffirmed our commitment to the objectives set out in the *Access Charge Order*, while modifying in certain respects the means we had selected to achieve those objectives. In our *First Reconsideration Order*,<sup>5</sup> we modified the original access charge plan by ordering, (i) a more gradual transition to customer line charges for residential and Centrex-CO subscribers; (ii) replacement of the lump-sum premium charge on AT&T with a percentage differential in the per minute charges assessed for premium and non-premium access; (iii) establishment of a surcharge on private lines with the capacity to "leak" interstate traffic into the local exchange; and (iv) certain other changes in the distribution of access costs among users of access services. In our *Second Reconsideration Order*,<sup>6</sup> we further

<sup>1</sup> See *Access Charge Order* at para. 122.

<sup>2</sup> The District Court decree providing for the reorganization of AT&T requires that the divested local Bell Operating Companies ("BOCs") provide all interexchange carriers with local exchange access "on an unbundled, tariffed basis that is equal in type, quality, and price to that provided to AT&T and its affiliates." *United States v. American Tel. and Tel. Co.*, 522 F.Supp. 131, 227 (D.D.C. 1982) [*Modification of Final Judgment or "MFJ"*], *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). In another phase of this docket, we have recently established comparable "equal access" obligations for independent (i.e., non-BOC) local telephone companies, subject to certain conditions. See MTS/WATS Market Structure (Phase III), Report and Order in CC Docket No. 78-72, Phase III, FCC 85-98 (released March 19, 1985) (hereinafter *Phase III Order*).

<sup>3</sup> 97 FCC 2d 662 (1983).

<sup>4</sup> 97 FCC 2d 834 (1984).

<sup>1</sup> MTS/WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (hereinafter *Access Charge Order*), modified on reconsideration, 97 FCC 2d 652 (1983) (hereinafter *First Reconsideration Order*), modified on further reconsideration, 97 FCC 2d 834 (1984) (hereinafter *Second Reconsideration Order*), *aff'd and remanded in part, Nat'l Ass'n of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 53 U.S.L.W. 3583, 3595 (U.S. Feb. 19, 1985) (No. 84-95) (*NARUC v. FCC*).

<sup>2</sup> The separations rules, which govern the apportionment of local telephone company investment and expense between the interstate and the intrastate jurisdictions, are set out in Part 67 of the Commission's Rules. See 47 CFR 67.1-67.701 (1984).

modified the access charge plan by deferring customer line charges for residential and single-line business customers to June 1, 1985, pending further examination of various issues concerning the implementation of such charges, including their effects on universal service and small telephone companies. In that order we also (i) increased the differential between premium and non-premium access charges; (ii) provided that the latter would be assessed on a flat-rate, per line basis for interexchange carriers providing MTS-WATS equivalent services; (iii) revised the method of phasing out the differential during the transition to equal access; and (iv) clarified or modified the application of access charges to, *inter alia*, the closed end of WATS lines, the open end of foreign exchange (FX) lines, and "leaky" private lines. The conformance of the principal parts of the access charge plan to the requirements of the Communications Act and other applicable legal standards was affirmed by the United States Court of Appeals for the D.C. Circuit in *NARUC v. FCC*.<sup>7</sup>

3. The first set of tariffs implementing the access charge plan were filed by the exchange carriers by October 3, 1983, to be effective January 1, 1984. We suspended these tariffs for three months in order to permit a thorough investigation of their terms and rates.<sup>8</sup> After such an investigation, which included a careful review of the extensive comments and replies submitted by interested parties and the issuance of a series of orders directing the exchange carriers to revise certain

terms and rates,<sup>9</sup> we permitted the switched access provisions of the tariffs (as revised according to our directions) to go into effect on May 25, 1984, but we continued our review of the provisions governing special access (basically local private lines used for access). We subsequently found those provisions to be unlawful.<sup>10</sup> The exchange carriers submitted revised special access tariffs, which (as further revised according to our orders) were recently allowed to go into effect.<sup>11</sup>

4. Shortly after the issuance of the *Second Reconsideration Order*, we issued a *Further Notice of Proposed Rulemaking*<sup>12</sup> requesting comments on four issues: (1) Customer line charges for residential and single-line business subscribers; (2) the transitional mechanism for implementing such charges; (3) lifeline exemptions or other assistance for low-income subscribers; and (4) additional assistance for small telephone companies. At the same time, we asked the existing Federal-State Joint Board to prepare recommendations concerning those issues.<sup>13</sup> In an Order released November 23, 1984, the Joint Board recommended several modifications to our existing plan, including the implementation of customer line charges for residential and single-line business subscribers of \$1.00 per month for the June 1, 1985 to May 31, 1986 period, and \$2.00 per month beginning June 1, 1986.<sup>14</sup> We adopted the

Joint Board's recommendations with a few minor changes and clarifications in an Order released December 28, 1984.<sup>15</sup>

5. We also decided in the *Second Reconsideration Order* to examine further two other issues: (1) The effects of customer line charges (and federal decisions generally) on universal service, and (2) the extent and dangers of bypass. Staff studies addressing these two issues were initiated shortly after the issuance of the *Second Reconsideration Order*.<sup>16</sup> These studies were presented to the Commission on December 19, 1984, and published as Commission Reports. The first, confirming the findings of the *Michigan Report*,<sup>17</sup> concluded that there is no persuasive evidence that Commission decisions have had or will have a deleterious impact on universal service.<sup>18</sup> The Report also recommended that Commission resources be focused on monitoring possible impacts on universal service based on actual data, rather than attempting to predict such impacts based on hypothetical models. The second study confirmed earlier findings that bypass is presently occurring and will continue to grow, and found that service bypass (i.e., the use of private lines to access the facilities of an

<sup>7</sup> 737 F.2d 1095. However, the Court remanded to the Commission for further consideration those parts of the plan dealing with the computation of customer line charges for party lines and the conditions under which exchange companies may elect to compute access costs based on an average schedule. We issued a Notice of Proposed Rulemaking in late 1984 requesting comments on, *inter alia*, these two sets of remanded issues. MTS/WATS Market Structure, Notice of Proposed Rulemaking, 49 FR 50413 (1984). Current Service, Rad. Reg. 2d [P&F] 64-47 (1984). We recently issued an order addressing, *inter alia*, the party-line issues. MTS/WATS Market Structure, Memorandum Opinion and Order in CC Docket No. 78-72, Phase I, FCC 85-87 (released February 27, 1985). The average schedule issues will be addressed in a subsequent order. Furthermore, one important transitional part of the access charge plan—that involving the differential between premium and non-premium access charges—is the subject of a separate appeal. *AT&T v. FCC*, appeal docketed, No. 84-1067 (D.C. Cir. March 9, 1984).

<sup>8</sup> Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 48 FR 49918, 54 Rad. Reg. 2d [P&F] 1119 (1983), *reconsideration denied*, FCC 83-568 (released December 29, 1983) (suspending the switched access tariffs until April 3, 1984); Memorandum Opinion and Order in CC Docket No. 83-1145, FCC 84-104 (released March 27, 1984) (further suspending some of the tariffs until June 13, 1984).

<sup>9</sup> Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 97 FCC 2d 1062 (1984) (hereinafter *BCA Tariff Order*); Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 49 FR 13075, 55 Rad. Reg. 2d [P&F] 869 (1984); Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 49 Fed. Reg. 19,821, 55 Rad. Reg. 2d [P&F] 1422 (1984) (hereinafter *April Tariff Order*); Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 49 FR 23924 (1984) (hereinafter *May Cost Order*).

<sup>10</sup> Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order, 49 FR 50457, 57 Rad. Reg. 2d [P&F] 188 (1984) (hereinafter *Special Access Tariff Order*).

<sup>11</sup> Investigation of Access/Divestiture Tariffs, Memorandum Opinion and Order in CC Docket No. 83-1145, Phase I and Phase II, Part I, Mimeo No. 2647 (released February 19, 1985).

<sup>12</sup> MTS/WATS Market Structure and Amendment of Part 67, Further Notice of Proposed Rulemaking, 49 FR 18318, Current Service, Rad. Reg. 2d [P&F] 64-41 (1984) (hereinafter *Further Notice*).

<sup>13</sup> *Id.* at para. 3.

<sup>14</sup> MTS/WATS Market Structure and Amendment of Part 67, Recommended Decision and Order, 49 F.R. 48325, 57 Rad. Reg. 2d [P&F] 287 (1984) (hereinafter *Joint Board Order*). The Joint Board also recommended that exchange carriers be entitled to file alternative interstate tariffs for the recovery of carrier common line costs where a state commission or the Joint Board has found that alternative tariffs are necessary to combat bypass. Any revenue shortfall created by an alternative tariff would be recovered by a 35-cent surcharge on the customer line charge. In addition, the Joint

Board proposal included three other recommended actions: (1) A reduction of the customer line charge for customers who meet a state-established means test subject to verification; (2) initiation of a further proceeding by the Joint Board to examine the effect of customer line charges and the alternative anti-bypass tariffs on universal service, bypass, economic efficiency, and interexchange competition; and (3) implementation of changes in the methodology for calculating the amount of high cost assistance to local telephone companies to direct more assistance to small telephone companies and those with higher cost levels.

<sup>15</sup> MTS/WATS Market Structure and Amendment of Part 67, Decision and Order, 50 F.R. 939, 57 Rad. Reg. 2d [P&F] 511 (1984) (hereinafter *Decision and Order*). We modified the Joint Board's proposal for changes in the language of Part 67 of our rules to reflect its recommendation that 90 days notice be required for the filing of alternative tariff provisions. *Id.* at para. 7 n. 11. We also directed the Joint Board to undertake a further study of issues relating to lifeline assistance measures and directed the Common Carrier Bureau to request additional comments concerning the effect of subscriber line charges on small business subscribers. *Id.* at para. 7.

<sup>16</sup> Public Notice, "Commission Seeks Further Information on the Effects of Federal Decisions on Local Rates and Services," Mimeo No. 3246 (released March 30, 1984); Public Notice, "Request for Data, Information, and Studies Pertaining to Bypass of the Public Switched Network," Mimeo No. 3206 (released March 28, 1984). See also Public Notice, "Request for Comments on Bypass Studies," Mimeo No. 6784 (released September 21, 1984).

<sup>17</sup> Local Telephone Service, A Report after Inquiry in CC Docket No. 83-788, 96 FCC 2d 491 (1984) (hereinafter *Michigan Report*).

<sup>18</sup> Further Report on the Effects of Federal Decisions on Universal Telephone Service, Order in CC Docket No. 78-72, Phase IV, FCC 84-636 (released January 4, 1985) (hereinafter *Michigan II Report*).



interexchange carrier) is likely to be the major form of bypass in the immediate future.<sup>19</sup>

6. In light of these related proceedings that address various issues concerning customer line charges, parties seeking reconsideration of the *Second Reconsideration Order* have for the most part properly focused their petitions on the other principal part of our access charge plan—that dealing with the assessment of access charges on interexchange carriers for their use of local exchange facilities in originating or terminating their customers' interstate communications.<sup>20</sup> These petitioners request that we reconsider certain modifications to our access charge rules for interexchange carriers and services that we made in the *Second Reconsideration Order*. The principal issues raised concern the non-premium rate structure we prescribed for access services provided OCCs for MTS-WATS equivalent services and the manner in which non-premium access charges are to be phased out as equal access is phased in. Petitioners have also objected to various aspects of our decision to treat the closed end of WATS lines under the switched access provisions of the rules and to the allocation of certain costs between the switched and special access categories. Our decision to order revised special access tariffs, filed December 3, 1984, prompted us to resolve one of the cost allocation issues separately because we did not anticipate acting on all the issues raised in this reconsideration round before the revised tariffs were filed. In the first part of the *Third Reconsideration Order* in this docket, we addressed the assignment of Category 5 station equipment costs to the special access element and adopted one amendment to the Part 69 rule.<sup>21</sup> In this Order, we reaffirm both the overall objectives and provisions of the access charge plan and the specific provisions we adopted in the *Second Reconsideration Order*, with one important modification—we amend the

non-premium rate structure by eliminating flat-rate charges and requiring that all non-premium access services be billed on a usage-sensitive basis.

## II. Discussion

### A. Non-Premium Access Charges

7. In the various stages of this proceeding, we have considered at length how the access charges paid by interexchange carriers should reflect the differences between the premium access to the local exchange afforded AT&T for its MTS and WATS services and the inferior access afforded OCCs for their MTS-WATS equivalent services.<sup>22</sup> In the *Access Charge Order*, we held that a lump-sum premium access charge would be assessed on AT&T to reflect the opportunity cost of premium access.<sup>23</sup> We set this premium charge equal to the costs of interstate Customer Premises Equipment (CPE), which in 1984 were approximately \$1.4 billion and which will be declining at the rate of 25 percent during the period 1984-87, the approximate period during which equal access is to be phased in. In the *First Reconsideration Order*, we concluded that (i) our original estimate of the opportunity cost of premium access was too low, and (ii) a differential in the per minute charges for premium and non-premium access would provide a better mechanism for reflecting the value of premium access.<sup>24</sup> We decided that a discount of 35 percent applied to the carrier common line charges assessed OCCs for their non-premium access would provide a reasonable measure of the value of premium access in 1984, which we estimated would be approximately \$2.2 billion. Again, we provided that the differential would be phased out as equal access was phased in, but revised the schedule for that phase-out to conform it explicitly to the equal access implementation schedule in the *MFJ*.

8. In the *Second Reconsideration Order*, we decided that our efforts to establish the value of premium access by reference to an opportunity cost analysis, while conceptually sound and focused on the relevant factors, produced results that were too imprecise and unstable to provide a reliable basis

for establishing the differential between premium and non-premium access charges.<sup>25</sup> We did conclude, however, that material submitted during the second reconsideration round had made a convincing case that the premium value was somewhat larger than our \$2.2 billion estimate in the *First Reconsideration Order*, although how much larger was difficult, if not impossible, to determine with much precision. Accordingly, we decided to adopt a suggestion made by the National Telecommunications and Information Agency (NTIA) that we establish a total differential for all relevant access elements, based not on a complex and problematic opportunity cost analysis, but on the total differential produced by the ENFIA rates then in effect.<sup>26</sup> ENFIA, despite its shortcomings,<sup>27</sup> was the rate structure the industry had been operating under for a number of years. In light of our concerns and those of many parties that there be a smooth transition from ENFIA to equal access that would not undermine the OCC's ability to compete effectively, it made sense to use the ENFIA rates as an initial benchmark for beginning that transition. Again adopting a suggestion of NTIA, we determined the non-premium discount for 1984 by reducing the then-existing ENFIA discount for all relevant access elements (estimated to be about 70 percent) by approximately one quarter, to 55 percent.

9. In making this determination, we expressed the concern that, while the 55 percent discount would produce a

<sup>19</sup> *Second Reconsideration Order*, at paras. 51-62.

<sup>20</sup> The Exchange Network Facilities for Interstate Access (ENFIA) tariffs, which were the result of an agreement between the pre-divestiture AT&T and some of the OCCs, governed the charges OCCs would pay for their use of local exchange facilities in completing their customers' interstate calls. The agreement constituted an interim measure to bridge the gap between court decisions permitting OCCs to offer services in direct competition with MTS and WATS. *MCI Telecommunications Corp. v. FCC*, 501 F.2d 365 (D.C. Cir. 1977), cert. denied, 434 U.S. 1040 (1978) motion for an order directing compliance with mandate granted, 580 F.2d 590 (D.C. Cir. 1978), cert. denied, 439 U.S. 960 (1978), and our determination in this proceeding of an appropriate access charge structure for all interexchange carriers. See Exchange Network Facilities (ENFIA), Memorandum Opinion and Order, 71 FCC 2d 440 (1979). Thus, the system of access charges we have provided in the Part 69 rules was intended to supplant the ENFIA rate structure. *Second Reconsideration Order*, at paras. 51-55. Indeed, when the switched access tariffs became effective on May 25, 1984, the ENFIA system lapsed and no longer governs the compensation paid by OCCs to exchange carriers for the use of exchange facilities.

<sup>21</sup> See MTS/WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224, paras. 29-35 (hereinafter *Second Supplemental Notice*).

<sup>19</sup> Bypass of the Public Switched Network, Order in CC Docket No. 78-72, Phase I, FCC 84-635 (released January 18, 1985) (hereinafter *Bypass Report*).

<sup>20</sup> A list of parties submitting pleadings in this reconsideration round is attached as Appendix A.

<sup>21</sup> MTS/WATS Market Structure, Memorandum Opinion and Order, 49 FR 46,383 (1984) (hereinafter *Third Reconsideration Order, Part I*). The Order amends § 69.303(c) of the rules, which provides the methodology for allocating Category 5 station equipment costs between special and switched access. Pursuant to the amended rule, only special access lines subject to the special access surcharge are counted in determining the allocation factor, which is based on the relative number of switched and special access equipment lines.

<sup>22</sup> While other carriers provide interstate MTS and WATS with premium access (e.g., larger independent telephone companies) and are subject to the premium charge, we will refer to that charge as an assessment on AT&T because AT&T receives most of the MTS and WATS revenues and pays most of the premium charges. See *First Reconsideration Order* at para. 92 n.75.

<sup>23</sup> See *Access Charge Order* at paras. 151-66.

<sup>24</sup> *First Reconsideration Order* at paras. 91-127.

smooth transition from ENFIA to equal access for most OCCs, the change from the per line ENFIA charges to the usage-based access charges would result in a substantial and abrupt increase in costs for those OCCs with above-average usage per line. Accordingly, we held that non-premium access charges should be computed on a per line basis, consistent with the practice under ENFIA.<sup>28</sup> We found that a 9,000 minutes per line factor should be used to compute the initial monthly per line charge because that figure was a reasonable estimate of average OCC usage.<sup>29</sup> In addition, to provide further assurance that the flat-rate methodology would facilitate the transition to equal access, we stated that we would initiate a proceeding in 1985 to review the non-premium rate structure and make any necessary revisions for future access years. Finally, we provided that the non-premium rates would be phased out as equal access is phased in on an end-office-by-end-office basis.<sup>30</sup>

10. The principal objections raised in this reconsideration round to the non-premium rate structure we adopted in the *Second Reconsideration Order* concern the use of flat-rate, as opposed to a usage-sensitive, charges for OCC non-premium access. In this Order, we find these objections meritorious and direct that non-premium access charges be assessed on a usage-sensitive basis as of January 1, 1986. While we have decided to institute a usage-based structure for non-premium access charges, it is still necessary to address certain objections related to three

specific features of the flat-rate structure, since it will be in effect through the end of December 1985: (i) The existence of an "FX loophole," which gives OCCs the option of obtaining usage-priced FX lines as an alternative to flat-rate FGA lines; (ii) the selection of 9,000 minutes per line as the basis for calculating the discounted flat rate; and (iii) the availability of LATA-wide access for terminating Feature Group A (FGA) traffic as part of non-premium access.<sup>31</sup>

#### 1. The Use of a Flat Rate for OCC Non-Premium Access

11. AT&T, Pacific, and NYNEX object to the flat-rate structure for non-premium OCC access on the grounds that it is inefficient and discriminatory, and they urge us to return to usage-based charges for such access.<sup>32</sup> The flat rate encourages inefficient use of the local network, these parties argue, because OCCs, by increasing their minutes of use per line, impose additional costs on local exchange carriers without paying any additional charges. They argue that a per line charge based on an estimate of average OCC minutes of use discriminates in favor of those OCCs with higher than average usage per line, which tend to be the larger, more established OCCs, and against those with lower than average usage per line, which tend to be the smaller, newer OCCs. This advantage for larger OCCs, they contend, undercuts the Commission's goal of promoting equal competition in the interexchange marketplace. In addition, Pacific maintains that, by effectively increasing the discount above 55 percent for AT&T's largest competitors, the flat-rate structure provides a further incentive for AT&T to bypass local exchange networks.

12. The OCCs that filed pleadings in this reconsideration round all support the flat-rate structure for non-premium access.<sup>33</sup> They generally assert that the

per line charge for OCC access both adequately compensates exchange carriers and fairly reflects the relative value of the different quality access provided AT&T and the OCCs.<sup>34</sup> Many OCCs also argue that charging for access on a per line basis promotes a smooth transition from the ENFIA arrangements to the usage-based rate structure of equal access.

13. When we implemented the flat-rate structure for non-premium access in the *Second Reconsideration Order*, we viewed it as the best method for avoiding a very abrupt increase in access costs for those OCCs with per line usage levels that substantially exceeded the industry average.<sup>35</sup> While we recognized that the use of a per line charge might disadvantage new entrants, we believed that the experience with the ENFIA tariffs, which used per line charges for all elements, indicated that this rate structure would not create a significant entry barrier. We stated that "[a] number of carriers have entered the market while the ENFIA tariff has been in effect and most have apparently succeeded in achieving average usage levels fairly quickly."<sup>36</sup> However, it is now our view that, for a number of reasons, this reliance on our past experience under ENFIA may have been misplaced. First, for most of the period those tariffs were in effect, there were only a relatively few OCCs; more recently, many smaller carriers have entered the market and are attempting to compete, not only with AT&T, but also with the larger OCCs. Second, as a number of parties point out, the average usage levels for the OCC industry on which the ENFIA flat-rate was based, which ranged from 3,000 to approximately 5,400 minutes per line, were substantially less than the 9,000 minutes we found to be a reasonable estimate of the current industry average on which we based the flat rate for non-premium access.<sup>37</sup>

<sup>28</sup> *Second Reconsideration Order*, at para. 85.

<sup>29</sup> The non-premium per line charge is obtained by multiplying a hypothetical premium charge per access minute for each relevant access element by 4,050 (45 percent of 9,000) minutes. See *Second Reconsideration Order*, at para. 87. We provided for two different adjustments to this initial per line charge for the period beginning June 1, 1985. First, we provided that the initial charge would be increased to reflect changes in the Consumer Price Index ("CPI"). Second, we stated that a reduction in the charge might be considered for the 1985-1986 period in light of any adjustments we might make to customer line charges in the supplemental proceedings addressing such charges. As discussed in para. 4, *supra*, we have adopted joint Board recommendations that residential and single-line business customer line charges be set at \$1.00 for the year beginning June 1, 1985, and \$2.00 thereafter. See *Decision and Order*, *supra* note 15. In order to implement our commitment in the *Decision and Order* that the full amount of the revenue generated from such charges be flowed through to consumers in the form of reduced interstate toll rates, we recently provided that the flat-rate charge for non-premium access should be recalculated for the year beginning June 1, 1985, rather than simply adjusted by the CPI. MTS/WATS Market Structure and Amendment of Part 67. Memorandum Opinion and Order in CC Docket No. 78-72, Phase 1, and No. 80-286, FCC 85-71 (released February 26, 1985).

<sup>30</sup> *Second Reconsideration Order*, at para. 89-90.

<sup>31</sup> Objections to the provisions governing the phase-out of the non-premium rate structure are discussed *infra* section II.B.1.

<sup>32</sup> AT&T Petition at 10-14; Pacific Petition at 6-8; NYNEX Opposition at 9 n. 7; AT&T Opposition at 6; NYNEX Reply at 4-5; Pacific Reply at 10-13. See also Rochester Opposition at 6-10. Furthermore, Ameritech urges us to return to a lump-sum premium charge on AT&T, as originally provided in the *Access Charge Order*. Ameritech Petition at 7-14. Our decision to abandon the lump-sum premium charge and recover the value of premium access from AT&T on a usage basis was made in the *First Reconsideration Order* and was not changed in the *Second Reconsideration Order*. Hence, Ameritech's request is untimely in this reconsideration round and is denied as such. See § 1.429(l) of the Commission's Rules, 47 CFR 1.429(l) (1984).

<sup>33</sup> Allnet Petition at 4; GTE Sprint Opposition at 3-6; Lexitel Opposition at 7-8; SBS Opposition at 3-7;

USTS Opposition at 7-11; Teltec Opposition at 3; MCI Opposition at 10; GTE Sprint Reply at 6-8.

<sup>34</sup> See, e.g., SBS Opposition at 7.

<sup>35</sup> *Second Reconsideration Order* at paras. 85-88.

<sup>36</sup> *Id.* at para. 86.

<sup>37</sup> The flat-rate charge for non-premium access in the NECA tariff is slightly more than \$330. NECA Tariff FCC No. 1. The flat-rate charges under ENFIA ranged from slightly under \$100 to slightly over \$225. See, e.g., AT&T (ENFIA), Memorandum Opinion and Order, 91 FCC 2d 1079, 1088 (1982); Memorandum Opinion and Order in CC Docket No. 78-371, Mimeo No. 4671 (released June 10, 1983). See also AT&T Opposition at 7 n.\*\*\*. Allnet questions our reliance on the ENFIA experience as the basis for finding that the flat rate we adopted in the *Second Reconsideration Order* will not be an entry barrier.

14. With many more competing firms and a higher industry average usage level, the disadvantage to new entrants created by the per line charge, which we characterized as "minimal" in the *Second Reconsideration Order*, is arguably much greater than was the case under ENFIA. Accordingly, we are no longer sanguine about the ability of new entrants to move rapidly and easily to usage levels close to the industry average<sup>38</sup>, and thus, about our previous finding that flat-rate non-premium charges would not harm small OCCs or serve as a barrier to entry. Furthermore, in opting for the per line charge, we were concerned that exchange carriers would incur substantial administrative costs in switching to usage-sensitive billing for non-premium access services. It now appears that the measurement capability sufficient to implement a usage-based non-premium rate structure does exist in the vast majority of end offices, thereby lessening the administrative burdens of assessing such charges on a usage-sensitive basis.<sup>39</sup>

15. Therefore, in order to avoid any unreasonable discrimination against smaller, newer OCCs<sup>40</sup> and thereby

promote equal competition in the interexchange marketplace, we have decided to establish a usage-based rate structure for all non-premium access services. The amendments to the rules implementing this decision are set out in Appendix B. This new rate structure for non-premium access will go into effect as of January 1, 1986.

## 2. Specific Objections to the Flat Rate Structure

16. As indicated above, despite our adoption today of usage-based charges for all non-premium access services, it is necessary to address certain objections to the flat-rate structure since it will remain in effect until January 1, 1986.

### (a) The "FX Loophole"

17. One question about the present non-premium rate structure that should be clarified at this time is whether the Part 69 rules and the current access tariffs permit OCCs to avoid paying the flat rate for FGA lines by ordering usage-based FX lines and reselling them to form an MTS-WATS equivalent service. A large number of parties address this issue, and all but one agree that OCCs have this option,<sup>41</sup> although they differ as to whether this is a desirable result. AT&T and a number of exchange carriers characterize this option as an "FX loophole", which they assert undercuts the Commission's stated rationale in establishing a flat-rate structure for non-premium access and demonstrates the need to return to usage-based charges. A number of OCCs argue that the availability of this option is a positive feature of the present non-premium rate structure that primarily benefits the smaller OCCs.

18. While we did not focus on this question in the *Second Reconsideration Order*, and hence the present rules and our explanation of their provisions in that Order are somewhat ambiguous on this point,<sup>42</sup> we agree with the

premium access than their larger, more established competitors. Indeed, an OCC with a usage level below 4,050 minutes per line is paying more for inferior access than AT&T is paying for premium access. This result could have a particularly deleterious impact on the ability of small regional OCCs, which serve limited geographic areas, to expand their operations by entering new markets and competing with AT&T and the established OCCs now serving those markets. We view this result as discriminatory and a significant burden on competition in the interexchange marketplace.

<sup>38</sup> See AT&T Petition at 12; AT&T Reply at 2-4; Rochester Opposition at 6-7; NYNEX Opposition at 9 n.7; NYNEX Reply at 4-5; Pacific Reply at 12; SBS Opposition at 6-7; Teltec Opposition at 3 n.4; MCI Opposition at 10 n.14. GTE Sprint is the only party that takes the position that OCCs may not use FX lines in this fashion. See GTE Sprint Opposition at 3-6; GTE Sprint Reply at 6-6.

<sup>42</sup> But see Separate Statement of Commissioner Dawson, *Second Reconsideration Order*, 97 FCC 2d

commenting parties who assert that OCCs should have the option of ordering and reselling usage-based FGA. The alternative, which would involve restricting resale by OCCs of access services or limiting the access services available to OCCs, would be contrary to our policies against prohibitions on resale and discrimination in services and rates based on the nature of the customer.<sup>43</sup> Furthermore, in light of the concerns discussed above about the effect of the flat rate on smaller OCCs, we find that such restrictions could harm competition in the interexchange market.<sup>44</sup> Accordingly, the present non-premium rate structure, including the availability of usage-based FX lines as an alternative to flat-rate FGA

connections, will continue in effect until the flat-rate structure is eliminated.<sup>45</sup>

### (b) The use of 9,000 minutes per line as the assumed OCC monthly usage

19. A number of parties have objected to our selection of a 9,000 minutes per line usage rate as the basis for computing the flat-rate charge. Allnet argues that 9,000 minutes per line is too high and does not reflect an industry-wide average usage level.<sup>46</sup> It asserts

at 895 ("Absent such restrictions [on resale of FGA services], there would be no basis to prohibit an OCC from ordering FX service on a non-premium per-minute basis and reselling it to form an MTS/WATS equivalent service.")

<sup>43</sup> See, e.g., *ECA Tariff Order*, supra note 9, at para. 69 and page 2-85.

<sup>44</sup> Lexitel, in a recently filed petition, asks us to issue a ruling clarifying that all consumers of access services may obtain non-premium FGA lines at usage-sensitive as well as flat rates. See supra note 38. Lexitel states that it had been the widespread practice among exchange carriers to permit OCCs to order either type of FGA, but that recently some exchange carriers have been refusing to fill new OCC orders for usage-based FGA. A similar petition for declaratory ruling was filed by TDX Systems, Inc. The action we take today has the effect of providing Lexitel and TDX with the relief they seek until flat-rate FGA is eliminated entirely. Accordingly, we will dismiss the Lexitel and TDX petitions as moot.

<sup>45</sup> While we recognize that, as AT&T argues, providing this option to OCCs will result in an aggregate discount to OCCs as a group that is somewhat greater than 55%, we believe that this possible deviation from the discount established in the *Second Reconsideration Order* is outweighed by our concerns with discrimination against smaller OCCs inherent in a strict application of the flat rate, particularly since the deviation will only remain in effect for a short period of time. Furthermore, by requiring a usage-based rate structure for all non-premium access services, effective January 1, 1986, we are adopting the "solution" urged on us by AT&T and the exchange carriers, the parties that view the availability of this option for OCCs as a flaw in the transitional plan for non-premium access established in the *Second Reconsideration Order*.

<sup>46</sup> Allnet Petition at 3-5. Allnet also asserts that, in states in which intrastate access charges are assessed on a usage basis, the Commission's formula will result in OCCs paying both intrastate and interstate access charges for the same usage.

Continued

The Commission . . . states, however, that past experience with ENFIA "indicates that per line charges do not create a significant entry barrier." The experience with ENFIA is inappropriate in this instance. The ENFIA rate was based upon minutes which ranged from approximately 3,000 minutes to slightly more than 5,000 minutes. These figures, as a barrier to entry, are a far lower barrier than 9,000 minutes.

Allnet Petition at 4-5 (citation omitted).

<sup>39</sup> In a recently filed Petition for Clarification, Lexitel noted that current average usage on its FGA access lines is approximately 7,500 minutes. Petition for Clarification in CC Docket Nos. 78-72, Phase I, and 83-1145, Phase I, at 2 (filed February 21, 1985) (hereinafter Lexitel Petition for Clarification). Allnet, in a Supplement to its Petition for Reconsideration in this proceeding, stated that its own average monthly usage level is 6,905 minutes per line. See *infra* note 51. Both Lexitel and Allnet entered the market in 1981. These are two of the "larger" of the relatively new carriers. If their usage levels fall considerably short of the industry average, the monthly usage levels for some of the very new and small OCCs are probably significantly below the 9,000 minutes per line figure.

<sup>40</sup> See the BOC Waiver Petition, discussed *infra* para. 30, and other documents in that record, which indicate that in most cases exchange companies can measure the total amount of non-premium traffic delivered to an OCC POP (although they cannot generally determine from which end office that traffic originated). See also AT&T Reply at 3 n.7. Furthermore, exchange carriers are now providing non-premium FGA service on a usage-sensitive basis in the form of FX lines.

<sup>41</sup> Lexitel states that, under the flat rate in the NECA tariff, it pays \$0.045 per minute for an average 7,500 minutes per line per month, while GTE Sprint, with over 12,000 average monthly usage minutes per line, pays \$0.028 per minute, a difference of 61%. Lexitel Petition for Clarification, supra note 38, at 11. Thus, the flat-rate structure produces the anomalous result that the new, smaller OCCs may be paying substantially more for non-

that, in adopting the 9,000-minute figure, we relied on flawed data that overstate OCC interstate minutes.<sup>47</sup> AT&T and NYNEX also challenge the accuracy of the 9,000-minute figure, but argue that it is too low. These parties maintain that the data on which the Commission relied are now two years old and probably understate actual OCC usage levels.<sup>48</sup> In particular, AT&T states that GTE Sprint has admitted to at least 12,000 minutes of use per line as of 1983, and argues that the steady increase in OCC usage levels, from an accepted average of 3000 minutes per line in 1980 and 1981 to GTE Sprint's 12,000 minutes per line in 1983, demonstrates that the 9,000 minute figure is likely to understate significantly actual OCC usage during the current period.<sup>49</sup> In response to these arguments by AT&T, SBS states that, with many OCCs rapidly entering new markets, per line usage levels are more likely to be below, than above, 9,000 minutes.<sup>50</sup>

20. We reaffirm our choice of 9,000 minutes per line as a reasonable estimate of average OCC monthly usage. None of the parties have demonstrated that the actual average usage rate is different from the figure we selected or have suggested an alternative figure that we might use. Merely identifying a particular OCC whose usage is above or below 9,000 minutes of use per line does not impeach the reliability of the figure selected.<sup>51</sup> Indeed, if anything, the

Allnet explains that, when an OCC uses a line for both inter- and intrastate traffic and the interstate use is less than 9,000 minutes, it will pay twice for its intrastate minutes to the extent of the difference between interstate minutes and 9,000 minutes. For example, a carrier that uses a line for 5,000 minutes of interstate use and 5,000 minutes of intrastate use will, according to Allnet, pay for 9,000 interstate minutes under the Commission's formula and 5,000 intrastate minutes under a state tariff—for a total of 14,000 paid minutes, which is 4,000 minutes more than it actually used. *Id.* at 9-12. While Allnet characterizes this as a double billing problem, its complaint seems simply to be a restatement of its position that 9,000 interstate minutes per line is too high.

<sup>47</sup> Allnet Petition at 3 n.8-9; Allnet Reply at 4-5. Lexitel, while not explicitly endorsing Allnet's arguments, urges us to "carefully consider" them. Lexitel Opposition at 9 n.12.

<sup>48</sup> AT&T Opposition at 6-7; see also NYNEX Opposition at 13-14.

<sup>49</sup> AT&T Opposition at 7 n. \* \* \*.

<sup>50</sup> SBS Opposition at 8.

<sup>51</sup> Allnet, in a Supplement to its Petition for Reconsideration, stated that its own average monthly usage level is 6,905 minutes per line. AT&T and NYNEX have argued that we should refuse to consider this information because the Allnet pleading was untimely filed. AT&T Opposition at 7 n. \* \* \*; NYNEX Opposition at 14. Allnet's Supplement was filed late and was unaccompanied by an appropriate motion for acceptance. See § 1.429(d) of the Commission's Rules, 47 CFR 1.429(d) (1984). However, in its Supplement, Allnet stated that, at the time it filed its petition for reconsideration, it was "in the process of conducting a study to

reliability of our selection is further supported by the fact that the parties can point to OCCs whose usage levels fall on each side of the estimated average.<sup>52</sup> Therefore, while 9,000 minutes per line is only an estimate of OCC average usage, we are not persuaded that this estimate is unreasonable or that another figure would be more reasonable. Accordingly, in the absence of any relevant evidence in this record undermining our selection, we believe changes to the estimated average used in the flat-rate calculation are not necessary.

#### (c) LATA-wide access

21. AT&T and a large number of exchange carriers complain about the fact that subscribers to non-premium FGA receive LATA-wide terminating access without paying any distance-sensitive charges.<sup>53</sup> These parties identify two sets of problems with such an arrangement, one concerning OCCs and the other concerning end users. First, with respect to the OCCs, AT&T asserts that providing LATA-wide access for payment of the flat-rate charge bestows an unfair competitive advantage on these carriers, allowing them to limit their Points of Presence (POPs) in a LATA without incurring transport charges comparable to those AT&T would incur if it used similar arrangements. Furthermore, AT&T argues that the assumed average hauls reflected in the access tariffs are unrealistically low, with the result that the non-premium discount will be effectively increased above the 55 percent level set by the Commission. The exchange carriers argue that LATA-

determine usage for all of its access lines," and that it filed its Supplement shortly after this study was completed. Allnet Supplement at 1-2. We shall treat this explanation as in effect a motion for acceptance and for this purpose waive the requirement of § 1.429(d) of our rules that such a motion be stated in a separate pleading. We therefore accept Allnet's Supplement, and we have considered the data presented therein. For the reasons stated in the text, however, those data do not refute the accuracy of the average figure we have selected.

<sup>52</sup> Furthermore, we are unpersuaded by Allnet's complaints that both of the sources we used to derive the 9,000 minute figure are tainted by the inclusion of intrastate minutes of use. The 1983 recalculation of ENFIA minutes, which was the principal basis for our estimate, purports to exclude intrastate minutes. See Comments of the BOCs and CSO, CC Docket No. 83-1145 (Phase I), filed December 22, 1983) at App. II, pp. 53, 56. However, our secondary reliance on the figures reported in MCI's Petition for Reconsideration in the last reconsideration round was misplaced. These figures appear to relate solely to Texas intrastate minutes.

<sup>53</sup> AT&T Petition at 11 n. \* \* \*; AT&T Opposition at 18-20; AT&T Reply at 4; U.S. West Opposition at 1-5; Ameritech Petition at 2-7; Pacific Petition at 2-3; NYNEX Opposition at 9 n. \* \* \*; Rochester Opposition at 7-8; Southwestern Bell Opposition at 2-4; Pacific Reply at 7-10.

wide access for OCCs represents a divergence from the Commission's general principle of requiring parties to bear the costs they cause and encourages OCCs to configure their networks in an inefficient manner, leading to revenue shortfalls for exchange carriers. Furthermore, AT&T and the exchange carriers point out that LATA-wide access is inconsistent with the ENFIA model, under which OCCs were only provided with access to a non-toll calling area for payment of the flat-rate charges.<sup>54</sup>

22. Second, with respect to end users, exchange carriers complain that inclusion of LATA-wide access as part of FGA leads to substantial intrastate toll avoidance by such customers.<sup>55</sup> They argue that, when FGA service with LATA-wide access is used as a terminating service, it becomes in effect at LATA-wide, OutWATS service. Thus, whenever the discounted FGA rates are lower than intrastate toll or WATS rates, end users with substantial levels of intraLATA toll calling have an economic incentive to substitute the former services for the latter.<sup>56</sup>

23. A number of OCCs respond that, although the transitional transport charges are not distance sensitive, they are based on average transport levels and were derived from the total revenue requirement for the transport element. Therefore, they argue, there should be no underrecovery of exchange carriers' revenue requirements.<sup>57</sup> For similar reasons, they contend that AT&T's arguments that LATA-wide access effectively increases the non-premium discount above 55 percent and bestows other competitive advantages on OCCs are incorrect. Rather, OCCs are simply paying an average charge for transport, as they do for other access elements, instead of specific transport charges for each OCC POP. Further, the OCCs argue that the problem of intraLATA toll avoidance by end users, to the extent it exists, can be alleviated by measures short of eliminating LATA-wide

<sup>54</sup> AT&T Petition at 10 n. \* \* \*; Ameritech Petition at 2-4; Rochester Opposition at 7-8; Pacific Reply at 8-9.

<sup>55</sup> Ameritech Petition at 5-7; Pacific Petition at 7-8; NYNEX Opposition at 9 n. \* \* \*; Rochester Opposition at 7-8; U.S. West Opposition at 4-5; Southwestern Bell Opposition at 1-4; U.S. West Reply at 3-4.

<sup>56</sup> Some exchange carriers assert that intraLATA toll avoidance by end users is a particularly serious problem because of the availability of flat-rate FGA connections. See, e.g., Ameritech Petition at 4; Rochester Opposition at 8; U.S. West Opposition at 4-5.

<sup>57</sup> Lexitel Opposition at 5-7; GTE Sprint Opposition at 6-7; ALTEL Opposition at 6; Ad Hoc Reply at 9.

terminations for flat-rate FGA.<sup>58</sup> Thus, the OCCs assert that an averaged, flat-rate transport charge including LATA-wide access is a reasonable mechanism for recovering the cost of transport during the transition to equal access, when transport charges will be distance sensitive. Finally, GTE Sprint argues that the LATA-wide access issue is grounded in the access tariff provisions and, therefore, should be resolved in the tariff process.<sup>59</sup>

24. The LATA-wide access issue raised by AT&T and the exchange carriers results from the interaction of our rules governing transitional, non-premium access charges and access tariff provisions filed by the exchange carriers. As adopted in the *Second Reconsideration Order*, the rules provide that transport is among the relevant access elements factored into the per line charge for OCC non-premium access.<sup>60</sup> However, those rules do not specify any particular geographic scope for the transport element, *i.e.*, they do not specify the area to which a subscriber obtains access for payment of the access charge. Thus, LATA-wide access terminations do not derive from the Part 69 rules. Rather, exchange carriers are providing LATA-wide access as part of FGA pursuant to the provisions in their access tariffs governing the transport component of FGA switched access.<sup>61</sup> We agree with

GTE Sprint, therefore, that the tariff process is the proper forum for the resolution of the issue of LATA-wide access for terminating non-premium FGA traffic. Exchange carriers seeking to limit terminating FGA access to an area smaller than a LATA would not be constrained by any provision of the Part 69 rules from filing tariff provisions that would accomplish this end.<sup>62</sup>

25. If the BOCs conclude that they must offer LATA-wide access in order to satisfy *MFJ* requirements, the elimination of flat rates for non-premium access should enable them to solve any problems that are caused by the interaction of a flat rate with LATA-wide access. The revised rules that we are adopting will enable all local exchange carriers to impose distance-sensitive charges for premium and non-premium transport. If the BOCs believe that any problems are sufficiently urgent to require revisions in non-premium transport before the new rules become effective, the BOCs may present such claims in petitions for a waiver of the present rules.

#### B. Equal Access Implementation Issues

##### 1. Phase-Out of the Non-Premium Access Charge Differential

26. As discussed above, in the *Second Reconsideration Order* we established premium and non-premium rate categories for access services provided by exchange carriers during the transition to equal access. Non-premium charges apply to FGA and Feature Group B (FGB) services and are calculated on the basis of a 55 percent discount (compared to premium access charges). We also provided in the *Second Reconsideration Order* that this discount is to be phased out as equal access becomes available on an end-

office-by-end-office basis, *i.e.*, when an end office is converted to equal access, the non-premium discount will no longer apply to FGA and FGB traffic originating or terminating in that end office.<sup>63</sup>

27. In petitions seeking reconsideration of the *Second Reconsideration Order*, a number of parties object to certain features of our end-office-by-end-office approach to phasing out the non-premium discount. First, a number of OCCs assert that equal access should be deemed to be available for purposes of phasing out the discount only when "tandem access" becomes available, *i.e.*, when it is possible to access multiple Feature Group D (FGD) end offices through a single tandem switching arrangement.<sup>64</sup> Second, some OCCs go even further and assert that, because of problems with marketing equal access service until they are widely available in an area, we should abandon the end-office approach to phasing out the discount and provide instead that the discount will stay in effect until all or almost all the end offices in a LATA have been converted to equal access.<sup>65</sup>

28. We decline these invitations to abandon our end-office approach to phasing out the non-premium discount in favor of requirements of "tandem access" or LATA-wide equal access. It was our intent in the *Second Reconsideration Order* to tie the phase-out of the discount to the phase-in of equal access that would be taking place pursuant to the schedule established in the *MFJ*. For the purposes of that schedule, equal access services are deemed to be available in all end offices that are actually converted to equal access, and not only in those converted end offices accessible through access tandems or in LATAs in which virtually all end offices are converted.<sup>66</sup>

<sup>58</sup>For example, USTS argues that such intrastate use of FGA connections by end users would violate the access tariffs and rules. It states that there is no reason to assume that such abuse will be widespread, but if it does become a serious problem, the exchange carriers are competent to devise "structural remedies" to control it, and the Commission could be expected to be responsive to such efforts. It concludes that a major, and otherwise salutary, feature of the access charge transition for OCCs should not be abandoned on the basis of what is now at least a largely hypothetical problem. USTS Opposition at 12-14. MCI makes a similar argument, but adds that if the Commission wishes to guard against the possibility of intra-LATA toll avoidance by end users, it could provide that end users ordering FGA be required to certify that all traffic over such lines will be interstate. MCI Opposition at 4-11. See also GTE Sprint Reply at 8.

<sup>59</sup>GTE Sprint Opposition at 6-7 and Reply at 9-10.

<sup>60</sup>See *Second Reconsideration Order* at para. 87; § 69.206 of the Commission's Rules, 47 CFR 69.206 (1984).

<sup>61</sup>When the initial access tariffs were filed by the exchange carriers in the fall of 1983, LATA-wide terminations were provided as part of the transport component of switched access, which included usage- and distance-sensitive charges. When the *Second Reconsideration Order* adopted the flat-rate approach for non-premium charges for all access elements, including transport, the LATA-wide feature of transport remained in the access tariffs. Hence, the flat-rate charge for FGA non-premium access includes a flat-rate component based on an average transport charge for FGA traffic. However, at the time of those initial tariff filings there was nothing in the Part 69 rules or any of the orders in this docket that compelled the exchange carriers to provide LATA-wide access; and none of the

modifications we made to the non-premium rate structure in the *Second Reconsideration Order* changed that situation. Accordingly, no amendment to the Part 69 rules would be required to alter the LATA-wide access provisions of the access tariffs.

<sup>62</sup>On August 6, 1984, NECA submitted a request for special permission to file an amendment to its tariff eliminating LATA-wide terminations for FGA services on one day's notice and without the supporting material required by § 61.38 of our rules. The Chief, Tariff Division, by letter to NECA, waived § 61.58 to permit such amendments to be filed on 45 days' notice, denied the request to waive the requirements of § 61.38, and specified certain information that should be included in the § 61.38 submission. Letter from Chief, Tariff Division to G. R. Evans, Director, Tariff and Regulatory Affairs (August 10, 1984). While NECA has not refiled its tariff amendment, Pacific Northwest Bell and Northwestern Bell filed changes to their tariffs to make FGA available only for use in conjunction with interstate communications. Those tariffs are now in effect. See Pacific Northwest Bell, Transmittal No. 126 (filed September 21, 1984) and Northwestern Bell, Transmittal No. 966 (filed September 28, 1984).

<sup>63</sup>Specifically the *Second Reconsideration Order* provides:

OCCs that receive equal access will pay the same per minute charges that are assessed for MTS and WATS usage as equal access becomes available in each end office. Access charges in end offices not converted to equal access shall continue to be assessed at a non-premium rate.

If equal access is available but the OCC does not elect to use it, the OCC will normally pay the equivalent of the subelement 1 charge for Local Switching . . . and the full equal access charge for other elements.

*Second Reconsideration Order* at paras. 79-80 (footnote and paragraph numbers omitted).

<sup>64</sup>Western Union Petition at 5-6; USTS Opposition at 3-8; GTE Sprint Reply at 2-5.

<sup>65</sup>Allnet Petition at 7; SBS Petition at 2-9; Lexitel Opposition at 9-13; SBS Opposition at 11-13; SBS Reply at 2-6; Allnet Reply at 3-4; GTE Sprint Reply at 2-5.

<sup>66</sup>We wish to clarify two points about our end-office approach to phasing out the discount, in light

Furthermore, the 55 percent discount and the end office-by-end office approach to phasing out that discount are complementary parts of the transitional plan for non-premium access we adopted in the *Second Reconsideration Order*. Were we to accept one of the alternative approaches to phasing out the discount suggested by the petitioning OCCs, we would find it necessary to consider reducing the level of the discount below 55 percent. It is not clear that these petitioners would find the combined results of such complementary changes to be in their best interests. In any event, we find that making either type of change at this time would not be in the best interests of the industry as a whole or the public.

29. A number of petitioners claim there is a different type of problem with our end-office approach to phasing out the discount, which involves its practical implementation. Both exchange and interexchange carriers have asserted that it is generally not possible to determine the originating end office for FGA traffic; therefore where some, but not all, end offices in an area have been converted to equal access, it is not possible to determine precisely how much originating FGA traffic should be charged at premium, and how much at non-premium, rates.<sup>67</sup> As a result, these parties argue that our intent in mandating an end-office approach to phasing out the non-premium discount can best be realized by allocating originating FGA traffic between converted and unconverted end offices on some estimated basis.

30. Subsequent to the conclusion of the pleading cycle in this

of our reliance, in part, on the *MFJ* equal access schedule in fashioning that approach. First, while the *MFJ* schedule applies only to the BOCs, we intend for the end-office approach to the phase-out of the non-premium discount to apply to the independent telephone companies as well. GTE will be implementing equal access pursuant to a consent decree entered into with the Department of Justice to settle an antitrust challenge to its acquisition of the Occ. Sprint. See *United States v. GTE Corp.*, No. 83-1298 (D.D.C. December 13, 1984). Other independent telephone companies will be implementing equal access in certain end offices pursuant to the *Phase III Order*, *supra* note 4. Second, while the *MFJ* provides that, subject to certain exceptions, all end offices should offer equal access services by September 1, 1986 (See *MFJ supra* note 4, at App. B, para. A.1), it is not our intent that the discount automatically terminate on that or any other particular date. There will still be BOC end offices unconverted after September 1, 1986, because they fall within one of the exceptions provided in the decree. Furthermore, it is likely that many independent telephone company end offices will not be converted by that date. In the absence of any future modifications to our rules, the discount will continue to apply in all end offices not in fact converted to equal access.

<sup>67</sup> See, e.g., Pacific Petition at 3-6; MCI Opposition at 21-23.

reconsideration round, the twenty-two BOCs submitted at petition for waiver of section 69.206 of our rules to permit them to implement a system for charging premium and non-premium rates for FGA and FGB traffic in areas partially converted to equal access.<sup>68</sup> The BOCs proposed formulas for estimating the amount of premium and non-premium originating FGA traffic and for making adjustments in the non-premium flat rate charged for FGA lines and FGB trunks to reflect the fact that some of the traffic on those lines and trunks would be billed at premium rates.<sup>69</sup> We invited comments on the BOC proposal from interested parties,<sup>70</sup> and a large number of comments and replies were filed. These comments and replies include most of the arguments raised on this issue in the third reconsideration pleadings. Indeed, those arguments in many cases are presented in a more complete and focused fashion in the BOC Waiver Petition pleadings than in the reconsideration pleadings. In order to consider fully the issues involved in implementing our end-office approach to phasing out the non-premium discount, we have decided to resolve these issues in a separate order addressing the BOC proposal. The reconsideration pleadings that address this aspect of the end-office approach to phasing out the discount have been incorporated into the record of the waiver request and will be dealt with in that separate order.

## 2. Notice of End Office Conversions

31. In the *Second Reconsideration Order*, we provided that premium access rates for FGA and FGB traffic in an end office where equal access is available may not be imposed on an OCC until six months after it receives notice that the end office will be converted to equal access.<sup>71</sup> Allnet argues that, because the

<sup>68</sup> Petition of Waiver, CC Docket Nos. 83-1145, Phase I, and 78-72, Phase I (July 18, 1984) (hereinafter "BOC Waiver Petition").

<sup>69</sup> By letter dated August 31, 1984, the Chief, Common Carrier Bureau informed the BOCs that they could implement their proposal on an interim basis pending a final decision on the proposal by the Commission. NECA filed tariff revisions implementing this proposal in accordance with the August 31 letter, and the Commission subsequently denied petitions filed by ARINC, Allnet, Lextel, Republic, and SBS opposing the tariff revisions. Memorandum Opinion and Order, Transmittal Nos. 21 and 28, Mimeo No. 1244 (released December 7, 1984).

<sup>70</sup> Public Notice, "Pleading Cycle Established for Comments on Bell Operating Companies Petition" (released July 25, 1984).

<sup>71</sup> See *Second Reconsideration Order* at para. 80; § 69.205(a) of the Commission's Rules, 47 CFR 69.205(a) (1984).

BOCs have been providing OCCs with many different kinds of information concerning planned conversions of end offices, including tentative, long-term conversion schedules and informal communications, OCCs are confused as to what constitutes the "notice" required by the Commission. Allnet contends that the situation would be improved if we were to establish certain additional, formal requirements for such notice.<sup>72</sup> No other parties addressed this issue in their pleadings.

32. The purpose of the six months' notice requirement is to provide sufficient time for the OCCs to respond to the opportunity for equal access.<sup>73</sup> We agree with Allnet that tentative schedules of end office conversions and informal communications between exchange carrier and interexchange carrier personnel, while no doubt useful, are not adequate substitutes for the requisite six months' notice. We do not agree, however, that detailed specification of the form and sufficiency of the conversion notice is necessary at this time. Any reasonable form of notice is acceptable provided that two conditions are met: the exchange carrier clearly identifies the requisite notice as such, and the notice unambiguously sets out the end offices to be converted and the dates of those conversions.<sup>74</sup>

33. It appears that the BOCs have not been withholding information concerning conversion schedules from the OCCs. Indeed, Allnet's arguments seem to be that it is receiving too much, rather than too little, information on end-office conversions. The clarifications concerning the notice requirements we have provided in this Order should alleviate whatever confusion may have existed among the carriers. Absent any further indications of problems with the end-office conversion notice provided by exchange carriers, we will not add further requirements to the access rules on the form and sufficiency of that notice.

<sup>72</sup> Allnet Petition at 7-8.

<sup>73</sup> *Second Reconsideration Order* at para. 80 n.42.

<sup>74</sup> Ameritech, for example, has proposed providing its end office conversion notices in newsletters it sends to its access customers. See Letter from Ameritech to the Commission (April 2, 1984) (OC Docket 78-72). Ameritech's proposal is satisfactory provided its customers are informed that the requisite six months' notice will appear in the newsletter, the notice is clearly distinguishable from any other information on end office conversions that may appear in the newsletter, and it unambiguously identifies the end offices to be converted and the dates on which equal access will be available in those end offices.

### C. Treatment of Closed End WATS Access Lines

34. In the *Second Reconsideration Order*, we amended the access charge rules to conform the treatment of closed end WATS access lines under those rules to the treatment of such lines under the separations rules.<sup>75</sup> Prior to the *Second Reconsideration Order*, the access charge rules included both closed end WATS lines and private lines in the special access category. The separations rules, on the other hand, include all WATS access lines and all ordinary subscriber access lines in the same separations category, while access lines for private line service are placed in a separate category. The combined investment in the former category is apportioned between the inter- and intrastate jurisdictions through the application of the frozen Subscriber Plant Factor (SPF), while investment in the latter category is directly assigned to the appropriate jurisdiction.<sup>76</sup> Concluding in the *Second Reconsideration Order* that these inconsistent apportionment procedures could produce anomalous results, we decided that for access charge purposes closed end WATS lines should be moved into the switched access category, with the interstate allocation of investment in such lines included in the common line element. As a result, closed end WATS access minutes are subject to the same carrier common line charges as MTS and open end WATS access minutes, and WATS subscribers are subject to customer line charges.

35. A number of parties object to this change in treatment of the closed ends

of WATS lines.<sup>77</sup> They argue that such lines should be treated like other dedicated lines, which are included in the special access category and are not assessed carrier common line charges. AT&T in particular argues that the current treatment of WATS lines results in substantial discrimination against its WATS service because OCC WATS-type services use the same type of dedicated line providing the same access as AT&T's WATS, but are subject only to special access charges. These parties also argue that the access rules need not reflect the separations treatment of WATS lines and that our concerns about consistency in this area are misplaced. Other parties support our current treatment of WATS closed ends.<sup>78</sup> In particular, a number of OCCs challenge AT&T's assertion that the access they receive for their WATS-type services is identical to that provided AT&T for its WATS service.

36. Those seeking a change in the access charge treatment of the closed ends of WATS lines have not presented any arguments we have not already considered in the *Second Reconsideration Order*. The present access charge treatment of closed end WATS lines derives from our conclusion in the *Second Reconsideration Order* that, pending further Joint Board review of the separations treatment of WATS access lines, it is undesirable to treat such lines and private lines consistently for the purpose of recovering interstate investment where the method of apportioning investment in these lines between jurisdictions is different.<sup>79</sup> Petitioners have presented nothing in this reconsideration round to convince us to alter that conclusion.

37. In addition, Pacific objects to the assessment of customer line charges on intrastate WATS lines, arguing that the Commission has no jurisdiction over intrastate lines. As stated above, the separations rules presently apportion federal and state investment in all WATS lines through the application of frozen SPF and do not distinguish between interstate and intrastate WATS lines.<sup>80</sup> Thus, a portion of the investment

in each intrastate WATS line is assigned to interstate operations and must be recovered through interstate charges. In these circumstances, the application of interstate charges (such as customer line charges) to recover the interstate share of the costs of such lines is proper and within our jurisdiction.

38. Finally, Western Union has suggested an amendment to § 69.305 of our rules to reflect the switched access treatment of closed end WATS lines adopted in the *Second Reconsideration Order*.<sup>81</sup> As presently written, the Part 69 rules distinguish between two parts of a WATS access line: that portion running between a customer's premises and the first end office—which is treated as customer outside plant (customer OSP)—and that portion running from that end office to the WATS screening office—which is treated as carrier outside plant (carrier OSP). The interstate allocation of investment in WATS access lines is assigned to the various access charge rate elements pursuant to § 69.304 for customer OSP and § 69.305 for carrier OSP. Western Union argues that, when we modified our treatment of closed end WATS lines in the *Second Reconsideration Order*, we properly amended § 69.304 to reflect that change, but failed to make the necessary, corresponding amendment to § 69.305. As a result, the second part (*i.e.*, the carrier OSP part) of the WATS access line is still treated as a special access line. We agree with Western Union that it was our intent to include both parts of WATS closed ends in the switched access category.<sup>82</sup> Accordingly, we are adopting Western Union's proposal to amend § 69.305 so that carrier OSP used to provide WATS closed end access is included in the switched access category.<sup>83</sup>

<sup>75</sup> *Second Reconsideration Order* at paras. 102-06. The Joint Board has previously recommended that we amend the separations rules to provide for the direct assignment of investment in closed end WATS lines to the federal or state jurisdiction in the same manner as private lines. Amendment of Part 67, *Second Recommended Decision and Order*, 48 FR 46556, paras. 81-82 (1983). A number of OCCs objected to direct assignment of WATS lines on the grounds that this treatment—at least if implemented without a substantial phase-in period—would cause distortions in the marketplace that would operate to their disadvantage. We decided to defer any changes in the separations treatment of WATS access lines pending further study by the Joint Board. Amendment of Part 67, *Decision and Order*, 96 FCC 2d 781 (1984) [hereinafter *Separations Order*], reconsideration pending, appeal docketed sub nom. *Rural Radio Coalition v. FCC*, No. 84-1110 and consolidated appeals No. 84-1125 and No. 84-1130 (D.C. Cir. March 22, 1984).

<sup>76</sup> See section 67.124 of the Commission's Rules, 47 CFR 67.124 (1984). The Commission has adopted a Federal-State Joint Board proposal to replace SPF with a nationwide, uniform 25 percent interstate allocation factor, which will be phased in beginning January 1, 1986. See *Separations Order*, supra note 76, at paras. 3, 49-51; *Decision and Order*, supra note 15, at paras. 1, 5 (extending phase-in period).

<sup>77</sup> AT&T Petition at 3-9; Pacific Petition at 8-10; Rochester Opposition at 10-11; Teltec Opposition at 1-2; Pacific Reply at 13-15; National Data Petition at 1-15 and Reply at 1-10.

<sup>78</sup> ALTEL Opposition at 3-4; GTE Sprint Opposition at 9-11; MCI Opposition at 12-16; SBS Opposition at 8-11; USTS Opposition at 15-16.

<sup>79</sup> The Joint Board is presently reviewing the separations treatment of closed end WATS lines. Amendment of Part 67, *Order Inviting Comments*, 49 FR 18746 (1984) [hereinafter *Order Inviting Comments*].

<sup>80</sup> See supra note 76 and accompanying text.

<sup>81</sup> Western Union Petition at 2-3. See also ARINC Opposition at 7-8.

<sup>82</sup> Western Union's proposal has not been opposed on its merits. AT&T argues against the proposal, but only on the ground that both parts of WATS closed end lines should be included in the special access category. AT&T Opposition at 21. ARINC, while urging a prompt review of the separations treatment of WATS lines and adoption of the Joint Board recommendation for direct assignment of such lines, supports Western Union's position that given our current treatment of WATS closed ends, the interoffice part of those lines belongs in the switched access category. ARINC Opposition at 5-8.

<sup>83</sup> The amended rule appears in Appendix B. In response to a request by NECA, the Bureau has granted a waiver of § 69.305 of the rules that allows NECA to treat the carrier OSP portion of closed end WATS lines in a manner consistent with the amendment we are adopting today. Memorandum Opinion and Order in CC Docket No. 78-72 and CC Docket No. 83-1145, Mimeo No. 8929 [released October 1, 1984]. The Bureau found that grant of a

#### D. Implementation of Multiline Business Customer Line Charges

39. In the *Second Reconsideration Order*, we deferred the implementation of residential and single-line business customer line charges until June 1, 1985, to permit us to conduct supplemental proceedings on how best to ensure that such charges do not have a negative impact on universal service or small telephone companies. We found that customer line charges for multiline businesses, on the other hand, do not raise comparable concerns, and such charges were not deferred.

40. Several parties have challenged these findings and urge modifications in our approach to customer line charges.<sup>84</sup> The National Federation of Independent Business (NFIB) argues that, under our plan, small businesses are bearing a disproportionate share of the redistribution of interstate NTS costs.<sup>85</sup> NFIB requests that the Commission base the level of customer line charges assessed a subscriber on the corresponding savings realized by that subscriber as the result of reductions in interstate toll charges. Thus, under NFIB's proposal, customer line charges would vary according to a subscriber's usage of interstate telephone service.<sup>86</sup> NFIB does not present any details on how to effectuate its proposal, but encourages the Commission to undertake a further proceeding to design a usage-based approach to the application of customer line charges.<sup>87</sup> In support of its arguments, NFIB relies on a survey of its membership purportedly showing that many small businesses make few interstate calls. NFIB asserts that the survey demonstrates the unfairness of applying

the full customer line charge to all multiline businesses.<sup>88</sup> Numerous parties have objected to NFIB's petition. Ad Hoc, AT&T, Southwestern Bell, and UTS argue that NFIB's petition amounts to an untimely attack on the use of flat-rate customer line charges to recover interstate NTS costs.<sup>89</sup> These parties also level a variety of attacks on the validity of the NFIB survey. ARINC argues that NFIB's complaints would be more properly addressed in the Commission's separate investigation of the impact of customer line charges on small business.<sup>90</sup>

41. We agree with the opponents of NFIB's petition that its proposal constitutes a belated challenge to the use of flat-rate customer line charges. These charges are designed to recover NTS costs of local exchange plant, which do not vary according to the use of that plant. Attempts to tie customer line charges to reductions in interstate toll costs would differentiate the charges paid to recover NTS costs on a usage basis. This proposal would be contrary to the basic economic rationale underlying the access charge plan—that is, charges should be based on costs and, absent compelling public policy reasons to the contrary, costs that do not vary with usage should be recovered through charges that do not vary with usage. In addition, the implementation of such a scheme appears to be unduly cumbersome and involves substantial administrative costs.<sup>91</sup>

42. Finally, NFIB's concerns do not reflect the long-term benefits to small businesses from the changes in the pricing of interstate telephone services that will result from the access charge

plan. That plan will not only lead to reductions in interstate toll rates, thereby providing opportunities for small business to make use of telecommunications services that perhaps are now too expensive, but it will also increase the efficiency of the public switched network and discourage uneconomic bypass of the network. The economic and technological vitality of the public network is obviously of crucial importance to small businesses, which—unlike major corporations—lack the ability to participate in the telecommunications revolution by constructing or leasing their own private telephone systems or otherwise avoiding the use of the public network in making interstate calls. In the long run, small businesses should enjoy lower telecommunications costs and better and more varied services as a result of the access charge plan.

43. Rural Telephone Company ("Rural") states that its local exchange tariff does not distinguish between residential and business subscribers because such a distinction would be arbitrary in its operating territory—rural Idaho and Nevada—where there are many farmers, ranchers, and miners whose residences serve as their places of business. As a result, Rural argues, it does not know which of its customers should be assessed customer line charges.<sup>92</sup> Rural is concerned that, since our rules provide that a line is "residential" if the rate for the line "is described as a residential rate in the local exchange service tariff,"<sup>93</sup> all of Rural's undifferentiated lines might be deemed business lines for purposes of assessing customer line charges.

44. With respect to these complaints, we note first that any problems Rural might have with the business/residential distinction would apply only to multiline subscribers, since all single-line subscribers, whether residential or business, will pay the same customer line charge, *i.e.*, \$1.00 beginning in June 1985 and \$2.00 beginning in June 1986.<sup>94</sup>

waiver to permit the allocation of the entire costs of WATS access lines to switched access was necessary in light of our *April Tariff Order*, *supra* note 9, which required exchange carriers to price WATS access lines entirely under the switched access provisions of the tariffs. The Commission continued the waiver and extended it to non-NECA exchange carriers in the *Special Access Tariff Order*, *supra* note 10, at para. 66 n.80.

<sup>84</sup> Clear Lake Independent Telephone Company (Clear Lake) asks us either to defer the multiline business charges until residential and single-line business charges go into effect or to redefine "multiline" as five or more lines. Clear Lake's petition has been considered and denied in the *May Cost Order*, *supra* note 9, at para. 124.

<sup>85</sup> NFIB Petition at 12. NFIB's petition seeks reconsideration of the *May Cost Order*, *supra* note 9. Because the arguments relate to the policy reasons for implementing the multiline business charge, we have incorporated NFIB's petition and the responsive pleadings into the record of this third reconsideration round.

<sup>86</sup> NFIB Petition at 13-15.

<sup>87</sup> Until a further study is completed, NFIB recommends a suspension or reduction of the current multiline business charge, particularly for those businesses with six or fewer lines. *Id.* at 15.

<sup>88</sup> *Id.* at 3-5.

<sup>89</sup> Ad Hoc Opposition to NFIB Petition at 3-4; AT&T Opposition to NFIB Petition at 3-8; Southwestern Bell Opposition to NFIB Petition at 1-3; and UTS Opposition to NFIB Petition at 1-8.

<sup>90</sup> ARINC Opposition to NFIB Petition at 1-4 (citing Public Notice, "Commission Seeks Information on the Effect of Federal Decisions on Local Rates and Services", Mimeo No. 5346 (released July 12, 1984)). The comments filed in response to this Public Notice were analyzed in the *Michigan II Report*, *supra* note 18, which concluded that transitional relief for small businesses is not necessary to preserve universal service to those businesses at reasonable rates. *Id.* at 58. We recently invited further comments on this report and two other studies addressing the impact of customer line charges on small businesses. MTS/WATS Market Structure and Amendment of Part 67, Order Inviting Comments, 50 FR 2594 (1985).

<sup>91</sup> Furthermore, NFIB's survey, which provides the basis for NFIB's challenge to the multiline business customer line charge, is flawed. Only 12,400 of NFIB's 560,000 members responded to the mail survey. The low response rate of a little over 2 percent undermines the usefulness of the survey. In addition to this probable source of bias, NFIB itself admits that potential respondents were not selected by random sampling, and therefore the survey lacks statistical validity. NFIB Petition at 3.

<sup>92</sup> Rural Petition at 1-2.

<sup>93</sup> Section 69.202(e) of the Commission's Rules, 47 CFR 69.202(e) (1984).

<sup>94</sup> Rural also complains that it will have difficulty determining when it is providing a customer with more than one line, particularly since it operates in several exchanges in two states. Rural Petition at 1. We note that the NECA tariff, which Rural indicates it joins in, provides that a multiline subscriber is one "provided more than one local exchange service in a state by the same Telephone Company." NECA Tariff FCC No. 1, §§ 4.6(D), (E), (F). Thus, Rural need only identify the subscribers who receive more than one line in a given state. We do not think this places an unreasonable burden on Rural or other telephone companies.



We do not know as a practical matter whether, among the relatively small number of subscribers in Rural's area,<sup>95</sup> there are a substantial number of multiline subscribers who might fairly be considered residential customers. Second, we doubt whether subscribers who have ordered multiple lines to a business/residence location are likely to cancel telephone service entirely as the result of customer line charges. Thus, it does not appear that the problem Rural has identified raises the universal service concerns that led us to defer some customer line charges. In any event, while Rural asks us to modify our rules, it is unclear what form of modification it is seeking. To the extent Rural is asking us to defer multiline business customer line charges or limit them to the single-line business rate, we decline to do so.<sup>96</sup> To the extent Rural is asking us to provide an alternative classification system for residences and businesses, we reiterate the position we have expressed previously in this proceeding, that problems of identifying the classifying residential and business subscribers are best left in the first instance to the local exchange companies and the state regulatory agencies.<sup>97</sup> Accordingly, we will make no modifications to the application of the multiline business customer line charge at this time.

#### E. Miscellaneous Issues

##### 1. The AT&T Emergency Petition

45. AT&T filed a petition on February 27, 1984, which it described as an emergency petition to reconsider both the *Second Reconsideration Order* and the *ECA Tariff Order* ("AT&T Emergency Petition"). AT&T asserted that emergency reconsideration was necessary because the combined effect of those two orders would reduce its return from interstate services to a confiscatory level. AT&T proposed that this result be avoided by reducing the differential between premium and non-premium charges and by reducing the exchange carrier access charges by the

amount of any "shortfall" in revenues resulting from that differential.

46. The AT&T Emergency Petition did not present any new arguments or information with respect to the appropriate differential for non-premium access. Accordingly, we will deny that petition insofar as it seeks a reduction in the total differential established in the *Second Reconsideration Order*.

47. The AT&T contention that the access charges should be reduced to enable AT&T to earn a return that would not be confiscatory was considered in connection with the investigation of access and divestiture related tariffs in CC Docket No. 83-1145. In the *May Cost Order*, we stated:

AT&T in its emergency petition contended that the *Second Reconsideration Order* and the access tariffs would have the effect of forcing upon it a confiscatory low return. Its proposed solution was to increase OCC rates and reduce BOC rates of return until equal access is available. Our analysis and conclusions in this order, however, make it unnecessary to consider AT&T's proposal. Its factual premise is in error or has been altered by our decisions on proper access rates. AT&T, we conclude, can offer at least a 6.1 percent rate reduction and still earn the allowed 12.75 percent return. We therefore do not address whether, if the facts were different, or indeed if the facts should change, some or all of the rule changes AT&T seeks should be granted. We could dismiss AT&T's Emergency Petition at this time. Out of an abundance of caution, however, we will hold it in abeyance until we have had an opportunity to review six months of actual operating results under the rates prescribed herein.<sup>98</sup>

48. We have now reviewed AT&T's operating results for the June-November 1984 period. The data submitted to us indicate that the AT&T achieved interstate rate of return for that period was 9.16%.<sup>99</sup> This figure reflects the combined return for MTS, WATS, and private line services. AT&T has recently stated that continuation of existing private line rates would produce a return of 6.2% for interstate private line services. We infer that the achieved rate of return for interstate MTS and WATS must have exceeded the 9.16% combined return.<sup>100</sup> Thus, actual experience confirms that no changes are required in the rules relating to switched access rates to avoid reducing the AT&T return from switched services to a confiscatory

level. Therefore, we deny the AT&T Emergency Petition.

##### 2. Treatment of Maritime Radio Common Carriers

49. In the *Second Reconsideration Order*, we examined, whether radio common carriers in the public mobile service (RCCs) were subject to access charges as end users, interexchange carriers, or users of exchange facilities subject to special access surcharges.<sup>101</sup> We held that, for purposes of the Part 69 rules, RCCs were neither end users (except to the extent they use exchange facilities for administrative purposes), nor interexchange carriers (because they provide exchange, not interexchange, communications services). Furthermore, we held that the jurisdictionally interstate interexchange lines subject to special access surcharges did not include the facilities provided to RCCs. We concluded, therefore, that access charges filed in compliance with the Part 69 rules should not be imposed on RCCs.<sup>102</sup> Mobile Marine Radio, Inc., a common carrier serving maritime users, requests clarification of our ruling so as to provide explicitly that maritime radio common carriers, like RCCs, are not subject to access charges.

50. We agree that maritime radio common carriers should be treated in the same manner as RCCs. Although maritime carriers and RCCs are regulated under different parts of the our rules,<sup>103</sup> they provide similar services and stand in a similar relationship to the local exchange carriers.<sup>104</sup> As in the case of the RCCs, interconnection of maritime carriers with exchange telephone companies is governed by agreements negotiated between the parties, a process we did not intend to supplant when we promulgated the Part 69 rules and required that charges for interstate access services be assessed pursuant to access tariffs. By contrast, the ENFIA rates, which we did intend to replace with access charges, did not apply to maritime carriers. Furthermore, VHF and coastal harbor maritime mobile stations are classified as mobile radio

<sup>95</sup> Rural states that it serves 140 people. Rural Petition at 1.

<sup>96</sup> See *supra* note 84.

<sup>97</sup> See *Second Reconsideration Order* at para. 49 n.32. Rural asks, as an alternative to our amending our rules, that we grant it a waiver of our rules. But, as with its request for a rule amendment, Rural does not identify the specific relief it seeks in the form of a waiver. If it is seeking permission to implement, in its special circumstances, a reasonable method for identifying residential multiline subscribers, we would be willing to consider any specific proposal Rural may develop. On the other hand, if it is seeking permission simply to treat all its multiline subscribers as residences (another possible interpretation of its request), the waiver is denied.

<sup>98</sup> *May Cost Order*, *supra* note 9, at para. 112.

<sup>99</sup> AT&T Communications Interstate Financial and Operating Data Summary, Interstate Monthly Report No. 1, for June 1984—November 1984.

<sup>100</sup> Letter from R.L. Raina, AT&T Communications Administration of Rates Tariffs, to Secretary, Federal Communications Commission (January 18, 1985).

<sup>101</sup> *Second Reconsideration Order* at paras. 144-49.

<sup>102</sup> *Id.* at paras. 148-49.

<sup>103</sup> The maritime carriers are regulated under Part 61 of the Commission's Rules, while the RCCs are regulated under Part 22.

<sup>104</sup> While it is true that maritime stations often serve much larger areas than those typically served by an RCC, the size of the service area does not determine whether a carrier is providing exchange-type service. Indeed, cellular operators may in some cases be authorized to provide service to land areas encompassing thousands of square miles. See *Federal Lottery Rulemaking, Report and Order*, 98 FCC 2d 175 (1985), *reconsideration pending*.

services providing "exchange telecommunications services" under section II(D)(3) of the MFJ.<sup>105</sup> Thus, we conclude that access charges provided for in Part 69 should not be imposed on maritime radio common carriers.<sup>106</sup>

### 3. Access Charges for FX-type Services

51. The Ad Hoc Committee on Telecommunications Users ("Ad Hoc") argues that, in light of the significant differences between the access services used by MTS-type services and FX-type services and in order to "resolve the current uncertainty facing the end users who purchase FX-type service," we should establish different access charge treatments for the two types of services.<sup>107</sup> Ad Hoc argues that rates for FX users will increase dramatically as end offices are converted to equal access, only to decline again as NTS costs are phased out of carrier charges and into customer line charges. This fluctuation in rates, it argues, will produce unnecessary price dislocations for FX service.<sup>108</sup> AT&T opposes the request, and argues that FX open ends and MTS-type services utilize local exchange services in the same manner, impose the same access costs on the exchange, and should be assessed the same access charges. AT&T concludes that, "FX customers now, in fact, obtain a substantial interim discount only because of Commission concerns regarding the value of line-side access when utilized for MTS-type services—a concern not even applicable to FX customers."<sup>109</sup>

52. In the *Second Reconsideration Order*, we considered and rejected the substance of Ad Hoc's position that the access charge plan be modified to provide that open end FX lines be treated differently from MTS-WATS equivalent services.<sup>110</sup> Nothing has

occurred in the interim that would cause us to revise that conclusion. Accordingly, we deny the Ad Hoc petition.

### 4. Computation of Local Switching Charges

53. Allnet argues that when we increased the discount for non-premium access from 35 percent to 55 percent in the *Second Reconsideration Order*, we mistakenly failed to reflect this change in § 69.205(c) of the rules, which sets out the method for computing transitional premium charges for local switching elements LS1 and LS2. As a result, the charge for an LS1 minute is computed by multiplying the charge for an LS2 minute by .65 (reflecting, according to Allnet, the previous 35 percent discount), rather than by .45 (which would reflect the current 55 percent discount). Allnet asks us to amend § 69.205(c) by substituting .45 for .65 as the discount factor applicable to LS1.<sup>111</sup> NYNEX argues in response that Allnet has confused the discount applicable, to premium local switching minutes after equal access is available, with the non-premium discount applicable to all access elements until equal access becomes available.<sup>112</sup> NYNEX points out that the former, which is derived from the toll weighting factor, is based on differences in switching costs and is unrelated to the non-premium discount.<sup>113</sup>

54. On this point, Allnet is wrong, and NYNEX is right. While prior to the *Second Reconsideration Order* the LS1 discount and the transitional discount for non-premium access were the same (i.e., 35 percent), the two factors are, NYNEX argues, completely unrelated. Accordingly, contrary to Allnet's suggestion, § 69.205(c) should not be amended to reflect the change in the

<sup>105</sup> Allnet Petition at 8-9.

<sup>106</sup> NYNEX Opposition at 11-12.

<sup>107</sup> We held in the *Second Reconsideration Order* that, as equal access was phased in, the 55 percent discount for non-premium access would be phased out. Thus, we provided that an OCC continuing to use inferior connections after equal access became available would pay a premium rate for such connections. However, we also provided that such an OCC would "pay a lower premium rate for Local Switching to reflect differences in switching costs." *Second Reconsideration Order* at para. 76 n.40; see also *id.* at para. 80. This lower charge is described in the access rules as the LS1 charge and, for the transition provided in Subpart C of the Part 69 rules, is set at 65% of the LS2 charge, which is the local switching charge applicable to equal access services. As NYNEX argues, this .65 factor is based on the toll weighting factor, which is used in the separations process to apportion the traffic sensitive costs of switching equipment "to reflect the difference in average cost per toll minute of use as compared to the average cost per exchange minute of use." Section 67.138(c) of the Commission's Rules, 47 CFR 67.138(c)(1984). See *Access Charge Order* at paras. 217-23.

non-premium discount from 35 to 55 percent.

### 5. Adjustments to Access Minutes

55. Allnet argues that the Commission should recognize intracompany traffic, rounded minutes, and off-peak usage as deductions from access minutes.<sup>114</sup> Allnet asserts that, while it raised these issues in the second reconsideration round, we did not specifically address them in the *Second Reconsideration Order*. NYNEX argues that Allnet's requests are untimely and repetitious.<sup>115</sup> AT&T agrees with NYNEX, but voices support for lower access charges for off-peak usage of exchange facilities for all carriers.<sup>116</sup>

56. We agree that Allnet's arguments are untimely. Allnet is essentially seeking to apply to access minutes certain deductions that were applied to "billed minutes," which was the measure of usage under the ENFIA arrangements.<sup>117</sup> Those discounts were not included in the Part 69 rules as adopted in the *Access Charge Order*, which used "conversation minutes" as the measure of usage. In the *First Reconsideration Order*, we changed the term "conversation minutes" to "access minutes" and defined the latter in order to clarify when the measurement period begins and ends at each end of a call.<sup>118</sup> We again, however, did not provide for any of the deductions sought by Allnet. Thus, Allnet's requests to incorporate these deductions into the access charge rules were stale when raised in the second reconsideration round, and were properly included in the requests "to reconsider facets of the access charge plan adopted in the *Access Charge Order* that the *Reconsideration Order* left unchanged" that we denied as "untimely or repetitious" in the *Second Reconsideration Order*.<sup>119</sup> Accordingly, they are denied again as untimely and repetitious.

### 6. Apportionment of Investment in Category 6 Central Office Equipment

57. SBS argues that the toll weighting factor applied to Category 6 Traffic Sensitive Central Office Equipment (COE) costs, which are recovered through local switching charges, should

<sup>114</sup> Allnet Petition at 1-3; Allnet Reply at 4.

<sup>115</sup> NYNEX Opposition at 12-13.

<sup>116</sup> AT&T Opposition at 7-8.

<sup>117</sup> See, e.g., AT&T Co., Memorandum Opinion and Order, 91 FCC 2d 1079, (1982), modified on reconsideration, 93 FCC 2d 739 (1983) *aff'd in part, remanded on other ground sub. nom.* MCI Telecommunications Corp., v. FCC, 712 F. 2d 517 (D.C. Cir. 1983).

<sup>118</sup> *First Reconsideration Order* at paras. 70-74.

<sup>119</sup> *Second Reconsideration Order* at para. 140.

<sup>108</sup> Memorandum of the Court, Civil Action No. 82-0192 (D.D.C. November 1, 1983).

<sup>109</sup> We also take this opportunity to clarify the treatment of Specialized Mobile Radio Services (SMRS) licensees under the access charge rules. SMRS is a private carrier service providing mobile communications to users eligible under Part 90 of our rules. Under section 332(c)(2) of the Communications Act, an SMRS—like other firms offering private land mobile service—is not "deemed a common carrier for any purpose under this chapter." 47 U.S.C. 332(c)(2)(1982). Consequently, since the SMRS licensee is neither an exchange carrier nor an interexchange carrier, it is an end user and must be charged the applicable business customer line charge.

<sup>110</sup> Ad Hoc Petition at 7-8.

<sup>111</sup> Ad Hoc Reply at 2-8; see also ARINC Opposition at 2-5.

<sup>112</sup> AT&T Opposition at 9.

<sup>113</sup> *Second Reconsideration Order* at para. 99.

also be applied to Category 6 NTS COE costs, which are recovered through line termination charges.<sup>120</sup> Not only is SBS' complaint two reconsideration rounds too late,<sup>121</sup> but it is also misplaced in this proceeding. The treatment of Category 6 COE investment in the access charge rules derives from the treatment of that investment in the separation rules. We recently adopted a Joint Board recommendation that the NTS portion of Category 6 COE investment continue to be allocated pursuant to the frozen SPF pending a comprehensive review of all COE separations issues.<sup>122</sup> SBS will, of course, be free to make its views on these issues known in that proceeding.

#### 7. Segregation of Common Line Revenue Requirement

58. In the *Second Reconsideration Order*, we amended sections of Subpart F of Part 69 of our rules, Segregation of Common Line Revenue Requirement, to reflect changes we made at that time in the transitional plan for customer line charges. We take this opportunity to make certain perfecting amendments to that Subpart. First, section 69.503 was deleted from the rules in the *Second Reconsideration Order*, but a cross-reference to that section remains in § 69.501(e). We now amend the latter section to delete this cross-reference.

59. Second, section 69.502, which governs the apportionment of the "base factor portion" of the common line revenue requirement, was limited by its terms to the period ending May 31, 1985. This limitation was to apply pending our reexamination of the transitional plan for residential and single-line business customer line charges. In light of our recent decision establishing a \$1.00 charge for such customers for the year June 1, 1985 to May 31, 1986, and a \$2.00 charge thereafter, the base factor allocation rule set out in section 69.502 should be extended past May 31, 1985.<sup>123</sup> We inadvertently failed to make the necessary change to this section when we adopted the new transitional rules for customer line charges, but we correct that situation by amending the rule today to delete the limitation to the period ending May 31, 1985.

#### III. Ordering Clauses

60. Accordingly, it is hereby ordered, that pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, and 403 and 5 U.S.C. 553, the *Second Reconsideration Order* adopted in this proceeding is modified to the extent set forth in this *Memorandum Opinion and Order*.

61. It is further ordered, that the petitions for further reconsideration or clarification are granted to the extent set forth in this *Memorandum Opinion and Order*, and are otherwise denied.

62. It is further ordered, that the Petition for Clarification filed by Lexitel is dismissed.

63. It is further ordered, that the Petition for Declaratory Relief filed by TDX is dismissed.

64. It is further ordered, that the Supplement to the Petition for Clarification filed by Allnet is accepted.

65. It is further ordered, that the AT&T Emergency Petition, as described herein, is denied.

66. It is further ordered, that the Motion to Accept Late Filed Pleading filed by NYNEX is granted.

67. It is further ordered, that §§ 69.205, 69.206, and 69.207 of the Commission's rules are amended as set forth in Appendix B, effective January 1, 1986.

68. It is further ordered, that §§ 69.305, 69.501, and 69.502 of the Commission's rules are amended as set forth in Appendix B, effective 30 days after publication in the *Federal Register*.

69. It is further ordered, that the Secretary shall cause this order to be published in the *Federal Register*.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

#### Appendix A

The following parties submitted petitions for reconsideration or clarification:

The Ad Hoc Committee of Telecommunications Users (Ad Hoc)

Allnet Communication Services, Inc. American Telephone and Telegraph Company (AT&T)

The Ameritech Operating Companies Mobile Marine Radio, Inc.

National Data Corporation

Pacific Bell and Nevada Bell (Pacific)

Satellite Business Systems (SBS)

Western Union Telegraph Company

Clear Lake Independent Telephone

Company and Rural Telephone

Company filed letters, which we have treated as petitions for reconsideration.

The following parties submitted oppositions to, or comments on, the petitions:

Aeronautical Radio, Inc. (ARINC) American Telephone and Telegraph Company

The Association of Long Distance Telephone Companies (ALTEL)

GTE Sprint Communications Corporation

Lexitel Corporation

MCI Telecommunications Corporation

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (U.S. West)

New York Telephone Company and New England Telephone and Telegraph Company (NYNEX)

Rochester Telephone Corporation

Satellite Business Systems

Southwestern Bell Telephone Company

Teltec Saving Communications Company, Satelco Incorporated, and Clark Telecommunications Corporation

United States Transmission Systems, Inc. (USTS)

The following parties submitted replies to the oppositions or comments:

The Ad Hoc Telecommunications Users Committee

Allnet Communication Services, Inc. American Telephone and Telegraph Company Pacific Bell and Nevada Bell

GTE Sprint Communications Corporation

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company

National Data Corporation

New York Telephone Company and New England Telephone and Telegraph Company

Satellite Business Systems

The following parties submitted responsive pleadings to Western Union's Petition for Rulemaking to amend section 69.303(c):

Dow Jones & Company Pacific Bell and Nevada Bell

The following parties submitted responsive pleadings to National Federation of Independent Business' petition for further reconsideration:

The Ad Hoc Telecommunications Users Committee

Aeronautical Radio, Inc.

American Telephone and Telegraph Company

Southwestern Bell Telephone Company

United Telephone System, Inc. (UTS)

<sup>120</sup> SBS Petition at 9-11.

<sup>121</sup> The relevant parts of §§ 69.106(b) and 69.306(g), which govern the allocation and recovery of Category 6 COE (local dial switching equipment) NTS costs, were promulgated in the *Access Charge Order*. Hence, SBS' complaint about the absence of the a toll weighting factor in these rules should have been raised in the first reconsideration round.

<sup>122</sup> See *Decision and Order*, supra note 15.

<sup>123</sup> See *Id.*

## Appendix B

47 CFR Part 69 is amended to read as follows:

1. Section 69.250(b) is revised to read as follows:

§ 69.205 Transitional Premium Charges.

(b) The transitional premium charges for the Carrier Common Line, Line Termination and Intercept elements shall be expressed in dollars and cents per access minute. Such charges shall be computed by dividing the revenue requirement for each such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium access minutes for each element for such period by .45.

2. Section 69.206 is revised in its entirety to read as follows:

§ 69.206 Transitional Non-Premium Charges for MTS-WATS Equivalent Services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access in lieu of carrier charges that are computed in accordance with §§ 69.105-69.108 and 69.111-69.112.

(b) The transitional non-premium charges for the Carrier Common Line, Line Termination and Intercept elements shall be computed by multiplying the premium charge for such element by .45.

(c) The transitional non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45.

(d) The transitional non-premium charge or charges for the Transport element or elements shall be computed by multiplying the corresponding premium charge or charges by .45.

§ 69.207 [Removed]

3. Section 69.207 is removed.

4. Section 69.305(b) is revised to read as follows:

§ 69.305 Carrier OSP.

(b) Carrier OSP used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. Such OSP shall be assigned to the Dedicated Transport element if it is used exclusively for the interexchange services of a particular carrier.

5. Section 69.501(e) is revised to read as follows:

§ 69.501 General.

(e) Any portion of the Common Line element revenue requirement that is not assigned to Carrier Common Line elements pursuant to paragraphs (a), (b), (c) and (d) of this section shall be apportioned between End User Common Line and Carrier Common Line pursuant to § 69.502. Such portion of the Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this Subpart.

6. Section 69.502 is revised in its entirety to read as follows:

§ 69.502 Base factor allocation.

The projected revenues from the End User Common Line charges and Special Access surcharges shall be deducted from the base factor portion to determine the amount that is assigned to the Carrier Common Line element.

[FR Doc. 85-10443 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 525 and 552

[GSAR AC-85-3]

#### Restriction on Procurement of Hand and Measuring Tools

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

**SUMMARY:** This Acquisition Circular temporarily amends §§ 525.105 and 552.225 of the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to reflect procurement restrictions in the current GSA and DOD Appropriation Acts on the acquisition of hand and measuring tools. The intended effect is to implement the appropriation restrictions and provide procedures and guidance to GSA contracting activities.

**DATES:** Effective: April 19, 1985.

**Expiration Date:** This circular expires June 18, 1985, unless cancelled earlier or extended.

**Comment Date:** Comments must be submitted by May 30, 1985.

**ADDRESS:** Comments may be submitted to Ida Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW, Washington, D.C. 20405, (202) 523-4754.

**FOR FURTHER INFORMATION CONTACT:** Edward J. McAndrew, Office of GSA Acquisition Policy and Regulations, (202) 566-1224.

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 U.S.C. 450(h)(1), a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with the FY 1985 Appropriation Act creates an urgent and compelling circumstance which makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this 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. This circular 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 525 and 552

Government procurement.

Authority: 40 U.S.C. 486(c).

In 48 CFR Ch. 5, the following acquisition circular is added to Appendix C to read as follows:

#### General Services Administration Acquisition Regulation Acquisition Circular AC-85-3

To: All contracting activities.

Subject: Restrictions on Procurements of Hand and Measuring Tools.

1. **Purpose.** This Acquisition Circular temporarily amends Section 525.105 and 552.225 of the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to reflect procurement restrictions in the current GSA and DOD Appropriation Acts on the acquisition of hand and measuring tools.

2. **Background.** The FY 1985 GSA Appropriation Act continues the

procurement restrictions on the acquisition of hand and measuring tools and stainless steel flatware from the FY 1984 GSA Appropriation Act. However, the procurement restrictions in the FY 1985 DOD Appropriation Act are changed for acquisitions of electric and air motor driven hand tools from the FY 1984 DOD Appropriation Act. All other procurement restrictions on the acquisition of hand and measuring tools in support of DOD requirements that were in the FY 1984 DOD Appropriation Act are continued in the FY 1985 DOD Appropriation Act. The procurement restrictions in the FY 1985 DOD Appropriation Act shall be applied in GSA procurements where such procurements satisfy requirements that are predominantly DOD requirements.

3. *Effective date.* April 19, 1985.

4. *Expiration date.* This circular expires 6 months after issuance (June 18, 1985) unless cancelled earlier.

5. *Reference to regulation.* Sections 525.105-70(c), 525.105-71, and 552.225-71 of the General Services Administration Acquisition Regulation.

6. *Explanation of change.*

a. Section 525.105-70(c) is amended as follows to cite the FY 1985 GSA Appropriation Act:

**525.105-70 Evaluating offers—Hand and measuring tools for other than the Department of Defense.**

(a) \* \* \*

(b) \* \* \*

(c) *GSA Appropriation Act restrictions.* Section 101(j) of Pub. L. 98-473, October 12, 1984, makes GSA appropriations subject to H.R. 5798 as passed by the House of Representatives on September 12, 1984. Section 506 of H.R. 5798 continues the Congressional policy contained in previous GSA Appropriation Acts that requires GSA purchases of hand and measuring tools be from domestic sources or be made in accordance with procedures prescribed by § 6-104.4(b) of the Armed Services Procurement Regulation (ASPR) (now the Defense Acquisition Regulation) as such regulation existed on June 15, 1970, and further provides that a factor of 75 percent in lieu of 50 percent shall be used for evaluating foreign source end products in § 6-104.4(b).

b. Section 525.105-71 is retitled and amended as follows to cite the FY 1985 DOD Appropriation Act, codify GSA's determination to apply the current DOD Appropriation Act restrictions in GSA procurements for requirements that are predominantly DOD requirements, and provide policy guidance on the requirements for full and open competition in acquisitions where the

current DOD Appropriation Act restrictions are to be applied:

**525.105-71 Acquisition of hand and measuring tools for the Department of Defense (DOD).**

(a) *DOD Appropriation Act restrictions.*

(1) Congressional policy on DOD's acquisition of hand and measuring tools is expressed in section 101(h) of Pub. L. 98-473, which contains the DOD Appropriation Act of 1985, and the House of Representatives Report No. 98-1086 on the DOD Appropriation bill for FY 1985. The following restrictions applicable to DOD's acquisition of hand and measuring tools are set forth in the current DOD Appropriation Act:

(i) Except for electric or air-motor driven hand tools, DOD is prohibited from acquiring hand and measuring tools that are not wholly produced or manufactured in the United States.

(ii) Electric or air-motor driven hand tools shall be considered of domestic origin if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

(2) Pursuant to subsection 6-104.4(d)(3)(ii) of the Armed Services Procurement Regulation (now the Defense Acquisition Regulation) as it existed on June 15, 1970, GSA has determined that accepting offers from firms offering foreign products is not in the national interest when DOD is the predominant user of the items being procured. As a result, the current DOD Appropriation Act restrictions shall apply in GSA procurements rather than the current GSA Appropriation Act restrictions where such procurements satisfy requirements that are predominantly DOD requirements. The bases for this determination are:

(i) The current DOD Appropriation Act prohibits DOD's acquisition of foreign hand and measuring tools. This restriction also applies when DOD requisitions such items through the GSA stock program.

(ii) It is not feasible for GSA to maintain separate supply systems to satisfy the requirements of civilian and military agencies.

(iii) The current GSA Appropriation Act prescribes the use of the procedures in the ASPR 6-104.4, dated June 15, 1970. These procedures provide that offers may be rejected when it is considered necessary for reasons of national interest.

(3) Acquisitions of hand and measuring tools, pursuant to the current DOD Appropriation Act restrictions, meet the requirements for full and open competition in FAR Subpart 6.1 if all

responsible sources offering domestic end products, as defined by the current DOD Appropriation Act restrictions, are permitted to submit offers.

(4) Acquisitions of hand and measuring tools pursuant to the DOD Appropriation Act restrictions without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR Subparts for determinations and findings or approved justifications.

(b) *Solicitation provision.* The contracting officer shall insert the provision at § 552.225-71, Procurement Restriction—Hand or Measuring Tools, in solicitations for the acquisition of hand or measuring tools for the Department of Defense.

c. Section 552.225-71 is retitled and amended as follows to incorporate the procurement restrictions in the FY 1985 DOD Appropriation Act:

**552.225-71 Procurement Restriction—Hand or Measuring Tools.**

As prescribed in § 525.105-71(b), insert the following provision in solicitations and contracts for the acquisition of hand or measuring tools for the Department of Defense.

**Procurement Restriction—Hand or Measuring Tools (Apr 1985)**

(a) The current Department of Defense (DOD) Appropriation Act prohibits DOD from directly or indirectly acquiring hand or measuring tools classified under Federal Supply Classification (FSC) Group 51, Hand Tools, or FSC Group 52, Measuring Tools, that are not domestic end products.

"Domestic end product," as used in this provision, means—

(1) Any hand or measuring tool, except for any electric or air motor driven hand tool, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

"Components," as used in this provision, means those articles, materials, and supplies incorporated directly into the hand or measuring tools.

(b) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools that are domestic end products.

(c) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this provision. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(d) Offers of hand and measuring tools that are not domestic end products are unacceptable and will not be considered for award under this solicitation.

(End of Clause)

Dated: April 19, 1985.

Richard H. Hopp, III,

Acting Deputy Assistant Administrator for Acquisition Policy.

[FR Doc. 85-10434 Filed 4-29-85; 8:45 am]

BILLING CODE 6320-61-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 681

[Docket No. 50460-5060]

#### Western Pacific Spiny Lobster Fisheries

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

**ACTION:** Emergency interim rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this emergency interim rule to resolve an enforcement problem in the fishery for spiny lobsters in the Northwestern Hawaiian Islands (NWHI). The action defines a legal-sized spiny lobster by using only one tail-width measurement and eliminates the present 15 percent tolerance for sublegal spiny lobsters. These changes will make it easier to enforce the regulations and to monitor the landings of spiny lobsters taken in this fishery.

**DATES:** In § 681.2, the current definition is suspended and a new definition for *Tail width* is added and in § 681.21, paragraphs (a) and (b) are suspended and a new paragraph (c) is added effective from April 25, 1985, to July 24, 1985. Comments are invited on this rule until May 28, 1985.

**ADDRESS:** Send comments to Mr. E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the environmental assessment prepared for this rule may be obtained from Mr. Fullerton.

**FOR FURTHER INFORMATION CONTACT:** Robert T.B. Iverson, Western Pacific Program Office, P.O. Box 3830, Honolulu, HI 96812, 808-955-8831.

**SUPPLEMENTARY INFORMATION:** Regulations for the Spiny Lobster Fisheries of the Western Pacific Region (FMP) became effective March 9, 1983 (48 FR 5560, February 7, 1983). There have been two amendments to the FMP. Amendment 1 became effective December 20, 1983 (48 FR 52922, November 23, 1983). It adopted Hawaii State regulations covering spiny lobsters in the territorial sea around the main Hawaiian Islands, east of 161°W longitude, as Federal regulations in the adjacent fishery conservation zone (FCZ). Amendment 2 became effective January 9, 1984 (49 FR 407, January 4, 1984). It changed the specifications of the required entryway openings for lobster traps used in the NWHI west of 161° W longitude to protect the Hawaiian monk seal, an endangered species which is protected under the Endangered Species Act of 1973 (Pub. L. 93-205) and the Marine Mammal Protection Act of 1972 (Pub. L. 92-522).

The existing spiny lobster regulations presently specify the following: (1) *Whole lobsters.* Only spiny lobsters with a carapace length of 7.7 cm or greater may be retained; (2) *Lobster tails.* If the carapace length cannot be determined, only lobsters with tails at least 5.0 cm wide may be retained, except for an allowance of up to 15 percent by number of the total catch per trip, which may have tail widths greater than or equal to 4.5 and less than 5.0 cm.

It has become apparent that these regulations are unenforceable. After review and analysis, the Western Pacific Fishery Management Council (Council) concluded that the most effective way to enforce regulations covering the taking of legal-sized spiny lobsters is (1) to eliminate the present 15 percent tolerance for sublegal spiny lobsters with a tail-width measurement between 4.5 and 5.0 cm; (2) to define a legal-sized spiny lobster as one with a tail width of 4.8 cm or more, and (3) to stop using a carapace measurement to define a legal-sized spiny lobster, and use only a single tail-width measurement.

The present 15 percent tolerance for sublegal spiny lobsters was originally introduced because the Council believed that using tail width to determine a legal lobster without a tolerance for sublegal lobsters was impracticable since the fishermen were measuring carapace length at sea. Use of a new measurement site that everyone uses with a new size limit should make it practical to determine a legal lobster

without any tolerance for undersized lobsters.

A 4.8 cm tail width for legal-sized spiny lobsters is based on a statistical regression analysis by NMFS to convert the present 7.7 cm minimum carapace length in male and female lobsters to its corresponding tail width at the new measurement site.

The fishery land spiny lobsters in three forms: frozen whole lobsters, live whole lobsters, and frozen lobster tails. An estimated 94 percent of the landings is frozen tails. When the lobsters are taken from the traps, they are measured by the fishermen either by carapace length or tail width at the first abdominal segment. Those lobsters destined for the live lobster trade are placed in holding tanks. The rest are either frozen whole or the tails are separated from the carapace portion. The tails are frozen and packed in plastic bags or cardboard boxes containing about 60-100 tails. At this stage, no effort is made to segregate the lobster tails by size.

During the tailing and packaging process some of the lobster meat often curls back over the tail, thus obscuring the measurement location and making a check measurement impossible. Further, the triangular structures forming the lateral notches between which the present tail-width measurement is made often break off, or ice builds up on the frozen tails, making remeasurement very difficult. Also, it is impractical for enforcement officers to recheck tail width measurements because of poor lighting in the offloading area and the discomfort of working in the refrigerated holds where the lobsters are stored. The time required to measure entire loads of up to 77,000 frozen lobster tails to determine if the 15 percent tolerance for sublegal tails had been exceeded would shut down the unloading operations.

Further, the method of fishing for spiny lobsters and subsequent stowage at sea make it impossible for enforcement officers to obtain a random sample of frozen lobster tails upon which to base a determination that the 15 percent tolerance has, or has not, been exceeded. Because of this tolerance, enforcement officers have reported that some fishermen may fish for legal-sized lobsters and then switch grounds to fish for sublegals up to the tolerance limit. This results in a size segregation at sea by bag or box of a substantial portion of the catch.

These regulations redefine the tail-width measurement site as the straight line distance across the tail at the widest spot between the first and second abdominal spines (figure 2). The

handling and processing of the lobster tails should not obscure this location; thus remeasurement by enforcement officers is possible. Also, because the 15 percent tolerance is abolished, it is no longer necessary for enforcement officers to be able to measure all tails or to obtain a random sample.

Because the market for frozen spiny lobster tails puts a premium on tails between 4.5 and 5.0 cm, these emergency regulations are expected to be controversial among those fishermen who specifically fish for sublegal lobsters up to the 15 percent tolerance limit. However, the primary purpose of the existing regulations is to protect the fisherman from inadvertently taking sublegal lobsters and not to provide a method to fish for sublegal lobsters.

Section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act authorizes the Secretary to implement emergency regulations if the Council finds that an emergency exists. By a vote of 10 for, 1 against, at its December 6, 1984 meeting, the Council determined that an emergency exists in the spiny lobster fishery in NWHI because the present regulations that define a legal-sized spiny lobster and that allow for a 15 percent tolerance of sublegal spiny lobsters with a tail width between 4.5 and 5.0 cm are unenforceable.

Specifically, the Council voted (1) to define a legal-sized spiny lobster as one with a tail width of 4.8 cm or greater; (2) to eliminate the present 15 percent tolerance for sublegal spiny lobsters with tail widths between 4.5 and 5.0 cm; and (3) to eliminate a carapace measurement and use only a single tail-width measurement to determine a legal-sized spiny lobster.

At its meeting on February 22, 1985, the Council heard additional testimony from lobster fishermen and NMFS scientists. Based upon the comments received, the Council decided that a legal-sized spiny lobster should be defined as one with a tail width of 4.8 cm or greater unless future study by the Southwest Fishery Center indicates that 4.8 cm is inadequate to protect the resource. Decisions on the other measures related to the emergency action were reaffirmed.

These changes should make it possible for enforcement officers to

monitor landings and ensure that the fishery takes only legal-sized spiny lobsters. The regulations also will promote the reproductive potential of the lobster stocks by protecting female spiny lobsters until they have attained a tail width of 4.8 cm which allows them a chance to spawn before becoming vulnerable to this fishery.

If these regulations prove to be enforceable, the Council will prepare an amendment to its spiny lobster FMP that will permanently establish this rule. When completed, the Council's amendment will include an environmental assessment, a regulatory flexibility analysis as required by the Regulatory Flexibility Act, and a determination of consistency of the amendment with the approved coastal zone management programs of Hawaii, American Samoa, and Guam as required by section 307(c) of the Coastal Zone Management Act.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. Because the present regulations are unenforceable as written, placing the resource in jeopardy, immediate action is necessary to achieve appropriate conservation and management.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment or to delay for 30 days the effective date of this rule, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. A copy of this emergency rule has been transmitted to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

It is impracticable to defer the effectiveness of this emergency rule to give the Hawaii Department of Planning

and Economic Development 90 days to review a determination that the rule is consistent to the maximum extent practicable with Hawaii's approved coastal zone management plan. While different from current State regulations applicable to State waters, this emergency rule has been determined to be consistent to the maximum extent practicable with Hawaii's approved coastal zone management plan, as required by regulations under the Coastal Zone Management Act, 15 CFR 930.32. When the Western Pacific Fishery Management Council adopts an amendment to the FMP permitting adoption of the emergency measure on a permanent basis, a formal consistency determination will be provided in accordance with 15 CFR 930.34(b).

The Director, Southwest Region, NMFS, prepared an environmental assessment for this rule and concluded that no significant impact on the human environment will result from its implementation.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 681

Fish, Fisheries, Reporting requirements.

Dated: April 24, 1985.

William G. Gordon,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

#### PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

For reasons set out in the preamble, 50 CFR Part 681 is amended as follows:

1. The authority citation for Part 681 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

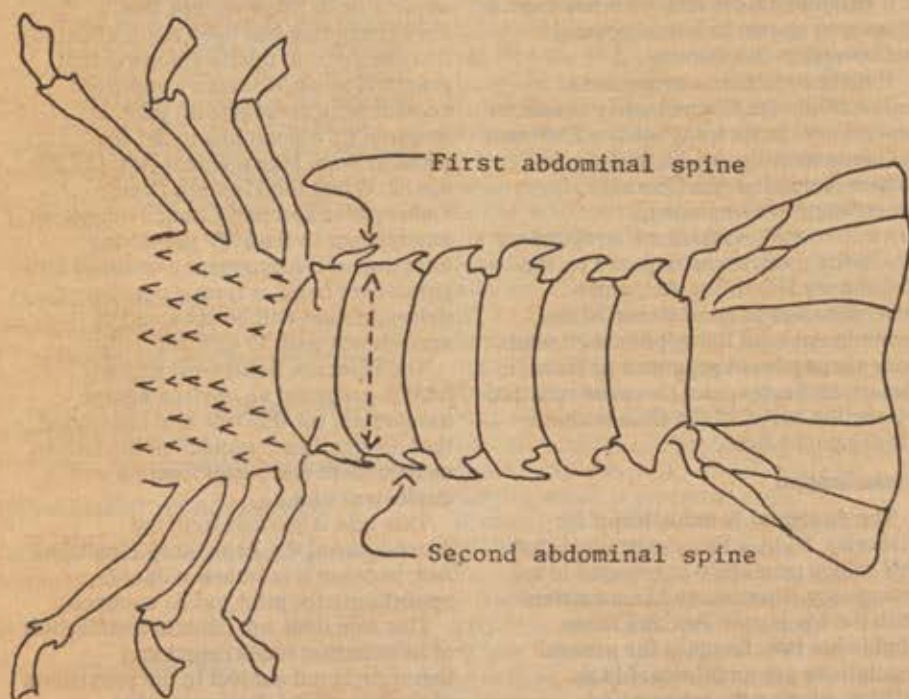
#### § 681.2 [Amended]

2. In § 681.2, the definition of *Tail width* is suspended from April 25, 1985 to July 24, 1985, and a new definition of *Tail width* is added, effective from April 25, 1985, to July 24, 1985, to read as follows:

\* \* \* \* \*

*Tail width* means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 2).

FIGURE 2. TAIL WIDTH



• • • • •  
 § 681.7 [Amended]

3. In § 681.7(b)(2), the comma is changed to a semicolon and the phrase "except for the tail-width allowance of § 681.21(b);" is removed.

4. In § 681.7(b)(3), the phrase "neither its carapace length nor" is removed; "can" is changed to "cannot".

§ 681.21 [Amended]

5. In § 681.21, paragraphs (a) and (b)

are suspended from April 25, 1985, to July 24, 1985 and a new paragraph (c) is added, effective from April 25, 1985, to July 24, 1985, to read as follows:

• • • • •  
 (c) Only spiny lobsters with a tail width of 4.8 cm or greater may be retained.

[FR Doc. 85-10204 Filed 4-25-85; 9:18 am]

BILLING CODE 3510-22-M



## Proposed Rules

Federal Register

Vol. 50, No. 63

Tuesday, April 30, 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.

### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 550

#### Pay Administration (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise the definition of "agency" in the regulations previously published for Federal agency salary offset regulations. This action is necessary to make the definition clearly reflect the intent of the law. These regulations would also delete extraneous material inadvertently included in the existing regulations.

**DATE:** Comments must be received on or before July 1, 1985.

**ADDRESS:** Send comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Washington, D.C. 20044, or deliver to OPM, Room 4351, 1900 E Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Rochester, (202) 632-4634.

**SUPPLEMENTARY INFORMATION:** On July 3, 1984, OPM published final regulations implementing the salary offset provisions of 5 U.S.C. 5514 [49 FR 27470]. The final regulations specified the required contents of agency salary offset regulations. They also established guidelines for requesting salary offsets when the debtor's employing agency and the agency responsible for collecting the debt are not the same.

Questions OPM has received since publication of the existing regulations have prompted us to amend the definition of "agency" in 5 CFR 550.1103 to more clearly reflect the intent of the law in § 5514.

#### The Definition of Agency

The current regulations say "agency" is an executive agency as defined by 5 U.S.C. 105, and includes the U.S. Postal Service, the U.S. Postal Rate

Commission, and military departments as defined by 5 U.S.C. 102. However, this limitation to Executive agencies and military departments is not strictly in accord with the intent of the law. When salary offset was originally authorized in Pub. L. 83-497, enacted July 15, 1954, it applied to agencies and employees in the executive, legislative and judicial branches. So agencies will not be misled on the question of who has the authority to use § 5514, we propose to expand the definition to include all branches of the Government.

#### Deletion of Extraneous Material

In § 550.1106(b)(3), we are deleting extraneous material that was inadvertently inserted in the final regulations.

#### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only the Federal Government.

#### List of Subjects in 5 CFR Part 550

Government employees, Personnel Management Office, Wages.

U.S. Office of Personnel Management.

Loretta Cornelius,  
*Acting Director.*

Accordingly, OPM proposes to amend 5 CFR Part 550 as follows:

#### PART 550—PAY ADMINISTRATION (GENERAL)

#### Subpart K—Collection by Offset from Indebted Government Employees

1. The authority citation for Subpart K of Part 550 reads as follows:

**Authority:** 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971-1975 Comp., 586; redesignated in sec. 2-1, E.O. 12107, 3 CFR, 1978 Comp., 264.

2. In section 550.1103, the definition of "Agency" is revised to read as follows:

#### § 550.1103 Definition.

"Agency" means (a) an Executive agency as defined by § 105 of title 5,

United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission, (b) a military department as defined by § 102 of title 5, United States Code, (c) an agency or court of the judicial branch, and (d) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

#### § 550.1106 [Amended]

3. In § 550.1106, paragraph (b)(3) is corrected by removing the last three sentences in the paragraph, commencing with the sentence—"Ordinarily, hearings may consist of informal conferences. \* \* \*

[FR Doc. 85-10472 Filed 4-29-85; 8:45 am]

BILLING CODE 6325-01-M

### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 60

[Docket No. PRM-60-2]

#### States of Nevada and Minnesota; Filing of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Petition for Rulemaking from the States of Nevada and Minnesota.

**SUMMARY:** The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking. This petition, filed by the States of Nevada and Minnesota, and dated January 21, 1985, was docketed by the Commission on January 28, 1985, and assigned Docket No. PRM-60-2. The petitioner requests that the Commission adopt a regulation governing the implementation of certain environmental standards which have been proposed by the Environmental Protection Agency.

**DATE:** Comment period expires July 1, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Single copies of the petition may be obtained free by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition, copies of comments, and accompanying documents to the petition may be inspected and copied for a fee at the NRC Public Documents Room, 1717 H Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:**

**Background**

*I. Statement of Grounds and Interest*

The State of Nevada filed this rulemaking petition as a state notified pursuant to the Nuclear Waste Policy Act (NWPA), that a potentially acceptable site for a repository has been identified within the state.

The State of Nevada avers that it may become affected for purposes of participation in site characterization, pursuant to section 113 or the NWPA. The State of Minnesota joins this petition as a state informed that it is being considered for site characterization for second repository. The State of Minnesota avers that it may be directly affected by the substance of standards for the development of repositories. The States of Nevada and Minnesota ground this petition on their respective interest in, and the prevailing responsibility for, the protection of the future health and safety of their citizens.

*II. Statement in Support of Petition*

The petitioner notes that the NWPA, enacted by Congress on December 20, 1982, and approved by the President on January 7, 1983, requires that the President recommend a first, high-level nuclear waste repository location to Congress by March 31, 1987 (section 114(a)(2)(A), 42 U.S.C. 10134(a)(2)(A)) or March 31, 1988, if he determines an extension is necessary (section 114(a)(2)(B), 42 U.S.C. 10134(a)(2)(B)). The Nuclear Regulatory Commission (Commission) must act upon an application for construction authorization for that repository by January 1, 1989, or within three years of the application's filing (section 114(d)(1), (2), 42 U.S.C. 10134(d)(1), (2)). The

President's recommendation must be based upon Department of Energy (DOE) site characterization at a site which must have been recommended by January 1, 1985 (section 112(b)(1)(D), 42 U.S.C. 10133(b)(1)(D)). Site characterization must be performed pursuant to a plan reviewed by the Commission and the affected state (section 113(b)(1), 42 U.S.C. 10133(b)(1)) before characterization begins. That plan must include criteria to be used by DOE to determine the "suitability of such candidate sites for the location of repository, developed pursuant to (section 112(a);" (section 113(b)(1)(A)(iv); 42 U.S.C. 10133(b)(1)(A)(iv)). DOE's section 112(a) guidelines, as concurred in by the Commission on June 22, 1984 (49 FR 28130) require that evidence used to apply those guidelines include "analysis of expected repository performance to assess the likelihood of demonstrating compliance with 40 CFR Part 191 and 10 CFR Part 60. . . ." Section 121(a) of the NWPA requires Environmental Protection Agency (EPA) to promulgate by rule, not later than one year after the date of the enactment of the NWPA, or January 7, 1984, "generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories." The EPA published a proposed rule, "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes" on December 29, 1982 (47 FR 58196). The proposed rule contained a section entitled "Assurance Requirements—40 CFR 191.14." According to petitioner, such assurance requirements are clearly "generally applicable standards" within the meaning of section 121(a) of NWPA.

In response to its published notice of proposed rulemaking, EPA received objections regarding the authority of EPA to promulgate the proposed "Assurance Requirements." These objections were based on legal arguments that section 121(a) of the NWPA specifically clarifies that EPA's authority to promulgate the proposed rule arises "under other provisions of law." Those "other provisions of law" include the Atomic Energy Act of 1954, as amended and the President's Reorganization Plan No. 3 of 1970. According to petitioner, the essence of the objection was that Reorganization Plan No. 3 placed within the Federal Radiation Council, which is no longer in existence, rather than EPA, the authority for requirements such as those contained within proposed 40 CFR 191.14.

The statutory deadline for the promulgation of the EPA standards has passed without promulgation of the standards. Petitioner states that the primary reason for that failure is the jurisdictional dispute over EPA's authority to issue the requirements contained in 40 CFR 191.14. The petitioner states that because proposed 40 CFR 191.14 contains generally applicable standards for the protection of the general environment for offsite releases from radioactive materials in repositories, the EPA should proceed to finalize 40 CFR Part 191. It is also argued that DOE could not make nomination decisions or recommendations for characterization until EPA standards are final.

Petitioner asserts that disputes as to the question of authority preclude EPA from issuing its final standards. The petitioner states further that the general authority of the Commission to protect the health and safety of the public against radiation hazards under the Atomic Energy Act endows the Commission with the power to enact regulations of the nature contained in proposed 40 CFR 191.14 notwithstanding the question over EPA's authority. Therefore, the petitioner suggests that since no objections have been raised regarding the substance of proposed 40 CFR 191.14, and because the proposed rule does provide confidence that the containment requirements of 40 CFR 191.13 would be met by a repository, the NRC should enact under its authority the proposed regulations originally published by EPA on December 29, 1982 (47 FR 58196), thereby removing the jurisdictional issue as an impediment to the EPA's promulgation of the proposed section. According to the petition, once this impediment is removed, the EPA could move to final adoption of its rule. The petition also recites certain proposed Commission findings, including a finding that the EPA's standards must be final before environmental assessments can be finally published and before DOE may nominate a site or recommend a site for characterization.

*III. Conclusion*

The assurance requirements referred to by the petitioner have been the subject of prior consideration by the Commission. As a result of such consideration, the Commission on May 17, 1984, directed the staff to continue discussions with EPA on those assurance requirements, with the objective of coming to a mutual agreement on provisions that could be

incorporated into 10 CFR Part 60.<sup>4</sup> If the NRC and EPA staffs arrive at such agreement, appropriate rule changes will be recommended to the Commission. If approved by the Commission, such changes will be published in the Federal Register. There would be an opportunity for further public comment before the final amendments are adopted.

As a matter of orderly administrative procedure, the Commission may elect to continue its efforts to resolve any outstanding differences with EPA, and to deny the instant petition. This would avoid duplicative, and indeed possibly conflicting, rulemaking activities. The issues raised in the petition would not be disregarded, but would, on the contrary, be considered in the development of rules acceptable to EPA which the Commission may propose for adoption. Commenters are invited to express their views as to the appropriateness of this course of action.

Dated at Washington, DC this 25th day of April, 1985.

For the Nuclear Regulatory Commission,  
John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 85-10484 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 85-NM-28-AD]

#### Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) which would improve fire safety in lavatories on Boeing Model 727 and Model 737 airplanes. This AD would require installation of divider panels on Model 727 airplanes to isolate the lavatory waste enclosure, and "No Stowage" placards in areas not suitable for storing combustible materials on both the Model 727 and Model 737 airplanes. Stowage of combustible materials in these areas could result in a fire if a component overheats or otherwise fails. An AD is proposed to ensure adequate fire safety.

**DATES:** Comments must be received on or before June 21, 1985.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-28-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Gardlin, Aerospace Engineer, Airframe Branch, ANM-1205; telephone (206) 431-2932. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Attention: Airworthiness Rules Docket No. 85-NM-28-AD, Office of the Regional Counsel, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

##### Discussion

Service experience has indicated that combustible materials are being stored in compartments which house electrical

and/or heat producing components on Boeing Model 727 and Model 737 airplane lavatories. Storage of combustible materials in these areas represents a fire hazard since the compartments were not intended for storage and were not designed for fire containment. Boeing Service Bulletins 727-25-277 and 737-25-1171 call for adding "No Stowage" placards to these areas. In addition, on certain Model 727 forward lavatories, the waste enclosure area is not adequately isolated from other areas and could allow a fire to spread beyond the waste enclosure. To remedy this situation, Service Bulletin 727-25-277 also calls for installation of a divider panel to isolate the waste compartment. Since a situation exists which could contribute to the propagation of a lavatory fire, an AD is proposed to require modification of Model 727 and 737 lavatories in accordance with Boeing Service Bulletins 727-25-277 and 737-25-1171, respectively.

It is estimated that 1500 planes of U.S. registry would be affected by this AD. Approximately 4 manhours at an average cost of \$40 per manhour would be required to modify each airplane. The cost of parts is estimated at \$100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$390,000.

For the reasons discussed above the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 or Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the public docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

#### PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration (FAA) proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by

<sup>4</sup> The Commission direction to the staff, along with other pertinent materials, has been placed in the file of this proceeding.

adding the following new airworthiness directive (AD):

**Boeing:** Applies to Model 727 and Model 737 series airplanes as specified in Boeing Service Bulletins 727-25-277 dated February 23, 1984, and 737-25-1171 dated August 10, 1984, respectively, certificated in all categories. To assure adequate lavatory fire protection, accomplish the following within one year after the effective date of this amendment, unless previously accomplished:

(A) For Boeing Model 727 airplanes, modify lavatories in accordance with Boeing Service Bulletin 727-25-277 dated February 23, 1984, or later FAA approved revisions.

(B) For Boeing Model 737 airplanes, install lavatory placards in accordance with Boeing Service Bulletin 737-25-1171 dated August 10, 1984, or later FAA approved revisions.

(C) An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received Boeing Service Bulletins 727-25-277 and 737-25-1171 may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.85)

Issued in Seattle, Washington, on April 22, 1985.

**Charles R. Foster,**

*Director, Northwest Mountain Region.*

[FR Doc. 85-10385 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 85-NM-41-AD]

### Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) that would require modification of the drain mast assemblies on CFM-56-2 engines installed on DC-8-70 series aircraft. The proposed AD is prompted by 18 reported instances of damage to the engine drain mast and transfer gear box horizontal drive shaft housing due to drain mast

contact with the runway during landing. This action is necessary to minimize the potential of inflight shutdown if drain mast failure is not detected during preflight inspection.

**DATES:** Comments must be received on or before June 21, 1985.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, CI-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California. 90808; telephone, (213) 548-2835.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-

41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

There have been 18 reported cases of damage to the engine drain mast and/or transfer gear box horizontal drive shaft housing due to drain mast contact with the runway. In three cases, both engines on one side of the fuselage sustained drain mast damage. Damage to the outboard engines has been more severe than to the inboard engines. If the drain mast damage is not detected in a ground walk-around inspection, on the next flight, engine oil loss can force an inflight shutdown of both engines on the same side of the fuselage. The manufacturer has issued Service Bulletin 71-96, dated February 12, 1985, which provides for a modification calling for trimming the existing drain mast, installation of a new flange on the modified mast, and installation of a new flexible mast on the modified drain mast manifold. This modification will minimize gearbox damage resulting from engine pod impacts during landing, which could lead to an inflight shutdown due to oil loss.

Therefore, in consideration of the hazardous consequence of the potential for drain mast contact with the runway, the proposed AD is considered to be necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require compliance with the McDonnell Douglas Service Bulletin described above, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Approximately 76 airplanes of U.S. registry would be affected by this AD. Each airplane contains four nacelles which would be affected by the proposed actions. It is estimated that 6.5 manhours per engine are needed to accomplish the required modification. Average labor cost is \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. registered owners is estimated to be \$79,040.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a

substantial number of small entities because few, if any, Model DC-8-70 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects in 14 CFR Part 39

Aviation safety. Aircraft.

#### The Proposed Amendment

#### PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC-8-71, -72 and -73 series airplanes, certificated in all categories. To preclude potential for oil loss resulting in inflight shutdown, compliance is required within eighteen (18) months after the effective date of this AD, as indicated, unless previously accomplished.

(A) Complete the modification defined in McDonnell Douglas Service Bulletin 71-96, dated February 12, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. The modification calls for trimming the existing drain mast, installation of a new flange on the modified mast, and installation of a new flexible mast on the modified drain mast manifold.

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

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

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

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on April 22, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-10384 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 85-AGL-11]

#### Proposed Alteration of Transition Area—Shell Lake, Wisconsin

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the Shell Lake, Wisconsin, transition area to accommodate existing conditions and to ensure that the Shell Lake Municipal Airport instrument approach procedure will be contained within controlled airspace.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATE:** Comments must be received on or before June 7, 1985.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:** The current description of the Shell Lake, Wisconsin, transition area identifies a "bearing to" in lieu of a "bearing from" the Shell Lake NDB (SSQ) and, as a result, does not properly describe the airspace required for the Shell Lake NDB Runway 31 instrument procedure. This action reduces the radius of the designated airspace area from 6.5 to 5 miles around Shell Lake Municipal Airport, eliminates the northwest extension, and designates the necessary southeast extension from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

Aeronautical maps and charts will reflect the defined areas which will

enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NRPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NRPM. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR

Part 71) to alter the designated airspace associated with the Shell Lake, Wisconsin, Municipal Airport so as to include airspace necessary to accommodate the existing Shell Lake NDB Runway 31 instrument approach procedure and to return unneeded airspace to a noncontrolled status.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

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

#### List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

#### The Proposed Amendment

#### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) as follows:

##### Shell Lake, WI

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Shell Lake Municipal Airport (latitude 45° 43' 48" N, longitude 91° 55' 14" W) and within 3 miles each side of the 139° bearing from the Shell Lake NDB (latitude 45° 43' 55" N longitude 91° 55' 05" W) extending from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

(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 11.85)

Issued in Des Plaines, Illinois, on April 16, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-10386 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-5-FRL-2827-3]

#### Approval and Promulgation of Implementation Plans; Wisconsin

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

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The intent of today's rulemaking action is twofold. First, USEPA is proposing to approve Wisconsin's general New Source Review (NSR) Program for sources located in attainment and unclassified areas, because it meets the general requirements outlined at 40 CFR 51.18 (a) through (h). On April 17, 1981 (46 FR 22374), USEPA approved portions of the Wisconsin State Statutes, Chapter 144, and the Wisconsin Administrative Code, Chapter NR 154, with respect to the NSR requirements identified at 40 CFR 51.18 (a) through (h) for sources located in nonattainment areas, as well as the detailed major source nonattainment area requirements identified at 40 CFR 51.18(j), but USEPA did not rulemake on the state's submittal as meeting the NSR requirements identified at 40 CFR 51.18 (a) through (h) for sources in attainment and unclassified areas. Furthermore, at that time USEPA was requested by the State of Wisconsin not to rulemake on the Prevention of Significant Deterioration (PSD) requirements, identified at 40 CFR 51.24, for major new sources and major modifications located in attainment and unclassified areas because the State anticipated further development of the PSD rules. Today, USEPA is proposing to approve Chapter 144 and Chapter NR 154, with respect to the general NSR requirements for sources in attainment and unclassified areas (40 CFR 51.18 (a) through (h)). The version of Chapter NR 154 under consideration today has been revised since the April 17, 1981 (46 FR 22374), approval for nonattainment areas.

Second, on June 15, 1984 (49 FR 24752), USEPA proposed to approve several permit exemptions in the revised Chapter NR 154, as they applied to nonattainment areas. In the June 15, 1984, notice of proposed rulemaking, USEPA took no action on Section NR 154.25 (Alteration of Permits by Petition) because additional clarification was needed from the State of Wisconsin. The State submitted the requested clarification during the public comment period. Therefore, USEPA now proposes to approve NR 154.25 for nonattainment, attainment, and unclassified areas, but

does not approve NR 154.25 as meeting the PSD program requirements.

USEPA plans to combine the final action on today's proposal, approving Chapter 144 and Chapter NR 154 for attainment and unclassified areas, with the final action on the June 15, 1984 (49 FR 24752) proposal, approving amendments to Chapter NR 154 for nonattainment areas. The approval of these final actions, combined with the April 17, 1981 (46 FR 22374) notice of final rulemaking approving the NSR regulations for nonattainment areas, will result in a series of regulations representing Wisconsin's NSR program for both attainment and nonattainment areas, which will be codified at 40 CFR 52.2570. This codification will specifically exclude the PSD program because, as explained below, review of the PSD program is not included in this notice and will be addressed at a future date.

USEPA's action is based upon State Implementation Plan (SIP) revision requests that were submitted by the State of Wisconsin on July 12, 1979, and October 13, 1983. The intent of today's rulemaking is to present a discussion of the material submitted by the State to support the revisions, and to provide an opportunity for public comment on the revisions and on USEPA's proposed action.

**DATE:** Comments on this revision, and on USEPA's proposed action, must be received by May 30, 1985.

**ADDRESSES:** Copies of the proposed SIP revisions and the supporting technical documents are available for review at the following address: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office.)

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

Wisconsin Department of Natural  
Resources, Bureau of Air  
Management, 101 South Webster,  
Madison, Wisconsin 53707

Comments on these rule revisions should be addressed to (Please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**  
Colleen W. Comerford, (312) 886-6034.

## SUPPLEMENTARY INFORMATION:

## Background

The criteria for an approvable SIP are described in 40 CFR Part 51, in the April 4, 1979, *Federal Register* (44 FR 20372), and in supplements dated July 2, August 28, September 17, and November 23, 1979 (44 FR 38583, 50371, 53761, 67182). One of these criteria is that each SIP require permits for the construction and operation of new or modified major stationary sources. These permits are to be issued in conformance with the requirements of section 173 of the Clean Air Act for major sources in nonattainment areas, and section 165 for major sources in attainment areas. Regulatory requirements related to NSR, and relevant to today's proposal, are contained in 40 CFR 51.18 (a) through (h) for major and minor sources in attainment and nonattainment areas, and 40 CFR 51.18(j) for sources in nonattainment areas. USEPA wishes to clarify that it is proposing for approval today those proposed SIP revisions that meet the NSR requirements of 40 CFR 51.18 (a) through (h), and Section NR 154.25 with respect to 40 CFR 51.18(j). USEPA is not approving these proposed SIP revisions with respect to the PSD requirements in 40 CFR 51.24. However, USEPA is proposing to approve all SIP revisions submitted by Wisconsin that help the State meet the NSR requirements outlined at 40 CFR 51.18 (a) through (h).

## New Source Review Program For Sources in Attainment and Unclassified Areas

In order to satisfy the requirements of 40 CFR 51.18 (a) through (h) and (j) for a NSR program, the State of Wisconsin submitted revisions to its SIP on July 12, 1979. Additional background material was provided by the State on September 4, 1979. Following the original submittal, Wisconsin submitted a series of amendments to its NSR program as additional SIP revisions. These SIP revision requests were submitted on November 27, 1979, May 1, 1980, and February 18, 1981.

The November 27, 1979, submittal consisted of portions of the air pollution control statutes, Wisconsin State Statutes Chapter 144, and the administrative regulations implementing those statutes, Wisconsin Administrative Code Chapter NR 154. The statutes and regulations that were submitted on November 27, 1979, incorporated the changes that had been made to these rules since the Wisconsin SIP was federally approved in 1973. The November 27, 1979, submittal stated that the revised statutes and regulations

contained therein were intended to supersede all previous submittals of Chapter 144, which had previously been approved as the basis for the Wisconsin NSR SIP.

On May 1, 1980, Wisconsin submitted to USEPA, as a SIP revision, several recent significant changes to its air pollution control laws, including its NRS procedures. On February 18, 1981, Wisconsin once again submitted a revised version of Chapter 144. At the same time, Wisconsin requested that USEPA not rulemake on those portions of the NSR statutes and regulations as they pertained to the PSD program because the State anticipated further development of these rules.

On April 17, 1981 (46 FR 22374), USEPA approved portions of Chapter 144 and Chapter NR 154 with respect to major and minor source NSR requirements for nonattainment areas only. USEPA did not take action on the above cited submittals with respect to the general permitting requirements in 40 CFR 51.18 (a) thru (h) for attainment and unclassified areas. This notice proposes to supplement the April 17, 1981, approval by proposing to approve the 1979, 1980, and 1981 submittals of Chapter 144 and revised Chapter NR 154 (the relevant parts of which were submitted on October 13, 1983, as Board Order Number A-39-81) with respect to sources located in attainment and unclassified areas. The revisions in Chapter NR 154 were made after the April 17, 1981, approval (46 FR 22374) and are the subject of a June 15, 1984, notice of proposed rulemaking with respect to nonattainment areas.

The following sections of Chapter 144 of the Wisconsin Statutes, and Chapter NR 154 of the Wisconsin Administrative Code, contain Wisconsin's authority and regulations for its NSR program for sources located in attainment and unclassified areas. USEPA plans to combine the final action on today's proposal approving Chapter 144 and Chapter NR 154 for attainment and unclassified areas, with the final action on the June 15, 1984 (49 FR 24752) proposal approving amendments to Chapter NR 154 for nonattainment areas. The approval of these final actions, combined with the April 17, 1981 (46 FR 22374) notice of final rulemaking approving the NSR regulations for nonattainment areas, will result in a series of federally approved regulations representing Wisconsin's NSR program for both attainment and nonattainment areas, as listed below.

The regulations in the following list will address all NSR activities in the

State of Wisconsin, except for those covering lead sources, which have been approved previously (49 FR 26762), the PSD program, which has not been submitted to USEPA per the State's request, and certain permit exemptions for nonattainment areas, on which USEPA deferred action. (Sections NR 154.01 (118), 154.04(3)(a), 154.04(5), and 154.04(6)(b); June 15, 1984; 49 FR 24752).

## (1) From Chapter 144:

Section 144.01 (1), (2), (3), (9m), and (12)—Definitions  
 Section 144.30—Air Pollution Definitions  
 Section 144.31—Air Pollution Control Powers and Duties  
 Section 144.34—Inspections  
 Section 144.375—Air Pollution Control, Standards and Determinations  
 Section 144.38—Classification and Reporting  
 Section 144.391—Air Pollution Control Permits  
 Section 144.392—Permit Application and Review  
 Section 144.393—Criteria for Permit Review  
 Section 144.394—Permit Conditions  
 Section 144.395—Alteration, Suspension and Revocation of Permits  
 Section 144.396—Permit Duration  
 Section 144.397—Operation Permit Review  
 Section 144.398—Failure to Adopt Rules or Issue Permits or Exemption  
 Section 144.399—Fees  
 Section 144.402—Petition for Alteration  
 Section 144.403—Hearings on Certain Air Pollution Actions  
 Section 144.423—Violations: Enforcement  
 Section 144.426—Penalties for Violations  
 Section 144.98—Enforcement: Duty of Department of Justice

## (2) From Chapter NR 154:

Section 154.01—Definitions  
 Section 154.04—Permit Requirements and Exemptions<sup>1</sup>  
 Section 154.05—Action on Applications  
 Section 154.055—Relocation of Portable Sources  
 Section 154.06—Source Reporting, Recordkeeping, Testing, Inspection and Operation  
 Section 154.08—Enforcement and Penalties  
 Section 154.21—Limitations on County, Regional, or Local Regulations  
 Section 154.24—Procedures for Non-contested Case Public Hearings  
 Section 154.25—Procedures for Alteration of Permits by Petition

<sup>1</sup>The April 17, 1981, approval of Chapter NR 154 included Section NR 154.04, entitled "Notice of Intent." The October 13, 1983, submittal included revisions to Section 154.04, which changed the title to "Permit Requirements and Exemptions" and listed source sizes and categories that could be exempted from the permitting requirements. The June 15, 1984 (49 FR 24752), *Federal Register* proposed to approve this section, as it applied to nonattainment areas, with the exceptions of NR 154.04(3)(a), NR 154.04(5), and 154.04(6)(b). However, NR 154.04, as noted in the listing above, is proposed for approval in its entirety for minor sources in attainment and unclassified areas.

USEPA has reviewed the relevant portions of these statutes and regulations in light of the requirements of 40 CFR 51.18. USEPA has determined that the Wisconsin NSR rules contained in Chapter 144 and revised Chapter NR 154 meet the general permitting requirements identified at 40 CFR 51.18 (a) through (h), as those requirements apply to sources located in attainment and unclassified areas. However, Section 144.394(2) addresses variances and Section 144.394(5) addresses emission reduction options. USEPA proposes to approve these sections provided that all variances and emission reduction options are submitted to USEPA as SIP revisions. In the final approval, this provision will be noted in the codification identified at 40 CFR 52.2570. USEPA wishes to clarify that a practice of prior approval by USEPA is a necessary condition to approval of this proposed SIP revision.

Therefore, USEPA proposes approval of the Wisconsin NSR statutes and regulations listed above, as they apply in attainment and unclassified areas. This approval does not extend to the PSD program. Variances and emission reduction options granted by Wisconsin that have not been submitted to USEPA and approved as SIP revisions will not be federally recognized.

#### Proposed Revisions to Section NR 154 for Nonattainment Areas

On October 13, 1983, the State of Wisconsin submitted Natural Resources Board Order Number A-39-81 to USEPA and requested that USEPA consider several of the revisions to Chapter 154 of the Wisconsin Administrative Code contained in the Order, as amendments to the Wisconsin SIP. Wisconsin requested that USEPA only approve those parts of the submittal that pertained to exemptions from construction, modification, and operation permits, and other permit program requirements. The State requested that USEPA not review the submittal as it pertained to the Lead SIP or to the State PSD program, because those revisions would be submitted and reviewed under separate rulemaking actions. The permit exemption revisions are discussed in the June 15, 1984, notice of proposed rulemaking (49 FR 24752).

In the June 15, 1984, notice of proposed rulemaking, USEPA also requested further clarification from the State of Wisconsin concerning Section NR 154.25 of the Wisconsin Administrative Code, procedures for alteration of permits by petition. USEPA stated that it would approve NR 154.25 if appropriate clarification were received prior to the close of the public comment

period, which ended on July 16, 1984. On July 13, 1984, Wisconsin submitted a letter stating that decisions made, pursuant to NR 154.25, would be subject to the permitting criteria outlined in Section 144.393 of the Wisconsin Statutes. Since Section 144.393 is part of the federally approved Wisconsin SIP for nonattainment areas, and is being proposed for approval today for attainment and unclassified areas, this satisfies USEPA's request for a demonstration that permit alteration decisions are based on procedures that are part of the approved SIP. Therefore, USEPA proposes to approve Section NR 154.25 for sources located in nonattainment, attainment and unclassified areas.

#### Conclusion

USEPA is proposing to approve Wisconsin's NSR program for attainment and unclassified areas. USEPA is not approving the NSR rules as they pertain to the PSD program. In effect, USEPA is proposing to approve Chapter 144 and revised Chapter 154 for the general NSR requirements in 40 CFR 51.18 (a) through (h). USEPA is also proposing to approve a revision to the Wisconsin Administrative Code, Section NR 154.25, as it pertains to sources located in nonattainment, attainment and unclassified areas.

Interested persons are invited to submit comments on each of these actions. USEPA will consider all comments received by May 30, 1985.

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

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

#### List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: March 29, 1985.

Valdas V. Adamkus,

Regional Administrator,

[FR Doc. 85-10369 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[NC-012; A-4-FRL-2626-9]

#### Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous Editorial Changes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** EPA today proposes to approve numerous editorial changes which North Carolina has made in its air pollution control regulations. The State submitted the changes as implementation plan revisions on December 12, 1984. The effect of the changes is to update, simplify, and clarify the regulations; no substantive changes have been made.

**DATE:** To be considered, your comments must reach us by May 30, 1985.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency,  
Region IV, Air Management Branch,  
345 Courtland Street, N.E., Atlanta,  
Georgia 30365  
Division of Environmental Management,  
North Carolina Department of Natural  
Resources and Community  
Development, Archdale Building, 512  
N. Salisbury Street, Raleigh, North  
Carolina 27611

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Bishop, Air Management Branch, EPA Region IV, at the above address, telephone 404/881-3966 (FTS 257-3966).

**SUPPLEMENTARY INFORMATION:** On December 17, 1984, the North Carolina Division of Environmental Management submitted as implementation plan revisions a number of editorial changes in regulations 15 NCAC 2D.0501, .0506 through .0517, .0519 through .0523, .0527 through .0532, .0901, .0903, .0905 through .0910, and .0912 through .0940. Also, the State deleted regulation 15 NCAC 2D.0609 and portions of 15 NCAC 2H.0601, .0604, and .0605. These changes received public hearing on July 10, 1984, and were adopted by the North Carolina Environmental Management Commission on November 8, 1984.

There are no substantive differences in the effect of the North Carolina air pollution control regulations as a result of the changes. Terms have been changed to make them consistent with current usage, references to test methods have been updated, corrections have been made in some of the emission limit tables, metric units of measurement



have been suppressed in favor of English units, references to the Code of Federal Regulations have been corrected and updated, and other changes have been made in order to standardize nomenclature and to clarify the intent and applicability of the regulations. Regulation 15 NCAC 2D.0609.

Monitoring Condition in Permit, and portions of the permit regulations of Section 2H.0600 have been deleted because they merely paraphrase the language of the North Carolina statutes. Interim compliance dates in the categorical compliance schedules for equipment installation and modification and use of low-solvent content coatings by sources of volatile organic compounds (VOC) have been deleted since they are no longer needed; the final compliance dates, of which January 31, 1983 is the latest, are still specified.

**Proposed Action.** EPA proposes to approve these changes because they are routine wording changes and have no effect on the meaning of the regulations.

In the process of revising regulation 2D.0917, [VOC Emissions from] Automobile and Light-Duty Truck Manufacture, an error has been introduced: The original regulation specified limits for top coat and surface application in subparagraph (c)(2) and for final repair application in subparagraph (c)(3); as revised, however, both specify "top coat and surface" and so the original wording of (c)(3) ("final repair") needs to be restored. The State has indicated that they will make this correction; EPA will defer approval action on the revised regulation until the correction is received.

Also, in the case of regulation 2D.0527, Emissions from Spodumene Ore Roasting, EPA proposes partial approval only. EPA on May 15, 1981 (46 FR 26769) withdrew its earlier approval of limits North Carolina had set for emissions of sulfuric acid mist from this process. The Agency took this action to forestall any problem in Federal enforcement of emission limits not required by any provision of the Clean Air Act and the Agency's implementing regulations. EPA proposes to approve the revised language of the regulation only as it pertains to sulfur dioxide.

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

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

#### List of Subjects in 40 CFR Part 52

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

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

Dated: April 2, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-10383 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Parts 220, 227, 228, and 234

[FRL-2826-8]

#### Ocean Incineration Regulation; Extension of Public Comment Period

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rulemaking; Extension of public comment period.

**SUMMARY:** On February 28, 1985 (50 FR 8222), EPA proposed rules which would regulate the incineration of liquid wastes at sea, and asked that written public comments on the proposed rule be submitted by May 29, 1985. EPA has determined that additional time should be allowed, to ensure that all interested parties have sufficient opportunity to submit comments. Consequently, EPA is extending the public comment period to June 28, 1985.

**DATE:** The deadline for submitting written public comments is extended to June 28, 1985.

**ADDRESS:** Marjorie A. Pitts, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Majorie A. Pitts, (202) 755-0100.

Dated: April 23, 1985.

Jack E. Raven,

Assistant Administrator for Water.

[FR Doc. 85-10368 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 0, 1, and 90

[PR Docket No. 83-737]

#### Frequency Coordination in the Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; Extension of reply comment period.

**SUMMARY:** The FCC is extending the time for submission of reply comments in this proceeding concerning frequency coordination in the Private Land Mobile Radio Services. The Commission has taken this action in order to give all interested parties ample opportunity to prepare reply comments and thus assure a complete record in this proceeding.

**EFFECTIVE DATE:** Reply comments are now due by June 10, 1985.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Private Radio Bureau, (202) 634-2443.

**SUPPLEMENTARY INFORMATION:**

#### Order Extending Reply Comment Period

In the matter of Frequency Coordination in the Private Land Mobile Radio Services PR Docket No. 83-737.

Adopted: April 19, 1985.

Released: April 23, 1985.

By the Chief, Private Radio Bureau.

1. On October 17, 1984, the Commission adopted a *Notice of Proposed Rule Making* (NPRM) in the above captioned matter. The NPRM was released on November 9, 1984, and appeared in the Federal Register, 49 FR 45454, on November 16, 1984. Comments on the NPRM were due by March 11, 1985, and reply comments are due April 25, 1985.

2. Petitions for an extension of time of the reply comment period were received from the International Association of Fire Chiefs, Inc. (IAFC) filing jointly with the International Municipal Signal Association (IMSA), the American SMR Network Association, Inc. (ASNA), and the Special Committee on Communications of the American Association of State Highway and Transportation Officials, Inc. (AASHTO). IAFC/IMSA requested an extension to July 1, 1985, ASNA to July 15, 1985, and AASHTO requested a 90 day extension (July 25, 1985).

3. IAFC/IMSA filed joint comments requesting certification as the frequency advisory committee for the Fire, Special Emergency, and Local Government Radio Services. IAFC/IMSA requested a time extension to enable them to develop comprehensive responses to the comments of other parties, particularly positions concerning the designation of coordinators for the Public Safety and Special Emergency Radio Services. ASNA argued that in order to facilitate the development of a complete record in

this proceeding, additional time was necessary for further dialogue between the participants to develop meaningful reply comments. AASHTO stated that due to the complexity of the issues and the large number of comments submitted, it will not have sufficient time to review, analyze, and develop meaningful reply comments by April 25, 1985.

4. We have reviewed the three requests for an extension of time to prepare reply comments which we believe have merit. We wish to ensure a complete record in this proceeding on which to base our decision, however, we have already provided a substantial amount of time for comments and reply comments in this matter. In order to provide relief for the petitioners to conclude their dialogue and to develop a complete record with which the Commission can proceed expeditiously to a decision, we will double the reply time by extending the reply comment period by 45 days. Accordingly, it is ordered, pursuant to the authority set forth in Section 0.331 of the Commission's Rules and Regulations, that interested parties will have until June 10, 1985, to file reply comments in this proceeding.

Federal Communications Commission.

Robert S. Foosner,

Chief, Private Radio Bureau.

[FR Doc. 85-10466 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 67

[CC Docket Nos. 78-72 and 80-286]

### MTS and WATS Market Structure and Amendment of the Rules and Establishment of a Joint Board; Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Recommended Interim Order and Request for Comments; extension of comment/reply comment period.

**SUMMARY:** This Order grants an extension of time to file data, comments and replies in response to the Joint Board's *Recommended Interim Order and Request for Comments*. In that Order, the Joint Board requested information and comments regarding permanent measures for the allocation and recovery of costs in Account 645, changes in the allocation and recovery of costs in Account 662, and the definition and allocation of equal access and network reconfiguration costs

between the interstate and intrastate jurisdictions. A limited extension of time is warranted because the issues dealt with are complex and the preparation of data requested will require detailed analysis by the parties. The additional time for filing will facilitate development of a complete record concerning these issues.

**DATES:** Comments are due April 29, 1985. Replies are due May 15, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Margot Bester, (202) 632-6363.

**SUPPLEMENTARY INFORMATION:** The Recommended Interim Order was published on April 15, 1985 (50 FR 14729).

#### Order

In the Matter of MTS and WATS market structure, Amendment of Part 67 of the Commission's rules and establishment of a Joint Board, CC Docket No. 78-72; CC Docket No. 80-286.

Adopted: April 17, 1985.

Released: April 18, 1985.

By the Chief, Common Carrier Bureau:

1. On March 25, 1985, the Federal-State Joint Board released a *Recommended Interim Order and Request for Comments (Recommended Interim Order)*<sup>1</sup> in the above-captioned proceeding. In the *Recommended Interim Order*, the Joint Board requested comments concerning permanent measures for the allocation and recovery of costs in Account 645 (Local Commercial Operations) as well as the need for changes in the allocation and recovery of costs in Account 662 (Accounting Department Costs) that involve billing and collection services. The Joint Board also solicited comments concerning the definition and allocation of equal access and network reconfiguration (EANR) costs between the interstate and intrastate jurisdictions.<sup>2</sup> Finally, the Joint Board asked the Bell Operating Companies (BOCs) to file data concerning EANR costs and the costs in Accounts 645 and 662. The requested data and comments were to be filed on April 22, 1985, with replies due May 13, 1985.

2. The BellSouth Corporation, Southwestern Bell Telephone Company, and U.S. West (Mountain States Telephone and Telegraph Company,

<sup>1</sup> *MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, Mimeo No. CC 3400, released March 25, 1985.

<sup>2</sup> The Joint Board also recommended interim measures for the allocation of the costs in Account 645.

Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company), pursuant to § 1.46 of the Commission's rules, have filed Motions for Extension of Time to file comments and reply comments in response to the Joint Board's *Recommended Interim Order*. BellSouth requests that the comment and reply dates be extended 14 days, until May 6, 1985, and May 27, 1985, respectively. Southwestern Bell requests a one-week extension, until April 29, 1985, of the date for filing comments, with no extension of the date for filing replies. U.S. West requests an extension of the date for filing data and comments to June 3, 1985, and an extension for replies to June 17, 1985.

3. All three companies state that the extensions of time they requested are necessary for them to prepare and file detailed, accurate, and complete responses to the data request contained in the *Recommended Interim Order*. The companies believe that such extensions are warranted due to the complexity of the issues and the level of detail specified for the data filings. The companies also state that a grant of their requests will serve the public interest by allowing for the development of a complete record without jeopardizing the expeditious resolution of the questions raised by the *Recommended Interim Order*.

4. Under the circumstances, we find that a limited extension of time in which to file comments and replies is warranted. We recognize that the issues dealt with in the Joint Board's *Recommended Interim Order* are complex and that preparation of the data requested therein will require detailed analysis by the BOCs if it is to be useful to the Joint Board in its resolution of these issues. However, expeditious resolution of these issues is also very important. Therefore, we are granting an extension of time to file data and comments from April 22, 1985, to April 29, 1985, and an extension of time to file replies from May 13, 1985, to May 15, 1985. We believe that this extension of time will enable the parties to provide an appropriate and meaningful response to the Joint Board's request for data and comments without jeopardizing the expeditious resolution of the questions raised by the *Recommended Interim Order*. We strongly urge all of the BOCs to use this additional time to prepare complete responses to the Joint Board's request for information.

5. Accordingly, it is ordered, pursuant to the delegation of authority contained in Section 0.291 of the Commission's Rules, 47 CFR § 0.291, that the date for filing the information and comments

discussed above is extended until April 29, 1985. The date for filing replies is extended until May 15, 1985.

6. The Motions for Extension of Time filed by BellSouth, Southwestern Bell and U.S. West are granted to the extent set forth above and are otherwise denied.

Federal Communications Commission.

William Adler,

Deputy Chief, Policy, Common Carrier Bureau.

[FR Doc. 85-10439 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 74

[MM Docket No. 85-36]

#### Review of Technical and Operational Requirements; Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment/reply comment period.

**SUMMARY:** This Order extends the time for submitting comments in MM Docket No. 85-36, concerning Technical and Operational Requirements in response to a Motion for Extension of Time filed by the Society of Broadcast Engineers (SBE).

**DATES:** Comments due by June 28, 1985, and Reply Comments due by July 28, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** The Notice of Proposed Rulemaking in this proceeding was published on February 28, 1985 (50 FR 8172).

#### Order

In the matter of Review of Technical and Operational Requirements: Part 74-E Aural Broadcast STL and ICR Stations; and Part 74-F TV Auxiliary Broadcast Stations, MM Docket No. 85-36.

Adopted: April 24, 1985.

Released: April 25, 1985.

By the Chief, Mass Media Bureau:

1. The Commission has under consideration a Motion for Extension of Time to Submit Comments, filed by the Society of Broadcast Engineers (SBE), in the above captioned proceeding. The SBE requested that the comment period be extended 60 days to allow a thorough investigation of the proposed rule changes, which they allege are highly

technical and will, if adopted, affect a broad range of services.

2. Accordingly, it is ordered that the date for submitting comments in MM Docket No. 85-36 is extended to June 28, 1985 and the date for filing reply comments is extended to July 29, 1985.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 85-10438 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 90

[PR Docket No. 83-737; FCC 85-34]

#### Frequency Coordination in the Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Memorandum Opinion and Order granting petitions for reconsideration.

**SUMMARY:** The Commission has adopted a *Memorandum Opinion and Order* granting two Petitions for Reconsideration of the *Notice of Proposed Rule Making* in Docket No. 83-737, concerning Frequency Coordination in the Private Land Mobile Radio Services, 49 FR 45454 (Nov. 16, 1984). This action is taken to allow the licensing of new, one-way, private carrier systems on paging-only frequencies.

**FOR FURTHER INFORMATION CONTACT:** Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

#### SUPPLEMENTARY INFORMATION:

#### Memorandum Opinion and Order

In the matter of Frequency Coordination in the Private Land Mobile Radio Services: PR Docket No. 83-737, FCC 85-34.

Adopted: January 18, 1985.

Released: January 25, 1985.

By the Commission:

#### Background

1. On November 9, 1984, the Commission released a *Notice of Proposed Rule Making* in Docket No. 83-737.<sup>1</sup> The *Notice* proposed amendments to the private land mobile radio frequency coordination procedures in response to the comments received on a *Notice of Inquiry* issued earlier in this Docket.<sup>2</sup> We solicited comments in the

<sup>1</sup> *Notice of Proposed Rule Making*, Docket No. 83-737, 49 FR 45, 454 (November 16, 1984).

<sup>2</sup> *Notice of Inquiry*, Docket No. 83-737, 48 FR 35149, [August 3, 1983].

*Notice of Inquiry*, and again in the *Notice of Proposed Rule Making*, in order to evaluate and update our policies governing the operation of frequency coordinating committees.

2. Our objectives in this proceeding are to improve the quality of frequency recommendations, to minimize processing delays, to encourage intersection frequency sharing where appropriate, and to facilitate the introduction of new technologies into the private land mobile radio services. In order to achieve these objectives, we must maintain an accurate and up-to-date private land mobile data base to facilitate applications processing and spectrum management for these radio services.

3. The *Notice of Proposed Rule Making* highlighted several of the problems currently encountered in the frequency coordination process. Coordinating committees must be able to determine which licensees are on the frequency, how many control stations are being operated, and how many mobiles are on the frequency to select the best frequencies for applicants. Recently, the accuracy of the data base has been a matter of concern to the Commission due to the conversion of community repeaters to private carrier operations. These conversions often result in one applicant substituting itself for a number of separate licensees. The new applicant may or may not be acting in conjunction with the other licensees on the frequency and it is not clear to the coordinators whether the new applicant is to be substituted for the previous licensees' mobiles and control stations, or whether the new applicant's requested mobiles and control stations are in addition to those already on the frequency.<sup>3</sup> These inaccuracies obviously affect the data base used by the Commission and the coordinating committees. Without access to accurate and current information from the data base, a coordinator cannot make sound frequency recommendations to applicants and the Commission loses its ability to review effectively the frequency recommendations before licensing.

4. In order to alleviate this problem, the *Notice* adopted a freeze on: (1) The conversion of community repeater operations to private carrier systems; and (2) the licensing of new private carrier systems, except on the 900 MHz paging frequencies and the 800 MHz Specialized Mobile Radio Service (SMRS) frequencies.<sup>4</sup> The freeze will

<sup>3</sup> *Notice of Proposed Rule Making*, *supra*, at paragraph 10.

<sup>4</sup> *Id.* at footnote 11.

remain in effect pending adoption of final rules that specify what information must be submitted to the frequency coordinators and the Commission.

#### Petitions for Reconsideration

5. We have received two petitions for reconsideration of our freeze on licensing of new private carriers and conversions of community repeaters to private carriers. National Page, Inc. (National Page), filed its petition on December 3, 1984, and Bob McCreedle d/b/a Page Call (Page Call) filed its petition on December 17, 1984. Both petitioners are applicants for one-way, private carrier paging-only facilities in the Business Radio Service, and have been unable to obtain authorizations due to the freeze on the licensing of new private carrier systems.

6. National Page is an applicant to operate one-way paging-only facilities in the Business Radio Service, on 462.825 MHz at five locations in and around Greenville, South Carolina. On the application, National Page indicated its intent to operate as a private carrier pursuant to 47 CFR 90.179. Consequently, National Page's application has not been processed.

7. National Page argues that the Commission should restrict its freeze on new private carriers to applications for two-way base/mobile channels in the private land mobile radio services. In support of this argument, National Page asserts that the Commission's reasons for initiating the freeze relate to two-way mobile systems that operate on a private carrier basis and not to one-way paging-only systems. National Page claims that users of a private land mobile paging-only system are not required to individually license their paging units. Consequently, a typical paging-only system has only one licensee and does not skew the accuracy of the data base.

8. The second argument made by National Page is that the freeze on private carrier paging-only systems is contrary to the public interest, congressional intent and recent Commission action to make communications services available to the public as rapidly as possible. National Page claims that there are currently over three hundred potential users who require paging service in the Greenville area. National Page also cites "The Communications Amendments Act of 1982,"<sup>5</sup> to assert that private carrier

for-profit paging systems are permitted by the Congress.

9. Page Call is an applicant for three one-way paging-only facilities in the Business Radio Service in the San Francisco Bay area. On its applications Page Call indicated its intent to operate on a private carrier basis pursuant to 47 CFR 90.179. Consequently, Page Call's applications have not been processed. Page Call already has received Commission authorization to operate a one-way paging-only system on 152.48 MHz,<sup>6</sup> and seeks authorization of its other three applications in order to serve the entire Bay area.

10. The first argument asserted by Page Call is that the three applications it has filed with the Commission do not constitute "new" private carrier systems as defined by footnote 11 in the Notice. Page Call reasons that the three applications currently on file with the Commission would simply complete the paging system started with the first authorization issued by the Commission on August 28, 1984.

11. Page Call's second argument is that the imposition of the freeze is contrary to the Commission's objective to minimize processing delays. Page Call claims that by withholding action on Page Call's three remaining applications, the Commission is not acting in the public interest by delaying authorization and development of private radio paging facilities.

12. Finally, Page Call argues for consistent treatment of its applications. Page Call filed four applications with identical requests. One was authorized by the Commission prior to the imposition of the freeze, while the other three have been returned by the Commission due to the freeze on the authorization of new private carrier systems.

#### Discussion and Decision

13. We have reviewed the two petitions in light of our freeze on the conversion of community repeaters to private carrier systems and on the licensing of new private carrier systems (except on the 900 MHz paging frequencies and the 800 MHz SMRS frequencies). Our objective in imposing the freeze was to preserve the integrity of the data base to enable the coordinating committees to recommend frequencies quickly and accurately and to allow the Commission to review thoroughly their recommendations.

14. Upon reconsideration, we conclude that the authorization of applications for new, one-way, private

carrier systems on paging-only frequencies does not cause the problems discussed in the *Notice of Proposed Rule Making*. We will therefore lift the freeze in so far as it pertains to these applications and permit the authorization of applications for new, one-way, private carrier systems on paging-only frequencies. We will retain the freeze on the conversion of community repeaters to private carrier systems and on the licensing of new private carrier systems, with the exception of the 900 MHz paging frequencies, the 800 MHz SMRS frequencies, and the systems described above. Those applications for new one-way, paging-only, private carrier systems which have been returned to applicants by the Commission may be re-submitted to the Licensing Division of the Private Radio Bureau in Gettysburg, Pennsylvania.

15. Accordingly, it is ordered that the petitions for reconsideration are granted and the petition for waiver filed by National Page, Inc. is dismissed as moot, pursuant to the authority contained in Section 4(1) and 303 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-10441 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 174

[Docket No. HM-197; Notice No. 85-2]

### Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in TOFC and COFC Service

**AGENCY:** Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM) and notice of public hearing.

**SUMMARY:** The Federal Railroad Administration (FRA) and MTB are considering development of safety standards that would permit the use of cargo tanks, portable tanks, IM portable tanks, and multi-unit tank car tanks in trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service. Use of these tanks when transporting a hazardous

<sup>5</sup> The Communications Amendments Act of 1982, Pub. L. 97-259, 96 Stat 1087, Sept. 13, 1982; See section 120 (Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332).

<sup>6</sup> This application was granted on August 28, 1984, prior to the imposition of the freeze.

material is currently prohibited except where specific approval has been granted under conditions approved by FRA.

**DATES:** (1) *Written Comments:* Written comments must be received by June 27, 1985.

(2) *Public Hearing:* A public hearing will be held at 10:00 a.m. on June 11, 1985. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk before June 6, 1985.

**ADDRESSES:** (1) *Written Comments:* Address comments to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th Street SW., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

(2) *Public Hearing:* A public hearing will be held in Room 6244 of the Nassif Building, 400 7th Street SW., Washington, D.C. 20590. Persons desiring to make an oral statement at the hearing should notify the Docket Clerk by telephone (202-426-3148) or by writing to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Five copies of the statement should be provided at the hearing, if possible.

**FOR FURTHER INFORMATION CONTACT:** Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, Washington, D.C. 20590, Telephone 202-426-0896.

**SUPPLEMENTARY INFORMATION:** The use of multi-modal freight containers to transport both hazardous and non-hazardous materials by rail is a common practice in the United States and internationally. However, the use of portable tanks, IM portable tanks, and multi-unit tank car tanks, which are all tanks designed for use in more than one mode of transportation, is generally prohibited in rail transportation in trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service. (See 49 CFR 174.61 and 174.63). An identical prohibition against TOFC/COFC transportation of hazardous materials applies to cargo tanks. (See 49 CFR 174.61.) Cargo tanks are tanks designed for highway use, but which potentially could be used in TOFC/COFC service.

Notwithstanding the general prohibition, the current regulations provide that specific approval can be given for tank TOFC and COFC service under conditions approved by the FRA. Four approvals for TOFC and COFC service of DOT specification 51, IM 101, and IM 102 tanks have been granted in the past several years. Recently, both the number of requests and the scope of the requests for approval of tank TOFC/COFC service have expanded. MTB and FRA believe this trend will continue as shippers perceive benefits in using containers (tanks) capable of use in several modes of transportation.

MTB and FRA believe that more complete safety criteria for TOFC and COFC service of tanks transporting hazardous material need to be established. Identification and development of appropriate safety criteria are needed, whether to guide a case-by-case approval process or to establish regulatory standards. It is appropriate to establish safety criteria at this time since, in many cases, they can be implemented without adversely affecting established transportation practices.

Tank TOFC/COFC service of hazardous materials involves many of the same safety issues as transportation in a traditional railroad tank car (single-unit tank car tank). These safety issues include pressure relief, identification, special commodity requirements, and special handling requirements. However, TOFC/COFC service involves other or different safety issues. In particular, securement of the container to the flatcar or in the highway trailer, and securement of the highway trailer to the flatcar are concerns unique to TOFC/COFC service. MTB and FRA believe that tank TOFC/COFC service of hazardous materials has its place in the overall transportation system. However, neither MTB nor FRA is now convinced that tank TOFC/COFC would provide the same level of safety in all instances as a traditional railroad tank car given the wide range of hazardous materials involved and the differences in tank design. The adequacy of securement of a trailer to the flatcar and the trailer's potential vulnerability in TOFC service are areas of most interest to FRA.

In order to identify and develop safety criteria for tank TOFC/COFC service of hazardous materials, MTB and FRA request all interested parties to address the topic areas listed below.

1. Securement and cushioning of trailers and containers. *E.g.*, are the Association of American Railroads' specifications M-952-82, M-943-80, M-931-83, and M-1002 (paragraph 600-19

of the January 1, 1983 revision) adequate minimum safety standards?

2. Surge prevention. *E.g.*, would a minimum filling density requirement provide adequate protection?

3. Special handling requirements. *E.g.*, are train placement restrictions similar to, or identical with, those in 49 CFR §§ 174.91 to 174.93 necessary or appropriate?

4. Special commodity requirements. *E.g.*, should thermal protection and puncture resistance requirements be established for tanks in TOFC/COFC service transporting materials such as flammable gases, ethylene oxide, and anhydrous ammonia?

5. Commodity restrictions. *E.g.*, should certain hazardous materials currently authorized in the various tanks under consideration be forbidden in TOFC service, COFC service, or both types of service?

6. Lading transfer. *E.g.*, should transfer of lading from a tank while in TOFC/COFC be prohibited or would safety standards similar to, or identical with, those in 49 CFR 173.10, 177.834, 177.837, and 179.67 provide an adequate level of safety?

7. Identification. *E.g.*, what marking should be required on a tank that indicates it is authorized for TOFC/COFC service and that identifies its special features (pressure relief devices, bottom outlets, special structural features)?

8. Pressure relief. *E.g.*, should all tanks in TOFC/COFC service transporting a flammable liquid be required to have safety relief valves in lieu of, or in addition to, safety vents?

9. System performance test requirements. *E.g.*, how many, if any, impact tests of a complete TOFC or COFC system are needed to demonstrate the adequacy of the system?

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under terms of Executive Order 12291, "significant rule" considerations under the DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act. A transcript of the

hearing will be made and placed in the public docket.

#### List of Subjects in 49 CFR Part 174

Hazardous materials transportation.  
Railroad safety.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (s)(4) of App. A to Part 106)

Issued in Washington, D.C., on April 25, 1985.

Alan L. Roberts,

Associate Director for Hazardous Materials  
Regulation, Materials Transportation Bureau.

[FR Doc. 85-10398 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-60-M

## Notices

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

#### Forest Service

#### Energy Fuels Nuclear, Inc., Canyon Mine, Kaibab National Forest, Coconino County, AZ; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement for the development of a uranium mine on the Kaibab National Forest. The proposed mine would encompass approximately 20 acres within Section 20, T.29N., R.3E., G&SRBM of the Tusayan Ranger District, Kaibab National Forest.

Energy Fuels Nuclear, Inc. submitted a plan of operations for development of an underground uranium mine, known as the Canyon Mine, to the Kaibab National Forest in October of 1984. The plan of operations identifies the proposed mine site, safety and environmental protection measures, procedures for operation on the mine and ore haulage and restoration of the mine site mining has been completed.

A range of alternatives for the development of the proposed mine, including, but not limited to, approval of the proposal, approval of the proposal with specific mitigation measures and no action, will be considered.

Federal, state and local agencies, and other individuals or organizations who may be interested in or affected by the proposal are invited to participate in the scoping process. The process will address issues and concerns such as the potential social and economic impacts of the proposal on Tusayan and Coconino counties, the potential impacts of the proposal on surface and ground water quality, wildlife, vegetative cover, grazing, cultural resources and air quality, alternative transportation routes and reclamation measures and the

cumulative impact of this proposal and others in the affected area. The process will also identify potential cooperating agencies.

The Forest Supervisor will hold a public scoping session on May 15, 1985 at the Chemistry Building on the campus of Northern Arizona University in Flagstaff, Arizona. Written comments and suggestions concerning preparation of the EIS should be sent to: Leonard A. Lindquist, Forest Supervisor, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046. Questions should be directed to R. Dennis Lund, Lands & Minerals Staff Officer, Kaibab National Forest, (602) 635-2681.

Leonard A. Lindquist, Forest Supervisor of the Kaibab National Forest is the responsible official.

Preparation of the EIS is expected to take about six months. The draft EIS should be available for public reviews by August, 1985. A final EIS will be prepared after comments are received on the draft EIS. The Final EIS and Record of Decision is expected to be completed by November, 1985.

Dated: April 19, 1985.

Leonard A. Lindquist,  
Forest Supervisor.

[FR Doc. 85-10329 Filed 4-29-85; 8:45 am]

BILLING CODE 3410-11-M

#### Sitgreaves National Forest Grazing Advisory Board; Meeting

The Sitgreaves National Forest Grazing Advisory Board will meet at 10:00 a.m., May 20, 1985 at the Soil Conservation Service Office, 152 W. Arizona, Holbrook, AZ.

The purpose of the meeting is to include a discussion of expenditures of range betterment funds for the Sitgreaves National Forest. A discussion of management planning will be included.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602) -333-4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: any interested persons besides the Advisory Board Members are welcome to attend, and will be afforded the opportunity to speak after being duly

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recognized by the Chairman of the Board.

Dated: April 22, 1985.

Douglas G. Smith,

Acting Forest Supervisor.

[FR Doc. 85-10205 Filed 4-29-85; 8:45 am]

BILLING CODE 3410-11-M

### DEPARTMENT OF COMMERCE

#### International Trade Administration

#### Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

##### Correction

In FR Doc. 85-9812 beginning on page 16119 in the issue of Wednesday, April 24, 1985, make the following correction: On page 16119, in the third column, in the second paragraph, in the first line, "Docket No. 85-273" should read "Docket No. 84-273".

BILLING CODE 1505-01-M

##### [Case No. 653]

#### Paul C. Carlson and C-O Manufacturing Co. Inc.; Order

In the matter of: Paul C. Carlson, 87 Springhill Avenue, Bridgewater, Massachusetts, 02324, and P.O. Box 3125, Brockton, Massachusetts, 02403, and C-O Manufacturing Company, Inc., P.O. Box 3125, Brockton, Massachusetts, 02403, Respondents.

This Order amends an Order, issued March 5, 1985 (50 Fed. Reg. 9699 (March 11, 1985)), that approved the Consent Agreement between the Respondents and the U.S. Department of Commerce and that denied the Respondents' export privileges for 15 years. This Order amends the March 5, 1985 Order by adding, in the caption, the Respondents' addresses, which were inadvertently omitted from the March 5, 1985 Order.

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (Department), initiated administrative proceedings pursuant to section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sections 2401-2420 (1982)) (the Act),<sup>1</sup> and Part 388 of the

<sup>1</sup>The authority granted by the Act terminated on March 30, 1984. The Regulations have been

Continued

Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1984)) (the Regulations) against Paul C. Carlson (Carlson) and C-O Manufacturing Company, Inc. by issuing Charging Letters alleging that Carlson and C-O Manufacturing Company, Inc. violated §§ 387.2, 387.3, 387.5 and 387.6 of the Regulations.

The Department, Carlson and C-O Manufacturing Company, Inc. have entered into a Consent Agreement whereby each party has agreed that the matter will be settled by denying Carlson and C-O Manufacturing Company, Inc. all validated license export privileges and reexport authorizations for a period of 15 years from the date of this Order.

The Hearing Commissioner approves the Consent Agreement.

It is therefore ordered. First, For a period ending 15 years from the date of this Order, Carlson and C-O Manufacturing Company, Inc. are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction which requires a validated export license or reexport authorization from the Office of Export Administration:

(a) Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any validated export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to commodities and technical data which require a validated license or reexport authorization under the Regulations;

(b) Such denial of export privileges shall extend not only to Carlson and C-

O Manufacturing Company, Inc. but also to their agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Carlson or C-O Manufacturing Company, Inc. is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

(c) No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Carlson, C-O Manufacturing Company, Inc. or anyone who is now or may be subsequently named as a related party, or whereby Carlson, C-O Manufacturing Company, Inc. or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Carlson, C-O Manufacturing Company, Inc. or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States;

Second, The Charging Letters, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective April 19, 1985.

Dated: April 19, 1985.

**Thomas W. Hoya,**  
Hearing Commissioner.

[FR Doc. 85-10379 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-DT-M

## National Oceanic and Atmospheric Administration

### National Advisory Committee on Oceans and Atmosphere; Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold an intersessional Shipbuilding Panel meeting on May 13-14, 1985 in San Francisco, CA. This meeting will be closed on both days and will be held at the Military Sealift Command-Pacific, Naval Supply Center, Building 310, San Francisco, CA, in a secure conference room. At this time the Shipbuilding Panel will examine in further detail the assumptions and methodology of Department of the Defense studies—classified SECRET—on sealift and shipyard mobilization requirements; discuss NACOA's review of surge capacity in U.S. shipyards, including some data which are proprietary in nature and some which are classified SECRET; and consider in detail reviewers' comments on NACOA's draft report on shipping, shipyards, and sealift, especially the conclusions and recommendations concerning national defense requirements which are based on classified studies.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Public Law 95-63 on July 5, 1977. Its duties are to: (1) Undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 25, 1985, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, by Section



5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be disclosed during this intersessional 2-day meeting should be exempt from the provisions of the Act relating to open meetings and public participation therein, because it will be considered within the purview of 5 U.S.C. 552b(c)(1), i.e., to discuss matters that are authorized to be kept secret in the interest of national defense.

A copy of the determination to close a portion of this meeting is available for public inspection and copying in the Central Reference & Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, area code 202/377-3271.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, N.W., Washington, DC 20235. The telephone number is 202/653-7818.

Dated: April 25, 1985.

Steven N. Anastasion,

Executive Director.

This is certified to be a true copy of the original.

[FR Doc. 85-10337 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-12-M

#### Marine Mammals; Issuance of Permit; Oregon Department of Fish and Wildlife

On January 7, 1985, notice was published in the *Federal Register* (50 FR 873) that an application had been filed by Oregon Department of Fish and Wildlife, Marine Science Drive, Building Number 3, Newport, Oregon 97365, for a permit to take marine mammals for the purpose of scientific research.

Notice is hereby given that on April 18, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115.

Dated: April 18, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-10470 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-22-M

#### Marine Mammals; Issuance of Permit; San Antonio Zoological Gardens and Aquarium

On February 25, 1985, notice was published in the *Federal Register* (50 FR 7626) that an application had been filed by the *San Antonio Zoological Gardens and Aquarium, 3903 North St. Mary's Street, San Antonio, Texas 78212* for a permit to take three (3) California sea lions (*Zalophus californianus*) and three (3) harbor seals (*Phoca vitulina*) for public display.

Notice is hereby given that on April 18, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: April 18, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 10485 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-22-M

[P77 9]

#### Modification No. 1 to Permit No. 464

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), scientific research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington 98112, is modified as follows:

Section B-4 is deleted and replaced by:

4. A dose rate of 2.0 to 4.0 mg of Ketamine hydrochloride per kg of estimated weight will be used. A pre-

Ketamine hydrochloride injection of the sedative Xylazine at the dose rate of 0.11 mg/kg of estimated weight will be used to reduce the chances of elephant seals exhibiting breath-holding behavior. In the event of the death or injury of five (5) seals the Holder shall suspend capture activities and submit a report within 10 days describing the circumstances of the incidents and the steps that were taken to reduce death or injury. Written authorization from the Assistant Administrator will be required to continue activities.

Section B-8 is added:

8. The Permit Holder shall coordinate with the Regional Director, Southwest Region, to ensure that any animals killed are used to the maximum extent practical.

These modifications became effective on April 18, 1985.

The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235;  
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115.

Dated: April 18, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 10486 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-22-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in India

April 25, 1985.

On March 8, 1985 a notice was published in the *Federal Register* (50 FR 9483) announcing that, on January 30, 1985 the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, had requested the Government of India to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in India.

No agreement has reached in consultations on a mutually satisfactory

solution. The United States Government has decided, therefore, until such time as a defferent solution is agreed, to control imports of cotton textile products in Category 313 at the prorated twelve-month limit of 10,602,245 square yards for Category 313, exported during the period which began on January 30, 1985 and extends through December 31, 1985.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313, exported during the designated period, in excess of 10,602,245 square yards.

**EFFECTIVE DATE:** April 30, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202) 377-4212.

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

April 25, 1985.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 30, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 313, produced or manufactured in India and exported during the period which began on January 30, 1985 and extends through December 31, 1985 in excess of 10,602,245 square yards.<sup>1</sup>

Textile products in Category 313 which have been exported to the United during the ninety-day period which began on January 30, 1985, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48

FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-10322 Filed 4-29-85; 8:45 am]

**BILLING CODE 3510-DR-M**

**DEPARTMENT OF DEFENSE**

**Department of Air Force**

**Intent To Prepare a Draft Environmental Impact Statement (EIC)**

The United States Air Force proposes to withdraw from the public domain approximately 35,000 acres of land located near North Alkali Lake, Oregon and currently under the control of the US Department of Interior Bureau of Land Management for the purpose of establishing an Air National Guard air-to-surface weapons range.

Approximately 30,000 acres of the withdrawn land would remain available for grazing and, when the range is not in use, recreation. The remainder would be fenced and posted as an exclusive-use weapons impact area.

An Environmental Impact Statement will be prepared which will examine the nature, scope, degree and extent of the impacts associated with the establishment and operation of the weapons range.

Participation in the environmental analysis process by interested federal, state, and local agencies, as well as interested private organizations and individuals, is invited. A public scoping meeting will be held in early July 1985 to review the proposed action and to solicit issues to be addressed in the EIS and facilitate public involvement in the environmental analysis. Exact time and place of meetings will be announced in the local news media.

It is estimated that the draft EIS will be available for public review and comment in November 1985.

For further information concerning the preparation of the EIS, contact Mr. David C. Van Gasbeck, ANGSC/DEV,

STOP 18, Andrews AFB, MD 20331-6008, Telephone Number: (301) 981-2461.

**Norita C. Koritko,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 85-10452 Filed 4-29-85; 8:45 am]

**BILLING CODE 3910-01-M**

**USAF Scientific Advisory Board; Meeting**

April 22, 1985.

The USAF Scientific Advisory Board C<sup>3</sup> Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet at the Strategic Air Command Headquarters, Offutt AFB, Nebraska, on May 17, 1985 from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting will be to receive classified briefings and hold classified discussions on ways in which existing and programmed systems may be effectively applied to attack of mobile ballistic missiles. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

**Norita C. Koritko,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 85-10451 Filed 4-29-85; 8:45 am]

**BILLING CODE 3910-01-M**

**USAF Scientific Advisory Board; Air Force Office of Scientific Research**

April 22, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet 13-14 May at 8:00 a.m. to 6:00 p.m. each day.

The purpose of the meeting will be to assess Army research and development programs with a potential application to Air Force SOF weapons needs. The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

**Norita C. Koritko,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 85-10453 Filed 4-29-85; 8:45 am]

**BILLING CODE 3910-01-M**

<sup>1</sup>The limit has not been adjusted to reflect any imports exported after January 29, 1985.

## Department of the Army

## Standard Rules and Class Rate Solicitations for Motor Carrier Rates and Services

**AGENCY:** Military Traffic Management Command, DOD.

**ACTION:** Notification of procedural changes in DOD freight rate acquisition programs.

**SUMMARY:** The Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD), intends to modify the procedures used to acquire rates and charges from the commercial carrier industry for the movement of its freight traffic. These modifications include the issuance of a series of rules and baseline rate publications designed to standardize and simplify the procurement of carrier rates and services under 49 U.S.C. 10721. The first two publications in this series, the MTMC Freight Traffic Rules Solicitation No. 1 and the MTMC Class Rate Solicitation No. 100, are now available in draft form for public review and comment. Copies of the two solicitations may be obtained by contacting Mrs. Marilyn Tyson, HQ, Military Traffic Management Command, Attn: MT-INN-G, Room 621, 5611 Columbia Pike, Falls Church, Virginia 22041-5050. Telephone: (202) 756-1585. Written comments concerning the two proposed publications will be considered if received not later than May 30, 1985. Address comments to: Commander, Military Traffic Management Command, Attn: Negotiations Division (MT-INN-G), Room 621, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

**FOR FURTHER INFORMATION CONTACT:** Allen Kirby, HQ, Military Traffic Management Command, Attn: MT-INN-T, 5611 Columbia Pike, Falls Church, Virginia 22041-5050, Telephone: (202) 756-1149.

**SUPPLEMENTARY INFORMATION:** The transportation regulatory reform legislation enacted over the past several years has brought about an influx of carriers into the business, a corresponding proliferation of rate publications, and a great diversity in the way carriers' rates, rules and services are expressed within those publications. As a result, the automation of carriers' rates and charges is essential to the formulation of a successful and manageable rate comparison program.

Automation is feasible, of course, only if carriers' rates and charges are expressed and filed in a uniform manner compatible with electronic data processing.

In order to achieve this uniformity, MTMC intends to issue a series of rules solicitations to govern each mode of transportation handling DOD freight shipments and a series of baseline rate solicitations to govern the movement of DOD shipments weighing less than 10,000 pounds. The first two solicitations of these series, which are now available for public review and comment, are described below:

**MTMC Freight Traffic Rules Solicitation No. 1 (MFTRS No. 1).** This solicitation contains rules, accessorial services, and baseline accessorial charges to govern the rates and services of motor carriers doing business with DOD, including those rates and services offered by surface freight forwarders, shipper associations and shipper agents which utilize motor carrier services. It will govern the movement of all DOD shipments by motor EXCEPT (1) bulk commodities requiring tank truck service, (2) vehicles moving in driveaway/towaway/truckaway service, (3) privately owned mobile homes, (4) shipments moving in courier and package express service, and (5) Foreign Military Sales (FMS) shipments. Separate rules solicitations to govern these shipments (except for FMS) are now under development. Guaranteed Traffic (GT) solicitations will not be made subject to MFTRS No. 1 unless specific reference is made in the GT solicitation itself.

**MTMC Class Rate Solicitation No. 100 (MCRS No. 100).** This solicitation contains a baseline class rate and minimum charge structure upon which motor carriers can base their actual rates and charges for the movement of DOD shipments weighing less than 10,000 pounds. It is designed to provide a simple, flexible, computer-oriented method of expressing rates for Freight All Kinds and specific class-rated commodities without substantially changing the manner in which those rates have traditionally been expressed.

Both of these solicitations are designed to be used with the proposed Standard Tender of Freight Services (tender) which is now under review by the Office of Management and Budget. A copy of the proposed tender is incorporated into each solicitation.

**John O. Roach II,**

*Army Liaison Officer With the Federal Register.*

[FR Doc. 85-10422 Filed 4-29-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Military Traffic Management Command Announces Toll-Free HOTLINE Telephone Numbers for Commercial Transportation Emergency Notification

**AGENCY:** Military Traffic Management Command, Army Department, Defense.

**ACTION:** HOTLINE Numbers Established for Commercial Transportation of Military Shipments.

**SUMMARY:** For those carriers doing business with the Department of Defense (DOD) and the Military Traffic Management Command, toll-free (800) HOTLINE telephone numbers were established at its area commands in Bayonne, NJ (Eastern Area), and Oakland, CA (Western Area). These numbers are to be used for reporting intransit accidents, incidents, delays or other emergencies involving DOD shipments.

The HOTLINE number may also be used by military transportation officers (TO's) or carriers to obtain advice on shipment transportation protective services, safe haven/refuge assistance, or other shipment problems. The numbers are as follows:

Eastern Area, Bayonne, NJ.....(800) 524-0331  
In New Jersey, Only.....(600) 624-1361  
Western Area, Oakland, CA.....(800) 331-1822  
In California, Only.....(800) 348-4639

For further information on transportation protective services or the HOTLINE numbers, please contact Betty Yanowsky at (202) 756-1356 or CPT Virginia Closs at (202) 756-2030.

**John O. Roach II,**

*Army Liaison Officer With the Federal Register.*

[FR Doc. 85-10423 Filed 4-29-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday-Thursday, 15-16 May 1985.

Times and places: 0900-1630 hours (Open) on 15 May at Program Manager Training Devices (PM TRADE), Orlando, Florida; 0900-1630 hours (Open) on 16 May at Department of Defense Training Data Analysis Center (TDAC), Orlando, Florida.

Agenda: Both the Training Technology and Training Effectiveness Subpanels of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet for briefings and discussions on training methods that can be

identified or envisioned that can increase readiness significantly and how their effectiveness can be measured and to identify emerging technologies that best contribute to more effective training and how applications of existing technologies can be used to alleviate training constraints. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 10458 Filed 4-29-85; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Thursday, 16 May 1985.  
Times: 0800-1200 hours (Open) and 1300-1600 hours (Closed).

Place: Fort Eustis, Virginia.

Agenda: The Army Science Board Functional Subgroup on Logistics and Support Systems will meet to observe the Promotion Logistics (PRO-LOG) '85 demonstration. This meeting is the Spring meeting of this subgroup and serves as a tutorial for its new members and keeps other members up-to-date in this functional area. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with Section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed in this portion of the meeting are so inextricably intertwined so as to preclude opening them to the public. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-10459 Filed 4-29-85; 8:45 am]

BILLING CODE 3710-08-M

### Office of the Secretary

#### Establishment of the Defense Financial and Investment Review Special Advisory Committee

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Defense

Financial and Investment Review Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will serve as a temporary advisory body to the Secretary of Defense. They will review the methodology, and conclusions of the current Defense Financial and Investment Review Study which was undertaken to evaluate Department of Defense procurement policies relating to contract pricing, financing, and profit to ensure effective and efficient expenditures of public funds while maintaining a viable defense industrial base.

Patricia H. Means,

OSD Federal Register Liaison Officer,  
Department of Defense.

April 25, 1985.

[FR Doc. 85-10445 Filed 4-29-85; 8:45 am]

BILLING CODE 3810-01-M

### DEPARTMENT OF EDUCATION

#### Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 30, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 728 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 25, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

#### Office of Bilingual Education and Minority Languages Affairs

Type of Review Requested: Revision  
Title: Application for New and Non-Competing Participation in Bilingual Education Fellowship Program  
Agency Form Numbers: ED 4561-2  
Frequency: Annually  
Affected Public: Non-profit institutions  
Reporting Burden: Responses: 45; Burden Hours: 1,800  
Recordkeeping Burden: Recordkeepers: 40; Burden Hours: 1,200

Abstract: The form is used by institutions of higher education to request approval of their graduate programs of study so that they may nominate students for fellowship awards. The student nomination form becomes part of the award document and is used by institutions to report annually on the amount of funds spent per fellowship.

Type of Review Requested: Revision  
Title: Demonstration of Compliance with Terms and Conditions of the Bilingual Education Fellowship Contract  
Agency Form Numbers: ED 4561-3  
Frequency: Annually  
Affected Public: Individuals or households  
Reporting Burden: Responses: 500; Burden Hours: 1,000  
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Regulations (34 CFR 562.41) require Fellowship recipients to demonstrate compliance with terms and

conditions of assistance awarded under the Bilingual Education Fellowship Program. Recipients must either work in an approved activity, repay financial assistance or have repayment deferred by the Secretary.

Type of Review Requested: New  
Title: Application and Survey Form for the Bilingual Education State Educational Agency Agency Program

Agency Form Numbers: T85-2P  
Frequency: Annually  
Affected Public: State educational agencies  
Reporting Burden: Responses: 57; Burden Hours: 7,410

Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 8,208

Abstract: This specific information collection is mandated in section 732 of the Bilingual Education Act as amended by Pub. L. 98-511, 20 U.S.C. 3221-3262. The data and information collected will be reported to the Department. The respondents are all State educational agencies that apply for assistance.

#### Office of Postsecondary Education

Type of Review Requested: Revision  
Title: Guarantee Agency Quarterly/Annual Report

Agency Form Numbers: ED 1130  
Frequency: Quarterly; Annually  
Affected Public: State or local governments

Reporting Burden: Responses: 300; Burden Hours: 360

Recordkeeping Burden: Recordkeepers: 60; Burden Hours: 2,220

Abstract: The Guarantee Agency Quarterly/Annual Report is submitted by 60 agencies operating student loan insurance programs under agreement with the Department of Education. The reports are used to evaluate agency operations, to make payments to agencies as authorized by law, and to make reports to Congress and others.

#### Office of Elementary and Secondary Education

Type of Review Requested: Extension  
Title: Indian Fellowship Application (New and Continuation) and Financial Report

Agency Form Numbers: ED 501, 501-1, 501-2

Frequency: Annually  
Affected Public: Individuals  
Reporting Burden: Response: 1105; Burden Hours: 1,699

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application will be used to obtain information needed to determine eligibility for funds, select fellows, and determine the amounts to be awarded to each fellow. The

applicants are Indian graduate and undergraduate students. The financial report is used to obtain information on any other funding that is being received by the fellow for the same academic year that the fellowship has been awarded.

[FR Doc. 85-10371 Filed 4-29-85; 8:45 am]  
BILLING CODE 4000-01-M

#### Office of Postsecondary Education

##### College Housing Program; Application Notice for New Awards for Fiscal Year 1985

Applications are invited for new projects under the College Housing Program for fiscal year 1985.

This program is authorized under Title IV of the Housing Act of 1950, 12 U.S.C. 1749-1749d, and administered by the Secretary of Education under section 306 of the Department of Education Organization Act, 20 U.S.C. 3446.

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for students and faculty members, and (2) in conserving energy and reducing related operating costs.

##### Closing Date for Transmittal of Applications

Applications for awards must be mailed or hand delivered on or before June 7, 1985.

*Applications Delivered by Mail:* An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., (ROB-3, Room 3022), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should

check with its local post office. An applicant is encouraged to use registered or at least first class mail.

*Applications Delivered by Hand:* An application that is hand delivered must be taken to the U.S. Department of Education, Division of Higher Education Incentive Programs, Room 3022, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, or Federal holidays. Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

*Program Information:* The College Housing Program provides three percent interest loans to postsecondary educational institutions for the construction, rehabilitation or acquisition of student and faculty housing and related facilities, and for conserving energy and reducing related operating costs in existing facilities. The maximum amount that may be borrowed by an institution is \$3,500,000, and the minimum amount is \$100,000.

The program regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in 34 CFR 614.31 and 614.32.

*Available Funds:* Under this program, the Secretary is authorized to make available for new College Housing Loan commitments in fiscal year 1985, the amount of income from repayments, less expenses, up to a ceiling of \$40,000,000. Twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. These estimates do not bind the U.S. Department of Education to a specific number of loans or to the amount of any loan, unless that amount is otherwise specified by statute or regulations. However, the Administration has proposed to withdraw authority to make new loans for fiscal year 1985.

Applicants should prepare and submit applications pending further notice. In accordance with the program regulations (34 CFR 614.34) the Secretary may deviate from the rank order of applications, as necessary, to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans made are reserved for applications from Historically Black Colleges.

*Application Forms:* Application packages will not routinely be mailed to all institutions of higher education. Copies may be obtained by writing to

the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., (ROB-3, Room 3022), Washington, D.C. 20202, Telephone: (202) 245-3253.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations. The application form is approved by the Office of Management and Budget under control number 1840-0095, expiration 4/86.

Applicable Regulations: The regulations applicable to this program are as follows:

- (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74, Subpart P; Part 75, §§ 75.600-73.615 (Construction); Part 77, § 77.1 (Definitions); and Part 79.
- (b) The regulations governing the College Housing Program (34 CFR Part 614).

Intergovernmental Review: On June 24, 1983, the Secretary published in the Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 et seq.) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Implements Section 401 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 8506) and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334);
- Allows States after consultation with local officials to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95

For programs subject to section 204 of the Demonstration Cities and Metropolitan Development Act, State

review and comment is obtained in accordance with the procedures set forth in that Act.

This program is listed in the Department's regulations as subject to section 204. Accordingly any applicant whose project comes within the criteria of section 204 should immediately contact the State Single Point of Contact established under the Executive Order and follow the procedures established in that state to meet requirements of section 204.

Section 204 requires that—

1. Each application be accompanied by comments and recommendations from the areawide agency;
2. Each application contain a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application; and
3. In the absence of comments and recommendations, the applicant certifies that the areawide agency was provided at least 60 days to comment on the application and did not do so.

Any applicant subject to section 204 must submit its applications by the May 24 closing date and shall supplement its application with the comments or assurances required by section 204 by July 8, 1985.

*Special Procedures:* On or before the deadline for submitting its application to the Secretary, the applicant shall submit a copy of its application to the appropriate State agency for postsecondary education for review. Comments, if any, are to be addressed to the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., (ROB-3, 3022), Washington, D.C. 20202. Comments must be received within 20 days after the deadline date if they are to be considered.

*Technical Assistance Workshops:* Applicants are invited to participate in technical assistance workshops to be held in three regional locations to assist applicants in application preparation. The workshops will take place in San Francisco on May 10, 1985, New Orleans on May 15, 1985, and Washington D.C. on May 20, 1985. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 245-3253.

*Further Information:* For further information, contact the Division of Higher Education Incentive Programs (College Housing Program), Department of Education, 400 Maryland Avenue, S.W., (ROB-3, 3022), Washington, D.C. 20202. Telephone: (202) 245-3253.

(12 U.S.C. 1749d)

Dated: April 22, 1985.

(Catalog of Federal Domestic Assistance Number 84.142, College Housing Program)

William J. Bennett,  
*Secretary of Education.*

[FR Doc. 85-10372 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 7873-001]

#### Bethel Associates; Surrender of Preliminary Permit

April 24, 1985.

Take notice that the Bethel Associates, Permittee for the Crooked Creek Dam Project No. 7873 located on Crooked Creek in Armstrong County, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on July 30, 1984, and would have expired on December 31, 1985. The Permittee states that analysis of the Crooked Creek Dam Project did not indicate feasibility for development.

The Permittee filed the request on April 8, 1985, and the preliminary permit for Project No. 7873 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 85-10410 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8187-001]

#### Cuddebackville Associates; Surrender of Preliminary Permit

April 25, 1985.

Take notice that the Cuddebackville Associates, Permittee for the Cuddebackville Project No. 8187 located on Neversink River in Orange County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on September 25, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Cuddebackville Project did not indicate feasibility for development.

The Permittee filed the request on April 8, 1985, and the preliminary permit for Project No. 8187 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10411 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8028-001]

### East Sidney Associates; Surrender of Preliminary Permit

April 25, 1985.

Take notice that the East Sidney Associates, Permittee for the East Sidney Project No. 8028 located on Ouleout Creek in Delaware County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 31, 1984, and would have expired on December 31, 1985. The Permittee states that analysis of the East Sidney Project did not indicate feasibility for development.

The Permittee filed the request on April 8, 1985, and the preliminary permit for Project No. 8028 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as

described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10412 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-100-002, et al.]

### Houston Pipe Line Co. et al.; Extension Reports

April 25, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a

transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before May 24, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-100-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Texas Eastern Transmission Corp	03-25-85	C	06-29-85
ST80-61-006	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Pacific Gas & Electric Co.	03-29-85	B	07-01-85
ST81-256-002	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	Southern Natural Gas Co.	03-25-85	C	05-12-85
ST81-447-002	Pacific Gas Transmission Co., 245 Market St., San Francisco, CA 94105	Natural Gas Corp. of California	03-25-85	B	06-24-85
ST83-510-001	Caprock Pipeline Co., P.O. Box 9831, Amarillo, TX 79105	Transwestern Pipeline Co.	03-29-85	C	07-01-85
ST83-545-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	El Paso Hydrocarbons Co.	03-26-85	B	06-24-85
ST83-552-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Intratex Gas Co.	03-27-85	B	07-01-85
ST83-558-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Dow Pipeline Co.	03-20-85	B	06-23-85
ST83-569-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	LGS Intrastate, Inc.	03-21-85	B	06-29-85
ST83-634-001	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	Washington Gas Light Co.	03-22-85	D	06-22-85
ST83-637-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Endevco Oil & Gas Co.	03-27-85	B	06-04-85
ST83-658-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Louisiana Intrastate Gas Corp.	03-27-85	B	06-21-85
ST84-101-001	Producer's Gas Co., 4925 Greenville Ave., Dallas TX 75206	Louisiana Industrial Gas Supply System	03-22-85	C	07-02-85
ST84-598-001	Dow Pipeline Corp., P.O. Box 4286, Houston, TX 77210	Northern Natural Gas Co.	03-28-85	C	07-01-85

These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-10413 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-47-002]

### MIGC Inc.; Motion To Amend Purchased Gas Adjustment Filing

April 24, 1985.

Take notice that MIGC, Inc., on April

19, 1985, filed with the Commission a motion to amend its semi-annual purchased gas adjustment filing submitted in Docket No. TA85-2-47-000 on March 15, 1985. The amendment requested by MIGC would reduce

MIGC's proposed rate decrease in this docket from 43.12 cents per MMBtu to 38.50 cents per MMBtu.

MIGC states that its proposed amendment to its purchased gas adjustment filing is necessary to correct

an error that occurred in the preparation of its filing. Amounts attributable to Btu measurement adjustments recovered from certain suppliers in accordance with 18 CFR 154.38(h) were incorrectly included in the calculation of MIGC's proposed adjustment. MIGC has requested permission to correct this oversight before its proposed revised rates take effective on May 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before May 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 85-10414 Filed 4-29-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP85-135-000]

**Pacific Interstate Offshore Company;  
Proposed Change in Rate**

April 24, 1985.

Take notice that Pacific Interstate Offshore Company (PIOC) on April 19, 1985, tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Second Revised Sheet No. 4.

The reason for submittal of this general rate case filing is to comply with Commission order dated June 21, 1983, requiring, in part, PIOC to submit a general rate change filing within 60 days of the termination of the Initial Rate Period, all as more fully described in the subject filing. This proposed change is submitted in compliance therewith.

Copies of the filing were served upon the Company's sole purchaser under its FERC Gas Tariff, Pacific Lighting Gas Supply Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of Rule 214 or Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211).

All such motions or protests should be filed on or before May 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 85-10415 Filed 4-29-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TA85-3-7-000 and TA85-3-7-001]

**Southern Natural Gas Company;  
Proposed Changes in FERC Gas Tariff**

April 24, 1985.

Take notice that Southern Natural Gas Company (Southern) on April 19, 1985, tendered for filing a proposed change to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective May 1, 1985. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed change reflects a net decrease in Southern's rates of 24.45¢ per Mcf as a result of a revised Current Adjustment pursuant to Section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual decrease in the cost of purchased gas to jurisdictional customers of \$107,345,952. In order to implement Southern's proposed out-of-period PGA rate decrease Southern has requested such Commission waivers as may be necessary to approve its filing effective May 1, 1985.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 85-10416 Filed 4-29-85; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 8186-001]

**Stockport Associates; Surrender of  
Preliminary Permit**

April 25, 1985.

Take notice that the Stockport Associates, Permittee for the Claverack Project No. 8186 located on Claverack Creek in Columbia County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on September 25, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Claverack Project did not indicate feasibility for development.

The Permittee filed the request on April 8, 1985, and the preliminary permit for Project No. 8186 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 85-10417 Filed 4-29-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP84-108-004]

**Texas Eastern Transmission Corp.;  
Proposed Changes in FERC Gas Tariff**

April 24, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 18, 1985 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

*Effective February 13, 1985*

Substitute Revised Seventy-second Revised Sheet No. 14  
Substitute Seventy-first Revised Sheet No. 14A

*Effective March 1, 1985*

Substitute Second Revised Seventy-second Revised Sheet No. 14  
Substitute Seventy-second Revised Sheet No. 14A



On February 7, 1985 Texas Eastern filed a Motion in Docket No. RP84-108, to place into effect in accordance with the Commission's September 12, 1984 order in that docket, a primary set of revised tariff sheets to be effective February 13, 1985 as subsequently approved by Commission order dated March 8, 1985.

Also, on March 14, 1985 Texas Eastern made a filing with the Commission, in Docket No. TA85-2-17, tracking the effect of Texas Eastern exercising its "Market Out" provisions in certain of its gas supplier contracts. These tariff sheets were approved by Commission order dated April 12, 1985 to be effective March 1, 1985.

Within the affected tariff sheets of the aforementioned filings the rate for the TS, TS-1 and TS-2 Rate Schedules in Zone A for transportation from 0-200 miles was misrepresented as 0.0844 \$/dth. Such rate was set forth in the filing of Docket No. RP84-108 as 0.0884 \$/dth which should have also been the rate for such transportation service in Texas Eastern's Motion filing of February 7, 1985 and subsequently in its "Market Out" filing of March 14, 1985.

The sole purpose of this filing is to set forth the appropriate rate of 0.0884 \$/dth for such rate schedules which were incorrect in the previous filings of February 7, 1985 and March 14, 1985.

The proposed effective dates for the above tariff sheets are as indicated above.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 5/2/85. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth P. Plumb,**

Secretary.

[FR Doc. 85-10418 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8033-001]

**Thompson Associates; Surrender of Preliminary Permit**

April 24, 1985

Take notice that the Thompson Associates, Permittee for the West Thompson Lake Project No. 8033 located on the Quinebaug River in Windham County, Connecticut has requested that its preliminary permit be terminated. The preliminary permit was issued on July 31, 1984, and would have expired on December 31, 1985. The Permittee states that analysis of the West Thompson Lake Project did not indicate feasibility for development.

The Permittee filed the request on April 8, 1985, and the preliminary permit for Project No. 8033 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

Secretary.

[FR Doc. 85-10419 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-137-000, Docket No. CP85-446-000]

**Transcontinental Gas Pipe Line Corporation, Producers-Suppliers of Transco Gas Supply Company and Transpcontinental Gas Pipe Line Corporation; Application and Petition To Amend**

April 24, 1985.

Take notice that on April 18, 1985, Transcontinental Gas Pipe Line Corporation (Transco) and Transco Gas Supply Company (Gasco) (jointly referred to as Applicants), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. RP83-137-000 and CP85-446-000 an application and petition to amend pursuant to Section 7 of the Natural Gas Act authorizing Applicants and their producer suppliers all abandonment and sales authorizations necessary to implement Transco's DS and SMP programs, all as more fully set forth in the application and petition to amend which is on file with the Commission and open to public inspection.

Applicants state that on September 26, 1984, the Commission issued an order establishing standard conditions applicable to all special marketing

programs (SMP's), and that one of the conditions contained in that omnibus SMP order was ordering paragraph (M)(a) which identifies markets eligible to purchase SMP gas under a 10 percent customer purchase option. It is claimed that was not able to implement a standard SMP, because the 10 percent condition would have undermined Transco's gas cost containment efforts instituted in Transco's Market Retention Program (MRP) and Market Maintenance Plan (MMP).

Applicants state that Transco declined to accept a certificate under the September 6 SMP order, and instead, on December 26, 1984, Transco submitted a settlement offer in Docket Nos. RP83-137-000, *et al.*, which would enable Transco to implement an SMP and a tailor-made 10 percent customer purchase option that did not conflict with Transco's MMP and MRP. It is stated that under the settlement Transco would implement a new discount transportation program to Rate Schedule DS, which would provide a pool of discounted gas supplies delivered at discounted transportation rates.

It is alleged that as of March 27, 1985, the Commission had reviewed Transco's settlement offer, had approved it with modifications, and intended that it become effective as of April 1, 1985. Applicants assert, however, that the Commission construed its March 27 order as requiring leave of the United States Court of Appeals for the District of Columbia Circuit to make the Order effective because the record in the omnibus SMP orders was already on review before the Court. Therefore, it is claimed the Commission in ordering paragraph (G) of the March 27 order indicated that Transco's SMP and DS programs could not become effective "unless and until leave of the United States Court of Appeals for the District of Columbia Circuit is obtained to modify our omnibus (SMP) orders."

It is averred that the unanticipated consequences of ordering paragraph (G) of the Commission's March 27 order have resulted in thwarting the timely implementation of Transco's SMP and DS programs, on a purely procedural basis, even though those programs have been found to be in the public interest. Applicants assert that the United States Court of Appeals for the District of Columbia Circuit issued an order on March 28, 1985, in which it, *sua sponte*, stayed all proceedings in the appeal of the omnibus SMP orders, and that on April 9, 1985, the Court issued an order which stated that "in keeping with the stay entered March 28, 1985 . . . the Commission should await release of the

[Court's] decision No. 84-109 [an appeal of an earlier SMP order issued to Columbia Gas Transmission Corporation] before presenting applications concerning these cases [Case Nos. 85-1029 and 85-1086] to the Court." It is averred that the United States Court of Appeals for the District of Columbia Circuit has determined that it would not perform the ministerial act of permitting the Commission's March 27 order to become effective and would not entertain further pleadings with the Court until the issuance of the Court's decision in a separate case, which decision Applicants speculate, may not be rendered for weeks or even months. Applicants contend that event though the Court has taken no substantive position on the merits of Transco's DS and related SMP programs, the programs are effectively stayed indefinitely unless the Commission acts.

Applicants assert that all other SMP programs remain in effect and that there is no basis to conclude that the Court would have Transco's special marketing efforts, and Transco's alone, remain inoperative. Applicants submit that it is not in the public interest to permit the present situation to continue and thus delay the implementation of those cost reduction programs on a purely procedural basis.

Applicants state that if the Commission had issued Transco the necessary authorizations to implement its tailor-made special marketing efforts in a self-contained order without incorporating by reference the conditions in the omnibus SMP order, or using such earlier dockets, there would have been no need for ministerial action by the Court. Applicants state that because this is not the case they request that their producer-suppliers be granted *de novo* authorization for partial abandonment of sales to Transco and Gasco for the limited period of April 1, 1985, through October 31, 1985, and also limited-term certificates of public convenience and necessity for the period April 1, 1985, through October 31, 1985, with pre-granted abandonment authorization, authorizing sales which the producers elect to make to Transco's customers under the DS or SMP programs. Applicants contend that approval by the Commission of the proposed authorizations would raise no issues not already considered and resolved by the Commission in its March 27 order, but would permit Transco's DS and SMP programs to be implemented without becoming further

entangled in, or delayed by, the pending review proceedings.

Applicants also request that the Commission amend its March 27 order. Specifically, Applicants request that (1) the March 27 order be amended so as to be issued only in Docket Nos. RP83-137-000 and CP85-446-000 and (2) the requirement for leave of the Court to make the order effective be deleted.

Any person desiring to be heard or to make any protest with reference to said application and petition to amend should on or before May 15, 1985, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission's by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-10420 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

#### Office of Hearings and Appeals Implementation of Special Refund Procedures; Mallard Resources, 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 as the result of DOE enforcement proceedings involving alleged Entitlements Program reporting violations by Mallard Resources, Inc., a refiner located in Houston, Texas.

**DATE AND ADDRESS:** Applications for refund must be postmarked by July 29, 1985, should conspicuously display a reference to Mallard Resources, Inc. (Case No. HEF-0474) 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, S.W., Washington, D.C. 20585, (202) 252-2094.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 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 a consent order entered into between the DOE and Mallard Resources, Inc. That consent order settled all disputes between the firm and DOE concerning allegations that MRI violated DOE regulations governing monthly reports by refiners in connection with the Domestic Crude Oil Allocation (Entitlements) Program during the period July through August 1979. A portion of the consent order funds have been paid to DOE and are being held in escrow under the jurisdiction of DOE pending receipt of instructions from OHA regarding their final distribution.

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 July 29, 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 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, SW, Washington, D.C. 20585.

Dated: April 22, 1985.

George B. Breznay,

Director, of Hearings and Appeals.

April 22, 1985.

### Decision and Order of the Department of Energy

#### Implementation of Special Refund Procedures

Name of Firm: Mallard Resources, Inc.  
Date of Filing: October 13, 1983.  
Case Number: HEF-0474.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement a specially-designed process to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged violations of the Department of Energy (DOE) regulations. On October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Mallard Resources, Inc. [hereinafter referred to as MRI]. Pursuant to this consent order, MRI agreed to refund \$800,000 in settlement of allegations that it had violated the DOE regulations governing the Crude Oil Entitlements Program, 10 CFR § 211.67. The portion of those funds which has been paid to the DOE is being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding its final distribution.

#### Background

DOE regulations in effect during the consent order period required crude oil refiners<sup>1</sup> to file monthly reports with the Economic Regulatory Administration (ERA) which specified their crude oil runs to stills<sup>2</sup> and their crude oil

receipts,<sup>3</sup> including volumes of lower and upper tier crude oil. See<sup>10</sup> 10 CFR 211.66 (b) and (h). In the event that an error was made in the monthly report, the regulations required the refiner to correct the errors by the filing of an amended report for the particular month in which the error occurred. 10 CFR 211.67(j). The Refiner's Monthly Reports and amended reports were subsequently used by the ERA in determining a firm's purchase or sales obligations under the Entitlements Program.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. The federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners and their downstream customers because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program 39 Fed. Reg. 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to generally equalize access to the benefits of price-controlled domestic crude oil. If, however, a firm received excessive entitlement benefits because it violated regulations governing

reporting of crude oil receipts and runs to stills, the extra expense was borne by all other participants in the Entitlements Program and their downstream customers. Because of the way the Entitlements Program worked, reporting errors like those which formed the basis for the MRI settlement had the same effect as crude oil overcharges.

MRI is a refiner of crude oil located in Houston, Texas. According to the Petition for Implementation of Special Refund Procedures filed by the ERA, the consent order involving MRI resulted from an audit by the DOE in which it was determined that MRI had under-reported its crude oil receipts in Refiner's Monthly Reports during July and August 1979 and that it had not subsequently filed amended reports correcting the errors. As a result, MRI allegedly received benefits from the Entitlements Program to which it would not otherwise have been entitled. In order to settle the dispute between the parties, MRI and the ERA signed a Consent Order on April 24, 1981, in which the Government agreed to terminate the pending investigation and administrative proceedings and MRI agreed to pay a stipulated sum of money to the DOE in a series of monthly installments. To date, MRI has paid a total of approximately \$188,500 into the escrow account. However, it is uncertain whether MRI will pay any additional amounts into the escrow account, since the firm is in bankruptcy.

On February 15, 1985, we issued a Proposed Decision and Order which tentatively set forth procedures to distribute refunds to parties who were injured by MRI's alleged violations. 50 FR 7637 (February 25, 1985) In the proposed decision we described a two-stage process for the distribution of the funds made available by the consent order. We stated that a second stage of the refund procedure may be necessary if funds remain after meritorious claims are paid in the first stage. In response to our proposed decision, several interested parties filed comments.

This decision establishes procedures for filing claims in the first stage of the MRI refund proceeding and describes the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the funds. In establishing these requirements, we have considered comments filed by Sun Company, Inc. (Sun) in response to the first-stage proposals in the February 15 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. Although we received comments from the States of Florida and Texas

total number of barrels of crude oil input to processing units for conversion into petrochemicals.

<sup>3</sup>"Crude oil receipts" was defined in 10 CFR 211.62, in part, as follows:

"Crude oil receipts" means, as to a particular refiner, the volume of crude oil (i) booked into its refineries in accordance with accounting procedures generally accepted and consistently and historically applied by the refiner concerned, for its own account or for the account of a firm other than a refiner or (ii) if not previously so booked into its refineries, delivered by that refiner for its account to another refiner pursuant to a processing agreement with that other refiner. Crude oil receipts shall not include crude oil received by a refiner for the purpose of processing at its refineries for the account of another.

<sup>1</sup>The term "refiner" was defined in the regulations as a firm which owns, operates, or controls the operations of one or more refineries. 10 CFR 211.62.

<sup>2</sup>"Crude oil runs to stills" was defined in 10 CFR 211.62 as follows:

"Crude oil runs to stills" means in the case of a refiner other than a petrochemical producer, the total number of barrels of crude oil input to distillation units processed by a refiner and measured in accordance with Bureau of Mines Form 6-1300-M and, in the case of a petrochemical producer, the total number of barrels producer, the

regarding disposition of funds remaining at the conclusion of the first stage of the refund proceedings, it is premature for us to address the issues raised by the States until all the first-stage claims have been paid.<sup>4</sup>

#### Jurisdiction

In previous Subpart V 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). The DOE regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to readily identify persons who were or may have been injured by the alleged violations or where it is unable to readily ascertain the amount of their alleged injuries. After reviewing the record developed in this proceeding, we have concluded that it may be difficult to identify potentially injured parties and to determine to what extent a refund applicant may have been injured by MRI's entitlements program reporting practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds which MRI paid to the DOE in settlement of the enforcement proceedings underlying the Petition for Implementation of Special Refund Proceedings.

#### Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceeding. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory

violations.<sup>5</sup> See also *A. Johnson & Co., Inc.*, 12 DOE ¶ 85,102 (1984), 49 FR 44541 (November 7, 1984) (establishing refund procedures like those in *Alkek* and *Adams* for funds obtained from 194 firms) (hereinafter cited as *A. Johnson*). The types of alleged violations that underlie the present proceedings are the same as those that were the subject of the *Alkek*, *Adams*, and *A. Johnson* proceedings. After having considered the comments we received concerning the first-stage proceedings tentatively adopted in our proposed decision, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after the *Alkek*, *Adams*, and *A. Johnson* proceedings. We therefore will establish first-stage refund procedures in which we will accept refund applications to be adjudicated in the same manner and using the same principles as those first-stage refund applications that were filed pursuant to the *Alkek*, *Adams*, and *A. Johnson* determinations.

In its comments on the proposed MRI decision, Sun suggested that the so-called "regulatory methodology" which it advocated for distributing the Stripper Well overcharges would also be appropriate in this case. For an explanation of Sun's position see *Stripper Well Exemption Litigation*, 12 DOE ¶ 85,017 (1984), and Documents No. 00200 and 00235 filed therein. Sun alternatively suggested that, regardless of whether we adopt its "methodology," the Entitlements-related portions of the settlement funds in the present proceeding should be distributed in the same way as the Stripper Well overcharges. Sun's position is premised on the reasonable assumption that the cost of the alleged violations underlying the present case was spread through the Entitlements Program in a manner similar to that of the Stripper Well overcharges. See *Union Oil v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982). We anticipate that we will adopt a method of granting refunds in the consolidated *Alkek*, *Adams* and *A. Johnson* proceeding which is consistent with that which OHA ultimately recommends to the District Court in the Stripper Well Exemption Litigation. However, because those matters are all currently under active consideration, it would be inappropriate to evaluate the

merits of Sun's proposal in this determination.

We will now accept applications for refund for portions of the escrow accounts established with funds received from MRI. See 10 CFR 205.283. Parties who have filed claims in the *Alkek*, *Adams*, or *A. Johnson* refund proceedings, but who have not yet had a decision on those claims, will be deemed to have filed similar applications in this proceeding and therefore need not file a separate application. Other potential claimants should file an application for refund following the guidelines outlined below. As we noted in *Alkek*, it would be premature for consumers and consumer groups to file applications for refund until the refiners' claim have been resolved. *Alkek* at 85,136.

An application must be in writing, signed by the applicant, and must specify that it pertains to Mallard Resources, Inc. Special Refund Proceeding (Case No. HEF-0474). Each applicant should indicate the basis for its belief that it was injured by MRI alleged Entitlements Program reporting violations. In addition, a claimant who was subject to the DOE regulations must show that it was unable to pass through to its customers the price increases caused by MRI's alleged violations. Each 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. An applicant is under a continuing obligation to keep OHA informed of any change in status while its application for refund is being considered. See 10 CFR 205.9(d). 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, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Refund applications must be filed in duplicate. A copy of each 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, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its

<sup>4</sup> In its comments regarding the Proposed Decision and Order, Texas criticized the threshold presumption utilized in some Subpart V proceedings involving firms which sold refined products. We need not address the merits of those comments in the present proceeding, as MRI's alleged regulatory violation concerns its compliance with the crude oil Entitlements Program.

<sup>5</sup> We subsequently added to the *Alkek/Adams* "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. See Office of Special Counsel, 10 DOE ¶ 85,046 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in *In re Stripper Well Exemption Litigation*, Case No. HEF-0025, 48 FR 57608 (1983).

application and submit two additional copies of its application form 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: Mallard Resources, Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the 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.

#### Conclusion

The refund mechanisms and procedures outlined above for first-stage claims filed with DOE will be adopted. Because of the difficulty inherent in establishing the level of injury to parties in the present case, there may be a portion of the refund moneys remaining after all successful first-stage claimants have been paid even though MRI has paid less into the escrow account than it is obligated to pay. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. See *Office of Enforcement*, 9 DOE ¶ 82,508 (1982).

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Mallard Resources, Inc. pursuant to the Consent Order executed on April 24, 1981 may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register.

Dated: April 22, 1985.

George B. Breznay,  
Director, Office of Hearings and Appeals.

[FR Doc. 85-10462 Filed 4-29-85; 8:45 am]  
BILLING CODE 6450-01-M

#### Implementation of Special Refund Procedures; Southern Union Co.

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 a fund of \$220,000 obtained from Southern Union Company, its wholly owned subsidiary, Southern Union Refining Company, and the following predecessors in interest to the Southern Union Refining Company: Famariss Oil Corporation, Famariss Oil & Refining Company, Southern Union Oil Products Company, and Southern Union Products Company, in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund must be postmarked by July 29, 1985, should conspicuously display a reference to case number HEF-0223, 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 consent order between Southern Union Company and DOE. The consent order settled all disputes between DOE and Southern Union concerning possible violations of DOE price regulations with respect to the firm's sales of refined petroleum products to its customers, and possible violations concerning Southern Union's participation in the Entitlements Program, during the period August 1973 through January 1981.

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 July 29, 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, SW., Washington, D.C. 20585.

Dated: April 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

#### Decision and Order of the Department of Energy

##### Implementation of Special Refund Procedures

April 19, 1985.

Name of Firm: Southern Union Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0223.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. 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 that it entered into with Southern Union Company (Southern).

On February 21, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Southern's alleged violations. In the proposed decision we described a two-stage process for the distribution of the funds made available by the Southern consent order. In the first stage, we will refund money to identifiable purchasers of covered products who may have been injured by Southern's pricing practices during the period August 19, 1973 through January 27, 1981. This decision describes the information that a purchaser of Southern petroleum products should submit in order to demonstrate eligibility to receive a portion of the consent order funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. See generally *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) [hereinafter cited as *Amoco*] [refund procedures established for first stage applicants, second stage refund procedures proposed]. However, because our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund, it is premature for us to address this issue. In response to our February 21, 1985 proposed decision, the States of New Mexico and Texas filed comments concerning the disposition of possible funds remaining at the

conclusion of the first stage proceedings. Those comments will not be discussed here, for the reasons noted above.

### I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Southern 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, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,284 (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 Southern consent order funds.

### II. Background

Southern was a refiner, as that term is defined in 10 CFR 212.31, which maintained its headquarters in Dallas, Texas, and based its refining operations in Hobbs, New Mexico. Two DOE audits of Southern's records revealed possible regulatory disputes by the firm. In order to settle all claims and disputes between Southern and the DOE regarding the firm's compliance with DOE regulations during the period August 19, 1973 through January 27, 1981, Southern and the DOE entered into a consent order on October 20, 1981. Under the terms of the consent order, Southern agreed to remit \$220,000 to the DOE, and \$200,000 to the Defense Fuel Supply Center (DFSC). These funds are being held in an interest-bearing escrow account established with the United States Treasury pending a determination of their proper distribution, and as of March 31, 1985, the Southern escrow account had earned \$91,068 in interest. This Decision concerns the distribution of the funds in the escrow account, plus the accrued interest.

### III. Proposed Refund Procedures

#### A. Crude Oil Claims

Because the consent order resolves two different kinds of violations, we shall divide the escrow account funds into two pools. According to information filed by the ERA in connection with the Petition for Implementation of this proceeding, \$20,000 of the total settlement amount of \$220,000 relate to Southern's participation in the Crude Oil Entitlements Program during the consent order period. A division of the consent

order funds on that basis is reasonable and has been used in the past.

See *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We therefore propose that a pro rata portion of the consent order fund—a pool of \$20,000 plus accrued interest—be set aside to satisfy claims filed by participants in the Crude Oil Entitlements Program. Claimants in this category must show that they were injured by Southern's alleged violations of those regulations.

We have previously established refund procedures for consent orders involving crude oil-related violations comparable to those resolved in the current consent order. Southern is alleged to have reported as its own crude oil rums to stills, crude oil located at a different refinery. This alleged misrepresentation would have increased the number of entitlements issued to Southern, and thereby reduced the value of the entitlement benefits available to all other refiners. This would in turn have increased the cost of crude oil to all domestic refiners. *Inn Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*) and *A. Johnson & Company, Inc.*, 12 DOE ¶ 85,102 (1984) (hereinafter cited as *Johnson*) which involved settlements with 252 firms, we established a two-stage refund procedure for consent orders funds received as a result of alleged crude oil regulatory violations. Because the types of alleged violations that underlie the crude oil-related portion of the present proceeding would have an impact similar to those that were the subject of the *Alkek*, *Adams*, and *Johnson* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore shall establish first-stage refund procedures for the Southern crude oil pool in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek*, *Adams*, and *Johnson* determinations.

Parties who have filed claims in the *Alkek*, *Adams*, or *Johnson* refund proceedings, and have not had a decision on those claims, will be deemed to have filed similar applications in this proceeding and therefore will not need to file a separate application. As we noted in *Alkek*, it would be premature for consumers and consumer groups to

file applications for refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

#### B. Refunds to Refined Product Purchasers

The remainder of the Southern settlement funds \$200,000 plus accrued interest, shall be distributed to claimants who can demonstrate that they have been adversely affected by Southern's alleged violations in sales of refined petroleum products during the consent order period. The petroleum products purchased by these claimants were purchased either directly from Southern or from other firms in a chain of distribution leading back to Southern. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Southern refined petroleum product for the period August 1973 to January 1981. If the product was not purchased directly from Southern the claimant must include a statement setting forth its reasons for maintaining the product originated with Southern. In addition, a reseller or retailer that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, a reseller or retailer claimant will be required to show initially 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. See *Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that it was injured by the alleged overcharges. *Id.*

As in many prior special refund cases we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Southern during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

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). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.<sup>1</sup>

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 purchase could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. 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.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Southern consent order is based on a number of considerations. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). 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. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly,

and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Southern and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, 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. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of \$5,000 is reasonable.<sup>2</sup> 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.

In addition to the presumptions 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 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 *Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Southern petroleum products need only document their purchase volumes from Southern to make a sufficient showing that they were injured by the alleged overcharges.

We note that if a reseller or retailer made only spot purchases from Southern, 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 prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

*Vickers* at 85,396-97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for Southern petroleum products. See *Amoco* at 88,200.

We have concluded that the DFSC is not eligible for any further refunds from the Southern settlement. Under the terms of the consent order, the DFSC has already received \$200,000 in direct restitution from Southern, in settlement of any claims between the agency and the firm. Any additional refund to the DFSC would be beyond the scope of the Southern settlement as embodied in the consent order. Therefore, the calculation of the volumetric refund amount is based on the total number of gallons of covered products which were sold to Southern customers other than the DFSC.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available

<sup>1</sup> The State of Texas has objected to some aspects of the use of presumptions in this case. We have considered and ultimately rejected identically worded comments from Texas in several recent cases. See e.g., *Amtel, Inc.* 12 DOE ¶ 85,073 (1984). Because no new arguments have been offered, we will not further address the merits of these arguments in the present decision.

<sup>2</sup> Resellers or retailers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than \$5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the \$5,000 threshold amount without being required to submit additional evidence of injury. See *Vickers* at 85,396; see also *Ada* at 88,122.

to us at this time, the volumetric refund amount is \$.000176 per gallon, exclusive of interest.<sup>3</sup> As of March 31, 1985, accumulated interest increased the per gallon refund amount to \$.000249 per gallon.

As in previous cases, we will establish a minimum refund amount of \$15,000 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15.00 outweighs the benefits of restitution in those situations. See e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

#### IV. Applications for Refund

After having considered all the comments received concerning the first stage proceedings, tentatively adopted in our February 21, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Southern petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Southern Union Refund Proceeding, Case Number HEF-0223.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Southern, it should also indicate the basis for its belief that the petroleum product purchased originated from Southern or Ida Gasoline Company. 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 Southern petroleum product, such as whether it was a reseller or ultimate consumer. 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 January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that

<sup>3</sup>During the consent order period, Southern sold 1,135,927,254 gallons of petroleum products to customers other than DFSC. The volumetric refund amount is obtained by dividing the portion of money remitted by Southern set aside for refunds to refined product purchasers by the volume of products sold (\$200,000 divided by 1,135,927,254 gallons = \$.000176 per gallon.)

price increases to recover alleged overcharges were infeasible. The 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 while its application for refund is being considered. See 10 CFR 205.9(d).

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, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each 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 applications and 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: Southern Union Company Special Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Southern 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.

#### V. Distribution of the Remainder of the Consent Order Funds.

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Southern Union Company and the Ida Gasoline Company pursuant to their consent order executed on August 31, 1979, may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the *Federal Register*.

Dated: April 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-10464 Filed 4-29-85; 8:45 am]

BILLING CODE 6450-01-M

#### Implementation of Special Refund Procedures; U.S.A. Petroleum

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding \$1,750,000 plus interest in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving U.S.A. Petroleum and its subsidiaries: USA Gasoline Corporation, USA Lubricants (formerly M-K Oil Company), Transworld Oil Company, Supersave Petroleum, Inc., and Gasoline de Puerto Rico Corporation (together hereinafter referred to as USAP). U.S.A. Petroleum is a refiner of petroleum products located in Santa Monica, California.

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0500.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to consent order



entered into by U.S.A. Petroleum which settled possible violations of DOE price controls in sales of all refined petroleum products by the firm and its predecessors to their customers, and possible violations concerning U.S.A. Petroleum's participation in the Entitlements Program, during the August 19, 1973 through January 27, 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by U.S.A. Petroleum pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered U.S.A. Petroleum products and participants in the Entitlements Program during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: April 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

### Proposed Decision and Order of the Department of Energy

#### Implementation of Special Refund Procedures

April 18, 1985.

Name of Firm: U.S.A. Petroleum.

Date of Filing: April 12, 1984.

Case Number: HEF-0500.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearing and Appeals (OHA) to formulate and implement a specifically-designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations, 10 CFR Part 205, Subpart V. Pursuant to the provisions of

Subpart V, on April 12, 1984 the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with U.S.A. Petroleum and its subsidiaries: USA Gasoline Corporation, USA Lubricants (formerly M-K Oil Company), Transworld Oil Company, Supersave Petroleum, Inc., and Gasolinas de Puerto Rico Corporation (together hereinafter referred to as USAP).

#### I. Background

USAP was a reseller-retailer of petroleum products from August 19, 1973 to February 1, 1976, and a refiner from February 1, 1976 to January 27, 1981, as those terms were defined in 10 CFR 212.31. It maintained its headquarters in Santa Monica, California. USAP operated motor gasoline retail stations in 30 states and the Commonwealth of Puerto Rico, with the vast majority of its stations located in California, Florida, Nevada, and Washington. Several separate DOE audits of USAP and its subsidiaries revealed possible regulatory violations by the firm. The audits resulted in three Notices of Probable Violation (NOPV's), all relating to the firm's participation in the Entitlements Program. However, other aspects of USAP's business were also audited at various times.

In order to settle all claims and disputes between USAP and the DOE regarding the firm's compliance with DOE regulations during the period August 20, 1973 through 27, 1981, USA and the DOE entered into a consent order on July 22, 1982. Under the terms of the consent order, USAP agreed to remit \$1,750,000 plus interest to the DOE. These funds are being held in an interest-bearing escrow account established with the United States Treasury pending a determination of their proper distribution, and as of March 31, 1985, the USAP escrow account had totaled \$2,207,205, including interest. This Proposed Decision concerns the distribution of the funds in the escrow account, plus the accrued interest.

#### II. Proposed Refund Procedures

##### A. Crude Oil Claims

Because the consent order resolves two different kinds of violations, we propose to divide the escrow account funds into two pools. See *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). According to the *Federal Register* Notice announcing the USAP consent order (47 FR 50084, November 4, 1982) (hereinafter referred to as the Notice) \$787,500 of the Consent Order funds plus accrued

interest relate to USAP's participation in the Crude Oil Entitlements Program during the consent order period. USAP is alleged to have to have engaged in a scheme whereby Entitlements obligations that should have been incurred by USAP, were instead incurred by other refiners. Since the other refiners had received exception relief from their entitlements purchase obligations, this alleged scheme would have reduced the value of the entitlement benefits available for all other refiners. We therefore propose that a pro rata portion of the consent order fund—a pool of \$787,500 plus accrued interest—be set aside to satisfy claims filed by participants in the Crude Oil Entitlements Program and their downstream customers who may have suffered from increased costs relating to these alleged violations. Claimants in this category must show that they were injured by USAP's alleged violations of those regulations.

We have previously established refund procedures for consent orders involving crude oil-related violations comparable to those resolved in the present consent order. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*) and *A. Johnson & Company, Inc.*, 12 DOE ¶ 85,102 (1984) (hereinafter cited as *Johnson*) which involved settlements with a total of 252 firms, we established a two-stage refund procedure for funds received as a result of alleged crude oil-related regulatory violations. Because the type of alleged violation that underlies the crude oil-related portion of the present proceeding would have an impact similar to those that were the subject of the *Alkek*, *Adams*, and *Johnson* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish refund procedures for the USAP crude oil pool in which we will accept refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek*, *Adams*, and *Johnson* determinations. For details regarding those procedures, see those determinations.

##### B. Refunds to Refined Product Purchasers

We propose that the remainder of the USAP settlement remitted to DOE,

\$962,500 plus accrued interest, be distributed to claimants who can demonstrate that they have been adversely affected by USAP's alleged violations in sales of refined petroleum products during the consent order period. The information available to us at this time regarding USAP's operations during that period does not provide names and addresses of all of the firm's customers. We are aware, however, that USAP produced and marketed motor gasoline, that it sold virtually no petroleum products other than motor gasoline, and that roughly 94% of its sales were at the retail level, through company-owned stations. Further, from our experience with Subpart V proceedings, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from USAP or from other firms in a chain of distribution leading back to USAP. These claimants may file refund applications. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of USAP motor gasoline or other covered products for the period August 19, 1973 through January 28, 1981. If the product was not purchased directly from USAP the claimant must include a statement setting forth its reasons for maintaining the product originated with USAP.

In addition, a reseller or retailer 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 be required to show initially 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. See *Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). The maintenance of a bank will not, however, automatically establish injury. See, e.g., *National Helium Corp./Atlantic Richfield Company*, 11 DOE ¶ 85,257 (1984) and cases cited therein. In addition, a reseller must provide some further evidence of injury. See *Amoco* at 88,215.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by USAP during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

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 refunds 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 presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

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 could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the injury from USAP's alleged pricing practices. 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.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the USAP consent order is based on a number of considerations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). 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. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also

desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from USAP and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, 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. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of \$5,000 is reasonable.<sup>1</sup> 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.

In addition to the presumptions 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 overcharges settled in the consent order. Unlike regulated firms in

<sup>1</sup>Resellers or retailers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than \$5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the \$5,000 threshold amount without being required to submit additional evidence of injury. See *Vickers* at 85,390; see also *Ada* at 88,122.

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 *Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of USAP petroleum products need only document their purchase volumes from USAP to make a sufficient showing that they were injured by the alleged overcharges.

We note that if a reseller or retailer made only spot purchases from Southern it is not likely to have suffered an injury. As we have previously stated with respect to spot purchases:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

*Vickers* at 85,396-97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for USAP petroleum products. 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 volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of 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 \$0.000384 per gallon, exclusive of interest. As of March 31, 1985, accumulated interest increased the per gallon refund amount to \$0.00484 per gallon.

As in previous cases, we will establish a minimum refund amount of \$15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15.00 outweighs the benefits of restitution in those situations. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the *Federal Register*, notice will be provided to the Independent Gasoline Marketers Council, the National Association of Manufacturers, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding.

#### *C. Distribution of the Remained of the Consent Order Funds*

According to the Notice and the petition for implementation (hereinafter referred to as petition) filed by the ERA, the non-crude oil-related portion of the consent order funds concerns violations relating to sales by USAP's subsidiaries of motor gasoline through retail outlets. The Notice proposes that this portion of the settlement be divided between the state governments of the states in which USAP owned retail outlets. Four states would receive money: California, \$776,160; Washington, \$73,727.50; Florida, \$64,198.75; and Nevada, \$48,413.75. The petition notes that the ERA "continue[s] to believe that this disposition is appropriate," and asks that OHA accept jurisdiction only if individual injured parties can be located. The petition asks that if the OHA determines that injured parties cannot be located, the refined product portion of the consent order fund should be remanded to the ERA, which will distribute the funds to the affected states. In addition, the ERA has requested that any money left over after the completion of the first-stage refund proceeding for Entitlements violations be deposited in the United States Treasury, in accordance with the terms of the Consent Order and the *Federal Register* Notice. The OHA will retain jurisdiction over this matter, and in the event that any money is left after completion of the first stage procedures, we intend to implement these proposals.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the U.S.A. Petroleum Company pursuant to the consent order executed on July 22, 1982

will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-10465 Filed 4-29-85; 12:35 pm]  
BILLING CODE 6450-01-M

#### Office of the Secretary

#### Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award; East-West Center

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restriction of Eligibility for Grant Award.

**SUMMARY:** DOE announces that it plans to award a grant to East-West Center pursuant to § 600.7(b) of the DOE Financial Assistance Rules, 10 CFR Part 600. DOE has determined that eligibility for this grant award shall be limited to the East-West Center.

Procurement Request Number: 01-85FE60740.000

#### Project Scope

The East West Center is hosting a Conference on "New Coal Technologies." This Conference is structured to provide a unique perspective on issues pertaining to the impact of new coal technologies on energy and development policies. As representatives of both the public and private sector will be in attendance, questions of technology transfer costs and the role of each sector in promoting the use of these technologies can be more realistically explored.

DOE has a vital interest in coal technologies and their impact on the energy industry and national development as a whole. This Conference bringing together technological and public policy personnel is a unique opportunity to identify major issues that will need to be addressed as new technologies become operational. Therefore, DOE has determined that DOE's partial support of \$25,000 in the form of a grant to East-West Center on a restricted eligibility basis is appropriate.

**FOR FURTHER INFORMATION CONTACT:** Shirely Jones/James Beiriger, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, D.C., on April 22, 1985.

Ben Goldman,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 85-10463 Filed 4-29-85; 8:45 am]

BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION  
AGENCY**

[OW-8-FRL-2827-2]

**North Dakota New Rockford Aquifer  
Petition for Sole Source Designation  
Extension of Public Comment Period**

**AGENCY:** Region VIII U.S. Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a decision has been made by the Region VIII office of EPA to extend the deadline for receipt of public comments on the New Rockford Sole Source Petition for forty-five (45) days. The original deadline for public comments was set at April 8. In response to numerous requests for an extension, EPA has decided to extend the deadline to May 23, 1985.

**FOR FURTHER INFORMATION CONTACT:** Laura Clemmens, Project Officer, U.S. EPA Region VIII (8WM-DW), 1860 Lincoln Street, Denver, Colorado. Phone: (303) 293-1419.

**SUPPLEMENTARY INFORMATION:** A public hearing on the potential designation of the New Rockford Aquifer as a sole or principal source of drinking water was held in Fessenden, North Dakota on Tuesday, March 4, 1985. Notice of the hearing and a request for public comments was published in the *Federal Register* on February 1, *The Bismarck Tribune* on February 5 and the *Harvey Herald* on February 6.

The Safe Drinking Water Act was enacted on December 16, 1974. Section 1424(e) of the Act states:

If the Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the *Federal Register*. After the publication of any such notice, on commitment for Federal Financial Assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In summary, Section 1424(e) authorizes EPA: (1) To designate sole or principal drinking water source aquifers; and (2) once a designation has been made, to review federal financially assisted projects which may contaminate a sole or principal drinking

water source aquifer through a recharge zone so as to create a significant hazard to public health.

On May 5, 1984, Orval Hovey, of Fessenden, North Dakota, petitioned the Regional Administrator of Region VIII to designate the New Rockford Aquifer as the sole source of drinking water for the City of Fessenden, North Dakota, and the surrounding farms. Mr. Hovey claims that the New Rockford Aquifer, if contaminated, would create a significant hazard to public health.

On September 25, 1984, the EPA Region VIII Regional Administrator found Mr. Hovey's application to be complete, and advised him that a determination would be made as to whether or not formal designation procedures were merited.

At this time, EPA is again announcing the availability of the petition and other relevant information for public review at the EPA office in Denver, and is requesting public comments on the petition. In particular, information is sought concerning: (1) Population dependent on the aquifer as its sole or principal source of water supply; (2) aquifer boundaries; (3) boundaries of the recharge zone of the aquifer; (4) location of water wells, and (5) alternative sources of drinking water currently in use.

After reviewing all relevant information and responding to all comments received on the petition, the EPA Administrator will publish notice of his decision (whether to designate the aquifer or not) in the *Federal Register* and in local newspapers.

Comments, data and references in response to this notice should be addressed to Laura Clemmens at the address shown above.

**John G. Welles,**

*Regional Administrator.*

[FR Doc. 85-10365 Filed 4-29-85; 8:45 am]

BILLING CODE 5560-50-M

[OA-FRL-2827-5]

**Privacy Act of 1974, Revision of  
Notices of Systems of Records**

**SUMMARY:** The Debt Collection Act of 1982 (Pub. L. 97-365) amends the Privacy act of 1974 to provide a new general disclosure authority, codified at 5 U.S.C. 552a(b)(12), which permits agencies to disclose from their systems of records certain information about delinquent consumer debtors. Disclosures may only be made to consumer reporting agencies.

The Environmental Protection Agency is amending three of its systems of records to provide for such disclosures to consumer reporting agencies and to

reflect minor administrative and editorial revisions which have occurred since publication of the systems in the *Federal Register*. The systems are EPA-1 (Payroll System), EPA-7 (Travel Voucher Folders, Advance Cards, and Payee Files), published on September 18, 1975, and EPA-9 (Freedom of Information Act Request File), published on January 25, 1978.

This publication does not establish a new routine use as defined in the Privacy Act and does not require public comment.

**EFFECTIVE DATE:** This new general disclosure notice shall become effective April 30, 1985.

**FOR FURTHER INFORMATION CONTACT:** Please contact Joe Nemargut, Financial Management Division, Office of the Comptroller, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. (202-382-5657), for EPA-1 and EPA-7; Jeralene Green, Office of Executive Support, Office of the Administrator, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. (202-382-4048), for EPA-9.

Dated: April 18, 1985.

**Seymond D. Greenstone,**

*Acting Assistant Administrator for Administration and Resources Management.*

**EPA-1**
**SYSTEM NAME:**

Payroll System (EPAYS; Payroll Accounting Master File; and Detail History File).

**SYSTEM LOCATION:**

EPA National Computer Center, Research Triangle Park, NC 27711; HSMA Computer Facility, HHS, Parklawn Bldg., Rockville, MD 20203; Financial Management Division, EPA, 401 M St., SW., Washington, DC 20460.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Salary and related payroll cost data and reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 44 U.S.C. 3301; Title 6, GAO Policy and Procedures Manual, pursuant to 31 U.S.C. 66(a) and sections 112(a) and 113 of the Budget and Accounting Procedures Act of 1950.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To conduct all necessary and appropriate intra-agency payroll activities. To furnish information requested by the U.S. Treasury for it to issue paychecks and distribute pay according to employees' directions. To report tax withholding to IRS and appropriate State and local taxing authorities; FICA deduction to SSA; dues deductions to labor unions; withholdings for health and life insurance to insurance carriers and U.S. O.P.M.; charity contribution deductions to agents of charitable institutions; annual W-2 statements to taxing authorities and the individual.

For additional routine uses see routine use paragraphs in Prefatory Statement to EPA systems published in 40 FR 43194 (September 18, 1975).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosure to credit reporting agencies:* Pursuant to 5 U.S.C. 552a (b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Computer records maintained on tape, others on paper.

**RETRIEVABILITY:**

Name and employee number.

**SAFEGUARDS:**

Paper records in locked metal file cabinets and automated filing banks within locked room.

**RETENTION AND DISPOSAL:**

Retained and disposed of according to EPA Records Control Schedules.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Payroll Accounts Office, EPA, 401 M St., SW., Washington, D.C. 20460.

**NOTIFICATION PROCEDURE:**

Inquiries may be addressed to System Manager.

**RECORD ACCESS PROCEDURES:**

Requests should be addressed to System Manager.

**CONTESTING RECORD PROCEDURES:**

Requests should be addressed to System Manager.

**RECORD SOURCES CATEGORIES:**

Individuals, supervisors, timekeepers, official personnel records, IRS.

**EPA-7****SYSTEM NAME:**

Travel Voucher Folders, Advance Cards, and Payee Files-EPA.

**SYSTEM LOCATION:**

Financial Management Division, EPA, 401 M St., SW., Washington, D.C. 20460.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees of EPA, consultants, and private citizens who travel or perform services for EPA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Travel vouchers with reimbursable details for specific trips. Travel advance cards with details of advances received and trip expenses applied. Payee files with itemized invoices.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Travel Expense Amendments Act of 1975 (Pub. L. 84-22); Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; Federal Claim Collection Act of 1966 (as amended).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Subgroups of files are used to determine amounts due an individual for authorized and official travel for EPA, and to conduct other payee-related activities. Transmittal to U.S. Treasury for payment. For additional routine uses see routine use paragraphs of Prefatory Statement to EPA systems published in 40 FR 43194 (September 18, 1975).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosure to Credit Reporting Agencies:* Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Manual.

**RETRIEVABILITY:**

Name.

**SAFEGUARDS:**

Voucher files are kept in locked room. Advance cards in lockable metal file cabinets. Payee files in locked cabinets.

**RETENTION AND DISPOSAL:**

Retained and disposed of according to EPA Records Control Schedules.

**SYSTEM MANAGER(S) AND ADDRESS:**

Accountant-In-Charge, Financial Management Division, EPA, 401 M St., SW., Washington, DC 20460.

**NOTIFICATION PROCEDURES:**

Inquiries may be addressed to System Manager.

**RECORD ACCESS PROCEDURES:**

Requests should be addressed to System Manager.

**CONTESTING RECORD PROCEDURES:**

Requests should be addressed to System Manager.

**RECORD SOURCE CATEGORIES:**

Individuals, supervisors, and finance (or accounting) office standard references.

**EPA-9****SYSTEM NAME:**

Freedom of Information Act Request File.

**SYSTEM LOCATION:**

(a) Freedom of Information Section, Office of the Administrator, EPA, 401 M St., SW., Wash., DC 20460.

(b) EPA, Region I, Room 2303, John F. Kennedy Federal Building, Boston, MA 02203.

(c) EPA, Region II, Room 1005, 26 Federal Plaza, New York, NY 10278.

(d) EPA, Region III, 841 Chestnut Street, Philadelphia, PA 19106.

(e) EPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.

(f) EPA, Region V, 230 S. Dearborn St., Chicago, IL 60604.

(g) EPA, Region VI, First International Building, 1201 Elm St., Dallas, TX 75270.

(h) EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101.

(i) EPA, Region VIII, Suite 900, 1860 Lincoln Street, Denver, CO 80295.

(j) EPA, Region IX, 215 Fremont St., San Francisco, CA 94105.

(k) EPA, Region X, 1200 Sixth Ave., Seattle, WA 98101.

(l) EPA, Office of General Counsel, 401 M St. SW., Wash., DC 20460.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All persons requesting information under the Freedom of Information Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copy of each Freedom of Information Act request received and a copy of the Agency's response and other pertinent correspondence and records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

EPA Order 1550.1C, dated August 23, 1978 and 40 CFR Part 2, dated September 1, 1978.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To conduct all necessary and appropriate intra-agency Freedom of Information activities. To compile the reports required by 5 U.S.C. 552(d).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosure to Credit Reporting Agencies:* Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

These records are maintained in file folders and in locked cabinets (Duplicate copies of FOIA requests and agency responses are filed in binders and are available for public inspection).

**RETRIEVABILITY:**

Name and request identification control number.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with EPA Records Control Schedules.

**SYSTEM MANAGER(S) AND ADDRESS:**

For records at (a) through (k) Freedom of Information Office, address as given in system location. For records at (1) Grants, Contracts and General Administration Division, address as given in system location above.

**NOTIFICATION PROCEDURE:**

Inquiries may be addressed to system manager.

**RECORD ACCESS PROCEDURE:**

Requests should be addressed to system manager.

**CONTESTING RECORD PROCEDURES:**

Requests should be addressed to system manager.

**RECORD SOURCE CATEGORIES:**

Information in this system comes from the individual to whom it applies.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 522a(k)(5), all information and material which meets

the criteria of these subsections are or may be exempted from notice, access, and contest requirements.

[FR Doc. 85-10362 Filed 4-29-85; 8:45 am]

BILLING CODE 6550-50-M

**FEDERAL COMMUNICATIONS COMMISSION**

[CC Docket No. 80-634; FCC 85-178]

**Changes in the Corporate Structure and Operations of the Communications Satellite Corporation**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final report and order adopting form modifications.

**SUMMARY:** The Report and Order adopts modifications to the annual Form M and monthly Form 901 financial reports which Comsat is currently required to submit to the Commission. The Order implements specific aspects of the Second Comsat Structure Order, 49 FR 19118 (May 4, 1984), by updating of Comsat's reporting system consistent with its current organizational structure. This Order strengthens reports necessary for regulatory purposes, while deleting or simplifying others where possible.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. deChabert, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, [202] 632-4047.

**EFFECTIVE DATE:** April 30, 1985.

**Report and Order**

In the Matter of Changes in the corporate structure and operations of the Communications Satellite Corporation; CC Docket No. 80-634.

Adopted: April 11, 1985

Released: April 19, 1985.

By the Commission.

**I. Introduction and Background**

1. On August 8, 1984, we adopted a *Second Notice of Proposed Rulemaking* in the above-captioned proceeding<sup>1</sup> for the purpose of modifying the common carrier reporting system of the Communications Satellite Corporation ("Comsat" or "the corporation") to reflect the cost allocation processes established by us in the *Second Comsat Structure Order*,<sup>2</sup> and to eliminate

<sup>1</sup>FCC 84-392, released August 14, 1984, 49 FR 34041 (August 28, 1984), with Erratum, Mimeo No. 6089, released August 20, 1984 ("Second Notice").

<sup>2</sup>Comsat, 97 FCC 2d 145 (1984), *recon. granted in part*, CC Docket No. 80-634, FCC 84-565 (released December 11, 1984) ("Second Comsat Structure Order"). In the Second Comsat Structure Order, we

information which we no longer regarded as useful or necessary for regulatory purposes. In response to the *Second Notice*, comments were filed by Comsat and TRT Telecommunications Corporation (TRT). Reply comments were filed by both parties. Below we: (a) Describe Comsat's current filing requirements; (b) outline our proposed revisions to these requirements as contained in the *Second Notice*; and (c) summarize the comments and reply comments. We then analyze the record and discuss our reasons for adopting with certain modifications the proposals set forth in the *Second Notice*.

**A. Current Filing Requirements**

2. Pursuant to sections 219 and 220 of the Communications Act of 1934, 47 U.S.C. 219, 220 (1983), section 401 of the Communications Satellite Act of 1962, 47 U.S.C. 741 (1976) and §§ 43.21 and 43.31 of the Commission's Rules and Regulations, 47 CFR 43.21, 43.31 (1983), Comsat files three different annual (Form M) and monthly (Form 901) reports.<sup>3</sup> First, the "Comsat-unconsolidated" annual and monthly reports cover the activities of the World Systems Division ("WSD") and Headquarters operations before consolidation with Comsat's wholly-owned subsidiaries.<sup>4</sup> Second, the "Comsat-consolidated" annual and monthly reports cover the activities of Comsat as a whole, including its wholly-owned subsidiaries and its partnership investments. Third, the "COMSAT General Corporation unconsolidated" annual and monthly reports cover the activities of COMSAT General.<sup>5</sup>

**B. Proposed Revisions**

3. We proposed in the *Second Notice* to revise and streamline the annual Form M and monthly Form 901 financial and corporate activity reports which Comsat currently files. Specifically, we

directed Comsat to revise its methodology for allocating directly assigned expenses and common costs between and among its jurisdictional (INTELSAT/INMARSAT) and nonjurisdictional (competitive or unregulated) accounts.

<sup>3</sup>Form M is an annual report filed by common carriers which provides detailed financial, corporate structure, corporate activities, employee, and shareholder information in a variety of schedules and forms. Form 901 is a monthly summary of revenues, expenses, assets and traffic.

<sup>4</sup>WSD and Headquarters operations include Comsat's "jurisdictional" functions. The term "jurisdictional" refers to the INTELSAT and INMARSAT activities in which Comsat participates under the mandates of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701-44 (1976), 47 U.S.C. Supp. IV 751-7 (1980) and the INTERSAT and INMARSAT Agreements.

<sup>5</sup>These reports do not cover the activities of COMSAT General's subsidiaries.

tentatively concluded that: (a) Comsat's "unconsolidated" Forms M and 901 for the WSD and Headquarters operations be recast to show separately the percentage shares of balance sheet and income entries that Comsat allocates among the corporation's INTELSAT jurisdictional, INMARSAT jurisdictional or nonjurisdictional accounts;<sup>8</sup> (b) Comsat report on its "consolidated" Forms M and 901 for the entire corporation all data pertaining to the allocation process (e.g., personnel, expenses, assets, investments, expenditure, etc.) individually for its jurisdictional INTELSAT and INMARSAT activities, the nonjurisdictional activities of the parent legal entity, Comsat's wholly-owned subsidiaries, and all partnerships in which it participates;<sup>9</sup> (c) Comsat file, in lieu of the "COMSAT General Corporation unconsolidated" Forms M and 901, reports reflecting all intracorporate transactions with COMSAT General and Comsat's other subsidiaries and affiliates; and (d) COMSAT General file only those reports required of similarly situated domestic carriers.<sup>8</sup> We also provided opportunity in the *Second Notice* for interested parties to comment on our proposals and to suggest other ways in which Comsat's reports could be further simplified, revised or eliminated were appropriate and in the public interest.

#### C. Comments and Reply Comments

4. In response to the *Second Notice*, Comsat states that it fully supports our objectives and the thrust of the proposals set forth in the *Second Notice*, its sole objection being to our tentative conclusions as to its obligation to submit separately and individually reports on the financial activities or its wholly-owned subsidiaries and partnerships. Otherwise, to meet our tentative requirements, Comsat has proposed to file a single set of "consolidating"<sup>9</sup>

financial statements which would replace the current bifurcated "COMSAT-unconsolidated" and "COMSAT-consolidated" forms. The monthly 901 reports would have six separate columns for INTELSAT, INMARSAT, other WSD (nonjurisdictional), total WSD, other nonjurisdictional (wholly-owned subsidiaries and Headquarters) and total Comsat.<sup>10</sup> In addition, the monthly statements would include a schedule showing the results of Comsat's costs allocations and bases therefor for home office, shared facilities and research and development (R&D) project expenses at Comsat Laboratories. Annual Form M reports would remain the same under Comsat's proposal except that the formats of the Schedule 10 Balance Sheets and the Schedule 11 Income Statements would be modified as above to conform with the category breakdowns Comsat has proposed for its 901 reports.<sup>11</sup>

5. In proposing to replace separate "unconsolidated" and "consolidated" reports with "consolidating" financial statements, Comsat states that these statements are sufficient for regulatory oversight purposes. Moreover, Comsat asserts that it should not be ordered to file nonjurisdictional financial data by individual subsidiary and partnership rather than on an aggregate basis. It argues that the *Second Comsat Structure Order* does not require disaggregation and that such a requirement may compromise corporate proprietary information.

6. Comsat supports our tentative conclusion that filings for COMSAT General need not submit financial activity data on domestic satellite operations other than that which is required of similarly situated domestic carriers. In addition, Comsat seeks authority to cease filing the supplemental schedules which previously it appended to its Forms M and 901. Comsat states that the information contained in these schedules would be available in its new consolidating statements, and that, in any event, the information made available in these supplemental

submissions appears not to have been a subject of significant outside interest in the past. Finally, Comsat proposes the elimination of Schedules 60B (Pensions Paid) and 71 (Accidents to Employees) on the grounds that pensions are covered under the Employee Retirement Income Security Act (ERISA) and virtually no accidents have been reflected in recent Schedule 71 reports.

7. The other party filing comments in this proceeding, TRT Telecommunications Corporation (TRT), seeks assurance that Comsat's financial reports will accurately convey the corporation's application of manpower and economic resources so as to enable the Commission to detect any cross-subsidization of Comsat's competitive ventures with revenues derived from its jurisdictional activities. TRT also expresses the concern that without stringent reporting requirements, Comsat may be able to cross-subsidize certain of its "competitive" activities with revenues derived from its "monopoly" INTELSAT activities. TRT states that these competitive activities include INTELSAT business services,<sup>12</sup> end-to-end services provided by a separate subsidiary<sup>13</sup> and future earth station services.<sup>14</sup>

8. TRT also states to facilitate Commission oversight of these financial reports, Comsat must be required to show the numerical bases for its prescribed cost allocations between jurisdictional and nonjurisdictional activities and between "competitive" and "monopoly" jurisdictional activities, the specific data sources used, the specific allocation factors used, and their derivation. Recognizing the additional burden which may be imposed upon Comsat in order to comply with the revised reporting requirements proposed in the *Second Notice* and its pleading, TRT suggests that we consider changing Form 901 from a monthly to a quarterly report.

9. In reply to TRT, Comsat asserts that if approved, its proposal to report separately INTELSAT, INMARSAT,

<sup>8</sup> *Second Notice, supra* at paras. 8-9.

<sup>9</sup> *Id.* at para. 14.

<sup>10</sup> *Id.* at para. 11. Erratum, *supra* p. 2. We tentatively concluded that this new approach would be consistent with our recent endeavors to streamline regulatory requirements for non-dominant domestic carriers. See Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor (Fourth Report and Order), 95 FCC 2d 554 (1984).

<sup>11</sup> Comsat distinguishes between "consolidating" and "consolidated" financial statements as follows: "consolidated" implies "that similar accounts" would be combined into one category. To the contrary, the "consolidating" financial statements proposed by Comsat would list each account separately and, in addition, include the aggregated amounts." Letter to William J. Tricarico, Secretary, FCC, from Ruth E. Sigler, General Attorney, World Systems Division and Paul Weeks, Assistant General Counsel, Comsat, dated November 8, 1984.

appended to Motion for Leave to Respond to Reply Comments, dated November 8, 1984, which motion we grant below.

<sup>12</sup> There are not such levels of detail in the line items of the two separate reports Comsat currently submits. Heretofore, to derive a picture of overall activities, one would have had to compare "Comsat-consolidated" to "Comsat-unconsolidated" annual and monthly reports to ascertain the relationship of Comsat's jurisdictional investments and obligations to the nonjurisdictional.

<sup>13</sup> Samples of Comsat's proposed revised financial statements are included here as Appendix A.

<sup>14</sup> See, e.g., Communications Satellite Corporation, File No. CSG-83-034-P/L, released April 11, 1984.

<sup>15</sup> Report and Order in CC Docket No. 82-540, Modification of policy on ownership and operation of U.S. earth stations that operate with the INTELSAT global communication satellite system, FCC 84-605, released December 18, 1984.

<sup>16</sup> Proposed Modifications of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite (Report and Order), 90 FCC 1304, vacated and remanded, ITT World Communications Inc. v. FCC, 725 F. 2d 732 (D.C. Cir. 1984); order on remand (Second Report and Order), FCC 84-633, — FCC 2d — (released January 11, 1985).

other (non-jurisdictional) WSD, total WSD, other (nonjurisdictional) and total Comsat activities, and to include a reporting of the results of the prescribed cost allocations and the base therefore, will provide information of sufficient detail to enable the Commission to fulfill its oversight responsibilities with respect to Comsat's jurisdictional activities. Comsat reiterates that while it has no objection to providing a schedule of nonjurisdictional activities in the aggregated form, it is opposed to breaking down this category of nonjurisdictional activities on an individual line-of-business basis. As to the distinctions TRT would draw between "competitive" and "monopoly" jurisdictional activities, Comsat asserts that it is premature to mandate a separate accounting for its prospective new service offerings. IBS earth station construction is being handled through a separate subsidiary and will be accounted for as a separate line item, and it is not clear, Comsat argues, how future earth station ventures will be treated in a competitive environment.

10. In its reply, TRT states that rather than seeking to address the proposals set forth in the *Second Notice* Comsat has responded with a vague counter-proposal of a single six-column report that will give less visibility to Comsat's operations, make it more difficult to detect cross-subsidies between Comsat's "competitive" and "monopoly" activities, and make comparisons with preexisting Form M's and 901's difficult if not impossible. TRT also states that Comsat's proposal to include all Headquarters activities within the "other (nonjurisdictional)" category gives the impression that no Headquarters investment and expenses will be allocated to jurisdictional accounts and that Comsat Headquarters engages in no jurisdictional activities. Noting that Comsat has proposed only to provide aggregated data for its wholly-owned subsidiaries, TRT asserts that Comsat also must be required to comply with our tentative conclusion in the *Second Notice* that it hereafter must report all data pertaining to the allocative process separately for each subsidiary and partnership. Also, TRT states that should we adopt Comsat's proposals, we also should provide for purpose of comparison a two-year transition period during which both the old and new Forms M and 901 reports would be filed.

11. In a letter dated November 8, 1984, Comsat states that TRT misunderstands the manner in which Comsat proposes

to treat its Headquarters expenses.<sup>15</sup> Also, Comsat opposes the filing of reports in both the existing and new formats because comparison of the two would be unproductive. In Comsat's view, its proposed revised financial activity reports would be of a much greater level of detail than its current Forms M and 901. Moreover, Comsat avers that any comparison would nevertheless be virtually impossible because certain activities previously classified as jurisdictional (e.g., INTELSAT contracts) are now classified as nonjurisdictional as a result of the *Second Comsat Structure Order* and related decisions.

## II. Discussion

### A. Overview

12. We stated in the *Second Notice* that the improper assignment of costs and expenses to Comsat's jurisdictional accounts could result in an inflated revenue requirement, excessive rates to the users of the INTELSAT and INMARSAT satellite systems and impermissible subsidies to Comsat's nonjurisdictional ventures.<sup>16</sup> With these considerations in mind, we tentatively concluded that Comsat's reporting system should be revised to achieve four basic objectives: (a) To facilitate the ability of the staff to monitor Comsat's jurisdictional INTELSAT and INMARSAT activities; (b) to enable the staff to ensure that Comsat's rates for INTELSAT and INMARSAT services are cost-based and that the revenues derived from such services are not used to improperly cross-subsidize other Comsat activities; (c) to provide an accurate picture of the corporation's overall activities to ensure that Comsat meets its statutory obligations and that Comsat's nonjurisdictional activities do not adversely affect the financial health of the corporation to the detriment of the jurisdictional ratepayer; and (d) to relieve Comsat of the burden of expending funds and manpower on reports or schedules not useful to the above objectives.

13. We find that Comsat's proposed revisions to its annual Form M and monthly Form 901's essentially comport with the tentative conclusions submitted under the reporting formats Comsat suggests will be sufficient to render a clear picture of the financial activity of the entire Comsat enterprise, we shall not require Comsat to supplement its

<sup>15</sup> Comsat's letter was attached to a motion for leave to respond to reply comments. See n. 9 *supra*. We grant this motion because we find the information presented in Comsat's letter helpful to the resolution of the issues before us.

<sup>16</sup> *Second Notice, supra* at para. 6.

annual and monthly reports schedules with allocation data individually for each Comsat subsidiary and partnership. We shall require, however, that Comsat supplement its schedules with a submission depicting all intracorporate transactions between the parent company and each of these entities. Thus, we shall grant Comsat's requests that it no longer be required to file: (a) Separate sets of "Comsat-consolidated" and "Comsat-unconsolidated" annual and monthly reports; (b) separate supplements to its monthly Form 901 financial statements; and (c) separate Form M and Form 901 schedules for COMSAT General. Also, we shall no longer require Comsat to submit Schedule 71 on employee accidents.

14. Under these new reporting requirements, the staff will have at its disposal the requisite information to effectively monitor Comsat's activities and the concerns expressed by TRT will be mitigated. Consequently, we shall deny as of little, if any, public interest benefit TRT's request that Comsat be required for two years to file reports on both the preexisting formats and the formats we adopt today. We find this requirement would be overburdensome both to the staff and to Comsat. However, we shall adopt TRT's suggestion that Comsat henceforth report separately on all Form M and 901 reports the financial activities of the subsidiaries it intends to establish to offer so-called "competitive jurisdictional" activities, such as earth station and end-to-end services.

### B. Monthly Form 901

15. In lieu of filing two sets of monthly reports, "Comsat-unconsolidated" and "Comsat-consolidated", Comsat seeks permission to submit a single set of three "consolidating" reports. As shown in Appendix A, these would consist of: "Consolidating Statement of Operations" (Chart 1); "Consolidating Balance Sheet" (Chart 2); and "Allocation of Home Office Costs, Research and Development Costs, and Shared Facilities" (Chart 3). On Chart 1, Comsat proposes to list operating revenues, operating expenses, operating income, other income and net income in six categories (INTELSAT, INMARSAT, Other—WSD (nonjurisdictional), Total WSD, Other nonjurisdictional and Total). Comsat's second monthly chart, "Consolidating Balance Sheet" is intended to show the assets, capital and liabilities of the corporation for each of the six categories listed in Chart 1. The third report, "Allocation of Home Office Costs, Research and Development



Costs, and Shared Facilities" ("Home Office Costs schedule"), is intended, pursuant to our prescriptions in the *Second Comsat Structure* and *Second Comsat Structure Reconsideration* orders, to provide all data pertaining to Comsat's process for allocating these costs among the six categories described in Chart 1. Comsat opposes any further breakdown of the "other nonjurisdictional" category on two grounds: first, that a more detailed accounting is not required to enable us to carry out our regulatory duties, and second, that Comsat should not be forced to disclose to competitors the financial status of its various individual competitive lines of business. We agree.

16. In the *Second Notice*, we stated that in order for the staff to determine whether Comsat is properly allocating common expenses and common plant costs among its various jurisdictional and nonjurisdictional accounts, Comsat must provide separate entries for its INTELSAT, INMARSAT and nonjurisdictional activities. The formats for monthly financial reports which Comsat has proposed are of sufficient detail to satisfy our requirements. As we already require Comsat to submit financial information for each separate wholly-owned affiliate and partnership in its annual Capitalization Plan submissions,<sup>17</sup> we shall not require Comsat also to file a separate report showing the breakdown of the "other-nonjurisdictional" categories for each individual wholly-owned subsidiary and partnership in the new monthly "consolidating" schedules Comsat proposes to submit.

17. We anticipate that Comsat's proposed 901 reports, which we are prescribing by this order, will enable the staff to monitor Comsat's financial activities to protect against any potential abuses stemming from Comsat's unique position as sole supplier of INTELSAT space segment facilities in the United States, as a future competitive supplier of earth station services, and as potential end-to-end service carrier. In particular, we find that Comsat's proposed "Home Office Costs" schedule will provide the cost allocations justifications sought by TRT. As such, we do not agree with TRT that our revised reporting requirements will be less effective mechanisms for regulatory oversight than current requirements. To the contrary, we believe that as presented in the formats we have prescribed, Comsat's modified

financial activity reports will enable interested parties such as TRT to obtain a more clear and concise picture of Comsat's corporate structure and operations than the current 901's provide. In fact, there may be merit to TRT's suggestion that Comsat's monthly Forms 901 be submitted only on a quarterly basis. As a practical matter, given the amount of detail which we are requiring in the three 901 schedules, and the time it may take Comsat to prepare and the staff to review them, it ultimately may prove unnecessary for Comsat to engage in the laborious process of assembling and collating the data on these schedules on a monthly basis, as is required of all common carriers under disposed to initiate a rulemaking to grant in Section 43.31 an exception for Comsat in recognition that its reporting requirements may be more comprehensive and stringent than required by the public interest.

#### C. Annual Form M

18. Comsat seeks authority to revise its existing Form M Schedule 10 Balance Sheet and Schedule 11 Income Statement to provide separate columns for INTELSAT, INMARSAT, other WSD (nonjurisdictional), total WSD, other nonjurisdictional and total Comsat. As this approach would provide considerably more detail to the schedules we currently receive, we find it acceptable for our purposes. Comsat has proposed to provide on its monthly "Home Office Costs" schedules cumulative information on all allocations (e.g., personnel, payroll, treasurer and treasury operations, shareholder meeting and common stock service costs, residual pool and research and development) under separate "year-to-date" line items.<sup>18</sup> Therefore, we find it unnecessary to require Comsat to submit a separate annual "Home Office Costs" schedule (i.e., a report reflecting on a twelve-month basis the information to be provided monthly). We shall however require Comsat to supplement its new monthly "Home Office Costs" schedules with year-to-date entries for each of the four categories comprising the "Shared Facilities" line item: Headquarters, Maintenance and Supply Center, Laboratories, and Computer.

19. With these additions, Comsat's annual submissions should provide the information and data necessary to scrutinize Comsat's methodology for allocating shared general and administrative and research and development expenses among its jurisdictional and nonjurisdictional

accounts, and mitigate the concerns of TRT as to the credibility of Comsat's cost allocations process.

#### D. Reporting Requirements for COMSAT General and Intracorporate Transfer Reports

20. In the *Second Notice*, we tentatively concluded that the Form M and 901 schedules currently filed by COMSAT General are of marginal value to the regulation of Comsat's jurisdictional international common carrier activities. As COMSAT General is principally involved in domestic satellite operations, we found no reason to treat the company differently than other domestic satellite carriers. Therefore we proposed to relieve COMSAT General of the obligation to file Forms M and 901 and to have COMSAT General file in the future only those financial reports which are required of similarly situated domestic carriers.<sup>19</sup> Nevertheless, to meet our overall objective of gaining sufficient information to derive an accurate picture of the overall activities of the corporation and to meet our regulatory responsibilities, we stated our intention to require Comsat to submit additional data on all intracorporate transactions between the parent company and COMSAT General, Comsat's other wholly-subidiaries, and the partnerships in which Comsat is a participant.

21. The above tentative proposals were unopposed by the parties to this proceeding. As they are consistent with our efforts to streamline the regulatory requirements for competitive domestic common carriers generally, while retaining (and fine-tuning) those filing requirements which are necessary to carry out our oversight responsibilities, we shall adopt these proposals without modification. We instruct the Chief, Common Carrier Bureau, to take such steps as may be necessary to develop expeditiously a schedule or schedules for Comsat's intracorporate transactions and to report to the Commission when this task has been completed.

#### E. Other Schedules

22. In response to our request for suggestions of other Comsat reports which either can be simplified or eliminated, Comsat asks that we no longer require it to file the supplemental

<sup>17</sup> See Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation, COMSAT, 94 FCC 2d 1149 (1983), recon. granted in part, FCC 83-381 (released August 17, 1983).

<sup>18</sup> See Appendix A, Chart 3.

<sup>19</sup> See *Second Notice*, *supra* at para. 11, as amended by Erratum. We stated, however, that Part 43 of our rules would remain applicable to COMSAT General, Comsat's other wholly-owned affiliates and Comsat's partnerships were these entities to offer services other than domestic satellite operations. *Id.*

schedules it currently attaches to its Form M and 901 reports because the data contained therein henceforth will be made available in its "consolidating" statements. Comsat also seeks relief from filing Schedules 60B (Pensions Paid) and 71 (Accidents to Employees). We shall grant these requests with respect to the supplemental annual and monthly schedules and Schedule 71. We also find insufficient public interest benefit to justify the duplication of data contained in the supplemental Forms M and 901 schedules, information which will be made available under the new reporting formats adopted today. Similarly, we will no longer require Comsat to file Schedule 71 with us because the same information must be provided to the Department of Labor pursuant to the Occupational Health and Safety Act of 1970. Therefore, Schedule 71 is superfluous and need no longer be filed by Comsat. Schedule 60B, however, is required of all communications common carriers with operation revenues in excess of \$1,000,000, pursuant to § 43.42 of our Rules and Regulations. As we see no compelling reason to exempt Comsat alone from this filing requirement, we decline to do so.

#### F. "Competitive" Jurisdictional Activities

23. TRT argues that Comsat's financial and corporate activity reports should reflect separately the various activities, such as ownership and management of international earth stations, in which Comsat will engage competitively, but which appear to be "jurisdictional" in nature. Comsat responds that it would be premature to impose such a requirement at this time. We disagree. Comsat is to establish a separate subsidiary for the provision of earth station services on or before May 20, 1985. Also, in the immediate future, Comsat will determine whether to enter the end-user market, and if it decides to do so, end-to-end services must also be provided through a separate subsidiary. Given this rush of events, we place Comsat on notice that all activities which may be described as "competitive" jurisdictional activities must be reflected in the aggregate "other nonjurisdictional" categories included on its annual and monthly Balance Sheet, Statement of Income and Home Office Costs schedules. Moreover, these specific "competitive" jurisdictional activities must be accounted for individually in the separate breakout of the "other jurisdictional" line items Comsat is to file. It will be no imposition on Comsat to provide for these modifications now, in anticipation of its

implementation of our *Authorized User II* and *Earth Station Ownership* decisions.

#### G. Transition Period

24. As a final matter, we deny TRT's request that we establish a two-year transition period during which Comsat would file reports under both preexisting and new formats. We are unconvinced of the public interest benefit of this approach. While it may be somewhat difficult for interested parties to compare the information presented in the new reporting formats with that in the Form M and 901 reports Comsat has heretofore submitted, we are confident that useful comparisons can be made and analyses undertaken. We also note that much of the information contained in the preexisting annual and monthly schedules will be of decreasing interest as Comsat restructures and its service offerings become subject of additional competition. Furthermore, we decline to impose upon Comsat a burden borne by no other carrier simply to reassure TRT that Comsat is acting in good faith. We are confident that the staff will be able to ascertain any discrepancies in Comsat's future accounting and reporting practices and take the necessary action to ensure that Comsat's conduct is consistent with this order. TRT's request for a transitional dual reporting period is therefore denied as lacking in public interest benefit.

#### III. Summary

25. This phase of the *Comsat Structure* proceeding was instituted for the purpose of revising and simplifying Comsat's reporting requirements to better reflect the new cost allocation methodologies adopted in the *Second Comsat Structure Order*. We conclude that the annual and monthly financial activity reporting requirements we are adopting today, in conjunction with the updates to its three-year Capitalization Plan which Comsat files on an annual basis, will enable the staff more effectively to monitor Comsat's jurisdictional INTELSAT and INMARSAT activities. At the same time, we believe today's decision will serve to relieve Comsat of the burden of filing reporting schedules which are superfluous to the regulatory oversight process.

#### IV. Ordering Clauses

26. Accordingly, It IS ORDERED, pursuant to section 4(i), 4(j), 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. sections 4(i), 219-220 (1983), section 401 of the Communications Satellite Act of 1962, 47

U.S.C. section 741 (1976) and §§ 43.21 and 43.31 of the Commission's Rules and Regulations, 47 CFR 43.21 and 43.31 (1983), that Communications Satellite Corporation (Comsat) shall revise its current monthly "Comsat-consolidated" and "Comsat-unconsolidated" Form 901 reports in the Balance Sheet, Statement of Income, Intracorporate Transfers, and Allocation of Home Office Costs, Research and Development Costs and Shared Facilities schedule formats, and supplements thereto, as provided above in paragraphs 16 and 17. Comsat shall file such revised financial schedules with the Commission within forty (40) days after the end of the calendar month during which this Order published in the *Federal Register*, and within forty (40) days of the end of every calendar month thereafter.

27. It is further ordered, that, in lieu of its annual "Comsat-consolidated" and "Comsat-unconsolidated" Form M reports, Comsat henceforth shall substitute therefor and timely file with the Commission not later than March 31 of each year for the preceding calendar year, the modifications to the annual Schedules 10 and 11, and the supplemental thereto, described above in paragraph 18.

28. It is further ordered, that, henceforth, COMSAT General Corporation shall file with the Commission only such financial information as is currently required of similarly situated domestic carriers.

29. It is further ordered, that any Comsat subsidiary, or partnership in which Comsat is a participant, which offers common carrier services other than domestic satellite operations, shall remain subject to the reporting requirements set forth in Part 43 of the Commission's Rules and Regulations and other applicable Commission decisions.

30. It is further ordered, that the Chief, Common Carrier Bureau is directed to take such steps as are necessary to develop a schedule or schedules depicting all intracorporate transfers between Comsat and its various subsidiaries and partnership ventures, as provided above in paragraphs 20 and 21, and to report back to the Commission upon completion of this task.

31. Pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 605, it is certified, that sections 603 and 604 of the Act do not apply because the annual and monthly reporting requirements, and the instant modifications thereof as provided for above, are rules of particular applicability to Communications Satellite Corporation

and are, hence, not subject to the Regulatory Flexibility Act. *Id.* at section 601(2).

32. It is further ordered that the request of Communications Satellite Corporation to respond to the reply comments of TRT Telecommunications Corporation is hereby GRANTED.

33. It is further ordered that the policies adopted herein are effective upon Federal Register publication.

34. It is further ordered, that CC Docket No. 80-634 is hereby terminated.

35. It is further ordered, that the Secretary shall cause this Report and Order to be published in the Federal

Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission  
William J. Tricarico,  
Secretary.

### Appendix A—Chart 1

#### COMMUNICATIONS SATELLITE CORPORATION, CONSOLIDATING STATEMENT OF OPERATIONS

[\$(000)]

	INTELSAT	INMARSAT	Other WSD (non-jurisdictional)	Current month total, WSD	Other (non-jurisdictional)	Period June 1984 Total
Operating revenue:						
International Satellite Systems						
INTELSAT Ownership—Net						
Maritime Services						
Technical Services and Other						
Total Operating Revenues						
Operating expenses:						
Depreciation & Amortization						
Use Charges						
Departmental Expenses						
Research and Development						
Share of INTELSAT Expenses:						
Operating & Maintenance						
Research and Development						
Share of INMARSAT						
INMARSAT Utilization—Net						
Total Operating Expenses						
OPERATING INCOME (Before Income Taxes)						
Provision for Income Taxes						
Net operating income						
Other income (expense)						
Interest from Temporary Cash Investments						
Other Income						
Amortization of Investment Credit						
Provision for Income Taxes						
Allowance for Funds Used During Constitution						
Total Other Income (Net)						
Net income						

### Appendix A—Chart 2

#### COMMUNICATIONS SATELLITE CORPORATION, CONSOLIDATING BALANCE SHEET

[\$(000)]

	INTELSAT	Period ended June 30, 1984			Total
		INMARSAT	Other WSD (Non-jurisdictional)	Total WSD	
Assets					
Property:					
Communications Plant in Service					
Accumulated Depreciation					
Net Communications Plant in Service					
Communications Plant Under Construction					
Plant Held for Future Use					
Property (Net)					
Investments					
Current Assets					
Cash and Temporary Cash Investments					
Receivables					
Customers					
Other Participants					
Accrued Interest					
Materials, Supplies & Spare Parts					
Prepayments to INTELSAT and INMARSAT					
Other					
Total Current Assets					

## COMMUNICATIONS SATELLITE CORPORATION, CONSOLIDATING BALANCE SHEET—Continued

(\$,000)

	INTELSAT	Period ended June 30, 1984			Total
		INMARSAT	Other-WSD (Non-jurisdictional)	Total WSD	
Note Receivable					
Goodwill					
Other Assets					
Total Assets					
Capitalization and Liabilities					
Current liabilities					
Accounts Payable					
Accrued Liabilities					
Total Current Liabilities					
Deferred credits & other liabilities					
Deferred Income Taxes					
Investment Credit (Net)					
Total Deferred & Other Liabilities					
Net capitalization					
Total Capitalization and Liabilities					

## Appendix A—Chart 3

## COMMUNICATIONS SATELLITE CORPORATION—ALLOCATION OF HOME OFFICE COSTS, RESEARCH &amp; DEVELOPMENT COSTS, AND SHARED FACILITIES

[June 1984]

	INTELSAT	INMARSAT	Other—WSD (non-jurisdictional)	Total WSD	Other (non-jurisdictional)	Total
<i>Cost Benefit Pools</i>						
Personnel:						
Current Month:						
Headcount						
Percentage						
Allocation						
Year-To-Date Allocation						
Payroll:						
Current Month:						
Headcount						
Percentage						
Allocation						
Year-To-Date Allocation						
Treasurer and Treasury Operations:						
Current Month:						
Gross Expenditures						
Percentage						
Allocation						
Year-To-Date Allocation						
Shareholder Meeting & Common Stock Service Costs:						
Current Month:						
Total Assets						
Percentage						
Allocation						
Year-To-Date Allocation						
<i>Residual Pool</i>						
Current Month:						
Operating Expenses						
Percentage						
Allocation						
Year-To-Date Allocation						
<i>Research and Development Pool</i>						
Current Month:						
Operating Expenses						
Percentage						
Allocation						
Year-To-Date Allocation						
<i>Shared Facilities</i>						
Headquarters:						
Square Footage						
Percentage						
Maintenance & Supply Center						
Expenses						
Percentage						
Laboratories:						
Expenses						
Percentage						
Computer						
Usage						

**Travel Reimbursement Experiment**

**AGENCY:** Federal Communications Commission.

**ACTION:** Publishing of Quarterly Report on Travel Reimbursement Experiment.

**SUMMARY:** In Pub. L. 97-259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. This must be done each quarter until September 30, 1985. In addition the Federal Communications Commission must publish each quarterly report in the Federal Register until September 30, 1985.

**DATE:** This report is for the period from January 1, 1985 through March 31, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Sherman, Office of the Managing Director, (202) 632-6900.

**SUPPLEMENTARY INFORMATION:** The report for the quarter ending March 31, 1985 is as follows:

**Summary Report**

Total Number of Sponsored Events:

11.  
Total Number of Sponsoring Organizations: 11.

Total Number of Commissioners/  
Employees Attending: 25.

Total Amount of Reimbursement:

Transportation.....	\$7,441.50
Room.....	5,006.21
Board.....	720.10
Other Expenses.....	800.52
Total.....	13,768.33

Individual Event Reports Attached.

**Individual Event Report**

**Sponsoring Organization (Name and Address):** International Thomson Communications, Inc., 600 Grant Street, Suite 600, Denver, Colorado 80203.

**Date of the Event:** February 11-15, 1985

**Description of the Event:** To participate in the Mobile Communications Exposition in Anaheim, CA.

Number of Commissioners Attending:  
0.

**Number and Title of Employees Attending:** 1, Bureau Chief; 1, Deputy Bureau Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation.....	\$768.00
Room.....	480.15
Board.....	163.85
Other Expenses.....	80.48
Total.....	<sup>1</sup> 1,493.48

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

**Sponsoring Organization (Name and Address):** National Translator Association, P.O. Box 628, Riverton, Wyoming 8251.

**Date of the Event:** March 21-25, 1985.

**Description of the Event:** To attend the National Translator Association seminar in Denver, Colorado.

Number of Commissioners Attending:  
0.

**Number and Title of Employees Attending:** 1 electronics Engineer, Mass Media Bureau.

Amount of Reimbursement:

Transportation.....	\$239.00
Room.....	200.00
Board.....	100.00
Other Expenses.....	25.00
Total.....	<sup>1</sup> \$564.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

**Sponsoring Organization (Name and Address):** Community Broadcasters Association, 1830 Jefferson Place NW., Washington, DC 20036.

**Date of the Event:** January 11-16, 1985.

**Description of the Event:** To participate on a panel on Low Power TV rules and the FCC lottery system in San Francisco, CA.

Number of Commissioners Attending:  
0.

**Number and Title of Employees Attending:** 1, Supervisory General Attorney, Mass Media Bureau.

Amount of Reimbursement:

Transportation.....	\$428.00
Room.....	0
Board.....	0
Other Expenses.....	0
Total.....	<sup>1</sup> 428.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

**Sponsoring Organization (Name and Address):** Association of Long Distance Telephone, Companies of Missouri, 18040 Edison Avenue, Chesterfield, Missouri 63017.

**Date of the Event:** March 26-27, 1985.

**Description of the Event:** To address the annual meeting of the Missouri Chapter of the Association of Long Distance Telephone Companies in Springfield, Missouri.

Number of Commissioners Attending:  
1.

**Number and Title of Employees Attending:** 1, Commissioner Patrick; 1 Attorney Adviser, Office of Commissioner Patrick.

Amount of Reimbursement:

Transportation.....	\$772.00
Room.....	120.00
Board.....	60.00
Other Expenses.....	50.00
Total.....	<sup>1</sup> 1,008.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

**Sponsoring Organization (Name and Address):** United States Telephone Association, 1801 K. Street NW., Suite 1201, Washington, DC 20006.

**Date of the Event:** March 26, 1985.

**Description of the Event:** To speak at the United States Telephone Association seminar in New York City.

Number of Commissioners Attending:  
1.

**Number and Title of Employees Attending:** 1, Commissioner Dawson.

Amount of Reimbursement:

Transportation.....	\$100.00
Room.....	0
Board.....	5.00
Other Expenses.....	22.25
Total.....	<sup>1</sup> 127.25

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

**Sponsoring Organization (Name and Address):** Energy Telecommunications and Electrical Association, 1150 17th Street NW., Washington, DC 20036.

**Date of the Event:** March 10-14, 1985.

**Description of the Event:** To participate in the Energy Telecommunications and Electrical Association Symposium in San Antonio, Tx.

Number of Commissioners Attending:  
0.

**Number and Title of Employees Attending:** 1, Bureau Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation.....	\$268.00
Room.....	200.00
Board.....	43.75
Other Expenses.....	60.00
Total.....	<sup>1</sup> 571.75

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): American Bankers Association, 1120 Connecticut Avenue NW., Washington, DC 20036.

Date of the Event: February 1-6, 1985.  
Description of the Event: To speak at the American Bankers Association Telecommunications and Financial Networks Conference in New Orleans, LA.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1 Deputy Bureau Chief, Common Carrier Bureau.

Amount of Reimbursement:

Transportation .....	\$359.50
Room .....	150.00
Board .....	0
Other Expenses .....	81.50

Total.....<sup>1</sup> 591.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Southwest Communications Association, P.O. Box 53417, Houston, Texas 77052.

Date of the Event: February 11-15, 1985.

Description of the Event: To attend the Texas Telecommunications Conference in Houston, TX.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, General Attorney Common Carrier Bureau.

Amount of Reimbursement:

Transportation .....	\$228.00
Room .....	100.00
Board .....	50.00
Other Expenses .....	50.00

Total.....<sup>1</sup> 428.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Oklahoma Communications Managers Association, 3815 North Santa Fe Street, Oklahoma City, Oklahoma 73125.

Date of the Event: March 8-12, 1985.

Description of the Event: To attend the Oklahoma Communications Managers Association convention in Oklahoma City, OK.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, General Attorney, Common Carrier Bureau.

Amount of Reimbursement:

Transportation .....	\$287.00
Room .....	0

Board .....	0
Other Expenses .....	9.00

Total.....<sup>1</sup> 296.00

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Association of Independent Television Stations, Inc., 1200 Eighteenth Street NW., Washington, DC 20036.

Date of the Event: January 6-10, 1985.

Description of the Event: To attend the Association of Independent Television Stations Convention in Los Angeles, CA.

Number of Commissioners Attending: 3.

Number and Title of Employees Attending: 1, Commissioner Dawson, 1, Commissioner Quello, 1, Commissioner Rivera; 1, Senior Adviser, Office of Commissioner Rivera; 1, Senior Adviser, Officer of Commissioner Patrick; 1, Attorney Adviser, Office of the Chairman; 1, Attorney Adviser, Mass Media Bureau; 1, Senior Adviser, Office of Commissioner Dawson.

Amount of Reimbursement:

Transportation .....	\$2,287.50
Room .....	1,914.75
Board .....	291.50
Other Expenses .....	172.29

Total.....<sup>1</sup> 4,666.04

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address) NAPTE International, 342 Madison Avenue, Suite 933, New York, NY 10173.

Date of the Event: January 9-14, 1985.

Description of the Event: To attend the NATPE convention in San Francisco, CA.

Number of Commissioners Attending: 3.

Number and Title of Employees Attending: 1, Commissioner Patrick; 1, Commissioner Quello; 1, Commissioner Rivera; 1, Senior Adviser, Office of Commissioner Rivera; 1, Senior Adviser Office of Commissioner Patrick; 1, Attorney Adviser, Mass Media Bureau; 1, Senior Advisor Office of Commissioner Dawson.

Amount of Reimbursement:

Transportation .....	\$1,703.50
Room .....	1,841.31
Board .....	0
Other Expenses .....	50.00

Total.....<sup>1</sup> 3,594.81

<sup>1</sup> Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

William J. Tricarico,  
Secretary, Federal Communications Commission.

[FR Doc. 85-10442 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

### A Closed Circuit Test of the Emergency Broadcast System During the Week of May 27, 1985

April 24, 1985.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of May 27, 1985. Only ABC, CBS, MBS, NBC, NPS, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after Test.

**THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.**

William J. Tricarico,  
Secretary, Federal Communications Commission.

[FR Doc. 85-10437 Filed 4-29-85; 8:45 am]

BILLING CODE 6712-01-M

### FEDERAL MARITIME COMMISSION

#### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009548-028.

Title: United States Atlantic Ports Eastern Mediterranean and North African Freight Conference.

Parties:

Constellation Lines S.A.  
Farrell Lines, Inc.  
Prudential Lines, Inc.

Synopsis: The proposed amendment would add Lykes Bros. Steamship Co., Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 202-009882-003.

Title: Pacific Australia Direct Line Joint Service Agreement.

Parties:

Associated Container Transportation (Australia) Ltd.  
PAD Shipping Australia Pty. Ltd.  
Rederiaktiebolaget Transatlantic.

Synopsis: The proposed amendment would modify the termination provisions of the agreement by extending the date by which notice of termination of the agreement may be given from April 20, 1985 to June 30, 1985. It would also provide that the rights of the parties with regard to any antecedent breaches of the agreement and any prior events giving grounds for termination, are unaffected by the amendment. The parties have a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-010071-004.

Title: Cruise Lines International Association (CLIA).

Parties:

American Cruise Lines  
American Hawaii Cruises  
Bahama Cruise Line, Inc.  
Carnival Cruise Lines  
Commodore Cruise Line, Ltd.  
Casta Cruises  
Cunard Line Ltd.  
Cunard/Norwegian American Cruises  
Delta Queen Steamboat Co.  
Eastern/Western Cruise Lines  
Epirotiki Lines, Inc.  
Hellenic Mediterranean Lines  
Holland America Westours  
Home Lines Cruises Inc.  
Norwegian Caribbean Lines  
Ocean Cruise Lines, Inc.  
Paquet Cruises, Inc.  
Pearl Cruises of Scandinavia, Inc.  
Premier Cruise Lines  
Princess Cruises  
Royal Caribbean Cruise Line, Inc.  
Royal Cruise Line  
Royal Viking Line  
Sitmar Cruises  
Sun Line Cruises

Synopsis: The proposed amendment would add a new section providing that the Association may allow travel agents listed in CLIA's Master List of

Independent Travel Agents to participate at reduced rates, in CLIA's cruise industry promotional, education and travel agency training programs. It would also restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 224-010750.

Title: Tacoma Terminal Agreement.

Parties:

Sea-Land Service, Inc. (Sea-Land)  
Tacoma Terminals, Inc. (TTI)

Synopsis: Agreement No. 224-010750 provides that TTI will provide terminal services and functions as listed in the agreement, for Sea-Land at the Tacoma Marine Terminal located in the City of Tacoma, Washington. The term of the agreement shall commence on the date it is determined to be effective by the Commission and shall run for one year. The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: April 25, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-10447 Filed 4-29-85; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

April 24, 1985.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of an assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR § 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 an supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR § 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

#### Federal Reserve Board Clearance

Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

*Proposal to approve under OMB delegated authority the extension with revision of the following report:*

1. Report title: Commerical Bank Report of Consumer Credit

Agency form number: FR 2571  
OMB Docket number: 7100-0080  
Frequency: Monthly  
Reporters: Commerical Banks  
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects information from a sample of member banks on the amount of consumer credit outstanding by types of loan. This information forms a component of estimates of total consumer credit, which is used in general financial analysis for monetary policy purposes.

Board of Governors of the Federal Reserve System, April 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10333 Filed 4-29-85; 8:45 am]

BILLING CODE 6210-01-M

**Bancshares 2000, Inc. 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 the 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 May 22, 1985.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bancshares 2000, Inc.*, McLean, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank 2000, N.A., McLean, Virginia.

**B. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *State Bond and Mortgage Company*, New Ulm, Minnesota; to acquire 100 percent of the voting shares of National Bank of Commerce in Mankato, Mankato, Minnesota.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Adams Bankcorp, Inc.*, Northglenn, Colorado; to acquire 100 percent of the

voting shares of Citywide Bank of Thornton, Thornton, Colorado.

2. *First National Holding Company*, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First Jenks Bancorporation, Inc., Jenks, Oklahoma, thereby indirectly acquiring First National Bank, Jenks, Oklahoma.

3. *Kingfisher Bancorp, Inc.*, Kingfisher, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Kingfisher Bank and Trust Company, Kingfisher, Oklahoma.

**D. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Richardson Bancshares, Inc.*, Richardson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Richardson, Richardson, Texas.

Board of Governors of the Federal Reserve System, April 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10334 Filed 4-29-85; 8:45 am]

BILLING CODE 6210-01-M

**Citizens and Southern Georgia  
Corporation et al.; Formations of,  
Acquisitions by; and Mergers of and  
Acquisitions of Nonbanking  
Companies**

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 office 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 1985.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation*, Atlanta, Georgia; through a proposed subsidiary, Citizens and Southern Acquisition Corporation, Atlanta, Georgia to acquire Landmark Banking Corporation of Florida, Ft. Lauderdale, Florida, thereby indirectly acquiring the following banks: Landmark Bank of Brevard, Melbourne; Landmark First National Bank, Ft. Lauderdale; Charlotte County National Bank, Port Charlotte; First Bank of Marco Island, N.A., Marco Island; First National Bank and Trust Company of Naples, Naples; First County Bank, Riverview; Landmark Bank of Tampa, Tampa; Peoples Bank of Hillsborough County, Tampa; East First National Bank, East Ft. Myers; First Commercial Bank of Ft. Myers, Ft. Myers; The First National Bank of Ft. Myers, Ft. Myers; Gulf Coast First National Bank, Ft. Myers Beach; North First Bank, North Ft. Myers; The Palmetto Bank and Trust Company, Palmetto; Landmark Bank of Orlando, Orlando; Landmark Bank of Palm Beach County, Boca Raton; Peoples Bank of Pasco County, Elfers; Gulf Coast Bank of Pinellas, Maderia Beach; Landmark Union Trust Bank of St. Petersburg, N.A., St. Petersburg; Palm State Bank, Palm Harbor; Gulf Coast National Bank, Sarasota; National Bank of Sarasota, Sarasota; and South County Bank, Venice, all located in the State of Florida.

Applicant have also applied for permission to acquire the following



nonbank companies: Capital Group, Inc., Ft. Lauderdale (indirectly engages in equipment leasing through Capital America, Inc., Ft. Lauderdale, and Capital Associates, Inc., Pompano Beach); Landmark Financial Services, Inc., Ft. Lauderdale, (credit life insurance agency activities and real estate appraisal activities); Landmark Mortgage Corporation, Tampa (residential real estate mortgage lending activities including loan origination, sale and servicing); The National Trust Company, Ft. Myers (trust and fiduciary activities); Florida Interchange Group, Inc., Orlando (data processing and electronic funds transfer), all located in the State of Florida.

Board of Governors of the Federal Reserve System, April 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10335 Filed 4-29-85; 8:45 am]

BILLING CODE 6210-01-M

**Commercial Bancshares, Inc., 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 May 20, 1985.

**A. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Library Street, New York, New York 10045:

1. *Commercial Bancshares, Inc.*, Jersey City, New Jersey; to engage *de novo*, directly in the activities of making, acquiring, and servicing all types of consumer loans, on a secured and unsecured basis; and selling as agent, life insurance directly related to such extensions of credit.

**B. Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Ameritrust Company*, Cleveland, Ohio; to engage *de novo* through its subsidiary, AT Investment Services Corp., Cleveland, Ohio, in securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. These securities brokerage services will be restricted to buying and selling securities solely as agent for the account of customers.

**C. Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-American Bancorp*, Louisville, Kentucky; to engage *de novo* through its subsidiary, The Loan Store, Inc., Louisville, Kentucky (d.b.a. Amity American Corp.), in making acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others, including the following types of credit transactions; consumer financing, mortgage financing and commercial financing; and to engage *de novo* in the sale of insurance sales, by acting as insurance agent or broker with respect to any insurance that is directly related to an extension of credit by a bank or bank related firm. These activities would be conducted in the Commonwealth of Kentucky and the States of Ohio and Indiana.

2. *Monticello Bankshares, Inc.*, Monticello, Kentucky; to engage *de novo*, in the activities of acting as agent in the sale of insurance directly related to extensions of credit by the subsidiary

bank. These activities would be conducted in the Commonwealth of Kentucky.

Board of Governors of the Federal Reserve System, April 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10336 Filed 4-29-85; 8:45 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

**Office of the Secretary**

**Retirement Policy Studies;  
Applications for Grants**

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications from researchers affiliated with non-profit organizations for grants for research in the area of retirement policy.

**A. Type of Application Requested**

This announcement seeks applications for projects to develop and conduct a program of research relating to national policy concerns in the area of retirement policy. The following paragraphs describe a high priority area for research; the questions they contain are intended as illustrations of specific concerns in this area. Other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

1. *The high priority area for which applications for the proposed program of research are most desired is as follows:*

*How do characteristics of older workers' jobs affect their decisions to retire, given the financial incentives they face, their health status, and other relevant variables?*

Applications should explore the labor supply of older workers and their decisions to retire with reference to the characteristics of particular jobs and with careful characterization of the financial incentives (including wages and retirement income) facing these individuals and other relevant variables such as health status. Both job characteristics and financial incentives must be included in an analysis for it to yield a useful understanding of this problem.

It is critical that measurement of job characteristics be handled in a technically competent manner that will meet professional scrutiny. Applicants should specifically address this concern.

The study of job characteristics and the retirement decision is important in order to improve understanding of the labor supply of older workers and of retirement behavior and, thus, to improve the ability to predict labor supply and retirement patterns in the future. In particular, better information in this area can help exploration of how changes in the sectoral composition of the economy—such as the secular shift of employment out of manufacturing and into the service sector—may affect retirement behavior through changes in job characteristics. Further, high quality estimates of the labor supply of older workers are necessary for understanding the effects of legal and institutional changes in public and private retirement income programs. Finally—although not a primary focus of the project—identification of how or whether or not particular job features delay, advance, or have no effect on retirement decisions can suggest how jobs might be redesigned to retain older workers, should such retention become a focus of policy.

#### a. Previous research

Over the past several years, the labor economics literature on retirement and the labor supply of older workers has grown substantially, and it has grown progressively in sophistication. [For example, see the research summarized in an article by Sheldon Danziger, Robert Haveman, and Robert Plotnick, "How Income Transfer Programs Affect Work, Savings, and the Income Distribution: A Critical Review," *Journal of Economic Literature*, Vol. XIX (September 1981), pp. 975-1028.] In general, these studies have concentrated on a detailed characterization of the financial incentives facing the individual as he makes decisions about how much to work and when to retire, and on his behavior in response to these incentives.

Thus, careful attention has been paid to likely returns from continued work (from wages and from accrual of additional pension and social security benefits) and to expected income (from social security, pensions, and other sources) once retired. Since the magnitudes of social security and pension benefits depend in very complicated ways on variables such as the age of retirement, earnings in the years immediately preceding retirement, and what the individual does after retirement, careful characterization of these effects and careful estimation of the individual's response to them is of central importance.

Other features of the individual's retirement decision—in particular, how an employee's work situation may

influence his decision to leave work and retire—have received very little attention in this literature. For instance, a worker who performs repetitive tasks, engages in stressful interpersonal encounters, or works outdoors, may be inclined to work less or retire earlier than workers in comparable financial circumstances whose jobs are less demanding in particular ways; yet we have not studied the retirement decision with this in mind.

A few studies, mostly from literature other than that of labor economics, have concentrated on job characteristics and how they affect the behavior of older workers. These studies suffer from one or more defects. First, their choice of respondents raises questions about the generalizability of their results, e.g., some have more homogeneous samples than might be desirable. Second, job characteristic variables employed have been very general and vague or have been imputed from other data sources. Third, some have inadequately captured the effect of financial incentives and other important variables.

In short, available research in this area appears to be limited by failure to account adequately for at least one group of causal factors. Desirable studies are those that examine both the job characteristics and the financial incentives aspects in an empirical framework that explicitly allows each aspect to condition the impact of the other. Of course empirical research in this area must also attempt to measure the effects of health, demographic characteristics, and other factors.

#### b. Variables of interest

Particular job characteristics that may be of interest include, but are not limited to, features such as:

- *Nature of physical environment:* E.g., does the job involve exposure to loud noises, extremes of heat, glare, dust, or pollution?
  - *Nature of interpersonal relations:* E.g., does the job involve stressful exchanges with co-workers, clients, or the public?
  - *Level of responsibility:* E.g., is the job supervisory? Does it otherwise entail high levels of responsibility?
  - *Individualization of pace of work and flexibility of schedule:* E.g., can the employee set his/her own pace? Can he influence how many hours a day or a week he/she works and starting and quitting times? Is the work highly repetitive?
  - *Nature of physical demands:* E.g., does the job involve lifting heavy weights, lengthy standing, etc.?
- Whatever job characteristics are deemed relevant for the study,

researchers must explain in detail the manner in which they would measure the characteristics.

Applicants should note that retirement is not a well-defined concept. A great variety of definitions is possible, and the appropriate definition to employ in analysis of this problem is not entirely clear. Alternatives that may be most useful for the proposed study include the following: (a) Beginning to draw retirement benefits from social security or employer pensions, (b) withdrawing entirely from the labor force, or (c) leaving a particular job, especially a relatively long-term, "career" job. The possible effects of mandatory retirement provisions should be explicitly considered if appropriate.

Applicants should also note that retirement is not the only labor supply measure of interest. Analysis of hours or weeks worked or in the labor force may also be revealing. Researchers may need to examine the effect of constraints imposed by employers on the ability of workers to choose to work less than full time.

#### c. Possible methods

The best methods for addressing this question are not entirely clear, and investigators may wish to consider a variety of possible approaches. The resources available for this project effectively preclude any attempt at large-scale, nationally representative data collection.

Use of existing data would be a valuable alternative, if national data on a large scale were available. However, a preliminary review of large-scale microdata bases has failed to identify any that would obviously support such an investigation, since such data sets tend to lack either detailed information on job characteristics or the financial and other attributes of the respondents. The National Longitudinal Survey, the Retirement History Survey, the Current Population Survey, and other such large-scale national data bases either provide the respondent's job title only or supply just a few descriptive characteristics along with the job title.

Some researchers have attempted to use this information together with the Dictionary of Occupational Titles to impute more job characteristics, but it is not clear that this procedure has captured the true nature of the respondents' jobs. [At least two investigators have in this manner imputed job characteristics. These attempts have not been fully successful at reliably capturing both job characteristics as well as the financial and other attributes of the respondents.]

See Melissa Hardy and Mark Hayward, "Toward an Understanding of Occupational Differences in Early Retirement: An Examination of the Indirect Mechanisms by which Occupations Condition the Retirement Transaction," *Research on Aging* (forthcoming in 1985) and Melissa Hardy, "Occupational Structure and Retirement," in Zena Blau, ed., *Current Perspectives on Aging and the Life Course* (Greenwich, Conn: JAI Press, forthcoming in 1985). For an early attempt, see Joseph Quinn, "Microeconomic Determinants of Early Retirement: A Cross-Sectional View of White Married Men," *Journal of Human Resources* v. 12, no. 3 (Summer 1977): pages 329-46. [Note: Citations are given for illustrative value only. They are not critical for construction of a proposal, may not have been published in 1985, and are not available from the Federal government.]

In short, using these data sets requires imputation of variables central to the analysis. While more sophisticated methodologies might improve this process, it appears that conditions drawn from an analysis involving such a technique would be inherently suspect. Potential applicants are nonetheless encouraged to consider ways in which these problems might be dealt with effectively.

Alternatively, other data sets of which we are unaware might be suitable for an investigation. In particular, potential applicants may wish to consider whether employers (or associations of employers) may have gathered data on their workers that could be useful and that might be made available for research.

Finally, potential applicants may consider whether a small-scale, carefully targeted microdata gathering effort might be appropriate, provided that its design would reveal the behavior in question and allow for generalizability to large segments of the national population. Examination of groups of employees whose work situation is likely to be very different from the rest of the population (such as college professors) should be avoided. Researchers proposing such an approach are urged to choose artfully areas where respondents are employed in various types of jobs and where respondents in each job type are thought to be representative of other such workers.

Since the problem under study is an interdisciplinary one, an interdisciplinary team approach might be used. Whatever method is chosen, it is important that researchers have, in

advance, assurances that they will be able to carry out the plan. In particular, written assurance that researchers will have access to employer data sets and/or to employees for interview are required if such data is proposed for the study.

In addition to completing the research, investigators on funded projects will be invited to comment, on the basis of their findings, on the desirability and possible design of future data-collection efforts.

2. *Potential users.* Potential users of the research include policy makers at Federal, State and local levels of government, employers, unions, financial institutions, investors, and providers of health insurance, pensions and other fringe benefits. Because many of those who will be interested in this research lack advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. Nevertheless, researchers should not be discouraged from employing methods of whatever degree of sophistication is appropriate to the questions they are addressing.

3. *Type of project excluded.* In consideration of the intent of this announcement, applications concentrating primarily on the local concerns of a local service delivery organization will not be considered for funding.

4. *Content and organization of the application.* The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should carefully describe the issues to be examined, the methodology proposed for testing the hypotheses, data sources to be used, and anticipated products of the research. Applications should clearly specify how the intended approach is expected to improve our knowledge over that contained in earlier studies. Application packages must provide letters of assurance from those whose cooperation will be necessary or other forms of evidence demonstrating that the methodology is practicable. Resumes of staff should be included, as should a full budget for the proposed project.

## B. Applicable Regulations

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63).

2. "Administration of Grants" (45 CFR Part 74).

## c. Effective Date and Duration

1. The grant (or grants) awarded pursuant to this announcement (are) expected to be made on or about June 28, 1985.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. Applicants should present a work plan and budget covering a one-year period.

## D. Statement of Funds Available

1. A total of \$150,000 has been set aside for grants to be awarded as a result of this announcement. Applications may be for single projects costing as much as \$150,000, but it is expected that most awards will be for single projects of less than \$75,000.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

## E. Cost Sharing

Applicants submitting an application in response to this announcement must share costs of the project. This may be in the form of institutional or individual cost sharing. Whichever method is proposed, that method must be stated in Block 12 of Standard form 424 and/or specified in the budget section of the application.

## F. Application Processing

1. Applications will be screened initially for relevance to the needs defined in section A (as well as for additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, relevance, and cost

effectiveness, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applications should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 25 double-spaced typed pages, exclusive of forms, abstract, resumes, and the proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in Section A above with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of scientific knowledge. (30 points)

b. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. The appropriateness and soundness of methodology (which may include an interdisciplinary approach), including research design, statistical techniques, modeling strategies, choice of data, and other procedures. Demonstration of a technically rigorous means of defining and measuring job characteristics and evidence showing that the methodology is practicable. Probability of successful completion of the study. (25 points)

d. The qualifications and experience of personnel (30 points)

#### G. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grant Officer if the application was sent by first class, registered or certified mail not later than June 14, 1985, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than June 14, 1985, as evidenced by a receipt from the commercial carrier.

#### H. Hand-Delivered Applications

An application to be hand-delivered

must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 a.m. and 4:30 p.m., Washington, D.C., time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on June 14, 1985.

#### I. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either: (a) Approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review. Awards will not necessarily be made in all of the high priority areas indentified in section A.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

#### J. Application Instructions and Forms

Requests for and copies of applications should be submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., Room 457F, Hubert H. Humphrey Building, Washington, D.C. 20201, Phone (202) 245-1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after May 31, 1985.

#### K. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

#### L. Intergovernmental Review

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" nor to its implementing regulations at 45 CFR Part 100.

Dated: April 23, 1985.

Robert B. Helms,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 85-10358 Filed 4-29-85; 8:45 am]

BILLING CODE 4150-04-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

[U-47295]

#### Cancellation of Notice of Realty Action, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of realty action: Sale of Public Lands U-47295.

**SUMMARY:** Notice is hereby given that the sale of public land in Box Elder County, Utah that was published as a Notice of Realty Action on Thursday, March 7, 1985 in 50 FR 9331 is hereby cancelled.

Further information can be obtained by writing or calling the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119 (801-524-6772).

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 85-10350 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-DQ-M

[F-14823-A]

#### Alaska Native Claims Selection; Akiachak, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Akiachak, Limited, for 62.64 acres. The lands involved are in the vicinity of Akiachak, Alaska: U.S. Survey No. 5737, Alaska, Lot 3, situated on the right bank of the Kuskokwim River immediately east of the village of Akiachak.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 30, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file

an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 Fed. Reg. 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,  
Section Chief, Branch of ANCSA  
Adjudication.

[FR Doc. 85-10401 Filed 4-29-85; 8:45 am]  
BILLING CODE 4310-JA-M

[F-14918-A]

#### Alaska Native Claims Selection; Pilot Station, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Pilot Station, Incorporated for approximately 0.85 acre. The lands involved are a portion of Lot 1 of U.S. Survey No. 4011, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 30, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,  
Section Chief, Branch of ANCSA  
Adjudication.

[FR Doc. 85-10400 Filed 4-29-85; 8:45 am]  
BILLING CODE 4310-JA-M

[AA-11130]

#### Alaska Native Claims Selection; Point Possession, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(2) of the Alaska Native Claims

Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h)(2), will be issued to Point Possession, Inc. for 4,481.32 acres. The lands involved are in the vicinity of Point Possession, within T. 11 N., R. 6 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contracting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271-5960.

Any party claiming a property interest which is adversely affected by the decision shall have until May 30, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 Fed. Reg. 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,  
Section Chief, Branch of ANCSA  
Adjudication.

[FR Doc. 85-10399 Filed 4-29-85; 8:45 am]  
BILLING CODE 4310-JA-M

[AZ-027-85-30]

#### Lower Gila North Draft Management Framework; Plan Amendment/ Decision Record; Phoenix District, AZ; Availability and Public Comment

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability of the Management Framework Plan amendment decision record and public comment period.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1976, a draft Management Framework Plan Amendment/ Environmental Assessment (MFP Amendment/EA) was prepared for the Lower Gila North Planning Area. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is available for public comment for 30 days, after which the Decision will become final.

The Decision amends the Land Tenure Adjustment section of the Lower Gila North MFP by changing the last

paragraph to read: "Public lands within the planning area not identified in this list will be considered for disposal to accommodate the following lands actions only: (1) State land selections and State exchanges; (2) mineral estate exchanges; and (3) special legislation."

#### Public Participation

Copies of the Decision Record and FONSI are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-4464. Public reading copies may also be reviewed there and at the Bureau of Land Management, Arizona State Office, 2707 N. 7th Street, Phoenix, Arizona 85019, (602) 241-5504.

The Decision Record and FONSI will be available 30 days from the date of publication in the Federal Register for public review. Written comments should be sent by that date to the State Director, Arizona State Office, Bureau of Land Management, 2707 N. 7th Street, Phoenix, Arizona 85019.

**FOR FURTHER INFORMATION CONTACT:** William T. Childress, Area Manager; Bureau of Land Management; Phoenix District Office; 2015 West Deer Valley Road; Phoenix, Arizona 85027; (602) 863-4464.

Marlyn V. Jones,  
District Manager.

[FR Doc. 85-10370 Filed 4-29-85; 8:45 am]  
BILLING CODE 4310-32-M

#### Restricted Vehicle Use Closure Order

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Restricted Vehicle Use Closure Order.

**SUMMARY:** Notice is hereby given in accordance with Title 43 CFR Group 6000—Outdoor Recreation and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, that approximately 3,694 acres of public land located within the Hagerman Fauna Sites National Natural Landmark in Twin Falls County, Idaho, are closed to motorized vehicles except on designated roads.

Careful review and analysis in cooperation with other agencies, professionals in the field of paleontology, and the public has determined that use of this area by motorized vehicles operated off-road is causing severe damage to scientific and natural features. Continued off road use by motorized vehicles will continue to

cause damage to paleontological features of international importance and to the terrain, soil and vegetation of the area. An early closure, published in the Federal Register of September 1978, was based on inadequate data and was insufficient to provide appropriate protection to the area.

All forms of motorized vehicles, including those used for outdoor recreation purposes, mining exploration, farming operations, scientific investigations, and resource management, are excluded from the area except for use on designated roads.

The closure applies to all public lands administered by the Bureau of Land Management within the area known commonly as the Hagerman Fossil Beds (and officially designated as the Hagerman Fauna Sites National Natural Landmark). The area is bounded on the east by Lower Salmon Falls Reservoir on the Snake River, on the west by developed farms, on the north by an imaginary line along or through sections 3, 4 and 5, T. 8 S., R. 13 E., BM.

The legal description of the area is:

- T. 7 S., R. 13 E., Boise Meridian, Idaho,  
 Sec. 9, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 10, Lot 3, 6, NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ ;  
 Sec. 17, E $\frac{1}{2}$ E $\frac{1}{2}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 20, E $\frac{1}{2}$ E $\frac{1}{2}$ ;  
 Sec. 21, Lot s. 3, 4, 7, 8, W $\frac{1}{2}$ W $\frac{1}{2}$ ,  
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ ;  
 Sec. 28, Lot 2, 3, 6, 7, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
 Sec. 29, E $\frac{1}{2}$ E $\frac{1}{2}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
 Sec. 32, All;  
 Sec. 33, Lot 2, 3, 6, 7, SW $\frac{1}{4}$ SW $\frac{1}{4}$ .  
 T. 8 S., R. 13 E., Boise Meridian, Idaho,  
 Sec. 3, Lot 4, 5, SW $\frac{1}{4}$ ;  
 Sec. 4, Lot 2, 3, 4, 6, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
 Sec. 5, Lot 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$ .

All Federal lands within the above described areas administered by the Bureau of Land Management are closed to vehicle use except on designated roads on a year-round basis until further notice. Signs will be posted to identify the exterior boundaries and to mark roads open and trails closed to motorized use. A map of the closure areas is posted at the Twin Falls and Hagerman Post Offices, Twin Falls County Courthouse, and at the Boise District Office located at 3948 Development Avenue, Boise, Idaho, 83705. Cooperation of all will be sincerely appreciated.

**FOR FURTHER INFORMATION CONTACT:** Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development

Avenue, Boise, Idaho 83705, phone (208) 334-1582.

Martin J. Zimmer,  
 District Manager,  
 April 12, 1985.

[FR Doc. 85-10435 Filed 4-29-85; 8:45 am]  
 BILLING CODE 4310-GG-M

### Realty Action; Proposed Exchange Marquette County, MI

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed Exchange ES-38726.

**SUMMARY:** The following Bureau of Land Management (BLM) administered public land has been examined and found to be suitable for disposal by exchange under the section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Michigan Meridian, Michigan

T. 47 N., R. 25 W.,  
 Sec. 32: W $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  (160 acres).

The proposed exchange also includes six small Forest Service administered parcels in Alger County, comprising 36.44 acres.

Cleveland Cliffs Iron Company is offering the following non-federal lands in exchange:

Michigan Meridian, Michigan

T. 46 N., R. 20 W.,  
 Sec. 4: all except N $\frac{1}{2}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 8: S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  (531.69 acres).

The purpose of the exchange is to acquire non-federal lands within the Hiawatha National Forest in order to consolidate ownership, eliminate isolated holdings and facilitate more efficient management. The exchange is consistent with BLM's land use plans. The value of the lands are approximately equal. The acreage may be adjusted or money used to equalize the values, if necessary.

Title to the BLM land will be issued subject to a restrictive covenant providing for protection of cultural values. Title to the non-federal land will be subject to a reservation of all ores and minerals, including the right to mine and remove same; and easements for established or existing roads, highways, railroads and utilities.

Upon publication of this notice, the Federal land will be segregated from all appropriations under the public land laws, including the mining laws, except exchanges, for a period of two (2) years or upon issuance of patent or other documents of conveyance, whichever occurs first. After acquisition, the non-federal land will become a part of the National Forest System.

**Comments:** For a period of 45 days from the date of publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the State Director, this Realty Action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this exchange is available for review at the Hiawatha National Forest Supervisor's Office, P.O. Box 316, Escanaba, Michigan 49829 and at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Priscilla McLain at (414) 291-4427.

Wink Hastings,  
 Acting District Manager.

[FR Doc. 85-10431 Filed 4-29-85; 8:45 am]  
 BILLING CODE 4310-84-M

### Roswell District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Roswell District Advisory Council Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Advisory Council.

**DATE:** Wednesday, May 29, 1985, beginning at 10:00 a.m. A public comment period will be held at 2:00 p.m.  
**Location:** BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

**FOR FURTHER INFORMATION CONTACT:** Dave Mari, Associate District Manager, or Guadalupe Martinez, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201 (505) 622-9042.

**SUPPLEMENTARY INFORMATION:** The proposed agenda will include: (1) The BLM/FS Land Interchange Proposal, (2) Update on Grazing Fee Study, and (3) Public Comment Period.

The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by May 22, 1985. Summary minutes will be

maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Timothy R. Kreager,

Acting District Manager.

[FR Doc. 85-10432 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-FB-M

[OR 38420(WASH)]

### Washington; Proposed Withdrawal and Reservation of Lands and Opportunity for Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Energy has filed an application to withdraw 1,000.75 acres of land for protection of the Hanford Site. This notice closes the lands to mining, but not mineral leasing, pending final action on the application.

**FOR FURTHER INFORMATION CONTACT:**

Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, [Telephone: 503-231-6905].

**SUPPLEMENTARY INFORMATION:** On April 5, 1985, the U.S. Department of Energy filed application OR 38420(WASH) to withdraw the following described lands from entry and location under the United States mining laws, but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Hanford Site

T. 11 N., R. 24 E.,

Sec. 14, NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 12 N., R. 24 E.,

Sec. 12, N $\frac{1}{2}$  and SE $\frac{1}{4}$ .

T. 13 N., R. 25 E.,

Sec. 30, lots 1, 2, and E $\frac{1}{2}$ NW $\frac{1}{4}$ .

T. 14 N., R. 25 E.,

Sec. 22, NE $\frac{1}{4}$ .

The areas described aggregate 1,000.75 acres in Benton and Grant Counties, Washington.

The purpose of the proposed withdrawal is to protect portions of the Hanford Site which have not been previously withdrawn or segregated. The surface estate of the lands has been acquired by the United States and is currently under the administrative jurisdiction of the U.S. Department of Energy; however, the mineral estate is public domain. The lands are located within the exterior boundary of the Hanford Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection

with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, the time and place will be announced.

The application will be processed in accordance with the regulations set forth in Title 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is rejected or the withdrawal is approved prior to that date.

Dated: April 22, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-10430 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-33-M

### Availability of the Draft Oregon Wilderness Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Draft Oregon Wilderness Environmental Impact Statement (draft EIS).

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft Environmental Impact Statement on wilderness suitability recommendations involving 77 wilderness study areas located primarily in eastern Oregon. Notice is hereby given of the availability of that Statement.

**DATE:** Comments will be accepted until August 31, 1985.

**ADDRESS:** Comments should be sent to: Wilderness Studies (935), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208.

**FOR FURTHER INFORMATION CONTACT:**

Jerry Magee (935), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208, Telephone (503) 231-6256.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the

Bureau of Land Management has prepared a draft Environmental Impact Statement on wilderness suitability recommendations involving 77 wilderness study areas located primarily in eastern Oregon.

The Proposed Action recommends 949,989 acres in 41 Wilderness Study Areas as suitable for wilderness designation and 1,345,153 acres as nonsuitable for wilderness designation. Six other alternatives are analyzed in the draft Environmental Impact Statement. The alternatives and the acres recommended as being suitable for wilderness are: All Wilderness (2,304,142 acres), Wilderness Emphasis (1,959,963 acres), Conflict Resolution Emphasis (1,111,741 acres), Ecosystem Diversity Emphasis (1,042,936 acres), Commodity Development Emphasis (336,335 acres), and No Wilderness/No Action (0 acres).

A limited number of individual copies of the draft Environmental Impact Statement may be obtained upon request to the above mentioned contact person. In addition, copies are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Main Interior Bldg., Room 5600, 18th and C Streets, N.W., Washington, D.C. 20240.

Oregon State Office, Bureau of Land Management, 825 N.E. Multnomah Street, Portland, OR.

Nevada State Office, BLM, 300 Booth St., Reno, NV.

Burns District Office, BLM, 74 S. Alvord St., Burns, OR.

Coos Bay District Office, BLM, 333 S. Fourth St., Coos Bay, OR.

Eugene District Office, BLM, 1255 Pearl St., Eugene, OR.

Lakeview District Office, BLM, 1000 Ninth St. South, Lakeview, OR.

Medford District Office, BLM, 3040 Biddle Road, Medford, OR.

Prineville District Office, BLM, 185 E. Fourth St., Prineville, OR.

Roseburg District Office, BLM, 77 NW Garden Valley Blvd., Roseburg, OR.

Salem District Office, BLM, 1717 Fabry Road, SE, Salem, OR.

Spokane District Office, BLM, 4217 Main Ave., Spokane, WA.

Vale District Office, BLM, 100 Oregon St., Vale, OR.

Winnemucca District Office, BLM, 705 East 4th St., Winnemucca, NV.

Public hearings on the draft Environmental Impact Statement will be conducted at the following times and locations:

June 18, 1985, 7:00 p.m. to 10:00 p.m., Oregon Room, Medford District

- Office, 3040 Biddle Road, Medford, Oregon
- June 19, 1985, 7:00 p.m. to 10:00 p.m.,  
Curry County Fairgrounds, Gold Beach, Oregon
- June 20, 1985, 7:00 p.m. to 10:00 p.m.,  
Public Meeting Room, Klamath County Library, 126 South Third, Klamath Falls, Oregon
- June 25, 1985, 7:00 p.m. to 10:00 p.m.,  
Conference Room, Lakeview District Office, 1000 South Ninth Street, Lakeview, Oregon
- June 27, 1985, 7:00 p.m. to 10:00 p.m.,  
Harney County Museum Clubroom, 18 West D Street, Burns, Oregon
- July 9, 1985, 7:00 p.m. to 10:00 p.m., The  
Riverhouse, North Highway 97, Bend, Oregon
- July 10, 1985, 7:00 p.m. to 10:00 p.m.,  
Courtroom, Gilliam County Courthouse, Condon, Oregon
- July 11, 1985, 7:00 p.m. to 10:00 p.m.,  
South Sherman Elementary School, Grass Valley, Oregon
- July 16, 1985, 7:00 p.m. to 10:00 p.m.,  
Weese Building, Room W-10, Treasure Valley Community College, Ontario, Oregon
- July 17, 1985, 7:00 p.m. to 10:00 p.m.,  
Copper Kitchen Meeting Room, 480 Campbell (just off the Interstate), Baker, Oregon
- July 18, 1985, 7:00 p.m. to 10:00 p.m.,  
Hoke Hall, Room 201, Eastern Oregon State College, LaGrande, Oregon
- July 23, 1985, 2:00 p.m. to 5:00 p.m. and  
7:00 p.m. to 10:00 p.m., Hearing Room/  
Auditorium, Second Floor, Portland Building, 1120 S.W. Fifth Avenue, Portland, Oregon
- July 25, 1985, 7:00 p.m. to 10:00 p.m., City  
Council Chambers, 777 Pearl Street, Eugene, Oregon
- July 30, 1985, 7:00 p.m. to 10:00 p.m., Utah  
Room, Holiday Inn, 1000 East Sixth Street, Reno, Nevada

An informal open house will be provide for questions and discussion during the hour preceding each public hearing.

Stanley D. Butzer,  
Acting State Director.

April 26, 1985.

[FR Doc. 85-10488 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-33-M

#### Minerals Management Service

#### Development Operations Coordination Document; Amoco Production Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1085, Block 75, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 19, 1985.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979. (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 19, 1985.

John L. Rankin,  
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10321 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-MR-M

#### National Park Service

#### Gateway National Recreation Area; Meeting

**AGENCY:** National Park Service—Gateway Advisory Commission, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** May 14, 1985, commencing at 3 p.m.

**ADDRESS:** Gateway National Recreation Area, William Fitts Ryan Visitor Center, Floyd Bennett Field, Brooklyn, New York.

**FOR FURTHER INFORMATION CONTACT:** Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (718) 338-3578.

**SUPPLEMENTARY INFORMATION:** The Advisory Commission was established by Pub. L. 92-592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include: (1) Status, New York City's request to extend Fountain Avenue Landfill beyond 12/31/85; (2) Fountain/Pennsylvania Avenue landfill presentation by N.Y.C. Dept. of Sanitation; (3) Presentation, Waterborne Debris Problem, by N.Y.C. Dept. of Environmental Protection; (4) Other Business as may come before the board; (5) Fall Meeting Schedule.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recreation Area, Building No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: April 19, 1985.

Robert W. McIntosh, Jr.,  
Superintendent, Gateway National Recreation Area.

[FR Doc. 85-10381 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-70-M

#### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by



the National Park Service before April 20, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 15, 1985.

Carol D. Shull,

Chief of Registration, National Register.

## ALABAMA

### Morgan County

Decatur, *Bank Street-Old Decatur Historic District (Boundary Increase)*, Roughly bounded by Bank, Market, Well and Lee Sts.

## CALIFORNIA

### Los Angeles County

Pasadena, *Singer Building*, 16 S. Oakland Ave. and 520 E. Colorado Blvd.

### San Diego County

Santee, *Edgemoor Farm Dairy Barn*, 9064 Edgemoor Dr., Edgemoor Geriatric Hospital

## COLORADO

### Boulder County

Longmont, *Callahan, T.M., House* 312 Terry St.

Longmont, *Longmont Fire Department*, 667 Fourth Ave.

### Chaffee County

Salida vicinity, *Chaffee County Poor Farm*, 8495 County Rd. 160

### Gunnison County

Crystal vicinity, *Crystal Mill*, County Rd. 3, 7 Miles SE of Marble

### Larimer County

Fort Collins, *Kissock Block Building*, 115-121 E. Mountain Ave.

### Park County

Tarryall, *Tarryall School*, 31000 County Rd. 77

### Summit County

Frisco, *Wildhack's Grocery Store-Post Office*, 510 Main St.

## CONNECTICUT

### New Haven County

Branford, *Frisbie, Edward, Homestead*, 240 Stoney Creek Rd.

## GEORGIA

### Baldwin County

Milledgeville vicinity, *Roe-Horper House*, Off US 441

### Hall County

Gainesville, *Dixie Hunt Hotel*, 209 Spring St., SW

## KENTUCKY

### Grayson County

Leitchfield, *Hunter House*, 118 W. Walnut St.

## MASSACHUSETTS

### Essex County

Amesbury, *Amesbury and Salisbury Mills Village Historic District*, Market Square, Millyard, Main, Market, Elm, Water, High and Ring Sts.

Swampscott, *Swampscott Fish House*, Humphrey St.

### Hampshire County

Northampton, *Northampton Downtown Historic District (Boundary Increase)*, East of RR Tracks including 2-10 Bridge and 1-30 Market Sts.

## MISSISSIPPI

### Amite County

Liberty, *Liberty Presbyterian Church*, North Church St.

### Hinds County

Brownsville vicinity, *Cates, John F., House*, MS 22

## MISSOURI

### Jackson County

Independence, *Truman, Harry S., National Historic Site*, 219 N. Delaware St.

## NEBRASKA

### Douglas County

Omaha, *Leone, Florentine, and Carpathia Apartment Buildings*, 832 S. 24th St., 834 S. 24th St. and 907-911 S. 25th St.

Omaha, *Nash Block*, 902-912 Farnam

Omaha, *Packer's National Bank Building*, 4939 S. 24th St.

Omaha, *Rosewater School*, 3764 S. 13th St.

### Hamilton County

Aurora, *Hamilton County Courthouse*, Courthouse Square

### Hayes County

St. John's *Evangelical Lutheran German Church and Cemetery*

## NEW MEXICO

### Chavez County

Roswell, *Garrett, Pat, House (Roswell New Mexico MRA)*, Rt. 2, East of US 380

Roswell, *Slaughter-Hill Ranch (Roswell New Mexico MRA)*, 1601 E. Second St.

Roswell, *Urton Orchards (Roswell New Mexico MRA)*, Rt. 3, Box 209 M

## NEW YORK

### New York County

New York, *Merchants Refrigerating Company Warehouse*, 501 W. 16th St.

### Onondaga County

Syracuse, *Pi Chapter House of Psi Upsilon Fraternity*, 101 College Pl.

## TEXAS

### El Paso County

El Paso, *Old San Francisco Historic District*, Missouri St. between No. 325 and 527

## Fayette County

Fayetteville, *Sarrazin Store*, Washington St.

## Wichita County

Wichita Falls, *Morningside Historic District*, Roughly bounded by 9th St., Morningside Dr., Pembroke Lane and Buchanan St.

## VIRGINIA

### Accomack County

Scarborough House *Archaeological Site (44AC4)*

## WASHINGTON

### Jefferson County

Port Townsend, *Bash, Henry, House (Victorian Residences in Port Townsend TR)*, 718 F St.

Port Townsend, *Coleman-Furlong House (Victorian Residences in Port Townsend TR)*, 1253 Umatilla Ave.

Port Townsend, *Fitzgerald, Thomas, House (Victorian Residences in Port Townsend TR)*, 832 T St.

Port Townsend, *Gogen-Sherlock House (Victorian Residences in Port Townsend TR)*, 1906 Cherry St.

Port Townsend, *Griffiths, J. W., House (Victorian Residences in Port Townsend TR)*, 2030 Monroe St.

Port Townsend, *House at 30 Tremont Street (Victorian Residences in Port Townsend TR)*, 30 Tremont St.

Port Townsend, *Lake-Little House (Victorian Residences in Port Townsend TR)*, 1607 Sheridan St.

Port Townsend, *Laubach, J. N., House (Victorian Residences in Port Townsend TR)*, 613 F St.

Port Townsend, *Morgan, O. L. and Josephine, House (Victorian Residences in Port Townsend TR)*, 1033 Pierce St.

Port Townsend, *Pearson House (Victorian Residences in Port Townsend TR)*, 1939 27th St.

Port Townsend, *Petersen, H. S., House (Victorian Residences in Port Townsend TR)*, 50th & Kuhn St.

Port Townsend, *Pettygrove, Benjamin S., House (Victorian Residences in Port Townsend TR)*, 1000 G St.

Port Townsend, *Ralston, Judge, House (Victorian Residences in Port Townsend TR)*, 1523 Madison St.

Port Townsend, *Saunders, James C., House (Victorian Residences in Port Townsend TR)*, 902 Sims Way

Port Townsend, *Stegerwald, Andrew, House (Victorian Residences in Port Townsend TR)*, 1710 Fir St.

Port Townsend, *Trumbull, John, House (Victorian Residences in Port Townsend TR)*, 925 Wilson St.

Port Townsend, *Ward, Milo P., House (Victorian Residences in Port Townsend TR)*, 1707 Jackson St.

[FR Doc. 85-10382 Filed 4-29-85; 8:45 am]

BILLING CODE 4310-70-M

**INTERNATIONAL DEVELOPMENT  
COOPERATION AGENCY**
**Agency for International Development**
**Latin America and the Caribbean  
Region; Redelegation of Authority No.  
133.3**
**AGENCY:** Agency for International  
Development, IDCA.

**ACTION:** Notice; Correction.

**SUMMARY:** This document amends the  
Latin America and the Caribbean  
Region; Redelegation of Authority to  
include a numerical designation.

**EFFECTIVE DATE:** April 18, 1985.

**FOR FURTHER INFORMATION CONTACT:**

 Nancy D. Frame, Assistant General  
Counsel for Employee and Public  
Affairs, Agency for International  
Development, Washington, D.C. 20523  
(202) 632-8218.

 Accordingly, the Agency for  
International Development is amending  
Latin America and the Caribbean  
Region; Redelegation of Authority  
published in 50 FR 7405 dated February  
22, 1985 to read as follows:

 Latin America and the Caribbean Region;  
Redelegation of Authority No. 133.3

Marshall Brown,

*Acting Assistant Administrator for Latin  
America and the Caribbean.*

[FR Doc. 85-10330 Filed 4-29-85; 8:45 am]

BILLING CODE 6118-01-M

**INTERSTATE COMMERCE  
COMMISSION**

[Docket No. A9-1; Sub-173X]

**Chicago and North Western  
Transportation Co.; Abandonment  
Exemption in Du Page County, IL**
**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce  
Commission exempts from 49 U.S.C.,  
10903 *et seq.*, the abandonment by the  
Chicago and North Western  
Transportation Company of 5.1 miles of  
rail line extending from milepost 25.5  
near Carol Stream to milepost 20.4 near  
Lombard, in Du Page County, IL, subject  
to standard labor protective conditions.

**DATES:** This exemption will be effective  
on May 30, 1985. Petitions for  
reconsideration must be filed by May 20,  
1985. Petitions for stay must be filed by  
May 10, 1985.

**ADDRESSES:** Send pleadings referring to  
Docket No. AB-1 (Sub-No. 173X) to:

- (1) Office of the Secretary, Case Control  
Branch, Interstate Commerce  
Commission, Washington, DC 20423
- (2) Petitioner's representative: Miles L.  
Tobin, One North Western Center,  
Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:**  
Louis E. Gitomer (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**

 Additional information is contained in  
the Commission's decision. To purchase  
a copy of the full decision write to T.S.  
InfoSystem, Inc., Room 2227, Interstate  
Commerce Commission, Washington,  
DC, 20423, or call 289-4357 (DC  
Metropolitan area) or toll free (800) 424-  
5403.

Decided: April 23, 1985.

 By the Commission, Chairman Taylor, Vice  
Chairman Gradison, Commissioners Sterrett,  
Andre, Simmons, Lamboley, and Strenio.  
Commissioner Simmons did not participate.

James H. Bayne,

*Secretary.*

[FR Doc. 85-10403 Filed 4-29-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30645]

**Western Pacific Railroad Co.;  
Construction and Operation in  
Alameda County, CA**
**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Application Accepted for  
Consideration.

**SUMMARY:** The Commission is accepting  
for consideration the application of  
Western Pacific Railroad Company to  
construct and operate 980 feet of  
railroad from its San Jose Branch to the  
New United Motor Corporation plant in  
Fremont, Alameda County, CA.

**DATES:** Written comments must be filed  
by May 14, 1985. Replies must be filed  
by May 20, 1985.

**ADDRESSES:** An original and 10 copies of  
all comments referring to Finance  
Docket No. 30645 should be sent to:  
Office of the Secretary, Case Control  
Branch, Interstate Commerce  
Commission, Washington, DC 20423  
Charles A. Miller, Covington & Burling,  
1201 Pennsylvania Ave., NW.,  
Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:**

 Louis E. Gitomer (202) 275-7245  
Elaine Sehrt (202) 275-7899  
Joseph Levin (202) 275-7936.

**SUPPLEMENTARY INFORMATION:** Western  
Pacific Railroad Company (WPRR)  
seeks Commission authority to construct  
and operate 980 feet of railroad from its  
San Jose Branch (milepost 5.41) to an  
automobile assembly plant in Fremont,

 Alameda County, CA. The proposed  
construction will cross 3 tracks of the  
Southern Pacific Transportation  
Company (SP), and a public street,  
Lopes Court.

 WPRR proposes to operate over the  
new track in order to provide rail  
service to the automobile manufacturing  
plant now owned by New United Motor  
Manufacturing, Inc., a joint venture of  
General Motors Corporation and Toyota  
Motor Company. WPRR will use the  
new track to transport carloads of  
finished automobiles from the plant site.  
Applicant intends to commence  
construction of the new track  
immediately on receipt of regulatory  
approval with operations over the track  
to begin on completion of construction.

 WPRR is controlled by the Union  
Pacific Railroad Corporation.

 Finance Docket No. 30568, *et al.*,  
*Southern Pac. T. Co.—Petition for  
Declaratory Order—Extension of Rail  
Line* (not printed), served March 29,  
1985, the Commission ruled that WPRR's  
proposal was not an exempt spur under  
49 U.S.C. 10907(b). In response to that  
decision, WPRR filed an application and  
renewed a request for exemption under  
49 U.S.C. 10505 from the requirements of  
49 U.S.C. 10901. The alternative  
exemption request in Finance Docket  
No. 30568, is also being considered by  
the Commission.

 In the application, filed on April 9,  
1985 WPRR seeks a certificate under 49  
U.S.C. 10901(a). WPRR also seeks an  
order under 49 U.S.C. 10901(d) requiring  
SP to allow WPRR to cross the SP lines  
that lie between San Jose Branch and  
the plant to be served.

 In a decision served April 11, 1985  
WPRR was granted a waiver of the 6-  
month prefiling environmental  
notification requirement of 49 CFR  
1105.9(b). It has, however, submitted  
environmental information with the  
application. In a separate notice,  
published April 8, 1985, environmental  
comments were invited.

 The application contains the  
information required by 49 CFR Part  
1150 and is accepted for consideration.  
Interested persons are invited to  
comment on the application by the dates  
set forth above.

Decided: April 17, 1985.

 By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

James H. Bayne,

*Secretary.*

[FR Doc. 85-10404 Filed 4-29-85; 8:45 am]

BILLING CODE 7035-01-M

### Release of Waybill Data for Use by the Association of American Railroads

The Commission has received a request from the Association of American Railroads (AAR) for permission to use the Commission's 1983 Carload Waybill Sample and any 1984 waybill data when available. AAR's Freight Equipment Management Program is investigating the feasibility and benefits of potential inter-railroad pooling projects and they need the waybill data to prepare certain statistics necessary for their analyses.

Specifically, one study covers a potential pooling project of covered hoppers. AAR indicates that access to the covered hopper waybill data will identify loaded origin-destination flow volumes and mileages. They state that this information, when combined with empty mileage data and an optimization program, will enable them to determine the potential benefits of improved utilization, such as in a pooling project.

The second area for which they seek the waybill data involves multi-level auto racks. The railroads already operate pooling projects for these cars but the three projects operate independently. AAR would like to quantify the utilization benefits of combining these projects into one single project. This, however, requires AAR's access to the loaded origin-destination flow volumes and mileages for multi-levels.

AAR states that they will release only aggregated statistics for the entire U.S. rail industry as a whole, except detailed data for the railroads' own movements might be provided to the particular railroads involved in each movement.

The Commission requires rail carriers to file waybill sample information if in any of the past three years, they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's

confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser, (202) 275-0907.

James H. Bayne,  
Secretary.

[FR Doc. 10351 Filed 4-29-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30640]

### Rarus Railway Corporation— Exemption From 49 U.S.C. 10901 and 11301

AGENCY: Interstate Commerce  
Commission.

ACTION: Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts Rarus Railway Corporation from the requirements of (a) 49 U.S.C. 10901 with respect to the lease and operation of the entire line of railroad of the Butte, Anaconda & Pacific Railway Company located in Deer Lodge and Silver Bow Counties, MT, and (b) 49 U.S.C. 11301 with respect to the directly related issuance of 1,000 shares of \$100 par value capital stock and a promissory note in an amount not to exceed \$300,000.

**DATES:** These exemptions will be effective on April 26, 1985. Petitions to reopen must be filed by May 20, 1985.

**ADDRESSES:** Send Pleadings referring to Finance Docket No. 30640 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission Washington, DC 20423
- (2) Petitioner's representative: Mark M. Levin, Suite 350, 1575 Eye Street, NW., Washington, DC 20005

**FOR FURTHER INFORMATION CONTACT:**  
Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**  
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S.

InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 12, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley dissented in part with a separate expression. Commissioner Simmons did not participate.

James H. Bayne,  
Secretary.

[FR Doc. 85-10402 Filed 4-29-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30634]

### Union Pacific Railroad Co. et al.— Trackage Rights Exemption; Corrected Decision<sup>1</sup>

On March 6, 1985, Union Pacific Railroad Company (UP) and its lessor, Oregon-Washington Railroad & Navigation Company, filed a notice of exemption for trackage rights over a line of track of Burlington Northern Railroad Company (BN) between milepost 69.5 and milepost 72.3 in Grays County, WA.

UP operates over a line adjacent to the line of BN. UP's trackage at times is under water due to flooding. Because BN's parallel trackage is higher, it does not incur the same water problem. Operations over the BN trackage and construction of the necessary connections will permit continued service to all of the active industries that presently are being served by UP.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers and falls within the class of transactions identified at 49 CFR 1180.2(d)(5) that the Commission has found to be exempt under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 L.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. See *D.T.&I.R./Trackage Rights*, 363 L.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be

<sup>1</sup> This decision corrects the decision served April 5, 1985, to reflect the trackage rights involve a line between milepost 69.5 and milepost 72.3 in lieu of milepost 34.228 and milepost 50.09.

protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 20, 1985.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-10395 Filed 4-29-85; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research Act of 1984—Oncogen Limited Partnership

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 (the "Act"), Oncogen Limited Partnership ("Oncogen") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Oncogen and (2) the nature and objectives of Oncogen. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Oncogen, and its general areas of planned activities are given below.

Oncogen is a limited partnership, consisting of the following general partners: Wallingford Research, Inc., ("WRI"), a wholly owned subsidiary of Bristol-Myers Company; Cancer Research, Inc., a wholly owned subsidiary of Genetic Systems Corporation ("GSC"); and Sygenic Company, a wholly owned subsidiary of Syntex (U.S.A.) Inc. The limited partner of Oncogen is ONKEM Limited Partnership ("ONKEM"). The general partners of ONKEM are WRI, GSC, and Syva Company. The limited partners of ONKEM are employees and consultants of ONCOGEN.

Oncogen is organized to engage in the research and development of commercial products for the diagnosis or treatment of human cancer.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-10477 Filed 4-29-85; 8:45 am]

BILLING CODE 4410-01-M

### Drug Enforcement Administration

[Docket No. 85-17]

#### Johnson Matthey's Fentanyl Application for Registration as Manufacturer of Controlled Substances; Notice of Objections, Request for Hearing, and Hearing

On February 19, 1985 at 50 FR 7007, notice was given that Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, had made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of two basic classes of controlled substances listed in Schedule II of the Controlled Substances Act of 1970, sufentanil and fentanyl. Opportunity was given for the filing of comments, objections and requests for hearing with respect to the application.

A request for hearing with respect to Johnson Matthey's application for registration as a bulk manufacturer of fentanyl was filed on behalf of Mallinckrodt, Inc.

Mallinckrodt is presently an applicant for registration as a bulk manufacturer of fentanyl itself and states its belief that the granting of the application for registration of Johnson Matthey should not affect Mallinckrodt's own pending application. Mallinckrodt's request for a hearing is intended to insure that Johnson Matthey's application has no such adverse effect. Mallinckrodt further states that if DEA determines that it is in the public interest to register only one company to manufacture fentanyl, then it, Mallinckrodt, can produce the substance most efficiently and with maximum regard for security.

Mallinckrodt also requests that all proceedings with respect to the registration of bulk manufacturers of fentanyl be consolidated.

Accordingly, notice is hereby given pursuant to 21 CFR 1301.43 that a hearing will be held on the aforesaid application of Johnson Matthey, Inc., for registration as a bulk manufacturer of fentanyl, commencing at 10:15 a.m. on Friday, June 28, 1985, in Room 1213, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, the proceedings on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings, and to determine whether any consolidation of proceedings is appropriate. Any person entitled to participate in said hearing and desiring to do so should file a notice of appearance pursuant to 21 CFR 1301.54 and 1316.48 within thirty days of the date of publication of this notice. A

person who has filed a request for hearing, i.e., Mallinckrodt, need not also now file a notice of appearance.

Dated: April 24, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-10407 Filed 4-29-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-11]

#### Mallinckrodt's Fentanyl Application for Registration as Manufacturer of Controlled Substances; Notice of Objections, Requests for Hearing, and Hearing

Notice was published in the Federal Register that on October 15, 1984, Mallinckrodt, Inc., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, had made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance fentanyl. Opportunity was given for the filing of comments, objections and requests for hearing with respect to the application.

Abbott Laboratories filed comments in support of the registration of Mallinckrodt stating its belief that the public interest would be served by having "sufficient competition" among the suppliers of fentanyl and that the registration of Mallinckrodt would allow authorized purchasers such as Abbott the opportunity to select between one or more vendors of the product.

Requests for hearing were filed on behalf of Janssen, Inc., and Johnson Matthey, Inc.

Janssen, Inc., has also filed an application for registration with DEA as a bulk manufacturer of fentanyl and states that its only interest in a hearing in this matter is to assure that Mallinckrodt's application would not adversely affect approval of its own application.

Johnson Matthey, Inc., is presently registered as a bulk manufacturer of fentanyl and states its desire to be heard on whether it is consistent with the public interest to register Mallinckrodt when, according to Johnson Matthey, there is no legitimate outlet for Mallinckrodt's proposed bulk manufacturing activities. Johnson Matthey states that it has or is in the process of establishing long term supply agreements with the only three firms that presently can lawfully distribute a fentanyl product for human beings in interstate commerce under the Federal Food, Drug and Cosmetic Act (FFDA).

Further, Johnson Matthey asserts that the only interstate marketer of an animal drug containing fentanyl approved under the FFDA, McNeil Laboratories, obtains its fentanyl from Janssen. In addition Johnson Matthey has agreed to provide fentanyl for all development needs to two other formulators who are planning to obtain a new drug application (NDA) for fentanyl products. Johnson Matthey also supplies fentanyl to persons engaged in pure scientific research, and it is ready, willing and able to supply fentanyl to any other lawful customer.

Therefore, since all proved distributors utilize, will utilize or may utilize fentanyl produced by Johnson Matthey, Johnson Matthey alleges that there is no apparent legitimate outlet for Mallinckrodt's proposed bulk production of fentanyl. Under these circumstances, Johnson Matthey concludes that granting Mallinckrodt's subject application would be contrary to the public health and safety and requests a hearing.

Accordingly, notice is hereby given pursuant to 21 CFR 1301.43 that a hearing will be held on the aforesaid application of Mallinckrodt, Inc., for registration as a bulk manufacturer of fentanyl commencing at 10:00 a.m. on Friday, June 28, 1985, in Room 1213, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537, the proceeding on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine whether any consolidation of proceedings is appropriate. Any person entitled to participate in said hearing and desiring to do so should file a notice of appearance pursuant to 21 CFR 1301.54 and 1316.48 within thirty days of the date of publication of this notice. A person who has filed a request for hearing need not also now file a notice of appearance.

Dated: April 24, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-10406 Filed 4-29-85; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Job Training Partnership Act; Program Year 1985 State Allotments for Migrant and Seasonal Farmworker Programs

AGENCY: Employment and Training Administration, Labor.

#### ACTION: Notice.

**SUMMARY:** This Notice announces the formula and Program Year July 1, 1985-June 30, 1986, proposed final allotments to States for programs funded under Title IV, section 402 of the Job Training Partnership Act (JTPA) (Pub. L. 97-300) of October 13, 1982.

Direct questions and comments to: Paul A. Mayrand, Director, Office of Special Targeted Programs, 601 D Street, N.W., Room 6122, Washington, D.C. (202) 376-8225. Written comments are to be postmarked no later than 30 days from the date of this Notice.

**SUPPLEMENTARY INFORMATION:** On October 19, 1984, the Department announced State planning estimates in the *Federal Register* for organizations interested in submitting funding applications pursuant to the published Solicitation for Grant Awards for Program Year 1985. The planning estimates were based on the same formula and are the same as the Program Year 1984 allotments, but did not reflect the August Fiscal Year 1984 supplemental appropriation action. These Program Year 1984 allotments were based on the total number of people in each State who worked in qualifying agricultural occupations and reported a poverty level income in response to questions asked in the conduct of the 1980 Decennial Census of Population and reflected a 75 percent hold-harmless factor. The Notice further indicated that the final Program Year 1985 allotment levels would be based on the Fiscal Year 1985 appropriation and may be subject to: (1) The last of the three announced hold-harmless applications and (2) data-base adjustments, if any, resulting from the deliberations of the Interagency Task Force on Farmworker Data.

However, the Department has decided to republish the October 19, 1984, planning estimates as the proposed final allotments. Each State will, therefore, receive for Program Year 1985 the allotment it received in Program Year 1984 minus any supplemental funds. The Department is taking this action because of the following two factors: (1) The current Program Year 1984 final appropriation level contains the aforementioned supplemental funds which caused affected States to operate at a higher level during Program Year 1984 than anticipated. The application of the initial hold-harmless strategy at this time would cause a more severe disruption of activities than might otherwise occur without additional time to adjust to a lower level of service, and (2) The Department does not now expect

to receive the report of the Interagency Task Force on Farmworker Data in time for review and comment until after Program Year 1985 has begun. Program Year 1985 will afford the Department and interested organizations a full opportunity to consider the results of the report and implement changes, if any, to become effective Program Year 1986. If such changes result in significant allotment shifts among the States, those shifts might be less disruptive without the application of the initial hold-harmless strategy at this time.

Signed at Washington, D.C., this 24th day of April, 1985.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 85-10475 Filed 4-29-85; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

### Summary of Decision Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

**SUMMARY:** Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the *Federal Register*. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

**FOR FURTHER INFORMATION CONTACT:**  
The petitions and copies of the final decisions are available for examination by the public in the Office of Standards.

Regulations and Variances, MSHA,  
Room 627, 4015 Wilson Boulevard,  
Arlington, Virginia 22203.

Dated: April 24, 1985.  
Patricia W. Silvey,  
Director, Office of Standards, Regulations  
and Variances.

## AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Doctat No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-83-24-M	48 FR 57641	Tenneco Minerals Co	30 CFR 57.21-53	Petitioner's proposal to construct stoppings in any crosscut with styrofoam blocks with joints and perimeter sealed with rigid urethane foam considered acceptable alternate method. Granted with conditions.
M-83-30-M	49 FR 672	International Minerals and Chemical Corp.	30 CFR 57.4-61A	Petitioner's proposal to install a reversible fan on the surface at the number 3 shaft with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-1-M	49 FR 10389	Hecta Mining Co	30 CFR 57.11-59	Proposal to provide a respirable atmosphere independent of the mine atmosphere for hoist operators as part of each mine's escape and evacuation plan with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-4-M	49 FR 18199	ASARCO, Inc.	30 CFR 57.11-37	Petitioner's proposal to reduce the size of the manway opening where certain ground conditions diminish the structural competence of the raise caps considered acceptable alternate method. Granted with conditions.
M-84-14-M	49 FR 23256	Duval Corp.	30 CFR 57.4-27	Petitioner's proposal to mount the fire extinguishers on each of the face electrical safety centers in lieu of mounting them on the equipment considered acceptable alternate method. Granted.
M-84-17-M	49 FR 40495	ASARCO, Inc.	30 CFR 57.4-35	Petitioner's proposal, as a research and development program, to convert one 35-ton haul truck and one loader to a dual fuel system of diesel and propane considered acceptable alternate method. Granted with conditions.
M-84-22-M	49 FR 47444	Kaiser Sand & Gravel Co	30 CFR 56.16-2	Proposal to conduct repairs inside bunkers or silos with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-124-C	49 FR 675	Eastern Mingo Coal Co	30 CFR 75.326	Use of air from the belt entry to ventilate the working face with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-125-C	49 FR 680	Southern Mingo Coal Co	30 CFR 75.326	Use of air from the belt entry to ventilate the working face with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-126-C	49 FR 681	Western Mingo Coal Co	30 CFR 75.326	Use of air from the belt entry to ventilate the working face with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-146-C	49 FR 5217	Turnis Coal Co	30 CFR 75.503	Use of a harness snap device in lieu of a padlock to secure screw caps in place on plugs of battery-powered machinery considered acceptable alternate method. Granted with conditions.
M-83-147-C	49 FR 4566	Bathlehem Mines Corp	30 CFR 75.305	Due to numerous roof falls, petitioner's proposal to establish two methane monitoring stations at specified locations with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-157-C	49 FR 5215	Eastern Coal Corp	30 CFR 75.305	Due to a roof fall, petitioner's proposal to install mandoors in the stoppings on the inby and outby sides of the fall and the use of evaluation points located at each side of the fall considered acceptable alternate method. Granted with conditions.
M-84-1-C	49 FR 13764	Inland Steel Coal Co	30 CFR 75.503	Petitioner's proposal to put a bracket on the battery with a set screw-type arrangement to lock it down on the mine's scoops considered acceptable alternate method. Granted with conditions.
M-84-6-C	49 FR 13766	U.S. Steel Mining Co., Inc	30 CFR 75.1700	Plugging and mining through abandoned oil and gas wells with specified precautions in lieu of establishing and maintaining barriers around such wells considered acceptable alternate method. Granted with conditions.
M-84-33-C	49 FR 15158	Shannopin Mining Co	30 CFR 75.305	Proposal to establish and maintain air monitoring checkpoints at specified locations to routinely monitor both air quantity and quality in the airway considered acceptable alternate method. Granted with conditions.
M-84-48-C	49 FR 13762	Deep Mine Coal Co., Inc	30 CFR 75.1400	Proposed operation of mancase or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.
M-84-68-C	49 FR 23263	Spring Creek Coal Co	30 CFR 77.216-3(a)	Petitioner's proposal to perform the inspection and recording requirements on an annual basis considered acceptable alternate method. Granted with conditions.
M-84-85-C	49 FR 21133	Pyro Mining Co	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-84-92-C	49 FR 18198	White County Coal Corp.	30 CFR 75.503	Use of a modified bolt and nut locking device in lieu of a padlock to secure screw caps in place on plugs of battery operated scoop tractors considered acceptable alternate method. Granted with conditions.
M-84-99-C	49 FR 23264	Warrior Coal Mining Co.	30 CFR 75.326	Petitioner's proposal to use a belt slope into the coal bed as a return aircourse from the mine workings with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-102-C	49 FR 22573	AMAX Coal Co.	30 CFR 77.803	Use of the present 4,160 volt electrical pole line system to supply power to portable and mobile equipment in addition to the stationary electrical equipment it presently supplies with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-127-C	49 FR 23264	Western Mingo Coal Co	30 CFR 75.1103-4(a)	Use of a carbon monoxide monitoring system in lieu of point-type heat sensors at every belt drive, at the section loading point, and at intervals not to exceed 2,000 feet along the belt considered acceptable alternate method. Granted with conditions.
M-84-128-C	49 FR 23257	Eastern Mingo Coal Co.	30 CFR 75.1103-4(a)	Use of a carbon monoxide monitoring system in lieu of point-type heat sensors at every belt drive, at the section loading point, and at intervals not to exceed 2,000 feet along the belt considered acceptable alternate method. Granted with conditions.
M-84-129-C	49 FR 23263	Southern Mingo Coal Co	30 CFR 75.1103-4(a)	Use of a carbon monoxide monitoring system in lieu of point-type heat sensors at every belt drive, at the section loading point, and at intervals not to exceed 2,000 feet along the belt considered acceptable alternate method. Granted with conditions.
M-84-132-C	49 FR 26182	Ray Coal Co	30 CFR 75.326	Use of air from belt haulage entries to ventilate active working places with specific precautions considered acceptable alternate method. Granted with conditions.
M-84-133-C	49 FR 23261	Ray Coal Co	30 CFR 75.1103-4(a)	Installation of a fire detection system using low level carbon monoxide monitoring devices in all belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.

## AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-84-139-C	49 FR 26183	Southern Ohio Coal Co.	30 CFR 75.503	Use of metal locking devices consisting of a fabricated metal bracket and a metal locking device (harness snap) in lieu of padlocks to secure battery plugs to machine-mounted receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-84-142-C	49 FR 35053	Southern Ohio Coal Co.	30 CFR 75.503	Use of metal locking devices consisting of a fabricated metal bracket and a metal locking device (harness strap) in lieu of padlocks to secure battery plugs to machine-mounted receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-84-160-C	49 FR 35053	T.A.G. Coal Co.	30 CFR 75.1400	Operation of man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.
M-84-161-C	49 FR 35051	Estep Coal Corp.	30 CFR 75.1710	Use of cable or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-84-164-C	49 FR 35051	Neumeister Coal Co.	30 CFR 75.1400	Operation of man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connection device considered acceptable alternate method. Granted with conditions.
M-84-170-C	49 FR 26161	Johnson Brothers Coal Co.	30 CFR 75.1710	Use of cable or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-84-178-C	49 FR 31182	Wolfgang Brothers Coal Co.	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.

[FR Doc. 85-10476 Filed 4-29-85; 8:45 am]

BILLING CODE 4510-43-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 85-24]

**National Commission on Space; Meeting****AGENCY:** National Aeronautics and Space Administration.**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 National Commission on Space (NCS).**DATE AND TIME:** May 15, 1985, 9:00 a.m. to 5:15 p.m.; May 16, 1985, 9:00 a.m. to 4:45 p.m.; May 17, 1985, 9:00 a.m. to 12:00 noon.**ADDRESS:** Smithsonian Institution, National Air and Space Museum, 6th St. and Independence Avenue, SW, Washington, DC 20560.**FOR FURTHER INFORMATION CONTACT:** Mrs. Mechthild E. "Mitzi" Peterson, Code RS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2733).**SUPPLEMENTARY INFORMATION:** The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next twenty years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15

voting members. The meeting will be open to the public for the stated times up to the seating capacity of the room (approximately 40 persons including Commission members and other participants).

The meeting will be closed to the public from 1:30 p.m. to 4:45 p.m. on May 16, 1985, and from 9:00 a.m. to 12:00 noon on May 17, 1985, for discussions relating to the national defense and foreign policy. Since this session will be concerned with matters listed in 5 U.S.C. 522b(c)(1), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of meeting: Open, except for a closed session as noted in the agenda below.

**Agenda***May 15, 1985*

9:00 a.m.—Introductory Remarks, Discussion, Administrative Arrangements.

**NASA Presentations**10:00 a.m.—NASA Perspective.  
10:30 a.m.—Transportation/Space Flight.  
1:00 p.m.—Space Station.  
2:30 p.m.—Science and Applications.  
3:45 p.m.—Commercial Programs.  
4:15 p.m.—Technology.  
5:15 p.m.—Adjourn.*May 16, 1985*

9:00 a.m.—Chairman's Remarks.

**Non-NASA Civilian Presentations**9:15 a.m.—National Oceanic and Atmospheric Administration (NOAA).  
10:15 a.m.—National Telecommunications and Information Agency (NTIA).  
11:30 a.m.—Department of Transportation (DOT).**National Security Planning (Closed Session)**1:30 p.m.—International Planning (closed).  
2:30 p.m.—Department of Defense (DOD) Planning (closed).  
3:45 p.m.—Strategic Defense Initiative (SDI) (closed).  
4:45 p.m.—Adjourn.*May 17, 1985*9:00 a.m.—Executive Discussion (closed).  
12:00 noon—Adjourn.**Richard L. Daniels,***Deputy Director, Logistics Management and Information Programs Division, Office of Management.*

April 24, 1985.

[FR Doc. 85-10331 Filed 4-29-85; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****Design Arts Advisory Panel (Exploration/Research Section); Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94-463), as amended notice is hereby given that a meeting of the Design Arts Advisory Panel (Exploration/Research Section) to the National Council on the Arts will be held on May 16-17, 1985, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

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 in confidence 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, DC 20506, or call (202) 682-5433.

Dated: April 23, 1985.

John H. Clark,

*Director, Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-10429 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

#### **Design Arts Advisory Panel (Fellowships Section); 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 Design Arts Advisory Panel (Fellowships Section) to the National Council on the Arts will be held on May 22-24, 1985, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

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 in confidence 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.

Dated: April 23, 1985.

John H. Clark,

*Director, Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-10428 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

#### **Museum Advisory Panel (Special Exhibitions Section); 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 Museum Advisory Panel (Special Exhibitions Section) to the National Council on the Arts will be held on May 14-17, 1985, from 9:00 a.m.-5:30 p.m. in room 730 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 in confidence 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.

Dated: April 22, 1985.

John H. Clark,

*Director, Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-10424 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

#### **Music Advisory Panel (Opera-Musical Theater Challenge Section); 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 Music Advisory Panel (Opera-Musical Theater Challenge Section) to the National Council on the Arts will be held on May 17, 1985, from 9:00 a.m.-5:30 in Room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

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 in confidence 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.

Dated: April 22, 1985.

John H. Clark,

*Director, Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-10427 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

#### **Music Advisory Panel (Solo Recitalists Fellowships, Section); 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 Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on May 14-16, 1985 from 9:00 am-5:50 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on May 16, 1985 from 1:30 pm-5:30 pm to discuss guidelines, policy, and the five-year planning document.

The remaining sessions of this meeting on May 14-15, 1985 from 9:00 am-5:30 pm and on May 16, 1985 from 9:00 am-12:30 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence 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 sections 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, 1100 Pennsylvania Ave., NW, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

*Director, Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-10426 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

#### **Visual Arts Panel (Painting Fellowships Section); 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 Panel (Painting Fellowships Section) to the National Council on the Arts will be held on May 13-16, 1985, from 9:00 a.m.-8:00 p.m.; and on May 17, 1985, from 9:00 a.m.-8:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

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 in confidence 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.

Dated: April 22, 1985.

John H. Clark,

Director, Council and Panel Operations,  
National Endowment for the Arts.

[FR Doc. 85-10425 Filed 4-29-85; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Biophysics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biophysics.

Date and time: Monday and Tuesday, May 20, and 21, 1985, from 8:30 A.M. to 6:00 P.M.

Place: Room 1141, The National Science Foundation 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 329, Phone: (202) 357-7777.

Purpose of advisory panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals 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 Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

April 25, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-10323 Filed 4-29-85; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences.

Date and time: May 20, 1985—8:30 a.m. to 5:30 p.m.; May 21, 1985—8:30 a.m. to 4:30 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: May 20—Open; May 21—Closed—8:30 a.m. to 9:30 a.m. May 21—Open—9:30 a.m. to finish.

Contact person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than May 15, 1985.

Purpose of committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Monday, May 20, 1985—8:30 a.m. to 5:30 p.m.—Open

Introductory Remarks

Current Status of the Division including:

1. Activities in FY 1985 cycle
2. Status of FY 1986 Budget request

Mathematical Sciences at other Federal agencies

Computational Mathematics

Setting priorities for the next five years

Tuesday, May 21, 1985—8:30 a.m. to 8:30 a.m.—Closed

Discussion and review of pending

proposals with policy implications.

Tuesday, May 21, 1985—9:30 a.m. to finish—Open

Mathematics and Science Education

Committee on Equal Opportunity in

Science and Technology

International activities

Setting priorities for the next five years

Other business

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 proposal. 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 Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-10324 Filed 4-29-85; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Decision and Management Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision and Management Science.

Type of meeting: Closed.

Date and Time: May 23-24, 1985, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550, Room 628.

Contact Person: Dr. Robert M. Thrall, Acting Program Director, National Science Foundation, Room 335, Phone (202) 357-7509.

Purpose of advisory panel: To provide advice and recommendations concerning research in Decision and Management Science.

Agenda: Closed: to review and evaluate research proposals 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 Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: April 25, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-10325 Filed 4-29-85; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended,

Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cellular Physiology.

Date and time: Monday, Tuesday and Wednesday, May 20, 21, and 22, 1985, from 9:00 a.m. until 5:00 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Maryanna P. Henkart, Program Director, Cellular Physiology, Room 332, Telephone: 202/357-7377.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals 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 Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M.R. Winkler,

Committee Management Officer.

[FR Doc. 85-10326 Filed 4-29-84; 8:45 am]

BILLING CODE 7555-01-M

#### Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and time: May 23, 24, 1985—9:00 A.M. to 5:00 P.M. each day.

Place: Room 351, National Academy of Sciences, 21st and Pennsylvania Avenue, NW., Washington, D.C.

Type of meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences Room 609, National Science Foundation, Washington, D.C. Telephone: (202) 3357-9639.

Summary Minutes: May be obtained from the contact person.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

#### Agenda

The Committee will hold morning and afternoon Sessions on both days following

opening remarks and introductions. The Committee will hear briefings and status reports of current topical interest from various officials and representatives from NSF, other Governmental Departments and Agencies, and other organizations active in ocean science matters. The Committee will also hear reports from several Subcommittees and reflect upon a proper course of action based on the information presented. The Committee will also discuss the current status and future directions of the draft Long-Range Plan for Ocean Sciences, and formulate appropriate guidance and direction for the continuing planning process. The Committee will also conduct necessary administrative functions in accordance with established practice with respect to approval of the minutes of the previous meeting determination of the time and place of the next meeting; as well as any other appropriate business.

M. Rebecca Winkler,

Committee Management Officer.

April 25, 1985.

[FR Doc. 85-10327 Filed 4-29-85; 8:45 am]

BILLING CODE 7555-01-M

#### Biochemistry Advisory Panel; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting.

Name: Biochemistry Advisory Panel.

Date: Monday and Tuesday, May 20 and 21, 1985, from 9:00 am to 5:00 pm.

Place: The Bavarian Inn and Lodge, Shepherdstown, West Virginia 25443.

Type of meeting: Closed.

Contact person: Arnold Revzin, Program Director, Biochemistry Program, Room 329-D, Telephone: (202) 357-7945.

Purpose of advisory panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals 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 Committee Management Officer pursuant to provisions of Section 10 (d) of Pub. L. 463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

April 25, 1985.

[FR Doc. 85-10328 Filed 4-29-85; 8:45 am]

BILLING CODE 7555-01

#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-440 and 50-441]

#### Cleveland Electric Illuminating Co. et. al.; Perry Nuclear Power Plant, Units 1 and 2; Receipt of Request for Action

Notice is hereby given that by petition dated March 8, 1985, Susan L. Hiatt on behalf of the Ohio Citizens for Responsible Energy, Inc., requested that the Director of the Office of Inspection and Enforcement initiate an investigation and show-cause proceeding with respect to the financial condition of the licensees of the Perry Nuclear Power Plant. The petitioner alleges that the licensees' precarious financial position may result in unsafe construction or sabotage of the plant and its nuclear fuel. The petition is being handled pursuant to 10 CFR 2.206 by the Office of Nuclear Reactor Regulation, and accordingly appropriate action will be taken on the petition within a reasonable time.

Copies of the petition are available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and in the local public document room at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 24th day of April, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-10482 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3002]

#### Duke Power Co.; Finding of No Significant Impact Issuance of Special Nuclear Material License No. SNM-1949; New County, SC

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1949 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the Catawba Nuclear Station in York County, South Carolina. The unirradiated fuel assemblies will be for eventual use in the Catawba Nuclear Station, Unit 2, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material

License No. SNM-1949. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 24th day of April 1985.

For Nuclear Regulatory Commission,

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch,  
Division of Fuel Cycle and Material Safety,  
NRC.

[FR Doc. 85-10483 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

**Northeast Nuclear Energy Co.;  
Environmental Assessment and  
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain testing requirements of Appendix J to 10 CFR Part 50 to the Northeast Nuclear Energy Company (NNECO) (the licensee) for Millstone Unit 1, located at the licensee's site in New London County, Connecticut.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from certain requirements of Appendix J to 10 CFR Part 50 for type A testing of containment penetrations with expansion bellows, testing main steam isolation valves (MSIVs) at 43 psig, and testing air locks at design basis accident pressure prior to conditions requiring containment integrity.

*The Need For The Proposed Action*

The licensee reports that the various containment pipe penetration expansion bellows were constructed so that they could not be type B tested as required by 10 CFR Part 50 Appendix J section II G.1, the MSIVs on the containment inboard were not designed to withstand the 43 psig pressure with flow in the

reverse direction, and airlock testing at 43 psig following outages and prior to conditions requiring containment integrity is excessively time consuming.

*Environmental Impact of the Proposed Action*

The proposed exemption affects selected tests to assure containment integrity and acceptable alternatives deemed equivalent. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the Appendix J requirements. Such action would not enhance the protection of the environment and would result in unjustified costs.

*Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Unit 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and 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 environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated November 14, 1975; July 29, 1977; May 31, 1978; September 20, 1978; May 9, September 9, October 15, and November 6, 1980; February 26, 1981; September 16, 1983; and December 7, 1984. These letters are available for public inspection at the Commission's

Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 23 day of April 1985.

For the Nuclear Regulatory Commission,

Dennis M. Crutchfield,

Assistant Director for Safety Assessment,  
Division of Licensing.

[FR Doc. 85-10481 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

**Northern States Power Co.;  
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 10 CFR 50.48(c) to Northern States Power Company (the licensee), for the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, located in Goodhue County, Minnesota.

**Environmental Assessment**

*Identification of Proposed Action*

The exemption would extend the implementation date in 10 CFR 50.48(c)(2) to allow time to complete the modifications in six fire areas required by 10 CFR 50 Appendix R. The exemption would extend the deadline for a period of five months from December 31, 1984 to June 1, 1985.

The exemption is responsive to the licensee's application for exemption dated December 21, 1984, as supplemented by letter dated January 30, 1985.

*The Need for the Proposed Action*

The proposed exemption is needed because of an expanded scope of studies and the unforeseen difficulties encountered in the procurement of material to complete the modifications.

*Environmental Impacts of the Proposed Action*

The proposed exemption is scheduler in nature and does not in any way impact the degree of fire protection that is equivalent to that required by Appendix R in regard to an increase in the risk of fires at these facilities. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological

environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological 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 for the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2.

#### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and 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, 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 the exemption dated December 21, 1984 and the supplement dated January 30, 1985 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 24th day of April 1985.

For the Nuclear Regulatory Commission,  
Gus C. Laines,

*Assistant Director, for Operating Reactors.*  
[FR Doc. 85-10480 Filed 4-29-85; 8:45 am]  
BILLING CODE 7590-01-M

#### **Advisory Committee on Reactor Safeguards; Meeting**

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 9-11, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the *Federal Register* on March 19, 1985.

The agenda for the subject meeting will be as follows:

#### **Thursday, May 9, 1985**

*8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)*—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

*8:45 A.M.-11:00 A.M.: Safeguards and Security at Nuclear Facilities (Open/Closed)*—The members will discuss provisions to preclude sabotage at nuclear installations. Representatives of the NRC Staff and its contractors will participate as appropriate.

Portions of this session will be closed as required to discuss Proprietary Information, detailed safeguards information, and National Security Information applicable to this matter.

*11:00 A.M.-12:00 Noon: Emergency Planning and Preparedness for Production and Utilization Facilities (Open)*—The members will hear and discuss the report of its Subcommittee as well as representatives of the NRC Staff in the Committee's consideration of the proposed NRC rule regarding the consideration of earthquakes in emergency planning and preparedness for production and utilization facilities.

*12:00 Noon-12:45 P.M.: Future ACRS Activities (Open)*—The members will discuss anticipated ACRS Subcommittee meetings and items proposed for consideration by the full Committee including plans for preparation of the ACRS report to the NRC Commissioners for the proposed NRC safety research program and budget for FY-1987.

*1:45 P.M.-6:00 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)*—The Committee will continue its consideration of the request for an FFDA for this type of facility. Representatives of the NRC Staff and the Applicant will make presentations and respond to questions regarding the proposed facility design.

Portions of this session will be closed as needed to discuss Proprietary Information applicable to this facility and detailed safeguards information as appropriate.

#### **Friday, May 10, 1985**

*8:30 A.M.-11:30 A.M.: Quantitative Safety Goals (Open)*—The members will continue their review of the NRC Staff evaluation of the two-year trial period for the use of quantitative safety goals and the proposed plan for implementation of quantitative goals as a regulatory mechanism. Members of the NRC Staff will participate in the discussion.

*11:30 A.M.-12:00 Noon: Palo Verde Nuclear Generating Station (Open)*—

Report of Subcommittee meeting on April 26, 1985

*12:00 Noon-12:30 P.M.: Scram Reliability (Open)*—Discuss ACRS Subcommittee review of scram system reliability for PWRs (WK/MME) System

*1:30 P.M.-2:00 P.M.: Preparation for Meeting with NRC Commissioners (Open)*—The members will discuss the basis for its report of April 15, 1985 to the NRC regarding the ACRS role in the civilian radioactive waste management program.

*2:00 P.M.-3:00 P.M.: Meeting with NRC Commissioners (Open)*—The members of the ACRS will meet with the members of the Nuclear Regulatory Commission to discuss the topic noted above.

*3:00 P.M.-4:30 P.M.: Operating Incidents and Events at Nuclear Power Stations (Open)*—The members of the Committee will hear and discuss a report by representatives of the NRC Staff regarding recent incidents and operating events at nuclear power plants.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

*4:30 P.M.-6:30 P.M.: Generic Safety Issues (Open)*—The members of the Committee will discuss the prioritization proposed by the NRC Staff for resolution of several new unresolved generic issues. Members of the NRC Staff will participate in the discussion.

#### **Saturday, May 11, 1985**

*8:30 A.M.-12:00 Noon: Preparation of ACRS Reports (Open/Closed).*

The members of the Committee will discuss proposed ACRS reports to the Nuclear Regulatory Commission regarding items considered during this meeting.

Portions of this session will be closed as required to discuss detailed security plans, and Proprietary Information applicable to the facilities being discussed and National Security Information.

*1:00 P.M.-3:00 P.M.: ACRS Subcommittee Activities (Open/Closed)*—The members will hear and discuss the reports of ACRS subcommittee chairmen and members regarding assigned subcommittee activities including scram system reliability in pressurized water reactors, simplification of technical specifications, proposed guidelines regarding the nongovernmental activities of ACRS members and emergency core cooling systems, etc.

Portions of this session will be closed as necessary to discuss Proprietary

Information applicable to the matters being considered, National Security Information, and information the release of which would represent an unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss National Security Information (5 U.S.C. 552b(c)(1)), Proprietary Information (5 U.S.C. 552b(c)(4)), detailed security information (5 U.S.C. 552b(c)(3)) and information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: April 25, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-10479 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

### Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, FC 409-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 10.4, "Guide for the Preparation of Applications for Licenses to Process Source Material." The guide is being revised to provide guidance on the preparation of applications in conformance with the revised NRC Form 313 for licenses to process source material.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by July 1, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific

divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 24th day of April 1985.

For the Nuclear Regulatory Commission,  
Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-10478 Filed 4-29-85; 8:45 am]

BILLING CODE 7590-01-M

### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the *Federal Register* of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36589, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 47 FR 16697, 40 FR 47467, 50 FR 8428, 50 FR 9342 and 50 FR 11471.

Under section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, William E. Brock, United States Trade Representative, in conformance with the provisions of section 2(b) of the Act, section 701(b) of the Tariff Act of 1930 as amended, and section 1-103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

The Government of the United Mexican States has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

In accordance with section 701(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of April 23, 1985,

Mexico is a "country under the Agreement."

William E. Brock,

United States Trade Representative.

April 23, 1985.

[FR Doc. 85-10454 Filed 4-29-85; 8:45 am]

BILLING CODE 3190-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Residential Model Conservation Standards (MCS) Technical Task Force; Meeting

**AGENCY:** Residential Model Conservation Standards (MCS) Technical Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Review agenda.
  - Presentation and task force discussion of staff recommendations on MCS implementation schedule and programs.
  - Update on preliminary cost data from Residential Standards Demonstration Program.
  - Presentation and discussion on markup for builder overhead, fees and profit.
  - Status reports:
    1. Thermal performance monitoring—Bonneville staff.
    2. Builder exit survey and analyses—State Energy Agency Staff.
- Status: Open.

**SUMMARY:** The Northwest Power Planning Council hereby announces a forthcoming meeting of its Residential Model Conservation Standards (MSC) Technical Task Force.

**DATE:** Friday, May 3, 1985, 10:00 a.m.—4:00 p.m.

**ADDRESS:** The meeting will be held at the Council's Central Office, 850 SW. Broadway, Suite 1100, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Tom Echman at (503) 222-5161.

Edward Sheets,  
Executive Director.

[FR Doc. 85-10349 Filed 4-29-85; 8:45 am]

BILLING CODE 0000-00-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21968; File No. SR-MSRB-85-11]

### Self-Regulatory Organizations; Proposed Rule Change by Municipal Securities Rulemaking Board Relating to Recordkeeping and Disclosures in Connection With New Issues

The Municipal Securities Rulemaking Board ("Board") on March 11, 1985 filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder, a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Board is filing amendments to rules G-8 and G-9 on recordkeeping and rule G-32 on disclosures in connection with new issues (hereafter referred to as "the proposed rule change"), as follows:<sup>1</sup>

##### Rule G-8. Books and Records to be Made by Municipal Securities Brokers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every municipal securities broker and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such municipal securities broker or municipal securities dealer:

- (i) through (xii) No change.
  - (xiii) *Records Concerning Deliveries of Official Statements. A record of all deliveries, to purchasers of new issue securities, of official statements or other disclosures concerning the underwriting arrangements required under rule G-32.*
- Rule G-9. Preservation of Records

(a) No change.  
(b) Records to be Preserved for Three Years. Every municipal securities broker and municipal securities dealer shall preserve the following records for a period of not less than three years:

- (i)-(ix) No change.
- (x) *All records of deliveries of rule G-32 disclosures required to be retained as described in rule G-8(a)(xiii).*

<sup>1</sup> Italics indicate new language; brackets indicate deletions.

(c) through (g) No change.  
Rule G-32. Disclosures in Connection with New Issues

(a) Disclosure Requirements. No [municipal securities] broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless [ , at or prior to sending a final written confirmation of the transaction to the customer indicating money amount due.] such [municipal securities] broker, dealer or municipal securities dealer [sends] delivers to the customer no later than the settlement of the transaction:

(i) A copy of the official statement in final form [voluntarily furnished] prepared by or on behalf of the issuer [(or an abstract or other summary of such statement which is prepared by such municipal securities broker or municipal securities dealer)] or if a final official statement will not be prepared by or on behalf of the issuer a written notice to that effect; and

(ii) In connection with a negotiated sale of new issue municipal securities, the following information concerning the underwriting arrangements:

(A) The underwriting spread;  
(B) The amount of any fee received by the [municipal securities] broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities;

(C) The initial offering price for each maturity in the issue that is offered or to be offered in whole or in part by the underwriters.

In the event an official statement in final form [is] will not be prepared by or on behalf of the issuer, [available at the time the final confirmation indicating money amount due is sent to a customer,] an official statement in preliminary form, if any, shall be sent to the customer [ , provided that an official statement in final form, or an abstract or summary thereof, must be sent to the customer promptly after such official statement becomes available to the municipal securities broker or municipal securities dealer.] with a written notice that no final official statement is being prepared.

Every [municipal securities] broker, dealer or municipal securities dealer shall promptly furnish the documents and information referred to in this section (a) to any broker, dealer or municipal securities dealer to which it sells new issue municipal securities, upon the request of such broker, dealer or municipal securities dealer.

(b) *Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.*

(i) *Managing Underwriters and Sole Underwriters.* When a final official statement is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall provide all brokers, dealers and municipal securities dealers that purchase the new issue securities with an official statement and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per \$100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and shall provide all purchasing brokers, dealers and municipal securities dealers with instructions how to order additional copies of the final official statement directly from the printer. A managing underwriter or sole underwriter that prepares an official statement on behalf of an issuer shall print the final official statement and other information required by paragraph (a)(ii) of this rule and make them available promptly after the date of sale of the issue but no later than two business days before the date all securities are delivered by the syndicate manager to the syndicate members.

(ii) *Financial Advisors.* A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares a final official statement on behalf of an issuer, shall make that official statement in final form available to the managing underwriter or sole underwriter promptly after the award is made. If the financial advisor is responsible for printing the final official statement, it shall make adequate copies of the final official statement available to the managing underwriter or sole underwriter promptly after the award is made but no later than two business days before the date all securities are delivered by the syndicate manager to the syndicate members to permit their compliance with paragraph (b)(i) of this rule.

[(b)] (c) *Definition of New Issue Municipal Securities and Official Statement.* For purposes of this rule, the following terms have the following meanings:

(i) The term "new issue municipal securities" shall mean securities of an issue that are sold by a [municipal securities] broker, dealer or municipal securities dealer [to a customer] during the underwriting period defined in rule G-11 of the Board, and

(ii) The term "official statement" shall mean a document prepared by the issuer or its representatives setting forth, among other matters, information concerning the issuer and the proposed issue of securities. A notice of sale shall

not be deemed to be an "official statement" for purposes of this rule.

## II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

### A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-32 currently prohibits a municipal securities broker or dealer from selling during the underwriting period new issue municipal securities to a customer unless, at or prior to sending the final confirmation of the transaction, a copy of the final official statement, if one is prepared by or on behalf of the issuer, and, in the case of negotiated sales, certain additional written information concerning the underwriting arrangements, are provided to the customer. The rule also requires dealers to furnish copies of official statements and other rule G-32 disclosures upon request to any broker, or municipal securities dealer to which it sells new issue municipal securities. The Board has stated that if sufficient copies of official statement are not available, a dealer must reproduce the official statement at its own expense. These requirements apply to all dealers who sell new issue securities, not solely to underwriters of the issue. The rule is designed to ensure that a purchaser of new issue securities is provided with all available information relevant to his investment decision.

The Board published for comment draft amendments in March and June 1984. In September 1984, the Board adopted amendments to rules G-8, G-9 and G-32 which were filed with the Commission on October 23, 1984. At its December 1984 meeting, after considering additional comments concerning these amendments, the Board determined to withdraw the amendments from the Commission pending further consideration by the Board at its February 1985 meeting. In adopting the proposed rule change, the Board reviewed its prior drafts of amendments as well as all of the comments received thereon. The amendments will become effective 30 days after their approval by the Commission.

The proposed rule change is designed to delineate more clearly the responsibilities of dealers that sell new issue securities as well as to strengthen and facilitate enforcement of rule G-32.

Specifically, the proposed rule change would require that the rule G-32 disclosures, including an official

statement in final form if any, be delivered by settlement of the transaction with a customer. Rule G-32 currently requires that the rule G-32 disclosures be delivered to customers at or prior to sending the money confirmation of the transaction. The proposed rule change would delay the deadline for delivery until settlement of the transaction with a customer. The Board has extended the deadline for delivering rule G-32 disclosures to assure that a dealer has adequate time to deliver the disclosures to a customer and that the customer will receive the disclosures prior to paying for the securities.

In addition, the proposed rule change would require that when a final official statement is being prepared by or on behalf of an issuer, the final version must be delivered to a customer new issue securities by the settlement of the transaction. Under current rule G-32, a dealer may have to bear the expense of mailing both the preliminary and, when it is prepared, the final official statement to customers. A number of dealers suggested that, in light of the expenses associated with obtaining and delivering official statements, the industry should only be required to send one disclosure document. The Board concluded that delivery of a preliminary official statement by itself would not be adequate in those instances in which a final version also is being prepared since the final official statement frequently differs materially from its preliminary version. The Board believes that requiring that final official statements be delivered is not unreasonable in light of the proposed extension of the deadline by which rule G-32 disclosures must be delivered and other new requirements that would be placed on managing underwriters and financial advisors summarized below.

For issues for which no final official statement will be prepared on or on behalf of an issuer, the proposed rule change would require that a dealer selling the new issue securities to a customer disclose that fact in writing by settlement of the transaction.

The proposed rule change would eliminate, in most instances, the requirement that a preliminary official statement be sent. Rule G-32 currently provides that when a final official statement is not prepared in time to send with the money confirmation, the preliminary version, if any, must be sent and the final official statement must be sent as soon as it becomes available from the issuer. As noted above, the proposed rule change would require that the final version of the official statement

be delivered by settlement of transactions in the new issue securities with customers. Under these circumstances, therefore there would be no need to deliver a preliminary official statement except in those instances in which a preliminary official statement is the only disclosure document prepared by or on behalf of the issuer. The Board understands that in some competitive sales, the issuers may prepare preliminary official statements only. In those circumstances, the proposed rule change would require a dealer selling the new issue securities to deliver by settlement of the transaction with the customer the preliminary version along with written notice that no final official statement will be prepared.

The proposed rule change would place certain responsibilities on managing underwriters and financial advisors. When a final official statement will be prepared by or on behalf of the issuer the proposed rule change would require the financial advisor and/or the managing underwriter to make the final official statement available in a timely manner. The proposed rule change would require managing underwriters to assure that rule G-32 disclosures are printed in final form no later than two business days prior to the date the securities are delivered by the managers to the syndicate members. A financial advisor that is subject to the Board's rules and prepares an official statement on behalf of an issuer but is not responsible for printing it would be required to deliver the final version to the managing underwriter promptly after the award is made so that the managing underwriter can complete printing within two business days prior to the date it delivers the securities to the syndicate members. If the financial advisor is responsible for printing the official statement, it must provide sufficient copies (as defined in paragraph (b)(1) of rule G-32) of the final version to the managing underwriter no later than two business days before the date the manager delivers the securities to the syndicate members. The Board has adopted these provisions because it understands that many dealers settle their customer transactions on the day the securities are delivered to the syndicate. It therefore concluded that it was necessary to specify these printing deadlines to facilitate compliance with the rule by these dealers.

In addition, the proposed rule change specifies that a managing underwriter must be prepared to provide to any broker, dealer or municipal securities dealer which has purchased the new issue, one copy of the final official

statement and other documents specified by subsection (a)(ii) of rule G-32 and one additional official statement per \$100,000 par value of the new issue purchased. A number of commentators suggested that it is difficult for dealers to comply with rule G-32 because some managing underwriters give the distribution of official statements a low priority. The Board believes that managing underwriters should be responsible for ensuring that final official statements are printed in sufficient time and numbers to permit dealers to deliver them to customers by the settlement of transactions in the securities. This provision also would require a manager to provide instructions how to obtain additional copies of the final official statement from the printer to any dealer seeking a larger number of the documents than is specified by the rule. These provisions are designed to achieve some balance between the costs associated with dissemination of official statements borne by underwriters and those borne by dealers selling new issue securities.

The proposed rule change retains the existing rule G-32 provision that purchasing dealers must request the rule G-32 disclosures. In September 1984, the Board adopted amendments to rule G-32 which would have required that purchasing dealers automatically receive the rule G-32 disclosures. After further consideration, the Board concluded that the primary purpose of the rule is to assure that public customers (rather than dealers) obtain the disclosures. The Board concluded that compliance with the new requirement might delay, rather than facilitate, delivery of the disclosures to customers, for example, when the securities trade among dealers several times in one or two days. Accordingly, the Board determined to delete the new requirement and restore the "on request" provision. The Board also concluded that a dealer at the end of a chain of inter-dealer transaction, which sells to a customer, should be able to obtain the disclosures directly from the syndicate manager and thereby avoid any lengthy delivery delays attendant to its seeking them through the transaction chain. The final text of rule G-32, therefore, would require selling dealers and syndicate managers to provide rule G-32 disclosures promptly to such dealers on request. Thus, a purchasing dealer which must deliver rule G-32 disclosures to a customer could obtain them from the dealer which sold the securities to it or from the managing underwriter whichever way is

appropriate to effect compliance with the rule.

Finally, the proposed rule change would impose certain recordkeeping requirements on dealers. Rules G-8 and G-9 set forth the recordkeeping and record retention requirements respectively for brokers, dealers, and municipal securities dealers. The proposed rule change would add a new section to rule G-8 requiring a dealer to maintain a record of deliveries of rule G-32 disclosures and would amend rule G-9 to require that these records be retained for a period of not less than three years. The primary purpose of the proposed recordkeeping requirements is to facilitate enforcement of rule G-32 since the enforcement agencies generally cannot determine from a dealer's internal records whether a dealer is complying with the rule; these amendments were strongly supported by the regulatory agencies commenting on the exposure drafts. The recordkeeping requirements also are designed to encourage dealers to formalize procedures for delivering the disclosures required under rule G-32 and would allow dealers flexibility to determine how to maintain records of deliveries of these disclosures.

(b) The Board has adopted the amendments to rule G-32 under Section 15B(b)(2)(C) of the Act which establishes the Board's authority to adopt rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and to protect investors. The amendments to rules G-8 and G-9 were adopted pursuant to Section 15B(b)(2)(G) of the Act which authorizes the Board to adopt rules which prescribe records to be made and kept by municipal securities brokers and dealers.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change would apply uniformly to all brokers, dealers, or municipal securities dealers that sell new issue municipal securities. The Board therefore believes that the proposed rule change would not impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others* *March Exposure Draft*

In March 1984, the Board published for comment draft amendments to rules G-8, G-9 and G-32. The draft



amendments to rule G-32 would have required delivery of an official statement, or if no official statement was prepared by the issuer a notice stating that fact, for a 40-day period commencing with the date of sale. In the case of a syndicate that maintained an unsold balance beyond the 40-day period, the draft amendments would have required syndicate members to deliver an official statement for sales of the new issue until the account was closed.

The draft amendment to rule G-8 proposed to add a new section requiring a dealer to maintain a record of deliveries of the disclosures required by rule G-32 and the draft amendment to rule G-9 proposed to require that these records be retained for a period of not less than three years.

Many of the commentators focused on the current requirements of rule G-32. Several stated that dealers find it difficult to obtain copies of official statements and suggested that the Board place more responsibility for obtaining sufficient copies of official statements upon managing underwriters. One commentator stated that it is physically impossible for a dealer which is not a member of a syndicate to provide a copy of the official statement to customers by the date the money confirmation is sent. It also stated that it is too expensive to send out final and preliminary official statements, particularly in competitive deals and suggested that the Board require delivery of only the final official statement.

With respect to the proposed amendments to rules G-8 and G-9, one commentator stated that the current rule G-32 is difficult to enforce and supported the draft recordkeeping requirements. Another characterized the proposed requirements as a "time consuming manual process." It also suggested, as an alternative, that the Board required that confirmation indicate whether an official statement is enclosed, is being sent, or is unavailable.

#### *June Exposure Draft*

After considering these comments the Board published in June 1984, a second exposure draft of amendments to rules G-8, G-9 and G-32. The draft amendments proposed to

—Place primary responsibility on managing underwriters for assuring that adequate numbers of official statements are made available;

—Require that non-underwriter dealers who purchase new issue securities automatically be sent official statements and other rule G-32 disclosures;

—Differentiate to a limited extent between underwriters and other dealers for purposes of when official statements must be sent to purchasers. The Board stated that it continued to believe it appropriate to require syndicate members to deliver final official statements prior to or with the money confirmation of a transaction in new issue municipal securities. It proposed, however, to permit a non-underwriter dealer that is unable to obtain the official statement by the date on which it sends the money confirmation, to send the information within one business day of its receipt from the selling dealer;

—Define the term "promptly" for purposes of sending out the final official statement when it is prepared after the sending of the money confirmations. The Board proposed to clarify the "promptly" standard by requiring an underwriter to deliver the final official statement within one business day of its preparation by the issuer to any person or non-underwriter dealer to which it sold the new issue securities. A non-underwriter dealer, in turn, would have been required to send the final official statement to any person or dealer to which it sold the new issue securities within one business day of its receipt from the underwriter or other dealer from which it purchased the new securities; and,

—Exempt project notes from rule G-32.

#### 1. Forty-Day Delivery Period

The Board received some comments in favor and some opposed to the 40-day delivery period. Several commentators suggested that there was no logical basis for specifying a different delivery period for syndicate members than for non-underwriters. One commentator suggested that the current requirement that official statements be delivered during the underwriting period is preferable.

After considering these comments, the Board determined to retain the current requirement that the rule G-32 disclosures be delivered during the underwriting period which applies to all dealers selling new issue securities.

#### 2. Delivery of Preliminary and Final Official Statements When Final Version Is Not Available in Time To Send With Money Confirmation

Several commentators suggested that it is too costly and burdensome to send out both the preliminary and final official statement and suggested that only one—the final version—be required to be sent out. Another supported delivery of both documents as specified by the current rule.

The Board has determined that when a final official statement will be prepared for a new issue, it must be sent to a customer purchasing the new issue securities by settlement of the transaction. When no final official statement will be prepared, the preliminary official statement, if any, would be sent. Thus a dealer would be required to deliver only one disclosure document to a customer. This would reduce the costs of dissemination currently borne by dealers selling new issue securities while assuring that a customer obtains the most complete disclosure document available from the issuer of the securities prior to paying for the securities.

#### 3. Differentiation Between Syndicate Members and Non-Underwriter Dealers for Purposes of When Official Statements must be delivered

The Board asked for comments whether it would be appropriate to permit a non-underwriter dealer, when it cannot obtain the official statement before the mailing of the final confirmation, to send out these disclosures to its customers or other purchasing dealers within one business day of their receipt from the syndicate member or other dealer from which it purchased the new issue securities. The proposal generally was acceptable to most of the commentators. One commentator preferred the current requirement that non-underwriter dealers deliver the official statement with the final confirmation on the grounds that investors should receive the final information about the issue when it is most beneficial.

The Board has determined that when a final official statement will be prepared for a new issue, it must be delivered to customers who have bought the new issue securities. The Board has extended the date by which the rule G-32 disclosures must be delivered from at or prior to sending the money confirmation until settlement of the transaction to give dealers more time to obtain and deliver the disclosures. It should be noted that under the proposed rule change a customer should receive the rule G-32 disclosures before he pays for the securities.

#### 4. Responsibilities of Managing Underwriters

A number of commentators supported the proposal that managing underwriters be required to assure that adequate copies of official statements are made available to syndicate members and other dealers selling new issue securities so as to permit compliance

with the rule. Several commentators suggested that the Board permit the manager to provide members with information how to obtain copies directly from the issuer presumably at their own expense.

The Board believes that managing underwriters should bear primary responsibility for assuring that the rule G-32 disclosures are printed in sufficient time and numbers to permit compliance with the rule by other dealers. Accordingly the Board has adopted amendments that would require managing underwriters or, when appropriate, financial advisors to print final official statements in a timely manner. The proposed rule change also would require managers to be prepared to provide dealers who have purchased the new issue securities, on request, a minimum number of official statements. These amendments should strike some balance between the costs of dissemination borne by managers and those borne by other dealers selling new issue securities.

#### 5. Amendments to Rules G-8 and G-9

Some commentators opposed the proposed recordkeeping requirements on the grounds that they would be burdensome and costly although one acknowledged, however, that such requirements would facilitate compliance inspections by the enforcement agencies. One commentator suggested, as an alternative, that the Board require dealers to develop written policies and procedures for complying with the rule. Other commentators supported the draft recordkeeping requirements; both emphasized that the current rule is difficult to enforce.

While the alternative suggestion that the Board require dealers to develop written procedures for the distribution of rule G-32 disclosures is plausible, the Board concluded that it would not be as effective an enforcement tool. The Board wishes to ensure that rule G-32 is capable of enforcement as the effectiveness of the rule might be viewed as a measure of the Board's commitment to disclosure. The Board notes that the proposed recordkeeping provisions allow dealers flexibility to determine how to keep records of deliveries and, therefore, should not be unduly burdensome or costly.

#### September Amendments

At its September 1984, meeting that Board adopted amendments to rule G-32 that would have modified the provision that dealers purchasing the new issue securities must request the rule G-32 disclosures from the selling dealer. The amendment would have provided that

all dealers who purchase the new issue securities automatically receive the disclosures in the same way as customers do. The Board also adopted the draft amendments to rules G-8 and G-9. The Board file the amendments with the Commission which noticed the filing on November 2, 1984.

One of the commentators suggested that the Board should place explicit responsibility on managing underwriters to facilitate the distribution process noting that they would be forced to violate rule G-32 when they could not obtain official statements from managers; another commentator disagreed. Two brokers opposed the requirement that all purchasing dealers receive official statements and other rule G-32 disclosures because it would require them to obtain and forward these documents. Other commentators generally interpreted the rule as prohibiting a dealer from sending money confirmations on transactions in new issue securities unless the dealer could comply with the requirements of the rule and suggested that under current industry practice, it was virtually impossible to comply with the rule.

As noted earlier, the proposed rule change would respond to these comments in that it would place more responsibility on managing underwriters and financial advisors to prepare an adequate supply of official statements in a timely manner, extends the deadline for delivering the final official statement, and restores the requirement that purchasing dealers request the rule G-32 disclosures.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, D.C. 20549. Copies of the submission, all subsequent amendments all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also 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 May 21, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 19, 1985.

**John Wheeler,**  
Secretary.

[FR Doc. 85-10339 Filed 4-29-85; 8:45 am]

BILLING CODE 8010-01-M

#### Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington D.C. 20549.

#### Revision/Extension

Form BD, File No. 270-19  
Rule 15b1-3, File No. 270-8  
Rule 17a-3, File No. 270-28  
Form ADV, File No. 270-39  
Rule 204-1, File No. 270-41

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB clearance revised Form BD (17 CFR 249.501), which must be filed pursuant to Rule 15b1-1 by applicants for registration as broker-dealers; Rule 15b1-3 (17 CFR 240.15b1-3) registration of successor to registered broker-dealer; Rule 17a-3 (17 CFR 240.17a-3) standards with respect to business records made by broker-dealers; Form ADV (17 CFR 279.1) a uniform form for registration of investment advisers with the Commission and with the states; and related amendments to Rule 204-1 to conform that rule to requirements of the form.

Comments should be submitted to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: April 23, 1985.

John Wheeler,  
Secretary.

[FR Doc. 85-10340 Filed 4-29-85; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on May 17, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks (2) Approval of Minutes of Meeting Held on March 22, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for March and April 1985; (5) Report of the RTCA Fiscal and Management Sub-Committee; (6) Approval of the RTCA Budget; (7) Report of the Ad Hoc Committee on Minimum Operational Performance Standards for 406 MHz

Emergency Locator Transmitters; (8) Consideration of Proposals to Establish New Special Committees; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 662-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on April 22, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-10387 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

#### [Summary Notice No. PE-85-7]

#### Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal

Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 14, 1985.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 24, 1985.

John H. Cassidy,

Assistant Chief Counsel, Regulations and Enforcement Division.

#### PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24384-1	Pan Aviation, Inc.	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 cargo aircraft at U.S. airports until hush kits are installed.
23999-1	Aerotransportes Entre Rios	14 CFR 91.303	To allow petitioner to operate one Stage 1 B-707-338C aircraft to New York and Miami until hush kits are installed.
24352-1	Aer Turas Teoranta	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-63F at U.S. airports until hush kits are installed.

[FR Doc. 85-10388 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-13-M

### National Highway Traffic Safety Administration

[Docket No. IP84-3; Notice 2]

#### Ford Motor Co., Denial of Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

This notice denies the petition by Ford Motor Company of Dearborn, Michigan,

to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 471.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 14, 1984, and an opportunity afforded for comment (49 FR 9669).

The petition related to paragraph S4.1.36(d)(3) of Standard No. 108. In pertinent part, this paragraph requires a replaceable bulb headlamp to show no surface deterioration, coating delamination, fractures, or deterioration of bonding materials when tested to the chemical resistance test established in paragraph S6.4. Pursuant to the relevant portion of this paragraph, the entire lens surface and top surface of the lens-reflector joint is to be wiped once to the left and once to the right by a 6-square inch cotton cloth saturated once in a

container with 2 ounces of unleaded gasoline "89 octane or above". The lamp is then stored for 48 hours and examined afterwards. In December 1983, the National Highway Traffic Safety Administration conducted chemical resistance tests using 91.0 octane premium unleaded gasoline to test six replaceable bulb headlamps used in 1984 Continental Mark VII passenger cars. All units tested failed, manifesting cracks at the bottom of the lamps at the end of the 48-hour period, which, in subsequent days propagated in number and extent and thus compromised the structural integrity of the headlamp. The agency's investigation is File CIR 2726.

Ford's initial certification of the lamp appears to have been based upon two tests, the first conducted by Ford in which a lamp was exposed to 91.5 octane fuel and the second by Sylvania using 89 octane fuel. Ford also conducted three tests on early production samples using 91.5 octane fuel, and all three tested lamps passed. After notification by NHTSA of the test failures, Ford and Sylvania, the lamp fabricator, conducted various tests using regular unleaded 89 octane gasoline, gasohol, and 100 octane leaded aviation fuel. The 39 headlamps that were tested all passed. However, tests on 19 other lamps that Ford conducted in December 1983, using unleaded 91.5 octane gas, after notification of NHTSA's test failures, produced 11 failures in 19 lamps. Apparently, based on the test results for the 22 lamps tested with 91.5 octane fuel, Ford estimates that up to 50% of the lamps produced before December 20, 1983, may fail to comply. Ford initially estimated that there were 23,000 lamps used on 11,500 cars but later informed NHTSA that there were a total of 26,766 headlamps of which 24,054 had been installed on 12,027 passenger cars, the remainder intended as replacement equipment. Ford believes that a change it instituted on December 20, 1983, precludes the condition's reoccurrence on cars manufactured after that date.

Ford argued that the noncompliance is inconsequential. It stated that such cracking as a result of exposure to gasoline is highly unlikely to occur on vehicles in service, for two major reasons: (1) As a practical matter, the weld joint is rendered inaccessible to a wiping cloth by a rubber seal and by vehicle sheet metal, and (2) as a practical matter, it is highly unlikely that headlamps in service will be wiped with rags so thoroughly soaked with gasoline as the test rag was as to permit runoff of the gasoline into the weld joint area. Ford believed that the precise cause of

the noncompliance was "rapid stress relief of the polycarbonate lens and reflector induced by the gasoline test fluid". A urethane coating is intended to prevent exposure of the weld joint area to chemicals which might induce cracking, but, on the Ford lamps in question, the coating was thinner than expected; further, not all of the linear weld flash had been removed from the weld joint area. As a consequence, the remaining flash projected through the urethane coating and the gasoline, when applied to the lamp, wicked through the coating via the projecting flash to the weld joint area. Ford believed that its tests show that the potentially affected lamps are sensitive only to premium unleaded gas, which it estimated comprised only 12.4 percent of the market. Ford's previous experience with plastic lamps on the 1980 Lincoln, which did not have the protective coating in the weld joint area, has shown a low number of problems with cracking. Its examination of 85 such headlamps uncovered no failures, while complaints from the field on other plastic headlamps in service over the years show an above-normal breakage/cracked repair rate of 0.73 percent. Ford also argued that because of the annealing process, the weld joint area becomes less susceptible to gasoline-induced cracking as the lamp grows older.

In summary, Ford's position was that only 50% of the lamps produced before December 20, 1983, were likely to be affected, that an estimated 12.4 percent of Mark VII owners use premium unleaded gas, that an estimated 0.73 percent of the lamps may be wiped with a cloth sufficiently saturated for gas to flow to the weld joint area, and that therefore only an estimated 10 of the 23,000 lamps may develop the conditions in service, discounting a reduction factor due to annealing.

In conclusion, Ford stated that the risk to motor vehicle safety introduced by this very low estimated number of headlamps which might crack on in-service cars owing to contact with unleaded gasoline is inconsequential.

The only commenter on the petition was Sylvania GTE Products Corporation, the manufacturer of the headlamps which failed compliance testing and which were the subject of the petition. Sylvania recommended granting the petition because in its view a "highly unlikely" chain of events would have to take place before a crack would develop. Sylvania submits that five events would have to occur. These events are listed and discussed in the

order that they were presented by Sylvania:

"(1) The headlamp would have to be wiped with a cloth *drenched* in gasoline. While a service station attendant might use a cloth containing gasoline, it is highly unlikely that it would be *drenched*".

Sylvania's remarks are its assessment of the probability of gasoline exposure in the most likely environment in which this exposure may occur. In essence, it is arguing that the test requirement bears little relation to the real world. NHTSA has encountered this argument before in its attempts to enforce other standards, most notably those relating to high speed and endurance tests of motor vehicle tires. Because of the impossibility of exactly replicating real-world situations, test procedures which are adopted must insure a high degree of repeatability, and the standards must be "reasonable, practicable, and appropriate", as well as meeting the need for motor vehicle safety.

In developing the standard for replaceable bulb headlamps, NHTSA found it "reasonable" to distinguish between those which would be manufactured with glass lenses and those which, like the Ford/Sylvania units, would have lenses of plastic. Because of the characteristics of plastic, NHTSA sought to insure lifetime performance of a plastic-lensed lamp equal to its newly manufactured state by requiring it to meet abrasion resistance, impact, and chemical resistance tests while not requiring this of lamps with glass lenses (S4.1.1.36(c)). In formulating appropriate tests, NHTSA began with Ford's original rulemaking petition of August 21, 1981, which stated that the company had included in its headlamp development program, areas of investigation that included "corrosion testing with chemicals to which the headlamps may reasonably be expected to be exposed to in service". The petition described a chemical resistance test to "evaluate the headlamps' susceptibility to damage caused by inadvertent contact with commonly corrosive substances". In Ford's chemical resistance test, a headlamp would be coated with one of five fluids: Motor oil, tar remover, power steering fluid, windshield washer fluid, and anti-freeze. NHTSA agreed with the necessity of a chemical resistance test, though noting the absence of gasoline. Gasoline is the most predominant and accessible automotive fluid, and, as a solvent, it is often used for removing road tar and oil spatters from car body surfaces including headlamp lenses, even though this is contrary to

recommended practice. Ford explained that gasoline had been considered a candidate chemical agent but that it had been omitted due to "inherent dangers" in handling gasoline in a laboratory or testing environment. In Ford's view, the solvent effect of gasoline would be essentially similar to the two other petroleum based fluids it has included as candidate chemical agents: tar remover and motor oil.

The chemical resistance test proposed by NHTSA in January 1983 included gasoline, as well as brake fluid, bringing the number of candidate fluids to seven. Further, the NPRM proposed immersion of headlamp assemblies in a test fluid for five minutes. In response to the proposal, Sylvania objected to the inclusion of gasoline because it could envision no situations in which it was likely to be placed on a headlamp lens. Ford reiterated its arguments of hazard and duplicative effect, asking NHTSA to remove motor oil and tar remover from the final rule if the agency decided to adopt gasoline as a test fluid. There was widespread opposition to five-minute immersion because of its apparent over-severity. In the final rule, NHTSA adopted the current requirement of cloth saturation with a single back and forward wipe across the lens surface. In accordance with Ford's recommendation, motor oil was not included in the final list of test fluids; in its petition for reconsideration, Ford did not protest the inclusion of gasoline in the rule.

Thus, the issue presented is not the likelihood of a drenched cloth being used to wipe the headlamp lens, but whether the requirement for a chemical resistance test using gasoline is reasonable, practicable, and appropriate, and meets the needs for motor vehicle safety. For the reasons discussed above and in its rulemaking notices, NHTSA has determined that it does, and that the requirement was adopted in accordance with statutory rulemaking procedures.

The second of five events presented by Sylvania was:

"(2) If a cloth containing gasoline was used, and if it was drenched, the gasoline would have to be certain brands of unleaded 91.5 octane gas. Not all premium unleaded 91.5 octane brands will cause a crack".

Sylvania also commented that: "Paragraph S6.4 requires use of '89 octane or above' gasoline. This is very ambiguous. Many tests have been conducted with 89 octane gas and there has not been a cracking problem. If the intention is for headlamps to pass a test using 91.5 octane gas, then the test procedure should so state and not state

'89 octane or above' as it presently does."

Sylvania's comment is addressed to the representativeness of the chemical resistance test. NHTSA's tests were conducted with 91.0 octane Hess premium unleaded gasoline. NHTSA's found 6 failures in 6 lamps tested. Ford's initial certification test used unleaded minimum 91.5 octane gasoline and that of Sylvania, 89 octane. Three Ford tests prior to NHTSA's notification of test failure used 91.5 octane Amoco premium unleaded gasoline, and all three lamps passed. These three tests were conducted on early production samples. Nineteen Ford and Sylvania tests were conducted after NHTSA's notification of test failure. These tests used 91.5 octane Amoco premium unleaded gasoline, and Ford found 11 failures. Of the 8 lamps that passed tests conducted after NHTSA notification, six were built after Ford instituted a production change to preclude additional failures. Therefore only 2 of 11 lamps produced after NHTSA notification and before Ford's production change passed.

The fact that Ford recorded a substantial number of failures using a different brand of gas than NHTSA used indicated to NHTSA that brand differences *per se* had little discernible effect upon test results. The fact that some of the Ford lamps passed is at least as likely to be attributable to differences in production repeatability among lamps, for Ford itself determined that the lamps that failed had been manufactured with excessive weld flash and inadequate protective coating. Some of the lamps also passed because of tighter production controls that were initiated after NHTSA notification.

For these reasons, test representativeness has not been shown to be a major factor in the results of these tests. However, because of the concern about repeatability and the possible misinterpretation of the specification, NHTSA takes this opportunity to clarify this requirement.

The intent is that any plastic-lens replaceable bulb headlamp pass the test when subjected to any motor vehicle gasoline with an octane rating between 89 and 100.

Another phenomenon which came to light subsequent to the tests discussed above is the effect of some hydrocarbons in old gasoline upon plastics. In March 1984, when its initial conformance problems had been corrected, Ford found test failures occurring in a mode not previously encountered while employing a sample it had obtained from NHTSA of the Hess 91.0 octane gas used in NHTSA's test three months previously. Further, a

headlamp which had previously passed a test using 91.5 octane Amoco gas failed when retested with the Hess fluid. Examination showed that the aromatic hydrocarbons had increased in the Hess fuel from 45.5% in December to 59.7% in March; continued reopening of the containers and/or storage apparently had altered the percentage of the remaining hydrocarbons. When Ford tested with both "fresh" Hess (47.5%) and Amoco (26.6%), it found no failures. Because the standard does not address the age of the test fluid, NHTSA which tested the Ford lamps using freshly obtained gasoline has continued to use such gas for its tests, that is to say, gasoline which is obtained from a retail pump within a week of the test.

"(3) If a cloth containing gas was used, and if it was drenched, and if a certain brand of premium unleaded 91.5 octane gas was used, then gas would have to penetrate under the rubber seal and the sheet metal."

While both Sylvania and Ford raised this issue, no data was submitted to demonstrate that gasoline could not penetrate under the rubber seal and sheet metal of the car when the headlamp is mounted on the car.

"(4) If a cloth containing gas was used, and if it was drenched, and if a certain brand of premium unleaded 91.5 octane gas was used, and if it penetrated under the rubber seal and sheet metal, then it *might* cause a crack on a headlamp, but that particular headlamp would have to have sufficient stress present and at the same time has an insufficient amount of protective coating."

Ford admitted that the headlamps were inadequately coated. No stress was needed for the cracks to occur in the test lamps.

"(5) If this unlikely chain of events were to happen and the lens to reflector seal cracked, the inner halogen bulb would still continue to operate and the headlamp would continue to function safely."

Sylvania's comments assume that the failure consists only of the cracking of the lens to reflector seal. In fact, the cracks propagated into the plastic lenses and reflectors of the headlamps, affecting their ability over time to cast a beam of light equivalent to that required of headlamps in service. The fact that there would be no effect upon the bulb is immaterial in this context.

Ford's arguments are similar to those made by Sylvania and the agency's response is correspondingly similar. The failure did not consist solely of the cracking of the lens to reflector seal, but the cracks propagated into the plastic

lenses and reflectors of the headlamps. Once a crack has begun, further propagation will be caused by operation of the vehicle subject to normal road shocks and ambient temperatures. Such cracks allow the admission of contaminants such as dust and moisture into the headlighting chamber, which in time will affect the performance of the headlamp reflector and detract from its ability to provide the photometrics for which it was designed.

NHTSA cannot accept Ford's estimate that only 10 of the 23,000 headlamps may be noncompliant under real world circumstances. Ford's assumption was based upon these considerations: that 50% of the 23,000 headlamps are susceptible to gasoline induced cracking, that 12.4% of vehicle buyers use gasoline of sufficiently high aromatic hydrocarbon content to cause lamp cracking, and that 0.73 percent of lamps may be wiped with a cloth sufficiently saturated with gasoline to cause gasoline flow into the weld joint area. Ford based the value of 50% susceptibility on Ford and Sylvania tests that had a 50% failure rate, it based the 12.4% use or exposure to gasoline cracking on Department of Energy data that noted only 12.4% of gasoline produced domestically was premium gasoline, and it based the value of 0.73% on an above-normal repair rate of similarly made, sealed beam headlamps that had been installed on 1980 Lincolns. Ford's conclusion is that even the figure of 10 may be excessive because it has assumed that the entire 0.73 percent estimated above-normal repair rate that it found on the 1980 Lincoln lamps was attributable only to gasoline-induced failures rather than all possible causes.

NHTSA does not agree with these calculations. First, NHTSA tests showed that the lamps had a 100% failure rate, not a 50% failure rate as estimated by Ford. Ford has not presented convincing evidence that its failure rate is more correct. Second, it is not appropriate to assume that only 12.4% of the Continental Mark VII owners will use premium unleaded gasoline simply because that percentage of gasoline is produced domestically. It would seem more appropriate to assume that these owners of a luxury automobile would be highly likely to use a premium gasoline. Third, the 0.73% above-normal repair rate seems to have been based on Ford dealer repair records. The relatively low cost of a headlamp would increase the probability that a number of non-dealer repairs were made, which would

understate Ford's above-normal repair rate. Therefore, a *minimum*, above-normal repair rate would seem to be more on the order of 0.73 percent with no adjustment for susceptibility or exposure. And, if this above-normal rate is due to gasoline-induced failures, multiplying the 23,000 headlamps here involved by 0.73 results in 168 headlamps for an unreported time period (the reporting period of the Ford data is unknown). If it is assumed that the time period is two years and the average life of a car is ten years, then 840 headlamps could be a more reasonable worst case estimate than the 10 headlamps of Ford's estimate.

In summary, given the high percentage of replaceable bulb headlamps that failed gasoline exposure tests conducted by both NHTSA and Ford, the agency believes that the noncompliance cannot be deemed to have an inconsequential relationship to safety.

Accordingly, it is hereby found that the petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

The engineer and attorney principally responsible for this notice are respectively Jere Medlin and Taylor Vinson.

(Sec. 102, Pub. L. 93-482, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.6)

Issued on: April 25, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.  
[FR Doc. 85-10469 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-50-M

[Docket No. IP85-7; Notice 1]

**Volvo White Truck Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance**

Volvo White Truck Corporation, of Greensboro, North Carolina, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of Receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not

represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.2.1 of Federal Motor Vehicle Safety Standard No. 101, in conjunction with Table I, requires that the windshield defroster and the fan be labeled with the appropriate identifying symbols; words are optional. Volvo White has produced up to 2,789 heavy duty trucks which use the optional identifying words for the defroster and the fan instead of the required symbols. The trucks involved are the Volvo F7, F10, and N12 series.

Volvo White claims that the drivers of such heavy duty trucks are professionals and would be unlikely to be unfamiliar with the operation of the controls, as an "average" driver might be when using a rented or borrowed passenger car. Volvo White also states that the Table I words were mandatory prior to the 1980 amendment to the standard. In addition, Volvo White is unaware of any complaints, accidents, or potential accidents relating to this noncompliance. Volvo White believes that the owners and operators of the vehicles would find the noncompliance to be inconsequential and would view any recall as a nuisance.

Interested persons are invited to submit written data, views and arguments on the petition of Volvo White Truck Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicating below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: May 30, 1985.

(Sec. 102, Pub. L. 93-482, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.6)

Issued on April 25, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.  
[FR Doc. 85-10357 Filed 4-29-85; 8:45 am]

BILLING CODE 4910-50-M

# Sunshine Act Meetings

Federal Register

Vol. 50, No. 83

Tuesday, April 30, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 15699.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time), Tuesday, April 30, 1985.

CHANGE IN THE MEETING: Correction of title of matter to be considered in part open to the public:

6. Proposed Change in Procedures for Obtaining Commission Approval of a Recommendation to Participate as Amicus Curiae

#### CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: April 25, 1985.

Cynthia C. Matthews,  
Executive Officer, Executive Secretariat.

This Notice Issued April 25, 1985.

[FR Doc. 85-10506 Filed 4-26-85; 11:43 am]

BILLING CODE 6750-06-M

2

### FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of a special meeting of the Federal Farm Credit Board ("Federal Board").

DATES AND TIMES: The special meeting is scheduled as follows: Monday, May 6—8:00 a.m. to 4:30 p.m., and Tuesday, May 7—8:00 a.m. to 3:00 p.m.

ADDRESS: Federal Farm Credit Board Special Meeting, Sheraton Inn West Springfield, 1080 Riverdale Street, West Springfield, Massachusetts 01090-0151.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the

Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102-5090 (703-883-4010).

**SUPPLEMENTARY INFORMATION:** A special meeting of the Federal Farm Credit Board has been called and will be held on May 6-7, 1985. The matters to be considered at the special meeting are:

*Monday, May 6*

- \*1. Office of Examination and Supervision Report
2. Regulation Changes—Proposed
- Financial Disclosure, Accounting and Reporting

*Tuesday, May 7*

Joint Meeting with Farm Credit Board of Springfield

1. Overview of the Springfield District by Management
2. Discussion of Issues:
  - a. Proposed Legislation Granting the FCA Intermediate Enforcement Authorities
  - b. FCA's Position on Central Entity—Who Speaks for the System.
  - c. Methods of Consolidating System Capital
  - \* d. Systemwide Financial Assistance Programs
  - e. Implications of Legislation to Authorize Merger of Unlike Banks
  - f. Class B Stock Insurance Proposal

\* This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 552b(c)(8) and (9).

Dated: April 25, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-10487 Filed 4-26-85; 9:35 am]

BILLING CODE 6705-01-M

3

### FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Time to be determined, Thursday, May 2, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open Meeting.

#### CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-6677).

#### MATTERS TO BE CONSIDERED:

Use of Preferred Stock as Regulatory New Worth

High-Yield Debt Securities and Related Matters

Jeff Sconyers,

Secretary.

No. 7, April 25, 1985.

[FR Doc. 85-10471 Filed 4-25-85; 5:00 pm]

BILLING CODE 6720-01-M

4

### LEGAL SERVICES CORPORATION

Special Committee on Presidential Search

TIME AND DATE: Meeting will commence at 8 P.M., May 22, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024.

STATUS OF MEETING: Closed to discuss matters related to Presidential Search as authorized under the Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6) and (9)(B)) and 45 CFR 1622.5(a), (e), and (g) and 1622.6(b).

#### MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Adoption of Draft Minutes—April 23, 1985
3. Review of Procedures (Closed)
4. Report on Investigations (Closed)

#### CONTACT PERSON FOR MORE

INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

DATE ISSUED: April 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-10546 Filed 4-26-85; 3:37 pm]

BILLING CODE 6820-35-M

5

### MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 A.M., Thursday, May 9, 1985.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

#### MATTERS TO BE CONSIDERED:

1. *Kelmon v. Department of Justice*, MSPD Docket No. SF07528411070.
2. *Berube v. General Services Administration*, MSPB Docket No. DC07528410055.
3. *Ferguson v. Department of Commerce*, MSPB Docket No. AT07528410532.
4. *Crampton v. Department of Treasury*, MSPB Docket No. AT03518090013.

#### CONTACT PERSON FOR ADDITIONAL

INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

For the Board.

Dated: April 28, 1985.

Robert E. Taylor,

*Clerk of the Board.*

[FR Doc. 85-10547 Filed 4-26-85; 3:37 pm]

BILLING CODE 7400-01-M

6

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF**

**PREVIOUS ANNOUNCEMENT: (50 FR 15275**

**April 17, 1985.**

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW.,  
Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** Monday,  
April 15, 1985.

**CHANGE IN THE MEETING:** Additional  
meeting.

The following additional item was  
considered at a closed meeting held on  
Monday, April 22, 1985, at 1:00 p.m.

Institution of injunctive action.

Chairman Shad and Commissioners Cox  
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: Angela  
Hall at (202) 272-3085.

John Whessler,

*Secretary.*

April 25, 1985.

[FR Doc. 10519 Filed 4-26-85; 12:40 pm]

BILLING CODE 8010-01-M



# federal register

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Tuesday  
April 30, 1985

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## Part II

### Department of Energy

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Office of Conservation and Renewable  
Energy

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10 CFR Part 455

Grant Programs for Schools and  
Hospitals and for Buildings Owned by  
Units of Local Government and Public  
Care Institutions; Final Rule

## DEPARTMENT OF ENERGY

## Office of Conservation and Renewable Energy

## 10 CFR Part 455

[Docket No. CAS-RM-78-503]

## Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Final rule.

**SUMMARY:** The Department of Energy is issuing a final rule today amending the regulation for the operation of its Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, commonly called the Institutional Conservation Programs (ICP). The principal amendments in this action are: Ceasing to allow grant funds to be used for costs associated with the installation and connection of leased equipment; permitting the States to establish criteria for, and accept, alternatives to energy audits; allowing demand charges for electricity to be included in energy price calculations; changing the payback limits on projects eligible for funding; adding the quality of technical assistance programs to the factors considered in ranking grant applications; and adding a requirement for DOE approval before certain changes in a grant project can be made. In addition, in this action DOE clarifies how the program regulation would be applied to an institution's use of savings-based financing agreements as matching contributions for ICP grants.

The amendments in the final rule improve the program's ability to assist institutions in conserving energy and reducing energy costs, and thereby increasing the productivity of the institutional sector.

**EFFECTIVE DATE:** September 1, 1985 for all changes with the exception of the change to § 455.63, which shall become effective October 1, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Stapp, Institutional Conservation Programs Division, Conservation and Renewable Energy, Department of Energy, Mail Stop 5G-070, CE-26, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2198

Daniel Ruge, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, SW.,

Washington, D.C. 20585, (202) 252-9519.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction and Description of the Program
- II. Savings-Based Financing Agreements as Matching Contributions for ICP Grants
- III. Amendments to the Grant Institutional Conservation Programs
- IV. Environmental, Regulatory Impact, Small Entity Impact and Paperwork Reduction Act Reviews

**I. Introduction and Description of the Program**

The Department of Energy (DOE) is amending the regulation for the Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, also known as the Institutional Conservation Program (program, Institutional Conservation Program, or ICP), 10 CFR Part 455, issued under Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238, 42 U.S.C. 6371 *et seq.* (the Act).

The purpose of today's action is to improve the operation of the Institutional Conservation Program. The Department is taking this action based in part on the responses to a Notice of Inquiry (NOI) published by DOE in the Federal Register on January 23, 1984 (49 FR 2846), and to a Notice of Proposed Rulemaking (NPR) published by DOE in the Federal Register on August 28, 1984 (49 FR 34164). The NOI and NPR solicited public comments about a number of specific areas of program policy and management and about the program generally.

The Act established that the program's basic goal is to reduce energy use and costs in institutional buildings. To accomplish this goal, the Act authorizes DOE to establish cost sharing (the terms cost sharing and matching are used interchangeably in this preamble and in the program's regulations) energy conservation grant programs to fund detailed energy audits, called technical assistance programs (TA's), of public and private nonprofit schools, hospitals, and buildings owned by units of local government and public care institutions, and to fund the purchase and installation of energy conservation materials and equipment, called energy conservation measures (ECM's), in schools and hospitals.

The TA analyses identify changes in maintenance and operating procedures and identify new equipment or materials which would cost effectively conserve energy in an institution's buildings. Implementation of the maintenance and operating procedures and installation of

the new energy conservation measures contribute to energy conservation not only in the building concerned, but also, by extension, in other buildings, by demonstrating the validity of energy conservation efficiency and management.

**II. Savings-Based Financing Agreements as Matching Contributions for ICP Grants**

The NPR addressed a number of areas relating to the use of savings-based agreements as matching contributions for ICP grants. Much of the discussion in the NPR was based on concerns expressed, or approaches to the issue suggested by letters responding to the NOI. A number of further concerns have arisen as a result of the discussion in the NPR. The principle concerns are discussed below. For the original discussion on this matter, see the August 28, 1984 NPR (49 FR 34164).

Savings-based financing agreements provide for the purchase and installation of energy conservation equipment or materials based on the savings produced by the ECM. In general, such agreements do not require an initial capital investment on the part of the institution for the equipment installed under the agreement.

DOE believes that such agreements could aid institutions to reduce their energy use and costs and thus further the goal of institutional energy conservation. In order to maximize the use of Federal program funds and enhance energy conservation, DOE urges institutions wishing to install conservation improvements to explore all possible funding sources and apply for an ICP grant only if alternative financing is not feasible.

Savings-based agreements may also be used as a match for an ICP grant, if the agreements meet the requirements of program regulations. Therefore, DOE is taking this opportunity to explain how the regulations apply to these types of agreements.

Savings-based agreements offered to meet the matching or cost sharing requirements of § 455.82(e) may not provide for the retention of title or ownership in any equipment by the supplier or other party beyond the date of project closeout.

In order to avoid conflict of interest, prohibited by the regulations, a savings-based agreement may not provide for a TA analyst to participate in the subsequent installation of the ECM's recommended in the TA. Even though Energy Service Companies will do their own engineering analysis as the basis

for the energy service contract, this analysis may not be used as the Technical Assistance Analysis (TA) in the grant application. The TA must be done by an independent analyst.

The regulations require that costs must be established by adequate documentation. In the case of a savings-based agreement compliance with this provision may be achieved by submitting invoices of the supplier or similar documentation.

DOE considers a project ready for closeout under the regulations when the improvements have been made, the equipment has been installed, and all activities specified in the grant award have been completed. Closeout need not be delayed until the end of the period during which the savings are to be shared under a savings-based agreement.

DOE hopes this discussion clarifies its position relating to the possible use of savings-based agreements to match DOE grants. Since these financing arrangements are relatively new, changes to the regulations may be warranted in the future. For the present, however, the current regulations appear sufficient.

### III. Amendments to the Institutional Conservation Programs

In this document, DOE has made several changes to the regulation which will better enable the program to achieve its purposes of reducing energy use and costs in institutional buildings and demonstrating the validity of energy conservation efficiency and management in actual situations.

Many commenters expressed concern that the changes might apply to ICP funding Cycle VII, which is currently underway. DOE recognizes that it is too late to make these changes applicable to Cycle VII, and has accordingly established two effective dates to coincide with the closing dates of Cycle VII. September 1, 1985 was established as the effective date for all revisions with the exception of § 455.63. The effective date of the revisions to § 455.63(b)(5) (requirement for quarterly financial assistance reports from States) is October 1, 1985. Although final action may not be taken under Cycle VIII prior to the appropriate effective date, affected parties are not precluded from preparing for the necessary changes in advance of those dates.

The principal changes made to the regulation are: Ceasing to allow grant funds to be used for some costs associated with leasing equipment; permitting the States to establish criteria for, and accept, alternatives to energy audits; allowing demand charges for

electricity to be included in energy prices; changing the payback limits on projects eligible for funding; adding the quality of technical assistance programs to the factors considered in ranking grant applications; and adding a requirement for DOE approval before certain changes in a grant project can be made. In addition, technical changes are made, including clarification of Davis-Bacon requirements, adding the Northern Mariana Islands to the listed areas where institutions are eligible to receive grants, and simplifying the references to renewable resource reviews. The changes are in response to experience gained in administering the program, and to comments submitted in response to the NOI and the NOPR.

A number of the changes proposed in the NOPR are not being made, because of persuasive arguments made by commenters to the NOPR. Those proposed changes were: Changing the definition of "energy conservation measure" to eliminate measures required primarily because existing measures have been poorly maintained, requiring technical assistance program analysts to identify measures which have been poorly maintained, and establishing more detailed requirements for applications for State Administrative grants.

#### Proposed Changes to Each Section, Comments Received, and DOE's Final Action

The following discussion describes DOE's proposed change(s) to each section, comments received regarding those proposed changes, and DOE's final action.

##### Section 455.1 Purpose and scope.

DOE proposed to amend this section (and all subsequent sections where the same phrase exists) by changing the term "solar energy or other renewable resource measures" to simply "renewable resource measures". Nine favorable comments were received on this change, and no unfavorable comments were received. Accordingly, DOE has finalized the change as proposed.

##### Section 455.2 Definitions.

DOE proposed to amend the definition of "Energy Conservation Measure" to state that DOE does not consider as an ECM, and consequently will not fund, measures which are necessary primarily because existing equipment or material has poorly maintained, or not maintained at all. Over half of all the commenters to the NOPR addressed this issue, with the majority opposed to the change, primarily because of concerns

about the subjectivity of the term "poorly maintained," the difficulty of ascertaining neglect (particularly with older equipment where normal wear and tear might be confused with neglect), and the inability of DOE or the States to enforce this on a consistent basis. Some commenters even felt that DOE should not penalize institutions which may, in the past, have neglected maintenance, by refusing to fund replacement improvements. While DOE continues to be concerned about neglected equipment, and wants to encourage proper maintenance, DOE felt the arguments against this change were persuasive, and is therefore not adopting this change (or the related change in § 455.42 which will be discussed later under that section).

DOE also proposed to amend the definition of "Energy Conservation Measure" to eliminate costs associated with the installation and connection of leased equipment as an allowable cost, because it no longer served the original purpose. A number of commenters supported DOE's proposal and some of them pointed out that if an institution can obtain equipment by means of lease-purchase, it should not need an ICP grant for that equipment. Those objecting to the proposal did not disagree with this reasoning. They did, however, raise the larger question of whether DOE should fund leased-equipment. That question is beyond the scope of this proposal and the commenters did not advance any reasons to broaden the scope of the rulemaking and to cause DOE to reconsider its existing policy in the treatment of leased-equipment.

DOE proposed expanding the definition of "Energy Conservation Measure" to include energy use evaluations. No significant comments were received on this proposed change, and it has been adopted as proposed.

DOE proposed adding a definition for "energy use evaluation" to conform to the proposed new § 455.20. One commenter indicated some concern that DOE might be intending to drop the energy audit requirement as part of this change, which DOE was not, in fact, proposing. The energy use evaluation is an added option which each State can decide to use or not. The other comments on this change were positive, and the change has been adopted as proposed.

DOE proposed to amend the definition of "heating and cooling system" by eliminating the word "conditioned." There were no significant comments received on this proposed change, and it is being adopted as proposed.

DOE proposed to amend the definition of "State" to include the Northern Mariana Islands. This proposal was based on section 502(a) of Article V of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. 1681 note. Additionally, shortly after the NOPR was published, Pub. L. 98-454 was enacted into law, 98 Stat. 1732 (October 5, 1984). Section 601(e) of the law amended the Energy Policy and Conservation Act to specify that the Northern Mariana Islands are included in the ICP definition of "State." Accordingly, the change is being adopted as proposed.

DOE proposed amending the definition of "unit of local government" by eliminating references to governmental entities already included in the definition of "State." There were no comments on this change and it is being adopted as proposed.

#### *Section 455.3 Administration of grants.*

DOE proposed to amend this section to delete references to a variety of documents from other agencies because the provisions of these documents are now covered by the DOE Financial Assistance Rules, 10 CFR Part 600. There were no comments on this change and it is being adopted as proposed.

#### *Section 455.4 Recordkeeping.*

DOE proposed amending this section to refer to the DOE Financial Assistance Rules, 10 CFR Part 600, as they relate to recordkeeping requirements for the program. No significant comments were received on this change and it is being adopted as proposed.

#### *Section 455.5 Suspension and termination of grants.*

DOE proposed amending this section to refer to the DOE Financial Assistance Rules, 10 CFR 600, as they relate to procedures for suspension and termination of grants. No significant comments were received on this change and it is being adopted as proposed.

#### *Section 455.20 Contents of any energy use evaluation.*

DOE proposed adding this section to describe the information required to be submitted in lieu of an energy audit in cases where an energy audit has not been performed on a building, and where the State has elected to accept an alternative energy use evaluation in accordance with new § 455.90(1). A number of commenters felt the existing energy audit (which requires more information than an energy use evaluation) should continue to be the

only choice. Other commenters felt that neither an energy audit nor an energy use evaluation should be required, since they are no longer funded by DOE. On the other hand, a good many commenters felt that the energy use evaluation was a worthwhile option. Because of the necessity for certain information, DOE has always required an energy audit or its equivalent as a qualifying step for obtaining a grant for a technical assistance program. Therefore DOE feels it cannot drop the requirement for an energy audit of its equivalent altogether. However, DOE does feel it is appropriate to offer the States an option to adopt a simpler energy use evaluation if they choose to do so, in order to reduce the burden on applicants who have not already had energy audits done previously in the ICP program. Therefore, this section is being added as proposed.

#### *Section 455.42 Contents of program.*

DOE proposed amending paragraph (a) of this section to make it clear that a TA report should be acceptable with regard both to DOE's requirements as to content, cost and savings calculations, and other factors set forth in § 455.42 and to the State's procedures for implementing those DOE requirements. All the commenters who addressed this change thought it was a good idea, and it is being finalized as proposed. DOE notes that the TA should be considered an energy and financial management tool to assist an institution in implementing all future energy conservation actions, not just those associated with an ICP grant.

DOE also proposed to amend paragraph (b) of this section to add a sentence at the end of the paragraph to require that the technical assistance analyst identify any energy conservation improvement in the TA which is necessary primarily because the existing energy conservation equipment or material it would replace has been poorly maintained, or not maintained at all. Most of the commenters who addressed this issue expressed the concern that it would be very difficult (in some cases impossible) to determine when equipment had been neglected, and that the very idea of neglect was subjective. DOE has decided not to adopt this proposed change. A more complete discussion of this issue occurs above under the § 455.2 Definitions part of this preamble, where a related proposed change in the definition of ECM has also not been adopted.

DOE proposed amending paragraphs (c)(1) and (b)(5)(vi) of this section to drop the exclusion of demand charges

for electricity from current prices, and permit those demand charges to be included in calculating energy cost savings. Over half of the commenters addressed this issue, virtually all of whom thought it was a good idea. A number of commenters, however, apparently interpreted the word "permit" in the preamble to the NOPR to mean that DOE was not requiring demand charges to be included in energy costs, and expressed concern that if it was optional, then such charges would only be included when they would favorably affect payback. DOE did not intend this to be an optional change, and is adding specific references to demand charges in the appropriate places in each of the affected paragraphs to make it clear that demand charges are to be included in current energy prices. However, DOE would like to reiterate here what was stated in the NOPR, that DOE hopes that technical assistance analysts and institutions will continue their efforts to direct energy usage away from peak periods wherever possible.

DOE also proposed dropping paragraph (d)(5)(vii)(C) from this section. This paragraph related to costs associated with leased equipment. There were no comments on this proposed change and it is being adopted as proposed. The issue of costs associated with leased equipment has already been discussed in more detail in this preamble under § 455.2 Definitions.

#### *Section 455.51 Eligibility.*

DOE proposed amending paragraph (b) of this section to change the permissible payback period range from "shall not be less than 1 year nor greater than 15 years" to "shall not be less than 2 years nor greater than 10 years." This change was proposed in response both to the NOI comments and to DOE's experience with the program. It was primarily motivated by the awareness that there were limited grant funds available, and literally thousands of potentially eligible institutions seeking assistance. Therefore, it was time for DOE to concentrate on funding those measures which had paybacks (1) somewhat beyond the range of what most institutions could reasonably be expected to be able to fund out of operating funds or other readily available resources, yet (2) not so long that meaningful savings projections (or even equipment durability or technological up-to-dateness) are impossible to determine. A 2 to 10 year payback range was felt to be reasonable in light of these considerations.

Most of the commenters (47 of 60) addressed this issue. A number of commenters thought the proposed change was a good one, but the majority objected, particularly to raising the minimum to 2 years. These commenters pointed out that there were still many 1 to 2 year payback measures which had not been funded, and expressed concern that if the change were adopted, such measures might never be installed. A few commenters were also concerned about lowering the maximum payback to 10 years, pointing out that there were worthwhile ECM's with over 10 year paybacks (particularly renewable measures).

DOE acknowledges these concerns, but still believes it is necessary to focus the resources of ICP on those measures which cannot be easily funded through other means yet which have the best chance of achieving estimated savings over future years.

A number of respondents to the NOPR pointed out that over the program's six funding cycles a great many institutions have benefited from ICP grants, and often those institutions have gone on to pursue other conservation efforts on their own, based on the favorable experience gained through the ICP grant process. In addition, recipient institutions often serve as positive examples to others wanting to conserve energy. DOE recognizes this important aspect of the program, and feels that ICP has by now amply demonstrated the wisdom of implementing relatively short payback conservation improvements (i.e., those with less than a 2 years payback). DOE believes it is now time to move the demonstration to the next step by limiting ICP grant funding to measures with paybacks of 2 years or more. Therefore, this change has been finalized as proposed.

A number of commenters on this change also raised a question about the definition of operations and maintenance procedures. Because § 455.42(d)(5)(vi)(A) requires that TA's must "Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized," some commenters inferred that DOE meant to require that all measures with paybacks of less than 2 years would be considered maintenance and operating procedures, and all such measures would have to be implemented before an applicant would qualify for an ECM grant. This is not DOE's intention, and, in fact, maintenance and operating procedures are not defined in terms of payback. A list of examples of maintenance and

operating procedures is provided in § 455.19(b)(2).

Evidently some commenters felt that any conservation improvement with a payback of less than a year was automatically considered a maintenance and operating procedure under the old payback range of 1 to 15 years. That was never the case, and, as one commenter correctly pointed out, there conceivably could be some operating and maintenance procedures with longer than 1 or 2 year paybacks, but they would not become ECM's once their payback exceeded some period of time. Conversely, a measure with a payback of less than 1 or 2 years would not become an operating and maintenance procedure by virtue of its payback.

In a related matter, one commenter thought that life cycle costing might be a better approach to use, to evaluate conservation investments, than simple payback. DOE has considered the use of life cycle costing in ICP, and allows for the inclusion of a life cycle cost analysis in a TA if the institution elects it, § 455.42(d)(vii). Because simple payback is easier to understand and less speculative to calculate, it remains the primary evaluation mechanism under the program.

#### *Section 455.62 Grant applications State administrative expenses.*

DOE proposed to amend paragraph (b)(2) of this section to require more specific plans from the States concerning how they propose to administer the program and how they propose to use their administrative grants. About one fourth of the commenters addressed this issue, with most indicating that this would place an added burden on the States, which do not all have the resources available to handle additional tasks, due to limited administrative grants. (States administrative grants are restricted to \$30,000 or 5 percent of the schools and hospitals grants awarded in a year, whichever is greater.) While DOE continues to be concerned that States provide it with meaningful applications for administrative grants, DOE recognizes that State resources vary considerably. DOE is therefore not adopting this change. However, DOE would encourage States which must (because of State requirements) prepare plans along the lines of the proposed change, or other detailed annual plans, to forward copies of such plans to DOE. States should also keep in mind the budget reporting requirements set forth in the DOE Financial Assistance Rules, (10 CFR 600.10), which apply to State administrative grants.

#### *Section 455.63 Grantee records and reports.*

DOE proposed amending paragraph (b)(3) of this section to require the reports concerning State administrative grants to discuss the State's progress toward accomplishing the State responsibilities set forth in the annualized plans submitted in accordance with proposed new § 455.62(b)(2). For reasons discussed above under § 455.62, DOE has decided not to adopt the proposed new § 455.62(b)(2). Consequently, DOE has decided not to adopt this proposed change to § 455.63.

DOE also proposed amending this section to require financial status reports for State administrative grants to be filed on a quarterly basis, rather than a semi-annual basis. There were relatively few comments on this proposed change, and most were in favor of it. DOE has therefore decided to adopt this change as proposed.

#### *Section 455.71 State ranking of grant applications.*

DOE proposed amending this section to add a new § 455.71(b)(4) to require that TA report quality be added to the ranking factors used to determine which applications are accepted for grants. This proposed change was based on comments received in response to the NOI and on DOE's awareness, from its experience in operating the program, that TA's often inadequately reflect the work needing to be done in a building, or include cost estimates and other calculations which turn out to be incorrect, sometimes causing problems later with cost overruns, etc. Over two-thirds of the commenters addressed this issue, with the majority opposed to the change because of concerns that judging TA quality would be too subjective, too time consuming or otherwise too difficult to do in a realistic way. Even some commenters who thought the change was a good idea felt it might be difficult to define what TA quality was. However, a number of commenters also felt the change was a good one, and would help to encourage better quality TA's.

DOE and the States have now managed ICP through six funding cycles. Thousands of TA and ECM grants have been made. Many States have developed guidelines for TA's, or have otherwise specified what they expected in a TA. The Pacific Northwest Laboratory has prepared a manual for DOE which includes an extensive section on TA reports. The National Society of Professional Engineers has

worked closely with DOE on a project to develop a suggested TA format, based on extensive ICP experience (this TA report should be available early in 1985). In addition, DOE has sponsored regional training sessions on TA's and many States have regular or occasional training or briefing sessions on TA preparation. Therefore, DOE believes that it will be possible for each State to define TA quality based on its particular needs, its experience, and the experience of others in reviewing and monitoring TA and ECM grants. Consequently, DOE is adopting this change as proposed.

#### *Section 455.80 Approval of grant applications.*

DOE proposed adding a new paragraph (f) to § 455.82, to require that a grantee request approval from DOE before (1) transferring DOE funds or matching amounts between buildings when the State ranks applications by buildings, or (2) transferring DOE funds or matching amounts between measures when the State ranks applications by measure. The proposed change would have applied only when the transfer of amounts increased the payback of the measure or building for which the transferred funds were to be used. DOE subsequently decided that this new requirement would more appropriately be included in § 455.80, and, consequently, a new paragraph (g) is being added to § 455.80 instead of the proposed new paragraph (f) to § 455.82.

In the preamble to the NOPR, DOE indicated that there was some question as to the necessity of obtaining a deviation from the Office of Management and Budget (OMB) to implement this change, since it might exceed the prior approval and rebudgeting requirements of OMB Circulars A-102 and A-110. It has been determined that this prior approval requirement is programmatic rather than budgetary, and is therefore authorized pursuant to the DOE Financial Assistance Rules, 10 CFR 600.114(d)(2). Consequently, no deviation is required.

While the comments varied on this proposed change, most commenters felt it was a good idea. DOE believes that this change is necessary to ensure the integrity of the ranking process, which is largely based on payback, and has adopted the change. However, it has been pointed out that adding costs to a measure or a building would always increase the payback, so DOE should review all transfers of funds from one measure or building to another. DOE has therefore revised the wording of this paragraph to reflect this reality, and has made some revisions to more clearly

relate this requirement to the DOE Financial Assistance Rules. DOE notes, however, that the review required by this change is limited to the matter of payback as it relates to the ranking process. Prior review of proposed budget or project changes shall not be required for any other purpose unless otherwise authorized by the DOE Financial Assistance Rules.

With regard to the change just discussed, a number of commenters raised questions about DOE's intentions in cases where a measure or a building would not have ranked at the higher cost resulting from a funds transfer from another measure or building. Concern was expressed that DOE might insist that the grantee return the entire amount budgeted for the measure or building in question, if it did not rank at the higher cost. In fact, DOE would not do this, but DOE might not approve use of DOE funds or matching grant funds for the entire additional cost. In such a situation, DOE would limit approval of cost increases to amounts which are not so large as to reduce the ranking of the building or ECM in question below the cutoff for the State in the grant program cycle during which that grant was awarded.

#### *Section 455.81 Grant awards for units of local government and public care institutions.*

In response to the need expressed by institutions in the territories, DOE proposed to amend this section, and §§ 455.82 and 455.83 to eliminate the 50 percent matching requirement for the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, as permitted under section 501(d) of the Omnibus Territories Act of 1977, as amended, 48 U.S.C. 1469a(d). Only a few comments were received on these changes, all in favor of them. DOE is therefore adopting these changes as proposed.

#### *Section 455.82 Grant awards for schools and hospitals.*

As discussed previously under § 455.81, DOE proposed to amend paragraph (b) to waive the requirement for matching funds for certain insular areas. No comments were received on this proposed change, and it is adopted as proposed.

DOE proposed to amend paragraph (e) to make it clear that DOE does not intend for the Davis-Bacon Act to apply to projects which are being used as a credit toward meeting the matching non-federal funds requirement. No significant comments were received on this proposed change, and it has been adopted as proposed.

#### *Section 455.83 Grant awards for State administrative expenses.*

As discussed under § 455.81, DOE proposed amending paragraphs (a)(1) and (a)(2) to waive the requirement for matching funds for certain insular areas. No comments were received on this proposed change, and it is adopted as proposed.

DOE proposed amending paragraph (c)(3) to change the threshold amount that might be paid for a single item of equipment from \$300 to \$500, to bring the program regulations into agreement with the DOE Financial Assistance Rules. There were no comments on this proposed change, and it is being adopted as proposed.

#### *Section 455.90 Contents of State plan.*

DOE proposed amending this section to allow each State to decide under what circumstances it will accept a briefer alternative to the EA, and what information it will require in lieu of an EA. There were no significant comments received on this proposed change, and it is being adopted as proposed.

### **IV. Environmental Regulatory Impact, Small Entity Impact, and Paperwork Reduction Act Reviews**

#### *A. Environmental Review*

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*), DOE published a Notice of Availability of an Environmental Assessment (EA) of the entire Title III program on March 12, 1979 in the *Federal Register*, 44 FR 13554. Based on this assessment DOE determined that the NECPA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment, and the therefore no Environmental Impact Statement (EIS), was required.

DOE has reviewed the environmental impacts of the program amendment issued today. It is DOE's judgment that the program amendment will result in no environmental impacts not previously analyzed in the EA on the program. Accordingly, DOE has determined that the environmental impacts of the program as modified by today's amendment have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, the previous negative determination is still applicable, and no additional EA or EIS is required.

#### *B. Review Under Executive Order 12291*

Today's issuance was reviewed under Executive Order 12291 (46 FR 13193 February 19, 1981). DOE has concluded

that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of \$10 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of OMB for a ten-day review. The Director has concluded his review under that Executive Order.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires, in part, that an agency prepare a final regulatory flexibility analysis for any final rule, unless it determines that the rule will not have "significant economic impact on a substantial number or small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. The changes made in this final rule primarily add flexibility to the existing program. Thus, these changes have a minimal effect on small entities. Accordingly, pursuant to section 695(a) of the Regulatory Flexibility Act, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### D. Paperwork Reduction Act

The information collection requirements adopted in this amendment have been approved by OMB in accordance with section 3504(b) of the Paperwork Reduction Act, Pub. L. 98-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*) and procedures implementing that Act (5 CFR 1320.1 *et seq.*) The OMB control number is 1910-1400.

#### E. Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number for the Grant Programs for Schools and Hospitals is 81.052.

#### List of Subjects in 10 CFR Part 455

Buildings, Community facilities, Energy audits, Energy conservation, Grant programs, Energy, Health facilities, Hospitals, Reporting and recordkeeping requirements, Schools, Solar energy, Technical assistance.

In consideration of the foregoing, DOE hereby revises Chapter II, Title 10, Part 455, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., April 12, 1985.  
**Donna R. Fitzpatrick,**  
*Acting Assistant Secretary, Conservation and Renewable Energy.*

Part 455 is revised to read as set forth below:

### PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

#### Subpart A—General Provisions

- Sec.  
 455.1 Purpose and scope.  
 455.2 Definitions.  
 455.3 Administration of grants.  
 455.4 Recordkeeping.  
 455.5 Suspension and termination of grants.

#### Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures

- 455.10 Purpose and scope  
 455.11 Financial assistance.  
 455.12 Cost sharing.  
 455.13 Allocation of funds.  
 455.14 Submission and review of applications.  
 455.15 Content of applications.  
 455.16 Use of funds.  
 455.17 Reporting requirements.  
 455.18 Contents of a preliminary energy audit.  
 455.19 Contents of an energy audit.  
 455.20 Contents of an energy use evaluation.

#### Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

- 455.40 Purpose and scope.  
 455.41 Eligibility.  
 455.42 Contents of program.

#### Subpart D—Energy Conservation Measures for Schools and Hospitals

- 455.50 Purpose and scope.  
 455.51 Eligibility.  
 455.52 Contents of program.

#### Subpart E—Applicant Responsibilities

- 455.60 Grant application submittals.  
 455.61 Applicant certifications.  
 455.62 Grant applications for State administrative expenses.  
 455.63 Grantee records and reports.

#### Subpart F—State Responsibilities

- 455.70 State evaluation of grant applications.  
 455.71 State ranking of grant applications.  
 455.72 Forwarding of applications.  
 455.73 State liaison, monitoring and reporting.

#### Subpart G—Grant Awards

- 455.80 Approval of grant applications.  
 455.81 Grant awards for units of local government and public care institutions.

- 455.82 Grant awards for schools and hospitals.  
 455.83 Grant awards for State administrative expenses.

#### Subpart H—State Plan Development and Approval

- 455.90 Contents of State plan.  
 455.91 Submission and approval of State plans  
 455.92 State plans developed by the Secretary.

#### Subpart I—Allocation of Appropriations Among the States

- 455.100 Allocation of funds.  
 455.101 Allocation formulas.  
 455.102 Reallocation of funds.

**Authority:** Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371 *et seq.*); and Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)

#### Subpart A—General Provisions

##### § 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Parts 1 and 2 of Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371 *et seq.*) which add Parts G and H, respectively, to Title III of the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 901 (42 U.S.C. 6291).

(b) This subpart authorizes grants to States or to public or nonprofit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating, acquiring and installing energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This subpart also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and evaluating energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

##### § 455.2 Definitions.

"Act," as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6201 *et seq.*), as amended by Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371).

"Auditor" means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

"Building" means any structure, the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

"Civil rights requirements" means civil rights responsibilities of applicants and grantees pursuant to the Nondiscrimination in Federally Assisted Programs regulation of the Department of Energy (10 CFR Part 1040).

"Complex" means a closely situated group of buildings on a contiguous site, or a closely situated group of buildings served by a central utility plant, such as a college campus or a multi-building hospital.

"Construction completion" means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy as determined by DOE.

"Cooling degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

"Coordinating agency" means any public or nonprofit organization legally constituted within a State for either administrative control or services for a group of institutions within a State and which acts, and is authorized by eligible institutions to so act, as the agent for such institutions with respect to their participation in the program.

"DOE" means the Department of Energy.

"Energy audit" means any survey of a building or complex conducted in accordance with the requirements of § 455.19.

"Energy conservation maintenance and operating procedures" means modifications in the maintenance and operations of a building, and any installation therein, which are designed to reduce the energy use in such building and which require no significant expenditure of funds.

"Energy conservation measure" means an installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source and which may contain integral control and measurement devices, but which is not an installation of leased equipment, including, but not limited to—

(a) Insulation of the building structure and systems within the building;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass

area, and other window and door systems modifications;

(c) Automatic energy control systems which would reduce energy consumption;

(d) Equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(e) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(f) Active or passive solar water heating systems;

(g) Furnace or utility plant and distribution system modifications including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and

(4) Utility plant system conversion measures including conversion of existing oil and gas-fired boiler installations to alternative energy sources, including coal;

(h) Addition of caulking and weatherstripping;

(i) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary;

(j) Energy recovery systems;

(k) Cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(l) Such other measures as the Secretary identifies by rule for purposes of this part, as set forth in Subpart D of 10 CFR Part 450; and

(m) Such other measures as a grant application shows will save a substantial amount of energy and are identified in an energy audit in accordance with § 455.19, its equivalent, an energy use evaluation, or a technical assistance report.

"Energy use evaluation" means an evaluation of the energy use characteristics of a building, which may be used in place of an energy audit

when a State has made provision for such use in its State plan and must contain the information set forth in § 455.20.

"Fuel" means any commercial source of energy used within the building or complex being surveyed such as natural gas, fuel oil, electricity, or coal.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

"Grantee" means the entity or organization named in the Notice of Financial Assistance Award as the recipient of the grant.

"Grant program cycle" means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States; applications receipt, review, approval or disapproval; and award of grants by DOE, but which does not include the grantee's performance period.

"Gross square feet" means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

"Heating or cooling system" means any mechanical system for heating, cooling or ventilating areas of a building, including a system of through-the-wall air conditioning units.

"Heating degree days" means the annual sum of the number of Fahrenheit degrees for each day's mean temperature below 65° for a given locality.

"Hospital" means a public or nonprofit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

"Hospital facilities" means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in or



established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203; 85 Stat. 688, which (a) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (b) is located on, or in proximity to, a Federal or State reservation or rancheria.

"Local educational agency" means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

"Maintenance" means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

"Native American" means a person who is a member of an Indian tribe.

"Operating" means the operation of equipment and energy-using systems in a building to achieve or maintain specified levels of environmental conditions of service.

"Owned" or "Owns" means property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

"Preliminary energy audit" means any survey of a building or complex conducted in accordance with the requirements of § 455.18.

"Primarily occupied" means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or an office or agency of a unit of local government.

"Public care institution" means a public or nonprofit institution which owns—

(a) A facility for long-term care, rehabilitation facility, or public health center, as described in section 1633 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270); or

(b) A residential child care center, which is an institution, other than a foster home, operated by a public or nonprofit institution and is primarily intended to provide full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

"Public or nonprofit institution" means an institution owned and operated by—

(a) A State, a political subdivision of a State or an agency or instrumentality of either; or

(b) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954; or

(c) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 510(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

"School" means a public or nonprofit institution which—

(a) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(b) (1) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) Is accredited by a nationally recognized accrediting agency or association; and

(4) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in paragraphs (b) (1), (2) and (3) of this definition; or

(d) Is a local educational agency.

"School facilities" means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

"Secretary" means the Secretary of the Department of Energy, or his/her designee.

"State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Virgin Islands.

"State energy agency" means the State agency responsible for developing State energy conservation plans pursuant to section 362 of the Energy Policy and Conservation Act (42 U.S.C.

6322), or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under section 394 of the Energy Policy and Conservation Act.

"State hospital facilities agency" means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

"State school facilities agency" means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such state which conforms to the requirements of this definition.

"Technical assistance" means a program or activity for (1) the conduct of specialized studies to identify and specify energy savings and related cost savings that are likely to be realized as a result of modifying maintenance and operating procedures in a building, acquiring and installing one or more specified energy conservation measures in a building, or both; and (2) the planning or administration of such specialized studies. For schools and hospitals which are eligible to receive grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation, or renewable resource measures in a building.

"Unit of local government" means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe which governing body performs substantial governmental functions and includes libraries which serve all residents of a political subdivision below the State level (such as a community, district or region) free of charge and which derive at least 40 percent of their operating funds from tax

revenues of a taxing authority below the State level.

#### § 455.3 Administration of grants.

Grants provided under this part shall comply with applicable law, regulation or procedure including, without limitation, the requirements of:

(a) The DOE Financial Assistance Rules (10 CFR Part 600 as amended), except as otherwise provided in this rule;

(b) Executive Order 12372 entitled "Intergovernmental Review of Federal Programs," (48 FR 3130, January 24, 1983), and the DOE regulation implementing this Executive Order entitled "Intergovernmental Review of Department of Energy Programs and Activities" (10 CFR Part 1005);

(c) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specified or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1966";

(d) DOE regulation entitled "Nondiscrimination in Federally Assisted Programs" (10 CFR part 1040) which implements the following public laws: Title VI of the Civil Rights Act of 1964; section 16 of the Federal Energy Administration Act of 1974; section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and section 504 of the Rehabilitation Act of 1973; and

(e) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

#### § 455.4 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required and specified by the DOE Financial Assistance Rules, 10 CFR Part 600.

#### § 455.5 Suspension and termination of grants.

Suspension and termination procedures shall be as set forth in the DOE Financial Assistance Rules, 10 CFR Part 600.

### Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures

#### § 455.10 Purpose and scope.

(a) This subpart contains the regulations whereby the Federal Government shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of—

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates can be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of—

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of renewable resources; and

(4) Providing, to the greatest extent practicable, consistent information necessary to identify those buildings to receive priority for additional financial assistance.

#### § 455.11 Financial assistance.

(a) DOE shall provide financial assistance from sums appropriated only upon application in accordance with the provisions of this subpart.

(b) The Secretary may make grants for purposes of conducting preliminary energy audits and energy audits of school facilities and hospital facilities.

(c) The Secretary may make grants for purposes of conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions.

#### § 455.12 Cost sharing.

(a) Amounts made available under this subpart, together with any other amounts made available from other

Federal sources, may not be used to pay more than 50 percent of the costs of a preliminary energy audit or an energy audit, except as provided in paragraph (b) of this section.

(b) The Governor of a State may request a grant of up to 100 percent of the costs of any preliminary energy audit or energy audit for schools or hospitals. When financial assistance in excess of the 50 percent cost share limitation is provided to a State, the sum allocated to that State for technical assistance and energy conservation measures, including renewable resource measures shall be reduced by an equal amount. Such funds shall be reallocated among all other States on the same basis as the initial allocation. The Secretary may make such a grant if the State has demonstrated that—

(1) The State would otherwise be unable to participate in the program; and

(2) The amount of the additional financial assistance requested is the minimum necessary to allow the State to participate.

(c) Where a State has expended funds without financial assistance under this subpart for the conduct of preliminary energy audits or energy audits commenced on or after November 9, 1978, the Secretary may, upon application and approval under this subpart, accept all or any portion of such expenditures as constituting State matching funds.

(d) To the extent that funds allocated to a State for preliminary energy audits and energy audits are not needed because all potentially eligible buildings have had or will have an energy audit or its equivalent conducted, such funds may be made available for technical assistance or energy conservation measures. DOE shall, upon request by the State, redistribute funds not needed for preliminary energy audits and energy audits to the State allocation for technical assistance or energy conservation measures, as appropriate, and such funds shall be in addition to those which would otherwise be available for such purposes.

(e) Amounts to be used to meet the cost-sharing requirements described in Subpart G of this part must meet the requirements for cost-sharing set forth in the DOE Financial Assistance Rules, 10 CFR 600.107.

#### § 455.13 Allocation of funds.

(a) Financial assistance for conducting preliminary energy audits and energy audits of school facilities and hospital facilities shall be allocated among the

States by multiplying the sum available by the allocation factor (F).

(b) Financial assistance for conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(c) The allocation factor (F) shall be determined by the formula—

$$F = \frac{(.1)}{(n)} + \frac{(.7SP)}{(NP)} + \frac{(.2SC)}{(NC)}$$

where, as determined by DOE—

(1) n is the total number of States;

(2) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports" Series p-25, number 042, or territory as determined from 1973 census estimates, "Current Population Reports", Series p-25, number 003;

(3) NP is 217,820,000, the total population of all States;

(4) SC is the sum of the State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970; and

(5) NC is 347,729, the sum of all States' heating and cooling degree days.

(d) Financial assistance allocated to a State pursuant to this subpart for a grant program cycle which remains unobligated at the end of the grant program cycle shall, if available, be reallocated under paragraph (a) or (b) of this section, as appropriate, in the subsequent grant program cycle.

#### § 455.14 Submission and review of applications.

(a) To be eligible to receive financial assistance, a State shall complete and submit an original copy of the application to the Secretary. Such application shall be signed by the Governor or his designee.

(b) The first State application shall be submitted not later than 30 days after the effective date of this subpart. Subsequent State applications shall be submitted for each grant program cycle on or before the date established by the Secretary for—

(1) Schools and hospitals;

(2) Buildings owned by units of local government and public care institutions; or

(3) Both.

(c) The State shall consult with representatives of schools, hospitals, units of local government and public care institutions during the preparation of applications for financial assistance for preliminary energy audits and energy audits.

(d) The Governor may request an extension of the submission date for a State's application by sending a written request to the Secretary prior to the date upon which it is due. An extension will only be provided for good cause shown. Such a request shall include a brief discussion of work remaining to be done on the application and time required for its completion. An extension shall not exceed 60 days except where additional time may be required by a State to enact enabling legislation, or where the Secretary finds an additional extension to be consistent with the overall objectives of the Act and the requirements of this subpart.

(e) The Secretary shall review each timely State application and provide financial assistance if the Secretary determines that the application meets the objectives of the Act and the requirements of this part.

(f) All or any portion of an application under this section may be disapproved to the extent that funds are not available under this subpart to carry out such application or portion thereof.

(g) The Secretary shall state in writing the reasons any application is disapproved. Applications not approved by the Secretary may be resubmitted by the applicant at any time within the grant program cycle in the same manner as the original application, and the Secretary shall approve such resubmitted application if it is found to be in compliance with the requirements of this subpart. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application.

#### § 455.15 Content of applications.

(a) An application shall contain—

(1) The name and mailing address of the proposed State grantee;

(2) A budget which shall include identification of the sources, amounts, and intended use of non-Federal funds required to meet the cost-sharing provisions of § 455.12; and

(3) Assurance that preliminary energy audit and energy audit procedures to be employed will meet the requirements of §§ 455.18 and 455.19.

(b) For each program for which financial assistance is sought, a State application shall also contain—

(1) A timetable, including a listing of milestones for the activities to be carried out by calendar quarters for each program for which financial assistance will be provided;

(2) A description of materials to be developed and adopted, or an identification of existing materials to be used, to meet the requirements for

conducting preliminary energy audits and energy audits set forth in §§ 455.18 and 455.19, including provision of data concerning heating degree days, cooling degree days, insulation, and wind speed for regions within the State;

(3) A description of the training to be provided to those persons who will conduct energy audits. Such training shall, at a minimum, use as instructors, architects or engineers who have had practical experience in performing energy audits. The minimum qualifications of those attending the training course, and the minimum qualifications of those who will be permitted to perform energy audits without having attended the training course, shall also be described.

(4) An explanation of how the size of the sample and the selection of sample buildings will be determined in those instances where a sampling methodology is used in the conduct of preliminary energy audits.

(5) A description of the methods which will be used to advise eligible institutions of the availability of assistance under this subpart, and the amounts available by categories of institutions as determined under paragraphs (c)(3) and (d)(2) of this section.

(c) A State application for financial assistance to conduct preliminary energy audits and energy audits of school and hospital facilities shall contain—

(1) A description of the procedures the State will use to provide funding or services to those schools and hospitals which are willing and able to conduct their own energy audits;

(2) A justification for any funding applied for in excess of the 50 percent limit provided in paragraph (a) of § 455.12;

(3) A description of the method by which funds will be apportioned between school facilities and hospital facilities, including a justification for the apportionment if fewer than all such facilities will be audited;

(4) An explanation of the manner in which activities to be conducted shall be consistent with—

(i) Related State programs for educational facilities in such State; and  
(ii) State health plans under sections 1524(c)(2) (42 U.S.C. 300m-3; 88 Stat. 2247) and 1603 (42 U.S.C. 300o-2; 88 Stat. 2259) of the Public Health Service Act; and

(5) A description of the actions taken by the State to solicit and consider the views of representatives of schools and hospitals during the preparation of the State's application.

(d) A State application for financial assistance to conduct preliminary energy audits and energy audits of buildings owned by the units of local government and public care institutions shall contain a description of—

(1) The procedures the State will use to provide funding or services to those units of local government and public care institutions which are willing and able to conduct their own energy audits.

(2) The method by which funds will be apportioned between buildings owned by units of local government and public care institutions including a justification for the apportionment if fewer than all these buildings will be audited; and

(3) The action taken by the State to solicit and consider the views of representatives of units of local government and public care institutions during the preparation of the State's application.

(e) A State application shall set forth procedures—

(1) By which buildings or complexes eligible for preliminary energy audits and energy audits will be identified, and a listing thereof prepared and maintained;

(2) For the State to participate, on a selective sampling basis, in the performance of on-site energy audits to assure that the findings present a reasonably thorough and accurate assessment of the buildings surveyed; and

(3) For the State to conduct followup visits, on a selective sampling basis, to ascertain the degree of implementation of energy audit results.

#### § 455.16 Use of funds.

(a) A State shall either carry out preliminary energy audits and energy audits of schools and hospitals, or provide for the conduct of such audits by schools and hospitals, through use of funds which the State has received pursuant to paragraph (b) of § 455.11.

(b) A State shall either carry out preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions, or provide for the conduct of such audits by units of local government and public care institutions, through the use of funds which the State has received pursuant to paragraph (c) of § 455.11.

(c) No financial assistance provided under this subpart shall be expended for—

(1) The audit of—  
(i) A vacant, unused or condemned building;

(ii) A stadium which is part of a school facility used primarily for exhibitions for which admission is

charged and which is not also generally used for intramural sports and physical fitness programs generally available to all students; or

(iii) A building or complex owned by a unit of local government or a public care institution—

(A) Not primarily occupied by such institution; or

(B) Which is intended for seasonal use; and

(2) The purchase or acquisition of any single piece of equipment or tangible personal property costing more than \$500 to be used in conducting preliminary energy audits or energy audits, unless prior written approval has been obtained from DOE.

(d) Of the financial assistance provided to a State under this subpart, not more than 25 percent shall be expended for—

(1) Administrative expenses;

(2) Development of materials for the conduct of preliminary energy audits and energy audits;

(3) Training of personnel to conduct energy audits;

(4) For conducting preliminary energy audits and sample energy audits; and

(5) For monitoring and evaluation.

(e) At least 75 percent of the financial assistance provided under this subpart shall be used in conducting energy audits of buildings, including costs of personnel attending training sessions conducted by the State preparatory to performing energy audits.

(f) A State may request, and the Secretary may approve, a waiver of the limitations required under paragraph (d) and (e) of this section, provided the State demonstrates that such a waiver would permit the conduct of more energy audits than would otherwise be conducted under the provisions of this section.

#### § 455.17 Reporting requirements.

(a) Each State receiving financial assistance under this part shall submit to DOE a quarterly program performance report and a quarterly financial status report. The reports shall be submitted to DOE within 30 days following the end of each calendar quarter.

(b) The quarterly program performance report shall include—

(1) For those buildings which have received a preliminary energy audit or an energy audit, a summary of the categories, types of ownership, functional uses, gross square feet and energy use levels; and

(2) For those buildings which have received an energy audit—

(i) An estimate of the savings anticipated from energy conservation

operation and maintenance procedure changes identified; and

(ii) An approximation of the energy savings indicated from applicable energy conservation measures if the procedure used by the State results in such information or a summary of the number of buildings for which the energy audit indicates potential for energy conservation measures, including renewable resource measures.

(c) The second quarterly report shall also include—

(1) The total sum required for energy audits of buildings whose owners have been advised of selection to receive an energy audit;

(2) A copy of the materials adopted by the State for conducting energy audits;

(3) The apportionment of funds pursuant to paragraphs (c)(3) and (d)(2) of § 455.15 and the data on which such apportionment was based;

(4) The listing of institutions and their buildings compiled pursuant to the provisions of paragraph (e)(1) of § 455.15, summarized by category, types of ownership, and functional use;

(5) Any necessary revisions to the estimate of the characteristics and energy conservation potential of buildings owned by eligible institutions resulting from the sample preliminary energy audits, if a sampling approach was used.

(d) Copies of preliminary energy audit and energy audit reports made by or furnished to the State under § 450.45 of this chapter shall be submitted to DOE together with the quarterly report.

(e) Reports shall contain such other information as may be required by DOE.

#### § 455.18 Contents of a preliminary energy audit.

(a) A preliminary energy audit shall provide a description of the building or complex audited and determine its energy-using characteristics, including—

(1) The name or other identification, and address of the building;

(2) A statement that the building meets the requirements of one of the following categories—

(i) A school facility;

(ii) A hospital facility; or

(iii) A building owned and primarily occupied either by offices or agencies of a unit of local government or by a public care institution, neither of which shall include any building intended for seasonal use or any building used primarily by a school or hospital;

(3) A description of the functional use made of the building identifying whether it is a—

(i) School—

(A) Elementary;

- (B) Secondary;
- (C) College or university;
- (D) Vocational;
- (E) Other;
- (ii) Hospital—
- (A) General;
- (B) Tuberculosis; or
- (C) Other;
- (iii) Local government building—
- (A) Office;
- (B) Storage;
- (C) Service;
- (D) Library;
- (E) Police station;
- (F) Fire station; or
- (G) Other; or
- (iv) Public care building—
- (A) Nursing home;
- (B) Long term care other than a nursing home;
- (C) Rehabilitation facility;
- (D) Public health center; or
- (E) Residential child care center;
- (4) The name and address of the owner of record, indicating whether owned by a public institution, private nonprofit institution or an Indian tribe;
- (5) The size of the building, expressed in gross square feet;
- (6) The age of the building;
- (7) Approximate daily hours of operation, including periods of partial use if applicable;
- (8) An indication of whether the building is partially used during vacation periods or other times when the building is not fully utilized, for periods of a week or more, by quarter;
- (9) An identification of major energy-using systems, including—
- (i) Type of heating system or cooling system or both;
- (ii) Fuel used for heating system, cooling system;
- (iii) Fuel used for domestic hot water, such as electric or natural gas;
- (iv) Special energy using systems, such as food service or laundry; and
- (v) Lighting, such as incandescent or fluorescent;
- (10) Fuel use in physical units and cost data by type for a preceding 12 month period, by month if practicable, using actual data or an estimate if actual figures are unavailable; and
- (11) Total annual energy use expressed in Btu's per gross square foot and energy cost per gross square foot.
- (b) A preliminary energy audit shall provide a brief description of activities which have been undertaken to conserve energy in the building or complex being audited, including whether—
- (1) A person has been designated to monitor and evaluate energy use;
- (2) Work partially or fully satisfying the requirements of an energy audit has been performed;

(3) Detailed studies have been conducted by architects, engineers or architect-engineer teams of energy use and energy conservation; and

(4) Any major energy conservation measures have been implemented, together with a listing of such measures, and estimates of their costs and energy savings if available.

(c) A preliminary energy audit shall provide information regarding site, building, and heating and hot water systems related to renewable resource potential, including—

(1) An indication of whether open land, such as fields, yards and parking areas, is available within the immediate vicinity of the building which is not heavily shaded by tall buildings, trees or other obstructions;

(2) A statement of whether the building is located generally within an urban, suburban or rural area;

(3) An approximation of whether more than half the building's roof area or southern oriented wall surface is heavily shaded by shrubs, trees, buildings or other obstructions for more than about four hours per day;

(4) The number of stories;

(5) A general description of the building's shape, such as square, rectangular, E-shaped, H-shaped or L-shaped;

(6) An indication of whether the roof is flat or pitched, and if pitched whether it has a southern orientation;

(7) Whether there are existing roof-top obstructions, such as chimneys, space conditioning equipment, water towers, mechanical rooms, stairwells or other permanent structures;

(8) An indication of the exterior material of the southern facing wall, such as masonry, wood, aluminum;

(9) An approximation of the proportion of glass area of the southern facing wall, such as less than 25 percent, 25-75 percent, more than 75 percent; and

(10) Location of primary space heating and water heating systems—

(i) Whether outside of or within the building;

(ii) If within the building, whether on the ground floor, in the basement, or on the roof; and

(iii) If within the building, whether centrally located, in multiple units, or a combination thereof.

#### § 455.19 Contents of an energy audit.

(a) An energy audit shall contain the information required for a preliminary energy audit, in accordance with § 455.18, and shall also include a description of—

(1) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition,

disposal, rehabilitation, or conversion from office to warehouse;

(2) For a building in excess of 200,000 gross square feet, if available—

(i) Peak electric demand for both daily and annual cycle; and

(ii) Annual energy use by fuel type of the major mechanical or electrical systems if the information is available or can be reasonably estimated;

(3) Terminal heating or cooling, or both, such as radiators, unit ventilators, fancoil units, or double-duct reheat systems;

(4) Building site and structural characteristics related to renewable resource potential, including but not limited to—

(i) Climatic factors, specifically—

(A) Average annual heating degree days and cooling degree days;

(B) Average solar insolation by month;

(C) Average monthly wind speed; and

(ii) Roof characteristics, including—

(A) An identification of primary structural component such as steel, wood, concrete; and

(B) Type of roofing material such as shingles, slate or built-up material; and

(5) A description of general building conditions.

(b) An energy audit shall—

(1) Indicate that appropriate energy conservation maintenance and operating procedures have been implemented for the building, supported by a demonstration based on actual records, that energy use has been reduced in a given year through changes in maintenance and operating procedures, by not less than 20 percent from a corresponding based period having a degree day variance of less than 10 percent; or

(2) Recommended appropriate energy conservation maintenance and operating procedures, on the basis of an on-site inspection and review of any scheduled preventive maintenance plan, together with a general estimate or range of energy and cost savings if practical, which may result from—

(i) Effective operation of ventilation systems and control of infiltration conditions, including—

(A) Repair of caulking or weatherstripping around windows and doors;

(B) Reduction of outside air intake, shutting down ventilation systems in unoccupied areas, and shutting down ventilation systems when the building is not occupied; and

(C) Assuring central or unitary ventilation controls, or both, are operating properly;

(ii) Changes in the operation of heating or cooling systems through—

- (A) Lowering or raising indoor temperatures;
- (B) Locking thermostats;
- (C) Adjusting supply or heat transfer medium temperatures; and
- (D) Reducing or eliminating heating or cooling at night or at times when a building or complex is unoccupied;
- (iii) Changes in the operation of lighting systems through—
  - (A) Reducing illumination levels;
  - (B) Maximizing use of daylight;
  - (C) Using higher efficiency lamps; and
  - (D) Reducing or eliminating evening cleaning of buildings;
- (iv) Changes in the operation of water systems through—
  - (A) Repairing leaks;
  - (B) Reducing the quantity of water used, e.g., flow restrictors;
  - (C) Lowering settings for hot water temperatures; and
  - (D) Raising settings for chilled water temperatures; and
  - (v) Changes in the maintenance and operating procedures of the utility plant and distribution system through—
    - (A) Cleaning equipment;
    - (B) Adjusting air/fuel ratio;
    - (C) Monitoring combustion;
    - (D) Adjusting fan, motor, or belt drive systems;
    - (E) Maintaining steam traps; and
    - (F) Repairing distribution pipe insulation; and
    - (vi) Such other actions as the State may determine useful or necessary, consistent with the purposes of the energy audit and acceptable cost constraints of § 450.46.

(c) Based on information gathered under paragraphs (a) and (b) of § 455.18, and paragraphs (a) (1) and (2) of this section, an energy audit shall indicate the need, if any, for the acquisition and installation of energy conservation measures and shall include an evaluation of the need and potential for retrofit based on consideration of one or more of the following—

(1) An energy use index or indices, for example, Btu's per gross square foot per year;

(2) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(3) The physical characteristics of the building envelope and major energy-using systems.

(d) Based on information gathered under paragraph (c) of § 455.18 and paragraph (a)(4) of this section, an energy audit shall include an indication of whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems.

(e) An energy audit may include an assessment of the estimated costs and

energy and cost savings likely to result from the purchase and installation of one or more energy conservation measures.

#### § 455.20 Contents of an energy use evaluation.

(a) An energy use evaluation may be used in lieu of an energy audit in cases where no energy audit has been performed, in accordance with § 455.19, and where the State has made provision for such use in its State plan, in accordance with § 455.90(1).

(b) An energy use evaluation shall contain the information required in § 455.18(a) through 455.18(b)(4), and shall also include a description of—

(1) The building's potential suitability for renewable resource applications;

(2) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition, disposal, rehabilitation, or conversion from office to warehouse;

(3) Appropriate energy conservation maintenance and operating procedures which have been implemented for the building;

(4) The need, if any, for the acquisition and installation of energy conservation measures, including an assessment of the estimated costs and energy and cost savings likely to result from the purchase and installation of one or more energy conservation measures and an evaluation of the need and potential for retrofit based on consideration of one or more of the following:

(i) An energy use index or indices, for example, Btu's per gross square foot per year;

(ii) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(iii) The physical characteristics of the building envelope and major energy-using systems; and

(5) Such other information as the State has determined useful or necessary, in accordance with § 455.90(1)

#### Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

##### § 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

##### § 455.41 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must—

(a) Be a school, hospital, unit of local government, public care institution or coordinating agency, all as defined in § 455.2, except that—

(1) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program; and

(2) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit, its equivalent or an energy use evaluation for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified as a result of the energy audit or its equivalent, identified in the energy use evaluation, or provide a written justification satisfactory to the Secretary, pursuant to § 455.90(j); and

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

##### § 455.42 Contents of program.

(a) The purpose of a technical assistance program is to provide a report which meets the requirements of this section and the State's procedures for implementing this section. A technical assistance program should be designed—

(1) To identify and document energy conservation maintenance and operating procedure changes and energy conservation measures in sufficient detail to support possible application for financial assistance, and to provide reviewers and decisionmakers handling such applications sufficient information upon which to base judgments as to their reasonableness; and

(2) To provide the institution with a description of its current characteristics, procedures, operating and maintenance procedure changes and potential for cost-effective capital improvements such that the report can be used to guide those responsible for the energy and financial management of the institution in implementing energy conservation actions without regard to possible financial assistance under this program.

(b) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.90(p) and who shall consider all feasible energy conservation operating and maintenance procedure changes and energy conservation measures for a building, including renewable resource measures. A technical assistance program shall identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing energy conservation maintenance and operating procedures. A technical assistance program shall also provide a detailed engineering analysis to specify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

(c) The technical assistance analyst shall use the following factors in calculating costs—

(1) Current prices, including demand charges.

(2) Marginal prices where incremental prices apply.

(d) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the energy audit, its equivalent, or energy use evaluation of the building, together with a statement as to the accuracy of the energy audit data as required in § 455.42(d)(7), and completeness of the energy audit recommendations;

(ii) The operation characteristics of energy using systems; and

(iii) The estimated remaining useful life of the buildings;

(2) An analysis of the estimated energy consumption of the building, by fuel type in total Btu's and Btu/sq. ft./yr. using conversion factors prescribed by the State, at optimum efficiency (assuming implementation of all energy

conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for renewable resource conversions; including water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar or renewable resource systems;

(5) A description and analysis of all identified operating and maintenance procedure changes, if any, and energy conservation measures, including renewable resource measures, setting forth—

(i) A description of each operating and maintenance procedure change and an estimate of the costs of adopting such operating and maintenance procedure changes;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure, discussing pertinent assumptions as necessary;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each conservation measure if any;

(v) An estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any;

(vi) An estimate supported by all data and assumptions used in arriving at the estimate, of the annual energy and energy cost savings (using current energy prices including demand charges) expected from each operating and maintenance procedure change and the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings or energy savings of each energy conservation measure, including renewable resource measures, the technical assistance analyst shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all feasible energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy costs savings, as determined in paragraph (d)(5)(vi)(B) of this section attributable to each individual energy conservation measure; and

(D) Consider climate and other variables;

(vii) The simple payback period of each energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 455.42(d)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(d)(5)(vi). For the purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices except:

(A) For energy conservation measures which result in conversion from oil, natural gas, other petroleum products or electricity to coal, the simple payback period shall be calculated based on the annual cost savings (using current energy prices) associated with the change in fuels; or

(B) For renewable resource energy conservation measures, the simple payback period shall be calculated using the cost of the fuels displaced (using current energy prices) as the annual cost savings; and

(viii) The estimated cost of the measure which shall be the total cost for design and other professional service (excluding cost of a technical assistance program), if any, and acquisition and installation costs. At the request of the applicant, the technical assistance report shall provide a life cycle cost analysis, which considers all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure for use by the institution;

(6) Energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period, by month if possible; and

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

#### Subpart D—Energy Conservation Measures for Schools and Hospitals

##### § 455.50 Purpose and scope.

This subpart indicates what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including renewable resource measures.

**§ 455.51 Eligibility.**

(a) To be eligible to receive financial assistance for an energy conservation measure, including renewable resource measures, an applicant must—

(1) Be a school, hospital or coordinating agency as defined in § 455.2, provided that financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified, as described in § 455.90(j).

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 2 years nor greater than 10 years, and the estimated useful life of the measure shall be greater than its simple payback period.

**§ 455.52 Contents of program.**

The programs to be funded under this part will be for the design, acquisition and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to those included in the definition of "energy conservation measures" in § 455.2.

**Subpart E—Applicant Responsibilities****§ 455.60 Grant application submittals.**

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) The energy audit, its equivalent, or an energy use evaluation (as determined by the State) for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds; including in-kind contributions (valued in accordance with the guidelines in 10 CFR 600.107(e)), to be used to meet the cost-sharing requirements described in Subpart G of this part;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including renewable resource measures, shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) Identification of each building pursuant to § 455.18(a) (1) through (5), or an equivalent identification if no preliminary energy audit was performed,

for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(3) A project budget, by measure or by building as provided in the State Plan, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR 600.107(e)) to be used to meet the cost sharing requirements described in Subpart G of this part;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, and the projected simple payback period as contained in § 455.42(d)(5) (vii) and (viii). Applications with more than one energy conservation measure per building shall include projected costs and paybacks for each measure, and the average simple payback period for all measures proposed for the building;

(6) Unless waived by DOE, the report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration or utilization change to the building, which significantly modified energy use, for each building.

(7) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, and analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(8) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

**§ 455.61 Applicant certifications.**

Applications for financial assistance for technical assistance programs and energy conservation measures, including



renewable resource measures, shall include certification that the applicant—

(a) Is eligible under § 455.41 for technical assistance or § 455.51 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.60;

(c) For applications for technical assistance, has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit, its equivalent, or identified in the energy use evaluation, and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program, if any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure as prescribed pursuant to § 455.90(j);

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) For a project under this Part having a total estimated cost of more than \$5,000, any construction contract or subcontract in excess of \$2,000 using any grant funds awarded under this part must include those contract labor standards provisions set forth in 29 CFR 5.5 and a provision for payment of laborers and mechanics at the minimum wage rates determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a) as set forth in 29 CFR Part 1. For the purpose of this section "project" means an undertaking to acquire and install one or more energy conservation measures in a building which is eligible under this part; and

(f) Will comply with all reporting requirements contained in § 455.63.

#### § 455.62 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file an application in accordance with the provisions of this section. At any time after notice by DOE of the amounts allocated to each State for a grant program cycle, each State may apply to the Secretary for an amount for administrative expenses not exceeding

\$30,000 or 2 percent of its total allocation for technical assistance and energy conservation measures, whichever is higher. In addition, each State, after it makes the submittal to DOE required under § 455.72, may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle. In the event that a State cannot or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State, in accordance with this part.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of intended use of all Federal and non-Federal funds, for the State administrative expenses listed in § 455.83(c) and a list of the sources and amounts of the required matching non-Federal funds, including in-kind contributions valued in accordance with the guidelines in the DOE Financial Assistance Rules [10 CFR 600.107(e)] to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(3) Any other information required by DOE.

#### § 455.63 Grantee records and reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including renewable resource measures, or State administrative expenses shall keep all the records required by § 455.4 in accordance with DOE Financial Assistance Rules.

(b) Each grantee shall submit reports as follows—

(1) For technical assistance projects, two copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain—

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures.

(2) For energy conservation measure projects—

(i) Grantee shall submit semi-annual progress reports. Two copies shall be submitted to the State energy agency no later than the end of July and January and shall detail and discuss milestones accomplished, those not accomplished, status of in-progress activities, and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu of the last semi-annual report if it satisfies the semi-annual progress report and final report designated time frames;

(ii) Grantees shall submit a final report. Two copies shall be submitted to the State within 90 days of the completion of the project and shall list and describe the energy conservation measures acquired and installed, contain a final estimated simple payback period for each measure and the project as a whole, and include a statement that the completed energy conservation measures conform to the approved grant application.

(iii) Grantees shall submit annual energy use reports. Two copies shall be submitted to the State within 60 days of the close of each 12-month period following project completion for a period of three years, or for the life of this Federal program, whichever is shorter, and shall identify each building and provide data on energy use for that building for the preceding 12-month period.

(3) For State administrative grants, each State shall submit a semi-annual program performance report to DOE by the close of each February and August. The report will provide:

(i) A discussion of administrative activities pursuant to § 455.83(c), and a discussion of milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned pursuant to § 455.73(f);

(ii) A summary of grantee reports received by the State during the report period pursuant to paragraphs (b)(1) and (b)(2) of this section; and

(iii) For the report due to be submitted to DOE by the close of each August, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedure and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance

phase of this program and upon the reports submitted to the State pursuant to paragraph (b)(2)(iii) of this section.

(4) Such other information as the Secretary may, from time to time request.

(5) Each copy of any technical assistance, energy conservation measures, or State administrative report shall be accomplished by a financial status report completed in accordance with the documents listed in § 455.3. A financial status report shall not be required for annual reports submitted pursuant to paragraph (b)(2)(iii) of this section. In addition, States shall file quarterly financial status reports for the quarters which occurs between the semi-annual report periods covered in their program performance reports. These quarterly reports are due within 30 days following the end of the applicable quarters.

(6) Grantee technical assistance, energy conservation measure, and financial status reports submitted to the State shall be submitted by the State to DOE as required by the Secretary.

#### Subpart F—State Responsibilities

##### § 455.70 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward applications for technical assistance or for energy conservation measures for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m-3 and 300o-2, respectively), and that each has been coordinated through abbreviated review mechanisms under section 1523 of the Public Health Service Act (42 U.S.C. 300m-2) and section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

##### § 455.71 State ranking of grant applications.

All eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit, its equivalent, or an energy use evaluation if an energy audit has not been performed, in accordance with the procedures established in the State Plan and one or more of the methods indicated in § 455.19(c) or § 455.20(d). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit or evaluation without the use of Federal funds. Each State shall develop separate rankings for all buildings covered by eligible applications for—

(1) Technical assistance programs for units of local government and public care institutions, and

(2) Technical assistance programs for schools and hospitals.

(b) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. Several buildings may be ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) Payback, calculated in accordance with § 455.42(d)(5)(vii);

(2) The types of energy sources to which conversion is proposed, including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(4) The quality of the technical assistance program report; and

(5) Other factors as determined by the State.

(c) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals

for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(d) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that—

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(e) To the extent provided in § 455.100(d), financial assistance will be initially available for schools and hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(1) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.100(d) and as stated in an approved State Plan.

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to paragraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(f) Only schools, hospitals, and hardship applicants shall be recommended for funding from the appropriate allocation specified in paragraphs (d) and (e) of this section, unless after the State deadline for submitting applications has passed, there are insufficient applications meeting the requirements of paragraphs (d) and (e) of this section and otherwise qualifying for funding under this part, in which case the State may recommend use of the remaining funds in those allocations to fund applications under this part without regard to the limitations of paragraphs (d) and (e) of this section.

#### § 455.72 Forwarding of applications.

(a) Each State shall forward all applications recommended for funding within its allocation to the Secretary once each grant program cycle along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71. If ranking has been employed the list shall include the standings of buildings or measures.

(1) Measure by measure rankings will be recombined for the respective building with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) The State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the

limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) States shall certify applications submitted are eligible pursuant to § 455.70(a).

#### § 455.73 State liaison, monitoring and reporting.

Each State shall be responsible for—

(a) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan and any amendment to a State Plan;

(c) Notifying each applicant how the applicant's building or measure ranked among other applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reason(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.71;

(e) Reporting requirements pursuant to § 455.63(b)(3); and

(f) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify the Secretary of any non-compliance or indication thereof.

#### Subpart G—Grant Awards

##### § 455.80 Approval of grant applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle. Such an application will be considered to the extent funds have not already been designated for institutions by the ranking process at the time of resubmittal. However, nothing in this provision shall obligate either the State or the Secretary to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) The Secretary shall not provide supplemental funds beyond those awarded for technical assistance projects and shall fund only one technical assistance project per building.

(e) The Secretary shall not provide supplemental funds beyond those awarded for all energy conservation measures funded under a grant in a given grant program cycle. An institution may apply for, and the Secretary may make, grant awards in another grant program cycle for energy conservation measures for which financial assistance was not previously and specifically provided, even though the measures relate to a building which previously received grants for other energy conservation measures.

(f) The Secretary may fund costs incurred by an institution for technical assistance and energy conservation measure projects after the date of the grant application, so long as that date is no earlier than the close of the preceding grant program cycle. Such costs may be funded when, in the judgment of the Secretary, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles and the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by the Secretary in accordance with this part.

(g) In addition to the prior approval requirements for project changes as specified in the DOE Financial Assistance Rules (10 CFR 600.114(c)), a grantee shall request prior written approval from DOE before—

(1) Transferring DOE or matching amounts between buildings included in an approved application when the State ranks applications on a building-by-building basis, or

(2) Transferring DOE or matching amounts between energy conservation

measures included in an approved application when the State ranks on a measure-by-measure basis.

**§ 455.81 Grant awards for units of local government and public care institutions.**

(a) The Secretary may make grants to units of local government, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80; except that in the case of units of local government and public care institutions a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with Subpart I of this part.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or tangible personal property having an acquisition cost in excess of \$500.

**§ 455.82 Grant awards for schools and hospitals.**

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80; except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands a grant may be made for up to 100 percent of such costs. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in the Subpart I.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including renewable resource measures, for buildings covered by an application approved in accordance with § 455.80; except that in the case of schools and

hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a case of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended and in amounts determined by the State pursuant to § 455.71(e).

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other tangible personal property having an acquisition cost in excess of \$500.

(e) Applicant expenditures for a technical assistance program or installation or one of more energy conservation measures commenced after November 8, 1978 for a building may be wholly or partially credited, in the discretion of the Secretary, toward meeting the matching non-Federal funds requirement for a grant for additional energy conservation measures in the same building. Credit will be considered only when the projects for which credit is sought meet program requirements, except that the project need not comply with the Davis-Bacon Act regarding labor standards or wage rates. Credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measures. Applications for credit for completed or partially completed energy conservation measures will be considered in conjunction with applications for additional energy conservation measures. The application shall reflect both the work done and the work to be done and will be reviewed and ranked on that basis. In no case shall the credit exceed an amount equal to the non-Federal share of the proposed additional energy conservation measures.

**§ 455.83 Grant awards for State administrative expenses.**

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the application for

administrative costs, in an amount not exceeding \$30,000 or 2 percent of that State's allocation for a given grant program cycle for technical assistance and energy conservation measures, whichever is higher. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, or in the case of grants to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, for up to 100 percent of the projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses or in the case of grants to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, for up to 100 percent of the projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) In the event that a State cannot or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this part.

(c) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration, provided that no single item of equipment or other

tangible personal property costing more than \$500 shall be acquired without the prior written approval of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

#### Subpart H—State Plan Development and Approval

##### § 455.90 Contents of State plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including renewable resource measures. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan, and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 455.18 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by § 455.18 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b). In addition, the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity, under § 455.71(b)(3).

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not

be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 455.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a case of severe hardship. Such policies and procedures shall be in accordance with § 455.71(e);

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide all maintenance and operating procedure changes recommended in an energy audit report, the equivalent of an energy audit report, an energy use evaluation, a technical assistance report, or a combination of these that have been implemented as provided under this part. An assurance that the maintenance and operating procedures will be implemented in the future, or a justification for not implementing such a procedure, as appropriate, may be acceptable in lieu of implementation if it is shown that—

(1) The recommendation is infeasible because of factors not considered by the auditor or analyst;

(2) There is a cost involved which exceeds the institution's limit in operating expenditures, provided it is shown a budget request has been made to implement the recommendation, and assurance is given that the change will be effected at some specified future date;

(3) The implementation of the change requires some item of supply or material which is not presently available; or

(4) Other factors subject to approval by the Secretary on a case-by-case basis;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The circumstances under which the State will accept an energy use evaluation in lieu of an energy audit, and the information the State will require to be contained in that evaluation;

(m) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the eligibility requirements contained in § 455.41(c);

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in compliance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3);

(o) The procedures for State management, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(p) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts have experience in energy conservation and—

(1) Be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties;

(q) A statement setting forth—

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measures programs; and

(r) For purposes of the technical assistance program, § 455.42, a statement setting forth uniform

conversion factors to be used in the technical assistance analysis for conversion of fuels to Btu equivalents.

#### § 455.91 Submission and approval of State plans.

(a) Proposed State Plans or amendments necessitated by a change in regulations shall be submitted to the Secretary within 90 days of the effective date of this subpart or any amended regulations. The Secretary, upon request and for good cause shown, may grant an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part the Secretary shall return the plan to the State with a statement setting forth the reasons for disapproval.

(d) The Secretary shall review each amendment submitted by the State and, if it is found to conform to the requirements of this part, approve the amendment. If the Secretary determines that a proposed State Plan amendment fails to comply with the requirements of this part, the Secretary shall return the amendment to the State with a statement setting forth the reasons for disapproval. With the consent of the Secretary, the State may submit a new or amended plan at any time.

#### § 455.92 State plans developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the plan developed by the Secretary.

### Subpart I—Allocation of Appropriations Among the States

#### § 455.100 Allocation of funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) The Secretary shall notify each Governor of the total amount allocated for grants within the State for any grant program cycle—

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures; and

(2) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) The Secretary shall notify each Governor of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State shall make available up to 10 percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance, not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(e).

#### § 455.101 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures including renewable resource measures, shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{N} + 0.1 \frac{(Sfc)}{(Nfc)} + 0.83 \frac{(SP)(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the projected average retail cost per million Btu's of energy consumed within the region in which the State is located, as contained in current regional energy cost projections obtained from the Energy Information Administration.

(2) Nfc is the summation of the Sfc numerators for all States;

(3) N is the total number of eligible States;

(4) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, Official Census documents;

(5) SC is the sum of the State's heating and cooling degree days, as contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days, Weighted by Population;" and "State, Regional and National Monthly and Seasonal Cooling Degree Days, Weighted by Population;" and

(6) NPC is the summation of the (SP)(SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

#### § 455.102 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(c), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant program cycle, if available.

(b) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) The Secretary shall reallocate the funds which remain unobligated by DOE at the end of any grant program cycle among all States in the next grant program cycle.

[FR Doc. 85-10078 Filed 4-29-85; 8:45 am]

BILLING CODE 6450-01-M

# **federal register**

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Tuesday  
April 30, 1985

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## **Part III**

### **Environmental Protection Agency**

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40 CFR Parts 260, 264, 265, and 270  
Hazardous Waste Management System;  
Standards for Owners and Operators of  
Hazardous Waste Treatment, Storage,  
and Disposal Facilities; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 270

[SWH-FRL 2789-1]

### Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** Under authority of the Resource Conservation and Recovery Act (RCRA), EPA is promulgating a rule that requires the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste. This rule applies to owners and operators of hazardous waste landfills regulated under 40 CFR Parts 264 and 265. This rule is based on public comments received on a proposed paint filter test and laboratory testing of six test protocols designed to detect the presence of free liquids. The rule includes conforming amendments to several other sections of the regulations.

**DATES:** Effective Date: This final rule becomes effective on June 14, 1985. The incorporation by reference of the publication listed in these regulations is approved by the Director of the Federal Register as of June 14, 1985.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA Hazardous Waste Hotline, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 800/424-9346 (382-3000 in Washington, D.C.). For specific information on this amendment, contact Paul Cassidy, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 382-4682.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 19, 1980, EPA promulgated regulations that established most of the basic elements of the hazardous waste management program required by Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6921 et seq. See 45 FR 33066 (May 19, 1980). Part 265 of these regulations sets forth standards that apply to owners and operators of existing interim status hazardous waste treatment, storage, and disposal facilities. These regulations included limitations on the placement in a landfill

of both bulk or non-containerized and containerized liquid waste or waste containing free liquids.

The May 19, 1980 regulations defined "free liquids" a "liquids which readily separate from the solid portion of a waste under ambient temperature and pressure." See 40 CFR 260.10. In the preamble to the May 19, 1980 regulations, the Agency suggested that an inclined plane test to determine whether sludges or semi-solids contained free liquids be used until a more rigorous test was devised.

On February 25, 1982, the Agency proposed a paint filter test for landfill operators to use to determine the presence of free liquids in sludges, semi-solids, slurries, and other wastes that are commonly received in containers. See 48 FR 57144 (February 25, 1982).

On July 26, 1982, EPA issued standards for use in issuing permits for facilities that treat, store, or dispose of hazardous wastes. See 47 FR 32274 (July 26, 1982). These regulations also included standards for the landfilling of both bulk or non-containerized and containerized liquid waste or waste containing free liquids.

On December 28, 1983, EPA issued a notice of availability of information and request for comments. This notice made available the results of laboratory tests conducted to evaluate the suitability of six test protocols in determining the presence of free liquids in waste samples. A summary of this information is presented in this preamble.

## II. Final Rulemaking on Paint Filter Test

### (A) Comments Concerning Proposed Paint Filter Test

The Agency initially proposed a paint filter test on February 25, 1982, and solicited comments on this proposed method as well as on any other test protocols that were capable of determining whether or not a waste sample contained free liquids.

The proposed paint filter test protocol called for a 100 ml representative sample of the waste to be placed in a 400 micron conical paint filter for five minutes. The filter was to be supported by a funnel on a ring stand with a beaker or cylinder below the funnel to capture any liquid that passed through the filter. If any amount of liquid passed through the filter, the waste would be considered to hold free liquids.

The comments received on the paint filter test proposed on February 25, 1982 were favorable. Commenters felt that the Agency had proposed a needed and straightforward test; they also believed that the test was simple and practical. Some commenters questioned the length

of the test (5 minutes); they generally felt that a longer test period was needed to accurately determine the amount of free liquids. One commenter stated that unless EPA identifies a specific brand of filter or provides specifications for the filter mesh, application of the February 25, 1982 test may produce inconsistent results.

Comments received on the December 28, 1983 Notice of Availability also endorsed the use of the paint filter test as the appropriate test protocol for determining the presence of free liquids in a waste material. Commenters questioned why hazardous wastes were not used in the testing program and also why a greater number (range) of hazardous materials were not evaluated with the six test protocols.

Although most of those commenting on the December 28, 1983 Notice of Availability agreed that the paint filter test was the appropriate test method, a few requested that EPA finalize several tests as suitable and that the owners or operators of hazardous waste landfill facilities be given the option of selecting any one of the optional test protocols.

Most commenters agreed that five minutes was an appropriate duration in order to determine the presence of free liquids on a pass/fail basis. A few commenters recommended a longer duration to completely assure that free liquids do not exist in a waste material.

The laboratory testing done on the paint filter test (see December 28, 1983, notice of Availability) incorporated the use of a fluted funnel and standard watchglass. These items were not part of the apparatus of the paint filter test as initially proposed in February, 1982. Therefore, commenters addressed the appropriateness of these measures for the first time following the Notice of Availability issued in December of 1983.

Commenters questioned the use of a standard watchglass in the paint filter test. One commenter claimed that evaporation is a negligible factor particularly when the duration is short. Commenters opposed using the standard watchglass to simulate landfill pressures. Commenters argued that there are no standardized conditions that could be suggested and any attempts to go beyond an evaluation of the waste itself will inevitably complicate the testing and interfere with the results.

Commenters also questioned the use of a fluted paint filter to facilitate moisture flow. Commenters stated that most laboratories do not use a funnel; instead, the paint filter alone is supported by a ring stand of about 100 mm ID. Another commenter stated that



in his use of the paint filter test, the support funnel used was of a different conical cross section than the paint filter. Contact between the two occurred only at the lip of the funnel. In this situation, use of a fluted funnel would be an unnecessary refinement.

A final comment requested that the quantity of waste be specified as 100g rather than 100ml. The commenter argued that measuring volume was not practicable when dealing with viscous materials.

*(B) Evaluation of Various Test Protocols and Response to Comments*

EPA has evaluated a variety of testing methods that could potentially determine the presence of free liquids in waste materials. The results of this study were made available to the public in the December 28, 1983, Notice of Availability. The test protocols evaluated were an inclined plane test, a lab press, a filtration test, a graduated cylinder test, a sieve test, and a paint filter test.

Five waste materials were used to evaluate these test methods. The selected wastes were drilling mud, air pollution control equipment sludge, paint sludge, separator sludge, and paper sludge. These waste materials were not hazardous wastes, but were selected because their textural consistencies were representative of the range of consistencies of hazardous wastes. The waste materials included those that could be classified as gelatinous, granular, oily, and fibrous.

The Agency has concluded that the paint filter test is the correct selection for a free liquid test protocol. The test protocols that simulate landfill pressures (lab press and filtration unit) have more disadvantages than any of the other test methods.<sup>1</sup> These disadvantages are:

- (1) Required operator training;
- (2) Difficulties in running the test methods; and
- (3) Difficulties in cleaning the test equipment.

The operational problems of the pressure tests could lead to inaccurate results. Due to the complexity of the equipment used in the pressure tests, operator training is necessary to gain familiarity with the equipment and understanding of the procedures. Even if an operator has been trained, the pressure tests have characteristics that

make them difficult to run. Proper alignment of the piston and test cylinder is critical to proper execution of the lab press test. When the alignment is not perfect, the test plunger will jam against the sides of the cylinder. The lab press must also be cleaned after every test. This is a tedious job due to the numerous parts in the cylinder. If the test cylinder is not thoroughly cleaned between tests, accuracy of the test may be impaired. A drawback encountered when testing with the filtration unit included the need to monitor the pressure. Since the pressure must always be maintained during testing with the filtration unit, continual monitoring of the equipment is necessary, thereby increasing the complexity of the test.

The other four test methods evaluated were gravity tests (only atmospheric pressure was applied to the samples). The sieve test is too erratic and the results are not reproducible. The graduated cylinder test that takes 24 hours is too lengthy to be used by owners and operators in the field. The Agency was concerned that such a lengthy test could interrupt landfill operations and possibly result in environmental damage. In addition, such a test could be difficult for EPA enforcement personnel to use.

This left the Agency with a choice between the inclined plane test and the paint filter test. The inclined plane test had a few minor disadvantages compared to the paint filter test. The overall test results indicate that the inclined plane test is less accurate than the paint filter test in determining the presence of free liquids. Occasionally during testing, the entire waste sample moved down the inclined plane. It would be difficult to interpret whether this indicated the presence or absence of free liquids. Also, during testing of the inclined plane, liquid adhered to the underside of the glass surface, making interpretation of the test results difficult.

The Agency has concluded that on a pass/fail basis, the paint filter test is the most appropriate test to use in order to determine the presence of free liquids and therefore determine which wastes will require further treatment before they can be landfilled.

A commenter from the regulated community agreed that the selection of the paint filter test, as opposed to the inclined plane test, was the correct choice as the appropriate test method by saying " \* \* \* it was found that the paint filter method gave test results with a much lower standard deviation and a higher degree of agreement between operators than the sloping plate test [the inclined plane test]."

The length of the test should not create undue operational burdens because the test period is only five minutes. The five minute duration of the test was selected as opposed to a longer period of time, because the laboratory testing indicates that, on a pass/fail basis five minutes is adequate to detect the presence of free liquids. Since this regulation is intended only to indicate if free liquids are present in a waste, a quantitative test that determines the absolute amount of free liquids in wastes is not necessary. The five-minute duration also provides a minimal testing burden for owners or operators in terms of the length of the test.

In response to the comment that EPA should specify a specific brand of paint filter or provide specifications for the filter mesh, EPA agrees and has provided a specification for the filter mesh. The laboratory tests were done with a conical paint filter that had a mesh number of 60. The proposed test (February 25, 1982) called for a 400 micron filter. The mesh number indicates the number of holes per linear inch; a filter with a mesh number of 60 has an opening every 0.0167 inch. A 400 micron filter has an opening every 0.0137 inch. EPA believes that a 400 micron filter and a filter with a mesh number of 60 are equivalent for the purposes of this test. However, to promote uniformity and provide specification for the filter mesh, a conical paint filter with a mesh number of 60 is specified for future testing.

In response to comments that EPA should not require the use of a standard watchglass as part of the paint filter testing, EPA agrees and has elected to not require the use of the watchglass. EPA agrees that evaporation will be a negligible factor during testing since the duration of the test will only be five minutes.

With regard to the use of a fluted paint filter to facilitate moisture flow, the Agency believes that one of the approaches outlined by the commenters has merit. Therefore, the Agency provides three options in the final test: (1) The paint filter alone can be supported by the ring stand, (2) the paint filter can be supported by a fluted glass funnel, or (3) the paint filter can be supported by a glass funnel with an open mouth that allows at least one inch of the filter mesh to protrude. All three of these are capable of supporting the paint filter yet not interfering with the movement of the liquid that passes through the filter mesh to the graduated cylinder. The option of using a support funnel of different conical cross section has not been allowed in the final test

<sup>1</sup> In addition to the factors cited in the text, the pressure test equipment was more expensive and had higher operating costs than the other test methods. In light of the fact that the pressure test methods were also less reliable, the Agency believes that it would not be cost-effective to require these methods.

due to the anticipated difficulty of supporting the waste sample and the paint filter.

The Agency has allowed the quantity of material being tested to be 100g as an alternative to 100ml for those cases where a viscous material is to be tested for the presence of free liquids.

#### (C) Paint Filter Test

Today's rule makes the use of the paint filter test mandatory for determining whether a waste sample contains free liquids. This means that for the purposes of §§ 264.314 and 265.314, dealing with liquids in landfills, owners and operators must use the paint filter test in order to demonstrate the presence or absence of free liquids in a containerized or bulk waste. This requirement has been added in §§ 264.314(c) and 265.314(d).

The final rule, which requires that the paint filter test be used for both bulk and containerized waste, is a logical outgrowth of the proposed rule. The proposal, 46 FR 8313, provided that the Agency would adopt the paint filter test as a test method to determine whether a waste contains free liquids, and expressly required that this test be used to determine whether a waste sample from a container contains free liquids. Although the proposal did not specifically address the issue of testing samples from bulk liquid wastes, the test methods examined in the proposal were generally described as capable of determining whether any waste sample contains free liquids. In its Notice of Availability, 48 FR 57144, the Agency provided a broader rationale for the rule. The notice stated that the test protocols that were being considered could be used to determine the existence of free liquids in sludges, semi-solids, slurries, and other waste types, and it placed no limitation on the types of wastes to which the test would be applicable. Based on comments received in response to the Notice, and on its own analysis, the Agency has concluded that there is no basis to distinguish between bulk and containerized liquids for the purposes of this test. In addition, inasmuch as the definition of "free liquids" is the same for both bulk and containerized liquids, the Agency considers it appropriate that the same free liquids test apply to both bulk and containerized liquids.

The paint filter test is also applicable with regard to the new statutory ban on bulk liquid hazardous wastes in section 3004(c)(1) of RCRA, which was added by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Beginning on May 8, 1985, section 3004(c)(1) bans the placement of bulk

liquid hazardous wastes and free liquids contained in hazardous wastes in any permitted or interim status landfill. In enacting the restrictions on liquids in landfills in section 3004(c), Congress intended to use EPA's current definition of "free liquids." See S. Rep. No. 284, 98th Cong., 1st Sess. 22 (1983). The legislative history to the new ban provision reveals that Congress was aware that EPA was evaluating test protocols for free liquids (notably, the paint filter test and the inclined plane). The Agency was authorized to specify appropriate test protocols in connection with the ban provision. *Id.* In view of these explicit references to EPA's current regulations and to the Agency's evaluation of test protocols, EPA believes that it is consistent with congressional intent to require that the paint filter test be used to implement the ban on bulk liquid hazardous wastes and hazardous wastes containing free liquids.

The finalized paint filter test requires that a predetermined amount of material be placed in the paint filter (mesh number of 60) and any portion that passes through and drops from the filter is what is considered to be a free liquid. A 100ml or 100g representative sample is required for the test. The sample must be placed in the filter for 5 minutes.

The paint filter test has been written in EPA's standard test protocol format and placed in EPA's test methods manual, EPA Publication No. SW-846 (*Test Methods for Evaluating Solid Wastes*) as Method 9095. SW-846 is incorporated by reference in several sections of EPA's regulations. Today's amendment to the test methods manual is now also incorporated by reference by virtue of its incorporation into this manual.

The paint filter test will be referred to as "Update II to SW-846" and is available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20401 (202-783-3228) (GPO Number 055-002-81001-2). Persons holding a subscription to the second edition of SW-846 will automatically receive this amendment. Others may purchase both the second edition of the manual and this amendment from GPO.

Method 9095, as set out in "Update II to SW-846", will be substituted for the version of Method 9095 that is currently printed in SW-846. As currently printed in SW-846, the "Scope and Application" provision of Method 9095 erroneously states that the paint filter test *must* be used to determine compliance with § 261.21 (characteristic of ignitability) and § 261.22 (characteristic of corrosivity). This reference is in error

because today's rule makes this test mandatory only for the purpose of determining whether free liquids are present in materials that are to be placed in landfills. In addition, Method 9095 as currently printed in SW-846 includes a procedure to determine the percent free liquid in a sample. Today's rule, which imposes a "pass-fail" test, does not require that such a procedure be used. "Update II to SW-846" deletes these inaccurate provisions.

#### (D) Conforming Changes

As a result of adding the requirement for the paint filter test to §§ 264.314 and 265.314, several minor conforming changes are being made. These conforming changes will add references to existing reference lists in Subparts B and E of Part 264 and in Subparts B, E, and N of Part 265. Specifically, technical conforming changes are being made to §§ 264.13 (General Waste Analysis), 264.73 (Operating record), 265.13 (General Waste Analysis), 265.73 (Operating record), and 265.302 (General operating requirements).

#### (E) Ignitable and Corrosive Liquids

As noted in section C of this preamble, today's rule requires that the paint filter test be used to determine the presence of free liquids in wastes that are to be placed in a landfill. Thus, the test must be used to determine whether free liquids are present in ignitable or corrosive wastes that are to be landfilled.

The Agency recommends that the test also be used on ignitable wastes under § 261.21 and corrosive wastes under § 261.22 in order to determine the characteristics of the material (i.e., whether it is considered a liquid or a solid). Sections 261.21 and 261.22 use the term "liquid;" however, "liquid" (or "aqueous," as a subset of liquid) was never precisely defined. EPA believes that, for purposes of the characteristics of ignitability and corrosivity, it will generally be obvious whether or not the waste is a liquid. Nevertheless, for mixed-phase wastes, EPA suggests that the paint filter test be used whenever the question arises. The paint filter test may also be used to obtain the liquid portion of the waste for subsequent flash point evaluation (in the case of an ignitable waste) or for corrosivity evaluation (in the case of a corrosive waste).

EPA believes that this test provides a practical method of testing ignitable and corrosive materials to determine the presence of liquids, and assists the regulated community in complying with

the Part 261 requirements until further evaluation is done.

### III. State Authority

#### (A) Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.)

Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities within the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's promulgation of a test protocol to determine the presence of free liquids will be applicable in authorized States because the requirements are being imposed pursuant to the Amendments. Therefore, these requirements take effect in authorized States at the same time that they take effect in nonauthorized States. This rule is regarded as a requirement of HSWA because the Paint Filter Liquids Test will be used to implement HSWA's ban on bulk liquid hazardous wastes, and because Congress anticipated that such a test protocol would be necessary to implement the new bulk hazardous

liquid waste ban. See S. Rep. No. 284, 98th Cong., 1st Sess. 22 (1983).

#### (b) Effect on State Authorizations

Today's announcement promulgates standards that are effective in all States since the requirements are designed to implement Section 3004(c)(1) of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6905, 6912(a), 6924, and 6925. Accordingly, under Section 3006(g), EPA will implement the standards in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations is described in 40 CFR 271.21 for section 3006(b). See 49 FR at 21678 (May 22, 1984). Similar procedures should be followed for Section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's standards within the time period discussed above.

#### IV. Effective Date

Section 3010(b) of RCRA, as amended by HSWA, establishes the general requirement that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this statutory requirement is to allow sufficient lead time for persons affected by the regulations to prepare to comply with major new regulatory requirements. Section 3010(b) allows the Administrator to provide an effective date less than six months after promulgation. This can happen when the Administrator determines that the regulated community does not need six months to come into compliance with the new regulatory requirements.

Today's amendment does impose a new requirement. The Agency believes, based on its analysis and on comments received on the test, that 45 days is more than sufficient to obtain the apparatus necessary to conduct the paint filter test. One commenter noted that, "this method is very simple, requires very little skill and uses readily available, relatively inexpensive equipment. The method can be put into use within a short period (0-2 weeks) with virtually no hardship to generators or disposal site operators." The apparatus needed to conduct the test includes a paint filter, ring stand and ring or tripod, beaker or graduated cylinder, and a glass funnel (if necessary). The Agency also believes that familiarity with the test procedure can be achieved within 45 days. The same commenter noted that, " \* \* \* the method can (be) taught to unskilled workers within a few hours."

#### V. Compliance With Executive Order 12291

Executive Order 12291 (Section 3(b)) requires that regulatory agencies prepare a Regulatory Impact Analysis for all "major" rules. Section 1(b) defines "major" rules as those which are likely to result in:

1. An annual effect on the economy of \$100-million or more;
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

EPA's analysis indicates that this test protocol and its associated cost does not constitute a "major" rule.

#### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq) requires a Federal Agency to prepare a Regulatory Flexibility Analysis (RFA) for all regulations that have "a significant economic impact on a substantial number of small entities."

This rule will not have a significant economic impact on a substantial number of small entities because the apparatus required by today's promulgation is inexpensive to buy and operate. Accordingly, I hereby certify that pursuant to 5 U.S.C. 605(b), this regulation will not have a significant impact on a substantial number of small entities.

#### VII. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management

and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 and have been assigned the following control numbers: 2050-0012 and 2050-0013.

#### VIII. List of Subjects

##### 40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

##### 40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

##### 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

##### 40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information, Incorporation by reference.

Dated: April 22, 1985.

Lee M. Thomas,  
Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 260, 264, 265 and 270 are amended as set forth below.

#### PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930 and 6974).

2. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

##### § 260.11 References.

(a) \* \* \*  
"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985)]. The second edition of SW-846 and Updates I and II are available from the Superintendent of Documents, U.S. Government Printing Office,

Washington, D.C. 20401, (202) 783-3228, on a subscription basis.

#### PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

4. Section 264.13 is amended by revising paragraph (b)(6) and by adding an OMB control number to the end of the section to read as follows:

##### § 264.13 General waste analysis.

(b) \* \* \*  
(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314, and 264.341.

(Information collection requirements in paragraph (b)(6) approved by OMB under control number 2050-0012)

5. Section 264.73 is amended by revising paragraph (b)(3) and by adding an OMB control number to the end of the section to read as follows:

##### § 264.73 Operating record.

(b) \* \* \*  
(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, 264.314, and 264.341;

(Information collection requirements in paragraph (b)(3) approved by OMB under control number 2050-0013)

6. Section 264.314 is amended by revising its title and by adding a new paragraph (c) to read as follows:

##### § 264.314 Special requirements for bulk and containerized liquids.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." [EPA Publication No. SW-846].

#### PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6908, 6912(a), 6924, and 6925).

8. Section 265.13 is amended by revising paragraph (b)(6) and by adding an OMB control number to the end of the section to read as follows:

##### § 265.13 General waste analysis.

(b) \* \* \*  
(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314, 265.345, 265.375, and 265.402.

(Information collection requirements approved by OMB under control number 2050-0012)

9. Section 265.73 is amended by revising paragraph (b)(3) and by adding an OMB control number to the end of the section to read as follows:

##### § 265.73 Operating record.

(b) \* \* \*  
(3) Records and results of waste analyses and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, and 265.402;

(Information collection requirements approved by OMB under control number 2050-0013)

10. Section 265.302 as amended by revising the comment to read as follows:

##### § 265.302 General operating requirements.

[Comment: As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.312, 265.313, and 265.314. As required by § 265.73, the owner or operator must place the results of these analyses in the operating record of the facility].

11. Section 265.314 is amended by revising its title and by adding a new paragraph (d) to read as follows:

##### § 265.314 Special Requirements for Bulk and Containerized Liquids.

(d) To demonstrate the absence or presence of free liquids in either a

containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." [EPA Publication No. SW-846].

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

12. The authority citation for Part 270 reads as follows:

**Authority:** Secs. 1006, 2002, 3005, 3007, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, and 6974).

13. Section 270.6 is amended by revising the first reference in paragraph (a) to read as follows:

**§ 270.6 References**

(a) \* \* \*

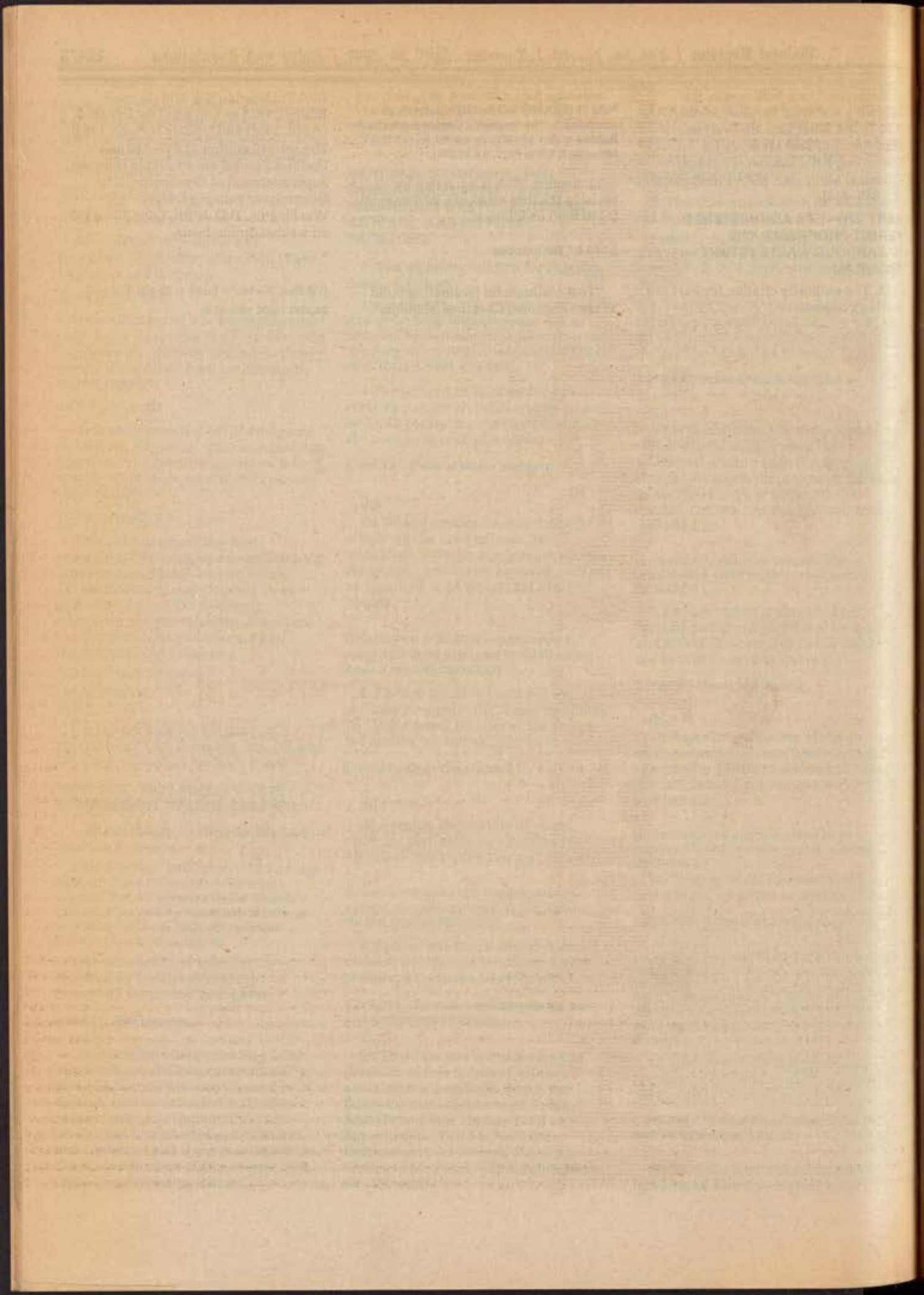
"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods",

EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984) and Update II April, 1985]. The second edition of SW-846 and Updates I and II are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238, on a subscription basis.

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[FR Doc. 85-10278 Filed 4-29-85; 8:45 am]

BILLING CODE 6560-50-M



# Federal Register

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Tuesday  
April 30, 1985

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## Part IV

### Environmental Protection Agency

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40 CFR Part 261  
Hazardous Waste Management System;  
Identification and Listing of Hazardous  
Waste; Proposed Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 261**
**[SWH-FRL 2780-3]**
**Hazardous Waste Management  
System; Identification and Listing of  
Hazardous Waste**
**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed Rule and Request for Comments.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) today is proposing to amend the list of hazardous wastes adopted pursuant to the Resource Conservation and Recovery Act (RCRA) by redefining the universe of solvents considered hazardous wastes. EPA is taking this action to close a major regulatory loophole created by the manner in which spent solvents were originally listed as hazardous wastes. The effect of today's proposal will be to bring certain spent solvent mixtures under RCRA Subtitle C control.

**DATES:** EPA will accept comments on this proposed rule until May 30, 1985.

Any person may request a public hearing on this proposed rule by filing a request with Eileen B. Claussen, Director, Characterization and Assessment Division, whose address appears below by May 15, 1985.

**ADDRESSES:** Comments on the proposed rule should be sent to Docket Clerk, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket number "Section 3001—Spent solvent listings." Request for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The docket for this proposed rule is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-4846, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

**SUPPLEMENTARY INFORMATION:**
**L. Background**

On May 19, 1980, the Environmental Protection Agency (EPA) promulgated the first phase of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. As part of these regulations, EPA listed 27 commonly used organic solvents as hazardous wastes, when spent or discarded. These solvents are identified as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005.<sup>1</sup>

Currently, the spent solvent listings apply only to the *individual* solvents that are technical grade or in pure form. These solvents are considered "spent" and are regulated under Subtitle C of RCRA when they no longer meet the specifications for which the solvent was originally used either because they have outlasted their shelf life, have become contaminated so as to require treatment, or are intended to be reused, recycled, or reclaimed. The listing does not cover manufacturing process wastes contaminated with solvents used as chemical intermediates or feedstocks. Such wastes are listed individually by industry category in § 261.32 of the regulations.

The Agency realized that limiting the universe of spent solvents considered hazardous waste to only single ingredient solvents of technical grade or in pure form would create a major regulatory loophole by allowing mixtures containing one or more of the listed solvents to remain unregulated. ("Solvent mixtures," as described in today's notice, include the following: (1) 100 percent listed solvents; (2) one or more listed solvents and other non-solvent constituents; (3) one or more listed solvents and other non-listed solvents; (4) one or more listed solvents, and other non-listed solvents and non-

<sup>1</sup> The list of solvents are as follows: F001—The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations (T); F002—The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethylene, chlorobenzene, 1,1,2-trichloro-1,2,2,2-trifluoroethane, ortho-dichlorobenzene, and trichlorofluoromethane, and the still bottoms from the recovery of these solvents (T); F003—The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol and the still bottoms from the recovery of those solvents (T); F004—The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene, and the still bottoms from the recovery of these solvents (T); F005—The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine, and still bottoms from the recovery of these solvents (T).

solvent constituents; or (5) any other mixture combination that includes a listed solvent.) Nonetheless, the Agency was unable to establish levels at which a solvent would be considered a "spent solvent" or at which a "spent solvent" would be considered hazardous; therefore, we were unable to establish levels at which mixtures of solvents would pose a hazard, when spent or discarded.

The Agency clearly indicated its interpretation regarding solvent mixtures in response to a petition submitted by Safety-Kleen Corporation (April 18, 1981). The petition requested clarification or modification of the regulations as they pertain to Safety-Kleen's closed-loop solvent recycling operation in which one of the solvents is a blend of four components—three of which are listed under 40 CFR § 261.31.<sup>2</sup> In response to Safety-Kleen's petition, the Agency stated that the spent solvent blend does not constitute a listed hazardous waste for reasons stated earlier. Safety-Kleen's spent solvent would be considered a hazardous waste only if it exhibited one or more of the characteristics of hazardous waste (*i.e.*, ignitability, corrosivity, EP toxicity, or reactivity). (See letter from John Lehman (EPA) to Theodore Mueller (Safety-Kleen Corporation), July 21, 1981, in the docket.)

**II. Reason and Basis for Today's  
Proposed Rule**
**A. EPA's Concern With Solvent  
Mixtures**

EPA is concerned that the present interpretation of the solvent listings allows many toxic spent solvent wastes to remain unregulated. The Agency has determined that a diverse group of industries (*e.g.*, printing, coatings, furniture, chemicals and shoe industries) use solvent mixtures. For example, the majority of solvents used in degreasing operations are blends. Although some generators may mix solvents on-site, the majority of solvent blends used in industry are commercial solvent mixtures. Solvents are typically and frequently blended to achieve increased solvent power, faster drying, and to decrease flammability. These virgin solvent mixtures typically contain from 15-50 percent or more of chlorinated solvents. In general, blends will contain 50 percent or more total solvents.<sup>3</sup>

<sup>2</sup> The Safety-Kleen solvent blend contains cresylic acid 14%, methylene chloride 29%, ortho-dichlorobenzene 29%, and water 28%.

<sup>3</sup> Safety-Kleen's solvent mixture contains 58 percent chlorinated solvent and 72 percent total

*Continued*



When EPA promulgated the first phase of the hazardous waste regulations, solvents were listed based on toxicity and ignitability. The Agency also considered factors such as bioaccumulation, persistence, and mobility [see "Criteria for Listing Hazardous Waste" at 40 CFR 261.11]. At that time, we listed the most commonly used solvents. (Solvent mixtures used in commerce often contain one or more of these toxic solvents.) Many are known carcinogens, teratogens, mutagens, or neurotoxins. Others are associated with acute and chronic adverse health effects (see the background documents to the solvent listings, available in the docket). In addition, these solvents are mobile and persist in the environment. Also, they may solubilize and mobilize other hazardous constituents. Since solvents are known to degrade synthetic (Lyman et al., 1983; Schwoppe, 1983) and clay (Ely, R.L., 1983) landfill liners, these toxic constituents, once mobilized, may readily migrate to ground water. In addition, many solvents are highly volatile (e.g., trichlorofluoromethane, carbon disulfide, methylene chloride, carbon tetrachloride, 1,1,1-trichloroethane); thus, exposure to toxic vapors may result during handling and land disposal when no provisions have been made to minimize volatilization.

As stated earlier, virgin solvent mixtures typically contain 50 percent or more of these toxic solvents, which is a concentration orders of magnitude above levels known to cause adverse health effects in laboratory animals and humans (see Appendix A to the listing background document for health effects data on the individually listed solvents, October 30, 1980). The Agency, therefore, is concerned that these wastes, when improperly managed, may pose health or environmental hazards identical to or greater than those posed by the individual solvents. We recognize that the acute toxicity of mixtures, in general, is uncertain because of the large number of possible chemical interactions; nonetheless, in the majority of cases, such mixtures will not be less toxic than the individual solvent constituents.

#### *B. Rationale for Establishing a Cut-off Level for Solvent Mixtures*

In order to close this serious regulatory loop-hole, we are proposing to expand the universe of wastes

solvents. Another solvent mixture typically used in parts cleaning (trade name—"SS-25") contains approximately 32 percent chlorinated solvent and 30 percent total solvent. "Freon-TMC," a commonly used fluoro-carbon degreasing and cleaning mixture, contains 50 percent chlorinated hydrocarbons and 50 percent chlorofluorocarbon.

considered "solvents" to include "solvent mixtures" which typically contain toxic or ignitable solvents in concentrations that are known to cause damage to public health or the environment and to establish a quantity and volume cut-off for these mixtures. At this time, however, the Agency has not developed health-based standards for the 27 listed solvents. Thus, the Agency is faced with establishing a regulatory threshold for solvents without the benefit of pre-established health-based levels. The Agency is working to develop health-based thresholds for several of the listed solvents; however, until these standards are promulgated, we are proposing to use of the approach outlined in today's notice.

In developing a threshold for these waste, the Agency considered the lowest concentration of total solvents typically used in solvent mixtures (i.e., 15 percent); however, the Agency believes that establishing a 15 percent threshold would encourage solvent formulators to re-formulate solvent mixtures to 14 percent or lower (total solvents) to avoid managing such materials as hazardous waste, when spent or discarded. Therefore, the Agency is proposing to regulate spent solvent mixtures containing ten percent or more total listed solvent by volume. We believe that a ten percent threshold limit represents a level well below the minimum solvent concentration needed to impart the characteristics for which solvents are typically used.

The Agency realizes that ten percent may not be the appropriate threshold limit. Although, the ten percent threshold is well above levels known to cause adverse health effects in humans, the Agency is concerned that establishing a lower threshold limit will bring commercial cleaning products (such as office cleaning products) and solvent waste streams containing de minimis concentrations of listed solvent into the hazardous waste management system. Establishing a higher cut-off level would allow many toxic solvent mixtures used by industry to remain unregulated. The Agency, therefore, concludes that establishing a ten percent threshold limit will bring the majority of solvent mixtures used by industry into the hazardous waste management system, while excluding dilute mixtures.

As stated earlier, the Agency is working to develop health-based standards for several of the listed solvents; however, promulgation of such regulations will take several years. The Agency is also developing a new

hazardous waste characteristic, the Toxicity Characteristic, which will establish regulatory thresholds for many organic compounds, including some solvents. We expect to promulgate thresholds for a significant number of compounds within the next few years. When promulgated, these threshold limits will override the approach proposed in today's notice. We are proposing in the interim, therefore, to institute the approach outlined in today's notice. We believe this approach will bring most mixed solvent wastes under Subtitle C control. In addition, pursuant to the new provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98-616) and as indicated in an Advanced Notice of Proposed Rulemaking published on February 15, 1984 (49 FR 5854-5859), we are evaluating land disposal of solvents. Under the HSWA, EPA is required to determine by November 8, 1986, whether the land disposal of spent solvents should be prohibited.

Today's proposal only partially fulfills EPA's obligation under the HSWA to list additional wastes as hazardous wastes. In addition, within the next few months the Agency will propose to add four additional solvents to the list of hazardous wastes. The provisions set forth in this amendment also will apply to these newly listed solvents when both proposals become final.

#### **III. Re-Numbering of the Solvent Listings**

As a result of today's proposal, persons who generate or manage certain solvent mixtures will be required to notify the Agency pursuant to the notification requirements under Section 3010 of RCRA.<sup>4</sup> The Agency is concerned that many of these persons will be uncertain as to the correct hazardous waste number for reporting solvent mixtures containing several listed solvents. Furthermore, at this time, we see no reason to continue to classify listed solvents according to use and chemical constituents (e.g., F001—identifies spent halogenated solvents used in degreasing and F003—identifies spent halogenated solvents). We are

<sup>4</sup>In order to effectively "track" hazardous waste described in today's notice and implement enforcement action, the Agency is requiring that newly regulated generators notify the Agency according to the section 301 notification requirements. In addition, pursuant to the HSWA RCRA reauthorization bill, Congress amended section 3005(3) of RCRA by providing that facilities in existence on the effective date of regulatory changes under the Act qualify for interim status if they make an application for a permit and comply with the Section 3010 notification requirements.

proposing today to recode the list of solvents in § 261.31 by deleting F002, F003, F004, F005, and modifying F001 to include all solvents formerly listed in F001 through F005. As a practical matter, this means that all listed spent solvents (and solvent mixtures) will be designated as F001. We believe that such action also will ease recordkeeping and reporting for those who generate and manage these wastes.

#### IV. Effect of Today's Proposal

Under this proposed rule, newly regulated persons who generate, treat, store or dispose of solvent mixtures (as defined in today's notice) would be required to notify the Agency pursuant to the notification requirements of section 3010 of RCRA and comply with the hazardous waste regulations, as they pertain to listed hazardous wastes. If a generator does not either mix the solvents before use or purchase mixed solvents for use, but mixes spent solvent wastes after use, the mixed spent solvent wastes are already regulated under RCRA, pursuant to the "mixture rule" contained in 40 CFR 261.3.

Since today's action is taken pursuant to the provisions in HSWA, when finalized, the rule will take effect immediately in all States regardless of authorization status. (See "State Authority" section of this notice for further details.)

The Agency believes that today's action will not place substantial burdens on generators of solvent mixtures because many such generators are handling their waste as hazardous because they are not aware of the "loophole," the waste exhibits one or more of the characteristics of hazardous waste, or they believe the waste should be handled as hazardous waste. In addition, 28 States currently regulate solvent mixtures which account for approximately 70 percent of total solvents generated (see the report entitled "Potential Costs and Impacts of Proposed Changes in the Listing of Solvent Wastes", Industrial Economics, Inc., October 30, 1984, available in the docket). Since there is a strong likelihood that solvent generators also generate other RCRA hazardous wastes, we do not expect that substantial numbers of generators will be newly regulated.

#### V. Effective Date of Regulation

The Agency believes the regulatory loophole created by the manner in which solvents originally were listed should be closed as soon as possible. This loophole permits very toxic mixtures to remain unregulated. Accordingly, EPA intends to make this

rule effective immediately, pursuant to 42 U.S.C. 6930(b) and 5 U.S.C. 552(b)(B), if and when it is promulgated. The Agency specifically requests comments on this point.

#### VI. Request for Comments

The Agency invites comments on all aspects of this proposal. In particular, we request information on solvent formulations typically used in commerce; that is, the concentration of solvent needed to impart the desired characteristics for which solvents are blended. Such data will enable the Agency to further assess the feasibility of a ten percent cut-off level. EPA also invites comments on whether we should continue to list certain solvents as hazardous wastes based solely on their exhibiting the characteristic of ignitability. Finally, we invite comments on renumbering of the solvent listings, in particular, whether solvents should be listed under a single hazardous waste number, or whether halogenated solvents should be listed separately from non-halogenated solvents.

#### VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a proposed or final rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule is not a major rule because it is not expected to result in an effect on the economy of \$100 million or more. Although some generators may be newly regulated, data from the RCRA notification data base indicate that many solvent generators also generate other RCRA hazardous wastes. The Agency believes, therefore, that the majority of solvent generators are already regulated under RCRA. Some of these generators may experience increased regulatory requirements when the proposal is promulgated as a final rule; however, as stated earlier in today's notice, many generators of solvent mixtures are currently regulated under State hazardous waste regulations.

The Agency has completed an initial analysis of the potential impacts of today's proposal. The analysis indicates that worst-case costs may be substantial, but they are expected to be experienced by only a few generators. There will be no adverse impact on the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Since this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as

required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in Room S-212A at EPA.

#### VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

Although some generators will be newly regulated and some will experience an increased regulatory burden, this amendment is not expected to have a significant economic impact on a substantial number of small entities. Worst-case costs are more likely to be experienced by generators with a large volume of difficult to manage wastes (*i.e.*, wastes not suitable for landfilling or recycling). This regulation, therefore, does not require a regulatory flexibility analysis.

#### IX. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

#### X. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Impacts

The solvent mixtures designated as hazardous waste by today's proposed rule, if listed, become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101 (14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center for release. (See CERCLA section 103 and 48 FR 23552, May 25, 1983.)

#### XI. State Authority

##### A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA

program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the enactment of HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal Program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

#### B. Effect on State Authorizations

Today's announcement proposes standards that will be effective in all States since the requirements are imposed pursuant to Section 3001(e)(2) of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984. Thus, EPA will implement the standards in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under

section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations is described in 40 CFR 271.21. See 49 FR at 21678 (May 22, 1984).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 217.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent to EPA's within the time period discussed above.

#### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: April 22, 1985.

Lee M. Thomas,  
Administrator.

#### References

- Ely, R.L., Jr., et al. Performance of Clay Caps and Liners for Disposal Facilities. Final Report under EPA contract No. 68-03-3149, March 1983.
- Lyman, W.J., et al. Expected Life of Synthetic Liners and Caps. Draft final report to EPA under EPA Contract No. 68-01-6160, March 1983.
- Schwoppe, A.D., Arthur D. Little, Inc. Data on Swelling and Permeability of Barrier Materials, September 1983.

For reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. 40 CFR 261.31 is amended by deleting EPA Hazardous Waste Nos. F002, F003, F004, and F005 and revising F001 to read as follows:

#### § 261.31 Hazardous wastes from non-specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic: F001....	The following spent solvents and spent solvent mixtures/blends containing, in total, ten percent (or more) by volume of one or more of the following solvents, and still bottoms from the recovery of these solvents and solvent mixtures: tetrachloroethylene (T), trichloroethylene (T), methylene chloride (T), 1,1,1-trichloroethane (T), carbon tetrachloride (T), chlorinated fluorocarbons (T), chlorobenzene (T), 1,1,2-trichloro-1,2,2-trifluoroethane (T), orthodichlorobenzene (T), trichlorofluoromethane (T), xylene (I), acetone (I) ethyl acetate (I), ethyl benzene (I), ethyl ether (I), methyl isobutyl ketone (I), n-butyl alcohol (I), cyclohexanone (I), methanol (I), cresols and cresylic acid (T), nitrobenzene (T), toluene (I,T), methyl ethyl ketone (I,T), carbon disulfide (I,T), isobutanol (I,T), and pyridine (I,T).	(T, I, OR T,I)

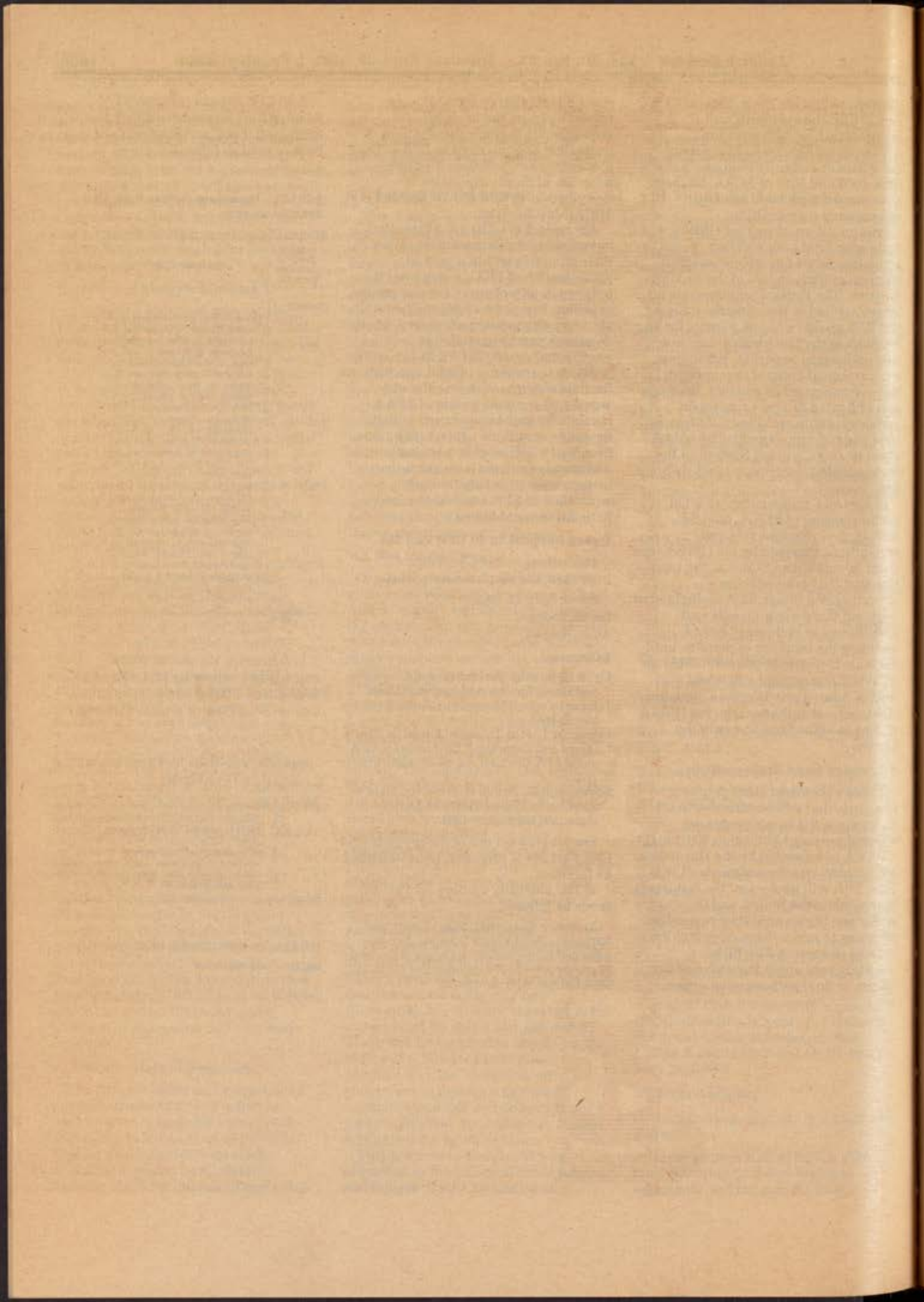
3. Appendix VII to Part 261 is amended by removing EPA Hazardous Waste Nos. F002, F003, F004 and F005 and revising F001 to read as follows:

#### Appendix VII—Basis for Listing Hazardous Waste

F001....	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, cresols and cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine.
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[FR Doc. 85-10277 Filed 4-29-85; 8:45 am]

BILLING CODE 5560-50-M



# **federal register**

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Tuesday  
April 30, 1985

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## **Part V**

### **Department of Education**

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**Office of Special Education and  
Rehabilitative Services**

**Handicapped Special Studies Program;  
Final Annual Evaluation Priority and  
Closing Date for Transmittal of New  
Grant Applications**

## DEPARTMENT OF EDUCATION

Office of Special Education and  
Rehabilitative ServicesHandicapped Special Studies Program;  
Final Annual Evaluation Priority

AGENCY: Department of Education.

ACTION: Notice of final annual  
evaluation priority.

**SUMMARY:** The Secretary announces a Fiscal Year 1985 annual evaluation priority for cooperative agreements under the Handicapped Special Studies program. This priority has been selected to ensure effective use of program funds and to meet the requirements included in section 618(d) of the Education of the Handicapped Act.

**EFFECTIVE DATE:** This priority will take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of this final annual funding priority, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Nancy Safer, Research Projects Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Room 3511-M/S 2313), Washington, D.C. 20202. Telephone: (202)732-1064.

**SUPPLEMENTARY INFORMATION:** The Handicapped Special Studies program, authorized by Section 618 of Part B of the Education of the Handicapped Act, as amended, supports studies to evaluate the impact of the Act, including States' efforts towards the provision of a free appropriate public education to handicapped children. 20 U.S.C. 1401, 1411 *et seq.* Section 618 of the Act requires that the results of these studies be included in the annual report submitted to the Congress by the Department.

Under section 618(c) of the Act, as amended by the Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the *Federal Register* for review and comment proposed annual priorities for evaluations conducted under section 618 of the Act. A State and local financing study mandated under Section 618(e)(2), as added by the Education of the Handicapped Act Amendments of 1983, was initiated in fiscal year 1984 and will be continued in fiscal year 1985.

A Notice of Proposed Annual Funding Priorities was published in the *Federal*

*Register* on October 28, 1984 (49 FR 43090) which contained the following five proposed priorities for fiscal year 1985 awards under the Handicapped Special Studies program:

- (a) Educational Progress of Handicapped Students;
- (b) Programming Features of Special Purpose Facilities;
- (c) State Educational Agency/Federal Evaluation Studies Projects;
- (d) Identification and Clarification of Emerging Issues; and
- (e) Evaluation Assistance.

The Secretary intends to award individual contracts to carry out the studies described under priorities (a), (b), (d), and (e). Under the Department's procedures, requests for proposals for individual contracts are announced in the *Commerce Business Daily* (see the Education Department General Administrative Regulations at 34 CFR 75.4), and are not subject to section 431 of the General Education Provisions Act, which establishes procedures for promulgating rules and regulations that apply to the Department's programs. The priority described under (c), *State Educational Agency/Federal Evaluation Studies Projects*, has been selected as a final priority for cooperative agreements to be entered into by the Secretary and State educational agencies and, therefore, is included in this notice of final annual priority, in accordance with Section 431.

**Summary of Comments and Responses**

The "Notice of Proposed Annual Evaluation Priorities" which was published in the *Federal Register* on October 28, 1984 (49 FR 43090) invited comments on the five proposed priorities for fiscal year 1985 projects under the Handicapped Special Studies program. A total of five comments were received concerning the five priorities. Comments addressing proposed contractual activities will be considered when requests for proposals are developed. The comments relating to the priority on State Educational Agency/Federal Evaluation Studies and the Department's responses are summarized below:

**Comment.** One commenter suggested that attention be paid to the needs of families of handicapped students, to changes in parents and the family system, relationships with school programs, or models and methods for facilitating collaboration and reducing conflict.

**Response.** The Secretary agrees that this is an important area for study. These issues are more appropriate for a research design than an evaluation study. This priority area, therefore, has

been added to the list of priorities for the Research in Education of the Handicapped program under Part E of the Act rather than to the evaluation priorities under this program.

**Comment.** One commenter recommended the addition of priorities on early intervention. One suggested priority would focus on programming in early intervention and the other on the state-of-the-art systems in early intervention.

**Response.** No change has been made. The Secretary agrees that these are important issues and might well be the focus of a project funded under priority (c), *State Educational Agency/Federal Evaluation Studies Projects*. However, funding under section 623 of the Act, Early Education for Handicapped Children, is available to States for the planning, development, and implementation of educational and related services needed by handicapped children from birth through five years of age. In addition, there are two Research Institutes and several demonstration projects that focus on early childhood programs for handicapped children. In view of the wide range of target priorities that have been and will be supported in this area, the Secretary chooses not to establish additional priorities in this under the Handicapped Special Studies program.

**Comment.** One commenter recommended that the influence of recreation as a "related service" be specifically included in the study of secondary program options provided handicapped students in relation to competency testing, graduation and transition under priority (c), *State Educational Agency/Federal Evaluation Studies Projects*.

**Response.** No change has been made. The area of study recommended by the commenter is appropriate for inclusion under the stated priority. There is nothing to prohibit an applicant from submitting a proposal under this priority that addresses this issue.

**Priority**

*State Educational Agency/Federal Evaluation Studies Projects.* This priority supports evaluation studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. Within this priority, studies are invited that address: (1) The impact and effectiveness of criteria used to determine eligibility and placement of students in various program options; (2) the effectiveness of instructional programming options and screening procedures used prior to referral for placement of children in

special education; or (3) the impact of secondary program options provided handicapped students in relation to competency testing, graduation, and transition. In accordance with Section 618(d) of the Act, as added by the Education of the Handicapped Act Amendments of 1983, the Secretary proposes to enter into cooperative agreements with State educational agencies to carry out these studies.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's plans and actions for this program.

(29 U.S.C. 1418)

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies)

Dated: April 24, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10375 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M

#### Handicapped Special Studies Program: State Educational Agency/Federal Evaluation Studies

**AGENCY:** Department of Education.

**ACTION:** Application Notice Establishing the Closing Date for Transmittal of Fiscal Year 1985 New Grant Applications—Handicapped Special Studies Program: State Educational Agency/Federal Evaluation Studies.

Applications are invited for new projects under the Handicapped Special Studies program: State Educational Agency/Federal Evaluation Studies under the Education of the Handicapped Act.

Authority for this program is contained in section 618(d) of Part B of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983. Under section 618(d)(1), the Secretary is authorized to support studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. (20 U.S.C. 1418(d))

Applications may be submitted by State educational agencies to enter into

cooperative agreements with the Secretary to conduct evaluation studies.

**Closing Date for Transmittal of Applications:** Applications for new awards must be mailed or hand delivered by June 17, 1985.

**Applications Delivered by Mail:** Applications sent by mail must be addressed to the Department of Education, Application Control Center, (Attention: 84.159), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

**Applications Delivered by Hand:** An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**Program Information:** On December 2, 1983, the Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, was enacted. As amended by Pub. L. 98-199, section 618(d) of the Act authorizes the Secretary to enter into cooperative agreements with State educational agencies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*). The legislative history of Pub. L. 98-199 includes the statement from the Senate Committee on

Labor and Human Resources that: "The Committee believes that local educational agencies, State educational agencies, and the Federal special education agency working together could produce comprehensive and useful information on the impact and effectiveness of programs assisted under the Act which could lead to program improvements at the Federal, State, and local levels." S. Rep. No. 19, 98th Cong., 1st Sess. 12 (1983).

In accordance with section 618(d)(2)(B) of the Act, projects supported under this program must be developed in consultation with the State Advisory Panel established under the Act, local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

The Secretary invites applications for evaluation studies that address the priority published in this issue of the **Federal Register**. This priority would support evaluation studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. Within this priority, studies are invited that address: (1) The impact and effectiveness of criteria used to determine eligibility and placement of students in various program options; (2) the effectiveness of instructional programming options and screening procedures used prior to referral for placement of children in special education; or (3) the impact of secondary program options provided handicapped students in relation to competency testing, graduation, and transition.

#### Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled: "Intergovernmental Review of Federal Programs." The regulations took effect on September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;

- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Handicapped Special Studies Program—State Educational Agency/Federal Evaluation Studies is a new program, and States have not yet made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice an applicant should contact the appropriate State single point of contact to see if this assistance will be included under its review process and to comply with the State's process under Executive Order 12372. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered, by August 16, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA Number: 84.159), 400 Maryland Avenue, SW.,

Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.) Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address:*

**Available Funds:** It is estimated that approximately \$1 million will be available for support of 10 cooperative agreements to carry out new evaluation studies under this program in fiscal year 1985. These estimates of funding level do not bind the U.S. Department of Education to a specific number of awards or to the amount of any award, unless that amount is otherwise specified by statute or regulations. Award approval is for an 18 month period. In accordance with Section educational agency must provide at least 40 percent of the total cost of the study.

**Application Forms:** Application forms and program information packages are expected to be ready for mailing by May 1, 1985. These materials may be obtained by writing to the Research Projects Branch, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested. (Approved by the Office of Management and Budget under Control Number 1820-0028)

**Applicable Regulations:** Regulations applicable to this program include the following:

(a) When adopted in final form, regulations governing the Handicapped Special Studies program (proposed for codification in 34 CFR Part 327). The proposed regulations for this program were published in the Federal Register on February 6, 1985 (50 FR 5080). A notice of Annual Funding Priority is published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed regulations and the annual funding priority for these projects. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to revise or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For further information contact Nancy Sefer, Research Projects Branch, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3511—M/S 2313), Washington, D.C. 20202. Telephone: (202) 732-1064.

(20 U.S.C. 1418(d))

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Programs)

Dated: April 24, 1985.

William J. Bennett,  
Secretary of Education.

[FR Doc. 85-10376 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M



# **federal register**

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**Tuesday  
April 30, 1985**

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## **Part VI**

### **Department of Education**

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**Office of Special Education and  
Rehabilitative Services**

**Rehabilitation Long-Term Training  
Program; Proposed Funding Priority for  
FY 1985, and Closing Date for  
Transmittal of Applications for FY 1985;  
Notices**

## DEPARTMENT OF EDUCATION

**Rehabilitation Long-term Training Program; Proposed Funding Priority for Fiscal Year 1985**

AGENCY: Department of Education.

ACTION: Notice.

**SUMMARY:** The Secretary proposes a funding priority for long-term training grants in the field of Rehabilitation Counseling in order to ensure effective use of program funds and direct funds to an area of identified need during Fiscal Year 1985. The Secretary will reserve funds for applications meeting this priority.

**DATE:** Comments must be received on or before May 30, 1985.

**ADDRESS:** All written comments and suggestions should be sent to Martin W. Spickler, Division of Resource Development, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW., Room 3319, Switzer Building, Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Martin W. Spickler, Division of Resource Development, Rehabilitation Services Administration. Telephone: (202) 732-1352.

**SUPPLEMENTARY INFORMATION:** Grants for the Rehabilitation Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel to be available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped. Applicants are notified that the Secretary will be collecting data to enable him, in accordance with the Rehabilitation Amendments of 1984 (Pub. L. 98-221), to target more closely awards made in future years to areas of personnel shortages.

**Eligible Applicants**

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

**Proposed Priority**

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3)(i), the Secretary proposes to

give an absolute preference to applications submitted in the field of rehabilitation counseling in Fiscal Year 1985 in response to the designated priority. An absolute priority is one which permits the Secretary to select only those applications that address the priority.

Applications submitted in the field of rehabilitation counseling must address the master's degree level training of rehabilitation counseling personnel. The proposed training curriculum must include placement content that will expose students to the direct involvement of business and industry in providing rehabilitation services to severely physically and mentally disabled individuals. The placement component should include coursework to enable the student's acquisition of skills and knowledge in the areas of: job development/job analysis/job modification/job restructuring; workmen's compensation; forecasting labor market trends; the applicability of sections 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; and effective consultation with employers and potential employers to identify employment opportunities for disabled individuals, to assist in the removal of barriers to the employment of disabled individuals, and to educate or train about various disabilities and any vocational implementations of those disabilities. Practicum training must include placement activities that involve students directly in business and industry settings.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3319, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program) (29 U.S.C. 774)

Dated: April 22, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10373 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M

**Rehabilitation Long-Term Training; Establishing Closing Date for Transmittal of New Rehabilitation Long-Term Training Program Applications in Fiscal Year 1985**

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for new Rehabilitation Long-Term Training projects in the field of Rehabilitation Counseling for Fiscal Year 1985.

Authority for this program is contained in Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774)

**Closing Date for Transmittal of Applications:** Applications for grant awards must be mailed or hand delivered by June 18, 1985.

**Applications Delivered by Mail:** Applications for new projects must be addressed to the Department of Education, Application Control Center, Attention: (CFDA No. 84.129), 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

**Applications Delivered by Hand:** Hand delivered applications must be taken to the U.S. Department of Education, Application Control Center.

Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**Program Information:** Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. Historically Black colleges and universities are encouraged to participate in this program.

The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to train skilled personnel who would be available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

All applications will be evaluated according to Selection Criteria which appear in program regulations in 34 CFR 386.30.

**Available Funds:** The total amount of funds available for rehabilitation training in Fiscal Year 1985 is \$22,000,000, including \$7,820,000 for the funding of new rehabilitation long-term training projects. Of this amount, approximately \$1,294,000 will be reserved for new rehabilitation counseling projects that address the

proposed funding priority published in this issue of the **Federal Register**. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

**Application Forms:** Application forms and program information packages for new awards are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue SW., (Mary E. Switzer Building, Room 3030-M/S 2312), Washington, D.C. 20202.

Application forms and program information packages will be mailed to grantees who are completing long-term training projects in the field of rehabilitation counseling during the 1984-1985 academic year.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the applications for new awards not exceed 25 pages in

length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820-0018)

**Applicable Regulations:** Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed funding priority is published in this same issue of the **Federal Register**. If substantive changes are made to the proposed funding priority when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priority.

**Further Information:** Martin W. Spickler, Ph.D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW. (Mary E. Switzer Building, Room 3319-M/S 2312), Washington, D.C. 20202. Telephone: (202) 732-1352.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

(29 U.S.C. 774)

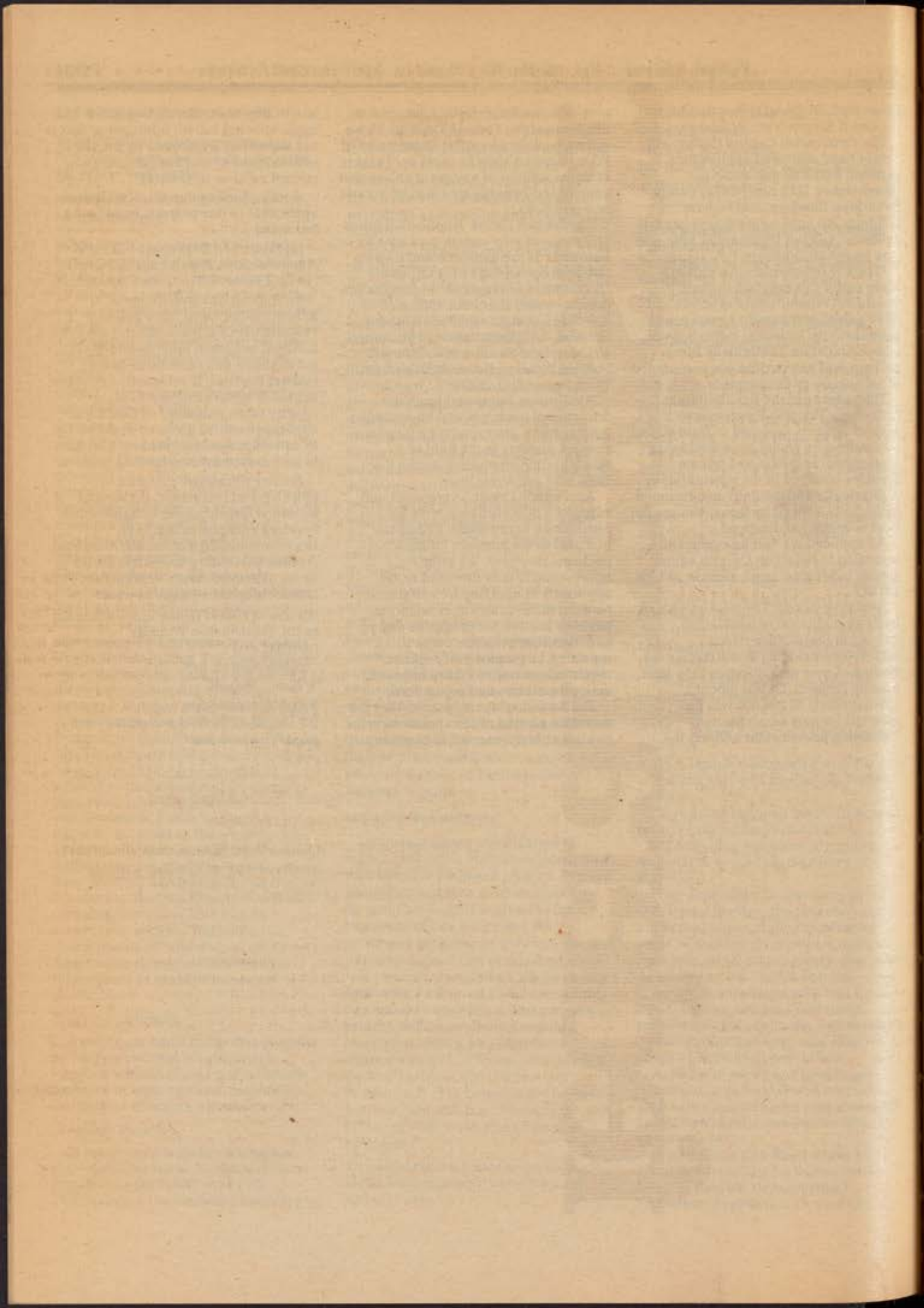
Dated: April 22, 1985.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 85-10374 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M



# **federal register**

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Tuesday  
April 30, 1985

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**Part VII**

## **Department of Education**

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Office of Bilingual Education and  
Minority Languages Affairs

Discretionary Grant Programs, Application  
Notice for Transmittal of Certain Fiscal  
Year 1985 Applications

## DEPARTMENT OF EDUCATION

Office of Bilingual Education and  
Minority Languages AffairsDiscretionary Grant Programs,  
Application Notice for Transmittal of  
Certain Fiscal Year 1985 Applications

AGENCY: Department of Education.

ACTION: Application Notice Describing  
Selection Criteria and Establishing  
Closing Dates for Transmittal of Certain  
Fiscal Year 1985 Applications.

**SUMMARY:** The purpose of this application notice is to inform potential applicants of selection criteria, other fiscal and programmatic information, and closing dates for transmittal of applications for awards under certain programs administered by the Department of Education.

This notice contains three parts. Part I includes general information on applicable definitions, regulations, selection criteria, and mailing and delivery instructions. Part II contains a listing of programs and closing dates. Part III consists of individual announcements for each program with specific administrative and fiscal information.

## Part I

On October 19, 1984, Title VII of the Elementary and Secondary Education Act, 20 U.S.C. 3221-3282, (Title VII), was amended by Pub. L. 98-511.

In Section 702 of Title VII, Congress declared it to be the policy of the United States, in order to establish equal educational opportunity for all children and to promote educational excellence, to provide financial assistance—

- To encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods; and

- To encourage the establishment of special alternative instructional programs for students of limited English proficiency in school districts where appropriate.

The programs assisted under Title VII include programs in elementary and secondary schools as well as related preschool and adult programs which are designed to meet the educational needs of individuals of limited English proficiency, with particular attention to children having the greatest need for these programs. Programs shall be designed to enable students to achieve full competence in English and may additionally provide for the development of student competence in a second language.

Section 721(i) provides that programs authorized under Title VII in the Commonwealth of Puerto Rico may, notwithstanding any other provision of Title VII, include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children, and may also make provision for serving the needs of students of limited proficiency in Spanish.

## Definitions

The following definitions provided in section 703 of Title VII apply to the terms used in this notice:

"Limited English proficiency" and "limited English proficient" when used with reference to individuals mean—

(1) individuals who were not born in the United States or whose native language is a language other than English;

(2) individuals who come from environments where a language other than English is dominant; and

(3) individuals who are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency;

and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

"Low-income" when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of title I of the Elementary and Secondary Education Act of 1965.

"Program of transitional bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other

children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

In such courses or subjects of study as art, music, and physical education, a program of transitional bilingual education shall make provision for the participation of children of limited English proficiency in regular classes.

Children enrolled in a program of transitional bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

"Program of developmental bilingual education" means a fulltime program of instruction in elementary and secondary schools which provides, with respect to the years of study to which such program is applicable, structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

Where possible, classes in programs of developmental bilingual education shall be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

"Special alternative instructional programs" means programs of

instruction designed for children of limited English proficiency in elementary and secondary schools. Such programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide, with respect to the years of study to which such program is applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

"Family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. Such programs of instruction may be conducted exclusively in English or in English and the student's native language. Where appropriate, such programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in such programs shall be accorded to the parents and immediate family members of children enrolled in programs assisted under this title.

"Programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

#### Selection Criteria

In order for timely awards to be made in Fiscal Year 1985, the Secretary has determined that applications for awards will be evaluated competitively under the selection criteria for grant programs that do not have regulations, in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.210. The programs will be governed by the statute and the EDGAR provisions in 34 CFR Parts 74, 75, 77, 78, and 79.

Applications will be evaluated under the following selection criteria in 34 CFR 75.210. The maximum score for each criterion is indicated in parentheses following the criterion, including an additional 15 points distributed by the Secretary as authorized by 34 CFR 75.210(c).

#### (a) Meeting the purpose of the authorizing statute. (30 points)

(1) The Secretary reviews each application for information that shows how well the project will meet the purposes of the statute that authorizes the program.

(2) In conducting this review, the Secretary looks for information that describes—

(i) The objectives of the project; and  
(ii) How the objectives of the project further the purposes of the authorizing statute.

#### (b) Extent of need for the project. (25 points)

(1) The Secretary reviews each application for information that shows the project meets specific needs recognized in the statute that authorized the program.

(2) In conducting this review, the Secretary looks for information that—  
(i) Describes the needs addressed by the project;

(ii) Describes how the applicant identified those needs;  
(iii) Describes how those needs will be met by the project; and  
(iv) Describes the benefits to be gained by meeting those needs.

#### (c) Plan of operation. (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;  
(ii) An effective plan of management that insures proper and efficient administration of the project;  
(iii) A clear description of how the objectives of the project relate to the purpose of the program;  
(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Members of racial or ethnic minority groups;  
(B) Women;  
(C) Handicapped persons;  
(D) The elderly; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools—a clear description of how the applicant will provide that opportunity.

#### (d) Quality of key personnel. (7 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);  
(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;  
(B) Women;  
(C) Handicapped persons; and  
(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

#### (e) Budget and cost effectiveness. (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and  
(ii) Costs are reasonable in relation to the objectives of the project.

#### (f) Evaluation plan. (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference. See 34 CFR 75.590, Evaluation by the grantee, and where applicable the requirements in section 733 of Title VII.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

#### (g) Adequacy of resources. (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

#### Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below.

##### Transmittal of applications:

Applications must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document. Each late applicant will be notified that its application will not be considered.

##### Applications delivered by mail:

Applications must be addressed to the U.S. Department of Education, Application Control Center, Attention: (insert appropriate CFDA Number), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

**Applications delivered by hand:** Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

**Intergovernmental review:** On June 24, 1983, the Secretary published in the Federal Register final regulations, 34 CFR Part 79 (published at 48 FR 29158)

implementing Executive Order 12372 entitled: "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

##### The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected these programs for review:

Alabama	Indiana
Arizona	Kansas
Arkansas	Louisiana
California	Maine
Connecticut	Massachusetts
Delaware	Michigan
Florida	Mississippi
Hawaii	Montana
Illinois	Nebraska

Nevada	Tennessee
New Hampshire	Texas
New Jersey	Vermont
New Mexico	Virginia
North Dakota	West Virginia
Ohio	Washington
Oklahoma	Wyoming
Oregon	Virgin Islands
Pennsylvania	Guam
South Carolina	Northern Mariana Islands
South Dakota	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All recommendations and comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by the date indicated in Part II to the following address.

The Secretary, U.S. Department of Education, Room 4181 (84.003 and appropriate letter), 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

**Please Note That the Above Address is Not the Same Address as the One to Which the Applicant Submits Its Application. Do Not Send Applications to the Above Address**

#### Part II—Programs With Closing Dates for New Awards Listed in Chronological Order

CFDA number	Program	Closing date for applications	Closing date for State intergovernmental review comments
84.003T	Program of transitional bilingual education	June 17, 1985	July 17, 1985
84.003D	Program for developmental bilingual education	do	Do
84.003A	Special alternative instructional program	do	Do
84.003L	Family english literacy program	do	Do
84.003P	Special populations program	do	Do
84.003M	Program for the development of instructional materials	do	Do
84.003J	Educational personnel training program	do	Do

#### Part III—Individual Announcements for Programs With New Awards Listed Under Part II

##### 84.003T—Program of Transitional Bilingual Education

**Closing Date:** June 17, 1985.

Applications are invited for new projects under the Program of Transitional Bilingual Education.

Authority for this program is contained in section 721(a)(1) of Title VII of the Elementary and Secondary



Education Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to local educational agencies (LEAs) (see definition of "local educational agency" in 34 CFR Part 77) and institutions of higher education applying jointly with one or more LEAs.

The purpose of the awards is to establish, operate, and improve programs of transitional bilingual education. The term "program of transitional bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

*Closing date for transmittal of applications:* An application for a grant must be mailed or hand delivered by June 17, 1985.

*Applications delivered by mail:* An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003T, Washington, D.C. 20202.

## Program Information

### A. Definitions

An applicant should read carefully the definitions of "limited English proficiency," "low-income," "native language," and "program of transitional bilingual education," contained in Part I of this notice.

(20 U.S.C. 3223)

### B. Application Requirements

An applicant shall meet the following requirements pertaining to the submission of an application for assistance:

1. An application for a grant under this program must contain the information required under section 721(c)(2) of Title VII.

(20 U.S.C. 3231(c)(2))

2. An application for a grant under this program must be developed in consultation with an advisory council, of which a majority shall be parents and

other representatives of the children to be served in the program. The application must be accompanied by documentation of the consultation and by the comments which the council makes on the application. The application must contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of a program carried out in secondary schools, representatives of the secondary students to be served.

(20 U.S.C. 3231(e)(1), (e)(2), and (e)(3))

3. An application for a grant must include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(20 U.S.C. 3231(e)(4))

Cross-reference. See 34 CFR 75.155-75.160.

4. A grant may be approved only if the Secretary determines that an applicant, in designing the program for which the application is made, takes into account the needs of the children in nonprofit private elementary and secondary schools through consultation with appropriate private school officials. Consistent with the number of children enrolled in these schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a type similar to that which the program is intended to address, and after consultation with appropriate private school officials, the applicant shall make provision for the participation of these children on a basis comparable to that provided for public school children.

If the Secretary determines that an applicant for assistance is unable or unwilling to provide for the participation in the project for which assistance is sought of children of limited English proficiency enrolled in nonprofit, private schools, the Secretary shall—

(i) Withhold approval of the application until the applicant demonstrates that it is in compliance with the requirements; or

(ii) Reduce the amount of the grant to the applicant by the amount which is required for the Secretary to arrange to assess the needs of the children in the area to be served for programs of the type authorized and to carry out these programs for the children.

(20 U.S.C. 3231(f)(2), (f))

### C. Required Activities

1. During the first six months of the grant, an applicant shall engage exclusively in preservice activities. These activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the educational program and to enable parents and family members to assist in the education of limited English proficient children. This requirement may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional program.

(20 U.S.C. 3231(d)(1)(B))

2. A grant will be approved only if the Secretary determines that the program will be evaluated in accordance with a plan that meets the requirements of section 733 of Title VII.

(20 U.S.C. 3231(f)(3))

Cross-reference. See 34 CFR 75.590 (Evaluation by the grantee). See also, (f) (Evaluation plan.) in the selection criteria in Part I of this notice.

3. A grant may be approved only if the Secretary determines that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program and that, to the extent possible, college or university credit will be awarded for this training.

(20 U.S.C. 3231(f)(6))

4. Parents or legal guardians of students identified for enrollment in a program of transitional bilingual education shall be informed of: the reasons for the selection of their child as in need of a program of transitional bilingual education; the alternative educational programs that are available; and the nature of the program of transitional bilingual education and of the instructional alternatives. Parents shall also be informed that they have the option of declining enrollment of their children in a program and shall be given an opportunity to do so if they so choose. Parents of children participating in the program shall be informed of the instructional goals of the program and the progress of their children in the program.

(20 U.S.C. 3231(d)(1)(D), 3232(c))

### D. Other Requirements

1. See the definition of "program of transitional bilingual education" in Part I of this notice for additional program

requirements. In particular, a program of transitional bilingual education may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 percent.

(20 U.S.C. 3223(a)(4))

2. An application for a grant may be approved only if the Secretary determines that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction.

(20 U.S.C. 3231(f)(1))

3. An application for a grant may be approved only if the Secretary determines that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant such State and local funds.

(20 U.S.C. 3231(f)(4))

4. An application for a grant may be approved only if the Secretary determines that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under Title VII is reduced or no longer available.

(20 U.S.C. 3231(f)(5))

5. An application for a grant may be approved only if the Secretary determines that the provision of assistance proposed in the application is consistent with criteria established by the Secretary after consultation with the State educational agency, following the submission of applications to SEAs from LEAs as required in B. 3. (*Application requirements.*) of this notice, for the purpose of achieving an equitable distribution of assistance within the State in which the applicant is located, taking into consideration—

(i) the geographic distribution of children of limited English proficiency;

(ii) the relative need of persons in different geographic areas within the State for the kinds of services and activities authorized under Title VII;

(iii) the relative ability of particular LEAs within the State to provide services and activities; and

(iv) the relative numbers of persons from low-income families sought to be benefited.

(20 U.S.C. 3231(f)(7))

#### E. Priorities

In consideration of applications from LEAs to carry out programs authorized under section 721 of the Act, the Secretary gives priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of these children in the schools of the local educational agencies and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out programs and the relative number of persons from low-income families sought to be benefited by the programs.

(20 U.S.C. 3231(h))

#### F. Project Period

An application will be approved for a project period of three years.

Upon reapplication, grants authorized under this program shall be renewed for two additional years unless the Secretary determines that—

(1) The applicant's program does not comply with the requirements set out in Title VII;

(2) The applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or

(3) There is no longer a need for the applicant's program.

(20 U.S.C. 3231(d)(1)(A), (C))

#### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

*Available funds:* It is expected that approximately \$11,900,000 will be available for the Program of Transitional Bilingual Education for Fiscal Year 1985.

It is estimated that these funds could support 80 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

*Application forms:* Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1885-0003.)

*Applicable regulations:* Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

*Further information:* For further information contact Dr. Rudy Cordova, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202) 245-2809.

(20 U.S.C. 3231(a)(1))

#### 84.003D—Program of Developmental Bilingual Education

*Closing date:* June 17, 1985.

Applications are invited for new projects under the Program of Developmental Bilingual Education.

Authority for this program is contained in section 721(a)(2) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to local educational agencies (LEAs) (see definition of "local educational agency" in 34 CFR Part 77) and institutions of higher education applying jointly with one or more LEAs.

The purpose of the awards is to establish, operate, and improve programs of developmental bilingual education. The term "program of developmental bilingual education" means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which such program is applicable, structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

**Closing date for transmittal of applications:** An application for a grant must be mailed or hand delivered by June 17, 1985.

**Applications delivered by mail:** An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003D, Washington, D.C. 20202.

## Program Information

### A. Definition

An applicant should read carefully the definitions of "limited English proficiency," "low-income," "native language," and "program of developmental bilingual education," contained in Part I of this notice.

(20 U.S.C. 3223)

### B. Application Requirements

An applicant shall meet the following requirements pertaining to the submission of an application for assistance:

1. An application for a grant under this program must contain the information required under section 721(c)(2) of Title VII.

(20 U.S.C. 3231(c)(2))

2. An application for a grant under this program must be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in the program. The application must be accompanied by documentation of the consultation and by the comments which the council makes on the application. The

application must contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the programs, and in the case of a program carried out in secondary schools, representatives of the secondary students to be served.

(20 U.S.C. 3231(e)(1), (e)(2), and (e)(3))

3. An application for a grant must include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(20 U.S.C. 3231(e)(4))

Cross-reference. See 34 CFR 75.155-75.160.

4. A grant may be approved only if the Secretary determines that an applicant, in designing the program for which application is made, takes into account the needs of the children in nonprofit private elementary and secondary schools through consultation with appropriate private school officials. Consistent with the number of children enrolled in these schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a type similar to that which the program is intended to address, and after consultation with appropriate private school officials, the applicant shall make provision for the participation of these children on a basis comparable to that provided for public school children.

If the Secretary determines that an applicant for assistance is unable or unwilling to provide for the participation in the project for which assistance is sought of children of limited English proficiency enrolled in nonprofit, private schools, the Secretary shall—

(i) Withhold approval of the application until the applicant demonstrates that it is in compliance with the requirements; or

(ii) Reduce the amount of the grant to the applicant by the amount which is required for the Secretary to arrange to assess the needs of the children in the area to be served for programs of the type authorized and to carry out these programs for the children.

(20 U.S.C. 3231(f)(2), (f))

### C. Required Activities

1. During the first six months of the grant an applicant shall engage exclusively in preservice activities.

These activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the educational program and to enable parents and family members to assist in the education of limited English proficient children. This requirement may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional program.

(20 U.S.C. 3231(d)(1)(B))

2. A grant may be approved only if the Secretary determines that the program will be evaluated in accordance with a plan that meets the requirements of Section 733 of Title VII.

(20 U.S.C. 3231(f)(3))

Cross-reference. See 34 CFR 75.590 (Evaluation by the grantee). See also, (f) (Evaluation plan.) in the selection criteria in Part I of this notice.

3. A grant may be approved only if the Secretary determines that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program and that, to the extent possible, college or university credit will be awarded for this training.

(20 U.S.C. 3231(f)(6))

4. Parents or legal guardians of students identified for enrollment in a program of developmental bilingual education shall be informed of: the reasons for the selection of their child as in need of a program of developmental bilingual education; the alternative educational programs that are available; and the nature of the program of developmental bilingual education and of the instructional alternatives. Parents shall also be informed that they have the option of declining enrollment of their children in a program and shall be given an opportunity to do so if they so choose. Parents of children participating in the program shall be informed of the instructional goals of the program and the progress of their children in the program.

(20 U.S.C. 3231(d)(1)(D), 3223(c))

### D. Other Requirements

1. Where possible, classes in programs of developmental bilingual education shall be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(20 U.S.C. 3223(5)(B))

2. An application for a grant may be approved only if the Secretary determines that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction.

(20 U.S.C. 3231(f)(1))

3. An application for a grant may be approved only if the Secretary determines that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant State and local funds.

(20 U.S.C. 3231(f)(4))

4. An application for a grant may be approved only if the Secretary determines that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under Title VII is reduced or no longer available.

(20 U.S.C. 3231(f)(5))

5. An application for a grant may be approved only if the Secretary determines that the provision of assistance proposed in the application is consistent with criteria established by the Secretary after consultation with the State educational agency, following the submission of applications to SEAs from LEAs as required in B. 3. (*Application requirements.*) of this notice, for the purpose of achieving an equitable distribution of assistance within the State in which the applicant is located, taking into consideration—

- (i) the geographic distribution of children of limited English proficiency;
- (ii) the relative need of persons in different geographical areas within the State for the kinds of services and activities authorized under Title VII;
- (iii) the relative ability of particular LEAs within the State to provide services and activities; and
- (iv) the relative number of persons from low-income families sought to be benefited.

(20 U.S.C. 3231(f)(7))

#### E. Priorities

In consideration of applications from LEAs to carry out programs authorized under Section 721 of the Act, the Secretary gives priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative number of these children in the schools of local educational agencies and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out the programs and the relative numbers of persons from low-income families sought to be benefited by the programs.

(20 U.S.C. 3231(h))

#### F. Project Period

An application will be approved for a project period of three years.

Upon reapplication, grants authorized under this program shall be renewed for two additional years unless the Secretary determines that—

- (1) The applicant's program does not comply with the requirements set out in Title VII;
- (2) The applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or
- (3) There is no longer a need for the applicant's program.

(20 U.S.C. 3231(d)(1)(A), (C))

#### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

*Available funds:* It is expected that approximately \$250,000 will be available for the Program of Developmental Bilingual Education for Fiscal Year 1985.

It is estimated that these funds could support 2 projects. However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

*Application forms:* Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0003)

*Applicable regulations:* Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

*Further information:* For further information contact the Dr. Rudy Cordova, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202) 245-2609.

(20 U.S.C. 3231(a)(1))

#### 84.003A—Special Alternative Instructional Program

*Closing Date:* June 17, 1985.

Applications are invited for new projects under the Special Alternative Instructional Program.

Authority for this program is contained in section 721(a)(3) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to local educational agencies (LEAs) (see definition of "local educational agency" in 34 CFR Part 77) and institutions of higher education applying jointly with one or more LEAs.

The purpose of the awards is to establish, operate, and improve special

alternative instructional programs. The term "special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. Such programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide, with respect to the years of study to which such program is applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

**Closing date for transmittal of applications:** An application for a grant must be mailed or hand delivered by June 17, 1985.

**Applications delivered by mail:** An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003A, Washington, D.C. 20202.

#### Program Information

##### A. Definitions

An applicant should read carefully the definitions of "limited English proficiency," "low-income," and "native language," and "special alternative instructional programs," contained in Part I of this notice.

(20 U.S.C. 3223)

##### B. Application Requirements

An applicant shall meet the following requirements pertaining to the submission of an application for assistance:

1. An application for a grant under this program must contain the information required under section 721(c)(2) of Title VII.

(20 U.S.C. 3231(c)(2))

2. An application for a grant under this program must be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in the programs. The application must be accompanied by documentation of the consultation and by the comments which the council makes on the applications. The application must contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested

individuals which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of a program carried out in secondary schools, representatives of the secondary students to be served.

(20 U.S.C. 3231(e)(1), (e)(2), and (e)(3))

3. An application for a grant must include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(20 U.S.C. 3231(e)(4))

Cross-reference. See 34 CFR 75.155-75.160.

4. A grant may be approved only if the Secretary determines that an applicant, in designing the program for which the application is made, takes into account the needs of the children in nonprofit private elementary and secondary schools through consultation with appropriate private school officials. Consistent with the number of children enrolled in these schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a type similar to that which the program is intended to address, and after consultation with appropriate private school officials, the applicant shall make provisions for the participation of these children on a basis comparable to that provided for public school children.

If the Secretary determines that an applicant for assistance is unable or unwilling to provide for the participation in the project for which assistance is sought of children of limited English proficiency enrolled in nonprofit, private schools, the Secretary shall—

(i) Withhold approval of the application until the applicant demonstrates that it is in compliance with the requirements; or

(ii) Reduce the amount of the grant to the applicant by the amount which is required for the Secretary to arrange to assess the needs of the children in the area to be served for programs of the type authorized and to carry out these programs for the children.

(20 U.S.C. 3231(f)(2), (j))

##### C. Required Activities

1. During the first six months of the grant, an applicant shall engage exclusively in preservice activities. These activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the

educational program and to enable parents and family members to assist in the education of limited English proficient children. This requirement may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional program.

(20 U.S.C. 3231(d)(1)(B))

2. A grant may be approved only if the Secretary determines that the program will be evaluated in accordance with a plan that meets the requirements of section 733 of Title VII.

(20 U.S.C. 3231(f)(3))

Cross-reference. See 34 CFR 75.590 (Evaluation by the grantee). See also, (f) (Evaluation plan.) in the selection criteria in Part I of this notice.

3. A grant may be approved only if the Secretary determines that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program and that, to the extent possible, college or university credit will be awarded for this training.

(20 U.S.C. 3231(f)(6))

4. Parents or legal guardians of students identified for enrollment in a special alternative instructional program shall be informed of: the reasons for the selection of their child as in need of a special alternative instructional program; the other educational programs that are available; and the nature of the special alternative program and of the other instructional options. Parents shall also be informed that they have the option of declining enrollment of their children in a program and shall be given an opportunity to do so if they so choose. Parents of children participating in the program shall be informed of the instructional goals of the program and the progress of their children.

(20 U.S.C. 3231(d)(1)(D), 3223(c))

##### D. Other Requirements

1. An application for a grant may be approved only if the Secretary determines that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction.

(20 U.S.C. 3231(f)(1))

2. An application for a grant may be approved only if the Secretary determines that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special

programs for children of limited English proficiency and in no case to supplant State and local funds.

(20 U.S.C. 3231(f)(4))

3. An application for a grant may be approved only if the Secretary determines that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under the Title VII is reduced or no longer available.

(20 U.S.C. 3231(f)(5))

4. An application for a grant may be approved only if the Secretary determines that the provision of assistance proposed in the application is consistent with criteria established by the Secretary after consultation with the State educational agency, following the submission of applications to SEAs from LEAs as required in B. 3. (*Application requirements.*) of this notice, for the purpose of achieving an equitable distribution of assistance within the State in which the applicant is located, taking into consideration—

- (i) the geographic distribution of children of limited English proficiency;
- (ii) the relative need of persons in different geographic areas within the State for the kinds of services and activities authorized under Title VII;
- (iii) the relative ability of particular LEAs within the State to provide services and activities; and
- (iv) the relative numbers of persons from low-income families sought to be benefited.

(20 U.S.C. 3231(f)(7))

An applicant for a grant under this program may receive priority based upon the information provided by the applicant in its application regarding the administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language; the unavailability of personnel qualified to provide bilingual instructional services; or the applicant's current or past efforts to establish a bilingual education program.

(20 U.S.C. 3231(c)(3))

#### E. Priorities

In consideration of applications from LEAs to carry out programs authorized

under Section 721 of the Act, the Secretary gives priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of these children in the schools of the local educational agencies and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out programs and the relative numbers of persons from low-income families sought to be benefited by the programs.

(20 U.S.C. 3231(h))

#### F. Project Period

An application will be approved for a project period of three years.

Upon reapplication, grants authorized under this program shall be renewed for two additional years unless the Secretary determines that—

- (1) The applicant's program does not comply with the requirements set out in Title VII;
- (2) The applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or
- (3) There is no longer a need for the applicant's program.

(20 U.S.C. 3231(d)(1)(A), (C))

#### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

*Available funds:* It is expected that approximately \$5,370,600 will be available for the Special Alternative Instructional Program for Fiscal Year 1985.

It is estimated that these funds could support 37 to 53 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

*Application forms:* Applications are expected to the ready for mailing by May 10, 1985. A copy of the application

package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1685-0003.)

*Applicable regulations:* Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

*Further Information:* For further information contact Dr. Rudy Cordova, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202) 245-2609.

(20 U.S.C. 3231(a)(1))

#### 84.003L—Family English Literacy Program

*Closing date:* June 17, 1985.

Applications are invited for new projects under the Family English Literacy Program.

Authority for this program is contained in section 721(a)(5) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to local educational agencies (LEAs) (see definition of "local educational agency" in 34 CFR Part 77), institutions of higher education, including junior or community colleges, and private nonprofit organizations. Eligible applicants may apply separately or jointly.

The purpose of the awards is to establish, operate, and improve family

English literacy programs. The term "family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. These programs of instruction may be conducted exclusively in English or in English and the student's native language. Where appropriate, these programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in programs shall be accorded to the parents and immediate family members of children enrolled in programs assisted under Title VII.

*Closing date for transmittal of applications:* An application for a grant must be mailed or hand delivered by June 17, 1985.

*Applications delivered by mail:* An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003L, Washington, D.C. 20202.

#### Program Information

##### A. Definitions

An applicant should read carefully the definitions of "limited English proficiency," "low-income," "native language," and "family English literacy program," contained in Part I of this notice.

##### B. Application Requirements

An application for a grant under this program must contain the information required under section 721(c)(5) of Title VII.

(20 U.S.C. 3231(c)(5))

##### C. Priorities

In consideration of applications from LEAs to carry out programs authorized under Section 721 of the Act, the Secretary gives priority to applications from LEAs which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of these children in the schools of the LEAs and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability or particular local educational

agencies to carry out the programs and the relative numbers of persons from low-income families sought to be benefited by these programs.

(20 U.S.C. 3231(h))

##### D. Projected Period

An Application will be approved for a project period of three years.

(20 U.S.C. 3231(d)(2))

##### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

*Available funds:* It is expected that approximately \$250,000 will be available for the Family English Literacy Program for Fiscal Year 1985.

It is estimated that these funds could support 2 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

*Application forms:* Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0003.)

*Applicable regulations:* Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

*Further Information:* For further information contact Mr. Rudy Munis, Director, Division of National Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202)245-2595.

(20 U.S.C. 3231(a)(5))

##### 84.003P—Special Populations Program

*Closing date:* June 17, 1985.

Applications are invited for new projects under the Special Populations Program.

Authority for this program is contained in Section 721(a)(6) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to local educational agencies (LEAs), institutions of higher education, including junior and community colleges; and private nonprofit organizations. Eligible applicants may apply separately or jointly.

The purpose of the awards is to establish, operate, and improve bilingual preschool, special education, and gifted and talented programs that are preparatory or supplementary to programs such as those assisted under Title VII.

*Closing date for transmittal of applications:* An application for a grant must be mailed or hand delivered by June 17, 1985.

*Applications delivered by mail:* An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003P, Washington, D.C. 20202.

#### Program Information

##### A. Definitions

An applicant should read carefully the definitions of "limited English proficiency," "low-income," and "native language," contained in Part I of this notice.

##### B. Required Activities

Parents or legal guardians of students identified for enrollment in a special populations program shall be informed of: the reasons for the selection of their child as in need of a special populations program; the alternative educational programs that are available; and the nature of the special populations program and of the instructional alternatives. Parents shall also be

informed that they have the option of declining enrollment of their children in a program and shall be given an opportunity to do so if they so choose. Parents of children participating in the program shall be informed of the instructional goals of the program and the progress of their children in the program.

(20 U.S.C. 3231(d)(1)(D), 3223(c))

#### C. Priorities

In consideration of applications from LEAs to carry out programs authorized under section 721 of the Act, the Secretary gives priority to applications from LEAs which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of these children in the schools of the LEAs and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out the programs and the relative numbers of persons from low-income families sought to be benefited by the programs.

(20 U.S.C. 3231(h))

#### D. Project Period

An application may be approved for a project period of one to three years.

For Fiscal Year 1985, an application will be approved for a project period of one year only.

(20 U.S.C. 3231(d)(3))

#### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

**Available funds:** It is expected that approximately \$2,500,000 will be available for the Special Populations Program for Fiscal Year 1985.

It is estimated that these funds could support 16 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

**Application forms:** Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0003.)

**Applicable regulations:** Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

**Further information:** For further information contact Mr. Rudy Munis, Director, Division of National Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, DC 20202. Telephone (202) 245-2595.

(20 U.S.C. 3231(a)(6))

#### 84.003M—Program for the Development of Instructional Materials

**Closing date:** June 17, 1985.

Applications are invited for new projects under the Program for the Development of Instructional Materials.

Authority for this program is contained in section 721(a)(7) of Title VII of the Elementary and Secondary Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The purpose of these awards is to establish, operate, and improve programs to develop instructional materials in languages for which materials are commercially unavailable.

(20 U.S.C. 3231(a)(7))

**Closing date for transmittal of applications:** An application for a grant

must be mailed or hand delivered by June 17, 1985.

**Applications delivered by mail:** An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003M, Washington, D.C. 20202.

#### Program Information

##### A. Definitions

An applicant should read carefully the definitions of "limited English proficiency," "low-income," and "native language," contained in Part I of this notice.

##### B. Priorities

In consideration of applications from LEAs to carry out programs authorized under section 721 of the Act, the Secretary gives priority to applications from LEAs which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of these children in the schools of the LEAs and the relative need for the programs. In approving applications, the Secretary, to the extent feasible, allocates funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out the programs and the relative numbers of persons from low-income families sought to be benefited by the programs.

(20 U.S.C. 3231(h))

##### C. Project Period

An application may be approved for a project period of one to three years.

For Fiscal Year 1985, an application will be approved for a project period of one year only.

(20 U.S.C. 3231(d)(3))

#### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

**Available funds:** It is expected that approximately \$250,000 will be available for the Program for the Development of



Instructional Materials for Fiscal Year 1985.

It is estimated that these funds could support 2 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

**Application forms:** Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0003.)

**Applicable regulations:** Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

**Further information:** For further information contact Mr. Rudy Munis, Director, Division of National Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202) 245-2595.

(20 U.S.C. 3231(a)(7))

#### 84.003—Educational Personnel Training Program

**Closing date:** June 17, 1985.

Applications are invited for new projects under the Educational Personnel Training Program.

Authority for this program is contained in Section 741(a)(1) of Title VII of the Elementary and Secondary Act, as amended by Pub. L. 98-511 (Title VII).

(20 U.S.C. 3221-3262)

The Secretary makes awards under this program to institutions of higher education.

The purpose of the awards is to establish, operate, and improve training programs for educational personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education or special alternative instructional programs for limited English proficient students, which shall emphasize opportunities for career development, advancement, and lateral mobility, and may provide training to teachers, administrators, counselors, paraprofessionals, teacher aides, and parents.

**Closing date for transmittal of applications:** An application for a grant must be mailed or hand delivered by June 17, 1985.

**Applications delivered by mail:** An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention, 84.003], Washington, D.C. 20202.

#### Program Information

##### A. Application Requirements

1. An application for a grant for preservice or inservice training activities shall be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in such programs. The application shall be accomplished by documentation of such consultation and by the comments which the council makes on the application. The application shall contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the program that will benefit from the training of the personnel under this project, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served.

(20 U.S.C. 3251(c), 3231(e))

2. An application for a grant for preservice or inservice training activities shall include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(20 U.S.C. 3251(c), 3231(e))

##### B. Other Requirements

Preservice training programs shall be designed to ensure that participants become proficient in English and a second language of instruction.

(20 U.S.C. 3251(d))

##### C. Priorities

1. In making a grant for preservice training programs, the Secretary gives preference to programs which contain coursework in teaching English as a second language; use of a non-English language for instructional purposes; linguistics; evaluation and assessment; and involving parents in the education process.

(20 U.S.C. 3251(d))

2. In making grants under this program, the Secretary gives priority to eligible applicants with demonstrated competence and experience in programs and activities such as those authorized under Title VII.

(20 U.S.C. 3254)

##### D. Project Period

An application will be approved for a project period of one year.

(20 U.S.C. 3231(d)(3))

##### E. Stipends

The Secretary provides for the payment, to persons participating in educational personnel training programs, stipends (including allowances for subsistence and expenses for these persons and their dependents) as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs.

(20 U.S.C. 3255)

##### Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 17, 1985 to the address in Part I of this notice.

**Available funds:** It is expected that approximately \$37,000,000 will be available for the Educational Personnel Training Program for Fiscal Year 1985.

It is estimated that these funds could support 40 projects.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

*Application forms:* Applications are expected to be ready for mailing by May 10, 1985. A copy of the application package may be obtained by writing to Ray Chavez, Regulations Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance.

Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0003.)

*Applicable regulations:* Regulations applicable to this program are the Education Department General

Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

*Further information:* For further information contact Mr. Rudy Munis, Director, Division of National Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone (202) 245-2595.

(20 U.S.C. 3241(a)(1))

Dated: April 24, 1985.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 85-10436 Filed 4-29-85; 8:45 am]

BILLING CODE 4000-01-M

# **federal register**

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Tuesday  
April 30, 1985

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## **Part VIII**

### **Department of Education**

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**Office of Elementary and Secondary  
Education**

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**34 CFR Parts 200, 201, 203, and 204  
Migratory Children and Neglected or  
Delinquent Children in Institutions, and  
General Definitions and Administrative,  
Project, Fiscal, and Due Process  
Requirements; Financial Assistance to  
State Educational Agencies; Final Rule**

## DEPARTMENT OF EDUCATION

## Office of Elementary and Secondary Education

## 34 CFR Parts 200, 201, 203, and 204

## Chapter 1, Education Consolidation and Improvement Act of 1981; Financial Assistance to State Educational Agencies To Meet Special Educational Needs of Migratory Children and Neglected or Delinquent Children in Institutions, and General Definitions and Administrative, Project, Fiscal, and Due Process Requirements

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary issues final regulations for the programs authorized under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) that provide financial assistance to (1) State educational agencies (SEAs) for programs designed to meet the special educational needs of migratory children, and (2) State agencies for programs to meet the special educational needs of neglected or delinquent children in institutions. In addition, the Secretary issues general regulations that apply to these programs, as well as to the State-operated program for handicapped children authorized under Chapter 1 of the ECIA, and to the program in 34 CFR Part 200 that provides financial assistance to local educational agencies (LEAs) for programs designed to meet the special educational needs of educationally deprived children. The Secretary is not issuing final regulations in this document for the Chapter 1 program that provides financial assistance to State agencies to meet the special educational needs of handicapped children in Part 202. Those regulations will be published in a separate document.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3624, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9846.

**SUPPLEMENTARY INFORMATION:**

## A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to SEAs and LEAs to meet special educational needs, on the basis of allocations calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the SEAs and LEAs of unnecessary Federal supervision, direction, and control.

The programs authorized by Chapter 1 provide financial assistance to—

(a) LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children;

(b) SEAs for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers and SEAs for special projects designed to improve interstate and intrastate coordination of migrant education activities;

(c) State agencies and eligible LEAs for projects designed to meet the special educational needs of children who are or have been served in institutions, schools, or programs for handicapped children;

(d) State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions; and

(e) The Secretary of the Interior to meet the special educational needs of Indian children.

An NPRM governing the Chapter 1 programs designed to meet the special educational needs of migratory children, handicapped children, and neglected or delinquent children and general provisions applicable to all Chapter 1 programs was published in the *Federal Register* on December 3, 1982 at 47 FR 54718.

Subsequent to publication of the proposed regulations, Congress enacted on December 8, 1983 the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98-211) to improve implementation of the ECIA. The technical amendments require that corresponding changes be made to certain sections of the proposed regulations. These changes are discussed in subsections C and E below.

Final regulations governing financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children were published in the *Federal Register* at 47 FR 52340 (Nov. 19, 1982) as 34 CFR Part 200. Certain amendments to those regulations were proposed on August 9, 1984 (49 FR 31914). Final regulations governing interstate and intrastate coordination of migrant education activities were published in the *Federal Register* at 48 FR 34644 (July 29, 1983) as 34 CFR Part 205.

## B. Overview of These Regulations

These regulations include—

- Revisions to Part 200 removing certain sections now included in Part 204.

- Part 201 which contains regulations for the program of assistance to SEAs for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers.

- Part 203 which contains regulations for the program of assistance to State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions.

- Part 204 which contains general regulations for programs covered by Parts 201 and 203, the Chapter 1 State-operated program for handicapped children, and the program of assistance to LEAs to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children covered in 34 CFR Part 200. Part 204 does not apply to the program to improve interstate and intrastate coordination of migrant education activities covered in 34 CFR Part 205.

This document does not include final regulations specifically for the Chapter 1 program for handicapped children. Those regulations will be published in a separate document.

In summary, the regulations in Parts 201 and 203 relate to—

- Applying for Chapter 1 Funds (Subpart A);

- Procedures for Determining the Amount of Grants and Subgrants (Subpart B); and

- Project Requirements (Subpart C).

The general regulations in Part 204 relate to—

- General Definitions and Applicability (Subpart A);

- General Administrative Requirements (Subpart B);

- Project Requirements (Subpart C);

- Fiscal Requirements (Subpart D); and
- Due Process Procedures (Subpart E).

### C. Summary of Major Changes From the December 3, 1982 Proposed Regulations

#### Definitions (201.3(b))—

This section continues to use the definitions of "currently migratory child," "migratory agricultural worker," and "migratory fisher," in effect in Department regulations on June 30, 1982, rather than the definitions of those terms used in the proposed regulations, except that the definitions of "currently migratory child" has been modified to incorporate the change enacted in Pub. L. 98-312, June 12, 1984, concerning children of migratory fishers residing in the geographically largest school districts.

#### SEA application (§ 201.11(b)) and Frequency of submission (§ 203.12(a))—

These sections require periodic updates of applications for the programs to meet the special needs of migratory children and neglected or delinquent children in institutions where substantial changes of circumstances have occurred in any fiscal year.

#### Contents of an SEA's application and updating information (§ 201.12) and Submission of LEA project applications to the SEA (§ 201.17)—

These sections contain additional information on the contents of State and local educational agency applications for the program to meet the special needs of migratory children. The regulations specify, by statutory provision, the items which must be included. Requirements for parent involvement (§ 201.35)—

This section requires parent advisory councils at the State and local levels for the program to meet the special needs of migratory children with appropriate procedures to be established by each SEA.

The changes in §§ 201.3(b) and 201.35 result from technical amendments to ECIA enacted December 8, 1983 (Pub. L. 98-211) and the technical amendment to ECIA enacted June 12, 1984 (Pub. L. 98-312). Since extensive comment was received on those issues in response to the NPRM, no further need for comment is evident. These final regulations also incorporate the requirements of Pub. L. 98-211 and Pub. L. 98-312 related to other portions of Part 201, such as § 201.12 concerning the content of the State's application, but do not expand on them.

### D. Summary of Regulatory Provisions in Parts 201 and 203

(1) *Applying for Chapter 1 Funds (Subpart A)*. Each Subpart A contains

definitions of several key terms used in each Part and explains the procedures for applying for funds for each Chapter 1 program.

With regard to applications, each Subpart A provides generally that an SEA that wishes to receive Chapter 1 funds must submit an application and have on file with the Secretary assurances that meet the applicable requirements in Section 435 of the General Education Provisions Act (GEPA) pertaining to fiscal control and fund accounting procedures.

The regulations also indicate that other agencies must submit an application to an SEA and meet the requirements for SEA approval of an application, in order to receive a grant from the SEA to operate a project.

(2) *Procedures for Determining the Amount of Grants and Subgrants (Subpart B)*. Each Subpart B describes how a grant is made to an SEA, including the method for determining the amount available for an SEA's grant, and the amount available for SEA administration. In addition, each Subpart B describes how grants to other agencies within a State are made. Section 201.24 indicates the circumstances under which the Secretary may make a special arrangement (a bypass) for migrant education services.

(3) *Project Requirements (Subpart C)*. Although the Chapter 1 statute retains most of the basic project design characteristics found in Title I, it reflects the Congressional intent to simplify the requirements. Each Subpart C contains the few special requirements, in addition to those in Subpart A, that apply to the design and operation of each type of program supported with Chapter 1 funds.

### E. Summary of Regulatory Provisions in Parts 200 and 204

As noted above, the Department has published final regulations in 34 CFR Part 200 governing the Chapter 1 program of financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children. Part 200 currently contains certain provisions that are included in Part 204 in these regulations. These provisions are those in 34 CFR 204.3, Acronyms that are frequently used; § 204.10, Recordkeeping requirements; § 204.11, Access to records and audits; § 204.12, Audit claims; § 204.14, Availability of funds; § 204.20, Sufficient size, scope, and quality of project; § 204.40, General; § 204.41, Jurisdiction; § 204.42, Definitions; § 204.44, Written

notice; § 204.45, Filing an application for review; § 204.46, Review of the written notice; § 204.47, Acceptance of the application; § 204.48, Rejection of the application; § 204.49, Intervention; § 204.51, The Panel's decision; § 204.52, Opportunity to comment on the Panel's decision; § 204.54, Cease and desist hearing; § 204.55, Cease and desist written report and order; and § 204.56, Enforcement of a cease and desist order.

The provisions in Part 204 replace those included in 34 CFR Part 200. When Part 204 takes effect, the duplicate provisions will be removed from Part 200.

Several sections which were published in the December 3, 1982 proposed regulations were affected by the technical amendments enacted on December 8, 1983 (Pub. L. 98-211). As a result, in an NPRM published in the *Federal Register* at 49 FR 31916 (Aug. 9, 1984), the Secretary repropounded those sections in Part 204 affected by the technical amendments. That document also proposed certain changes in the due process procedures in Part 204.

The sections that were repropounded on August 9 are: § 204.13, State rulemaking and other SEA responsibilities; § 204.21, Annual meeting of parents; § 204.22, Allowable costs; § 204.23, Evaluation; § 204.30, Maintenance of effort; § 204.31, Waiver of the maintenance of effort requirements; § 204.32, Supplement, not supplant; § 204.43, Eligibility for review; § 204.50, Practice and procedure; and § 204.53, The Secretary's decision. Because these sections have been published for additional public comment, the final regulations for Part 204 reserve those sections. When these sections become final, they too will be removed from Part 200.

The final regulations for Part 204 are summarized below:

(1) *General Definitions and Applicability (Subpart A)*. Subpart A contains definitions of several key terms that apply to the programs covered in 34 CFR Parts 200, 201, and 203 and the Chapter 1 State-operated program for handicapped children. This subpart also contains commonly-used acronyms that apply to Chapter 1 programs.

(2) *General Administrative Requirements (Subpart B) and Project Requirements (Subpart C)*. Subparts B and C contain requirements that apply to the design and operation of all projects supported with Chapter 1 funds. These requirements relate to—

- Recordkeeping requirements (204.10);
- Access to records and audits (204.11);
- Audit claims (204.12);

- Availability of funds (204.14); and
- Sufficient size, scope, and quality of project (204.20).

With regard to § 204.11(b)(1) concerning the responsibility of State and local governments to conduct audits in accordance with 34 CFR 74.62, the Secretary calls attention to the Single Audit Act of 1984, Pub. L. 98-502, 31 U.S.C. 7501 *et seq.*, enacted on October 19, 1984. This Act applies to any State or local government with respect to any of its fiscal years which begin after December 31, 1984. To the extent 34 CFR 74.62 is inconsistent with that Act, State and local governments should comply with the provisions of the Act. The Secretary expects to amend 34 CFR 74.62 in the future to conform that regulation to the provisions of the Single Audit Act.

(3) *Fiscal Requirements (Subpart D)*. This subpart is reserved.

(4) *Due Process Procedures (Subpart E)*. Subpart E contains specific provisions that afford due process protections to SEAs concerning—

- Final audit determinations.
- Determinations to withhold funds.
- Cease and desist complaints.
- Other Chapter 1 proceedings that may be designated by the Secretary.

These regulations are consistent with the Administration's efforts to reduce regulatory burden while increasing State and local flexibility. To the extent feasible, the Secretary will give deference to an SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with the Chapter 1 statute, legislative history, regulations, and other applicable provisions of law.

#### F. Application of Other Statutes and Regulations

(1) Recipients of funds under Chapter 1 are recipients of Federal financial assistance and, therefore, must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance. Consequently, those statutes, as well as the regulations that implement them, apply to Chapter 1 programs. The applicable civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although final regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 1 funds must comply with the provisions of that Act.

(2) Section 596 of the ECIA, as amended by Pub. L. 98-211, makes certain sections of GEPA specifically applicable to Chapter 1 programs. Subject to the exceptions stated below, the provisions of GEPA are applicable to Chapter 1.

(A) Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(B) Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231c(a), is superseded by Section 591(b) of the ECIA.

(C) Section 427 of GEPA (regarding the promulgation of Federal regulations or criteria relating to parental participation), 20 U.S.C. 1231d, is superseded by Section 556(b)(3) of Chapter 1.

(D) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Section 556 of Chapter 1.

(E) Section 431A of GEPA (relating to maintenance of effort determinations), 20 U.S.C. 1232-1, is superseded by Section 558(a) of Chapter 1 relating to the same topic.

(F) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA application) of GEPA do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds). Section 435 of GEPA applies to Chapter 1 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and funds accounting procedures. Section 436 of GEPA applies to Chapter 1 with regard to similar assurance in paragraphs (b)(2) and (b)(3).

(G) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(H) Section 455 of GEPA, 20 U.S.C. 1234d, is superseded by Section 593 of the ECIA with respect to judicial review of withholding actions.

(3) Section 1741 (distribution of block grant funds), Section 1742 (reports on the proposed use of funds and public hearings), Section 1743 (transition provisions), and Section 1745 (State audit requirements) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 1. However, Section 1744 regarding access to records by the Comptroller General does apply, and its provisions have been incorporated in § 204.11 of these regulations.

(4) The Education Department General Administrative Regulations (EDGAR), with the exception noted in paragraph 5 below, do not apply to these programs. EDGAR includes 34 CFR Part 74, which incorporates Office of Management and Budget (OMB)

Circulars A-21, A-87, A-102, A-110, and A-122, and 34 CFR Part 76, which deals with State-administered programs. Rather than complying with the provisions contained in these parts, agencies may apply equivalent procedures of their own for financial management and control of their programs. However, agencies continuing to comply with the provisions in 34 CFR Part 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 435 and 436 of GEPA that apply to Chapter 1. The parts of EDGAR that do not apply to Chapter 1 also include 34 CFR Part 77 (Definitions That Apply to Department Regulations) and Part 78 (Education Appeal Board).

(5) Subject to any changes necessitated by the Single Audit Act, referred to above, 34 CFR 74.62, related to non-Federal audits, applies to Chapter 1. This section incorporates the audit requirements contained in Attachment P to OMB Circular A-102.

#### Public Participation

Proposed regulations were published on December 3, 1982, with a comment period of 60 days. In response to public request, the original period for comment was increased to 105 days. During the comment period, over 13,000 letters containing comments were received. Comments were also received in the course of briefing sessions conducted by the Department for State and local officials. A summary of significant comments and responses to them are contained in the appendix to these regulations. The appendix will not be codified in the Code of Federal Regulations.

The Department has carefully considered all comments received and has made changes warranted by those comments. The appendix summarizes these changes.

#### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are

not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 1. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising the State agencies and LEAs in administering the programs. Program funds may be used for LEA administrative expenses. For these reasons, the regulations will not have a significant economic impact on the small entities affected.

#### Intergovernmental Review

The program for financial assistance to SEAs to meet the special educational needs of migratory children (Part 201) is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

#### List of Subjects

##### 34 CFR Part 200

Education, Education of disadvantaged, Education of handicapped, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Migrant labor, \*Neglected, Private schools.

##### 34 CFR Part 201

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor, \*Neglected, \*Private schools.

##### 34 CFR Part 203

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, \*Neglected.

##### 34 CFR Part 204

Education, Education of disadvantaged, Education of handicapped, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Migrant labor, \*Neglected, \*Private schools.

#### Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations. Except as otherwise indicated, references to "Sec." in these citations refer to sections of the Education Consolidation and Improvement Act of 1981.

Dated: April 23, 1985.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.009, Programs for Education of Handicapped Children in State Operated or Supported Schools; No. 84.010, Educationally Deprived Children—Local Educational Agencies; No. 84.011, Migrant Education—Basic State Formula Grant Program; No. 84.012, Educationally Deprived Children—State Administration; and No. 84.013, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 200, 203, and 204 and establishing a new Part 201 as follows:

1. Part 200 is amended by removing the sections listed below:

#### PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

- Sec.
- 200.4 Acronyms that are frequently used.
- 200.51 Sufficient size, scope, and quality of project.
- 200.56 Recordkeeping requirements.
- 200.57 Audits and access to records.
- 200.58 Compromise of audit claims.
- 200.64 Availability of funds.
- 200.90 General.
- 200.91 Jurisdiction.
- 200.92 Definitions.
- 200.94 Written notice.
- 200.95 Filing an application for review of a final audit determination or a withholding hearing.
- 200.96 Review of the written notice.
- 200.97 Acceptance of the application.
- 200.98 Rejection of the application.
- 200.99 Intervention.
- 200.101 The Panel's decision.
- 200.102 Opportunity to comment on the Panel's decision.
- 200.104 Cease and desist hearing.

Sec.

- 200.105 Cease and desist written report and order.
- 200.106 Enforcement of a cease and desist order.

(Sec. 552-558, 591-596 of Pub. L. 97-35, 95 Stat. 464-469, 480-482 (20 U.S.C. 3801-3807, 3871-3876), as amended by Pub. L. 98-211, unless otherwise noted).

2. Part 204 (Migrant Education Program) is revised and redesignated as Part 201 to read as follows:

#### PART 201—FINANCIAL ASSISTANCE TO STATE EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

##### Subpart A—Applying for Chapter 1 Migrant Education Program Funds

###### General

Sec.

- 201.1 Purpose.
- 201.2 Applicable regulations.
- 201.3 Definitions for this program.
- 201.4-201.9 [Reserved]

###### Applying for a State Grant

- 201.10 Eligibility of an SEA to participate as a grantee.
- 201.11 Documents an SEA must submit to receive a grant.
- 201.12 Contents of an SEA's application and updating information.
- 201.13 Approval of an SEA's application.
- 201.14-201.15 [Reserved]

###### Applying to an SEA for a Subgrant

- 201.16 Documents that an LEA must submit to apply for a subgrant.
- 201.17 Submission of an LEA's project application to the SEA.
- 201.18 Approval of an LEA's project application for a subgrant.
- 201.19 [Reserved]

##### Subpart B—Determining the Amount of Grants and Subgrants

- 201.20 Amount available for an SEA grant.
- 201.21 Determination of an SEA grant.
- 201.22 Reallocation of excess funds.
- 201.23 Amount available for State administration.
- 201.24 Secretary's special arrangement for services (bypass).
- 201.25 Amount of a subgrant to an LEA.
- 201.26-201.29 [Reserved]

##### Subpart C—Project Requirements

- 201.30 Eligibility of a child to participate.
- 201.31 Service priorities.
- 201.32 Annual needs assessment.
- 201.33 Special allowable costs for migrant programs.
- 201.34 Coordination with other migrant programs and projects.
- 201.35 Requirements for parent involvement.
- 201.36-201.39 [Reserved]

Authority: Secs. 552-558, 591-596 of Pub. L. 97-35, 95 Stat. 464-469, 480-482 (20 U.S.C. 3801-3807, 3871-3876), unless otherwise noted.

## Subpart A—Applying for Chapter 1 Migrant Education Program Funds

### General

#### § 201.1 Purpose.

The migrant education program, authorized by Section 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Chapter 1), is designed to—

- (a) Provide financial assistance to State educational agencies (SEAs) to establish or improve programs of education designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers; and
- (b) Enable these SEAs to coordinate their migrant education programs and local migrant education projects with similar programs and projects in other States, including the transfer of school records and other information about eligible migratory children.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 552, 20 U.S.C. 3801; Title I, Secs. 141–142, 20 U.S.C. 2761–2762)

#### § 201.2 Applicable regulations.

The regulations in this part, 34 CFR Part 204, and 34 CFR 74.62 apply to migrant education programs and projects for which the Secretary provides financial assistance under Chapter 1 pursuant to the formula contained in Section 141 of Title I of Elementary and Secondary Education Act of 1965, as amended (Title I). Regulations for interstate and intrastate coordination program grants are contained in 34 CFR Part 205.

(Secs. 552–558, 20 U.S.C. 3801–3807)

#### § 201.3 Definitions for this program.

(a) The definitions in 34 CFR 204.2 apply to the programs and projects covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this Part:

“Agricultural activity” means—

- (1) Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;
- (2) Any activity directly related to the cultivation or harvesting of trees; or
- (3) Any activity directly related to fish farms.

“Currently migratory child” means a child—

- (1) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and
- (2) Who has moved within the past 12 months from one school district to

another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity. This definition also includes children of migratory fishermen, if those children reside in a school district of more than 18,000 square miles and migrate a distance of 20 miles or more to temporary residences to engage in fishing activity.

“Fishing activity” means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

“Formerly migratory child” means a child who—

- (1) Was eligible to be counted and served as a currently migratory child within the past five years, but is not now a currently migratory child;
- (2) Resides in the area served by the agency carrying out a Chapter 1 migrant education program or project; and
- (3) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

“Guardian” means a person who—

- (1) Has been appointed to be the legal guardian of a child through formal proceedings in accordance with State law;
- (2) An SEA determines would be appointed to be the legal guardian of a child under the law of the child's domiciliary State if formal guardianship proceedings were undertaken; or
- (3) Is standing in the place of a parent to a child.

“Migratory agricultural worker” means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in an agricultural activity.

“Migratory children” means children who qualify under either the definition of “currently migratory child” or “formerly migratory child” described in this section.

“Migratory fisher” means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised

of a single school district, has moved from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in a fishing activity.

“Operating agency” means—

- (1) A local educational agency (LEA) to which an SEA makes a subgrant of migrant education program funds;
- (2) A public or nonprofit private agency with which an SEA or the Secretary makes an arrangement to carry out a migrant education project; or
- (3) An SEA, if the SEA operates the State's migrant education program or projects directly.

(Secs. 552–558, 20 U.S.C. 3801–3807; Title I, Sec. 142(b), 20 U.S.C. 2762(b))

#### §§ 201.4–201.9 [Reserved]

### Applying for a State Grant

#### § 201.10 Eligibility of an SEA to participate as a grantee.

(a) An SEA may apply to the Secretary for a grant to operate a State migrant education program directly, through subgrants to LEAs, or through arrangements with public or nonprofit private agencies.

(b) Two or more SEAs may apply jointly for a grant to support a migrant education program that benefits eligible migratory children in those States.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141(a), 20 U.S.C. 2761(a))

#### § 201.11 Documents an SEA must submit to receive a grant.

(a) *SEA assurances.* An SEA that wishes to receive Chapter 1 migrant education program funds under this Part shall have on file with the Secretary assurances that—

- (1) Meet the requirements in Section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures;
- (2) Meet the requirements of Section 142(a)(5) of Title I regarding when preschool children may be served; and
- (3) Have been properly submitted to the Secretary by the SEA.

(b) *SEA application.* To receive a Chapter 1 migrant education program grant, an SEA shall submit to the Secretary an application to cover a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application. During subsequent years, the SEA's application must incorporate any updating reports required by § 201.12(b) to assure that the State's program and projects annually comply with the Chapter 1 requirements. The application must be specific and contain



sufficient information to allow the Secretary to determine whether the State's program and projects will satisfy the requirements of Chapter 1 and the applicable regulations for each year.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3876; Title I, Sec. 141 (a) and (b), 20 U.S.C. 2761 (a) and (b))

(Approved by the Office of Management and Budget under control number 1810-0029)

**§ 201.12 Contents of an SEA's application and updating information.**

(a) *Contents of an application.* The SEA's application must address the following topics sufficiently to permit the Secretary to evaluate the proposed program and determine that the State's program and projects will be administered and carried out in a manner that complies with the Chapter 1 statute, the applicable regulations, and applicable assurances:

(1) How, in accordance with Section 142(a) of Title I, the SEA plans to spend Chapter 1 migrant education program funds, including the estimated unused amount of its preceding year's migrant education program grant—

(i) To administer and operate the program and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children; and

(ii) To coordinate the program and projects with those of other States, including the transmittal of pertinent information with respect to school records of migratory children.

(2) How, in accordance with Section 142(a)(2) of Title I, the SEA in planning and carrying out its program and projects shows there has been and will be appropriate coordination with programs administered under the Community Services Block Grant Act of 1981 (45 U.S.C. 9901) and under Section 402 of the Job Training Partnership Act of 1982 (29 U.S.C. 1672).

(3) How, in accordance with Section 142(a)(3) of Title I and Section 556 of Chapter 1—

(i) The SEA will ensure that LEAs and other operating agencies will expend Chapter 1 migrant education funds only on the basis of applications approved by the SEA;

(ii) The annual assessment of the State's identified migrant children with special educational needs has affected the program design;

(iii) The children selected for services are those who have the greatest need for special assistance and how the needs of these children are sufficiently specified to permit concentration on them;

(iv) The size, scope, and quality of the program and projects offered are sufficient to give reasonable promise of substantial progress toward meeting the special educational needs of the migrant children being served;

(v) The program and projects are designed and will be implemented in consultation with parents and teachers;

(vi) The effectiveness of the program and projects in achieving program goals will be evaluated in objective, measurable terms of educational achievement in basic skills and will include a determination whether improved performance is sustained;

(vii) The SEA will ensure that results of evaluations will be used to improve the provision of services to eligible migrant children; and

(viii) Services will be provided to eligible migrant children enrolled in private schools.

(4) How, in accordance with Section 142(A)(3) of Title I and Section 558 of Chapter 1, the State's administration and implementation of the program and projects for eligible migrant children are consistent with the basic objectives of project requirements contained in Section 558 of Chapter 1 regarding maintenance of effort, supplementing of non-Federal assistance, and comparability of services.

(5) How, in accordance with Section 142(a)(4) of Title I, the SEA has planned and will carry out its program and projects in consultation with parent advisory councils at the State and local levels.

(b) *Amendments to the application: annual updating of information in the application.* An SEA shall annually update its application by submitting to the Secretary—

(1) A request for the next fiscal year's allocation of migrant education program funds;

(2) A statement of the estimated unused amount of its preceding year's migrant education program grants;

(3) A budget for the expenditure of the succeeding year's Chapter 1 migrant education funds; and

(4) Any additional updating arising from significant changes in the number or needs of children to be served, or the services to be provided.

(c) *Further updating of information in the application.* If, during the course of a project year, there are significant changes in the number or needs of the children to be served or the services to be provided, the SEA shall submit a description of those changes to the Secretary together with the impact of the changes on the Chapter 1 migrant education budget, program, and projects.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3805; Sec. 558, 20 U.S.C. 3807; Title I, Sec. 142(a), 20 U.S.C. 2762(a); 29 U.S.C. 1592; 45 U.S.C. 9912)

(Approved by the Office of Management and Budget under control number 1810-0029)

**§ 201.13 Approval of an SEA's application.**

(a) *Standards for approval.* The Secretary approves an SEA's application and any updating amendments if the proposed State migrant education program—

(1) Complies with the Chapter 1 statute and the applicable regulations;

(2) Is designed to meet the special educational needs of eligible migratory children; and

(3) Holds reasonable promise of making substantial progress toward meeting these needs.

(b) *Effect of approval.* The Secretary's approval of an application under this section requires the SEA to perform in accordance with its application, application requirements, and updating amendments, if any.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3805; Title I, Sec. 142(a), 20 U.S.C. 2762(a))

(Approved by the Office of Management and Budget under control number 1810-0504)

**§§ 201.14-201.15 [Reserved]**

**Applying to an SEA for a Subgrant**

**§ 201.16 Documents that an LEA must submit to apply for a subgrant.**

An LEA that desires to receive a subgrant shall submit to the SEA, under the procedures in § 201.17, a project application that is specific enough to allow the SEA to determine if the proposed local migrant education project satisfies the applicable requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3805)

(Approved by the Office of Management and Budget under control number 1810-0504)

**§ 201.17 Submission of an LEA's project application to the SEA.**

(a) *Frequency of submission.* An LEA shall submit a project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a subgrant would be made under that application.

(b) *Contents of the application.* The project application must include—

(1) A description of the local Chapter 1 migrant education project to be conducted;

(2) A budget for the expenditure of Chapter 1 migrant education program funds;

(3) The assurances in Section 556(b)(2) through (b)(5) of Chapter 1;

(4) The assurances in Section 436(b)(2) and (b)(3) of GEPA; and

(5) Information that the SEA needs to ensure that the project comports with activities described in the SEA's application as provided in § 201.12.

(c) *Annual updating of information in the application.* An LEA shall annually update its project application by submitting to its SEA—

(1) Data showing that the LEA has maintained fiscal effort on the same basis as is required for LEAs by Section 558(a) of Chapter 1;

(2) A budget for the expenditure of Chapter 1 migrant education funds;

(3) Any additional updating resulting from significant changes in the number or needs of children to be served, or the services to be provided; and

(4) Other information that the SEA may request.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805; Sec. 596, 20 U.S.C. 3878; Title I, Sec. 142(a), 20 U.S.C. 2762(a))

#### § 201.18 Approval of an LEA's project application for a subgrant.

(a) *Standards for approval.* An SEA may approve an LEA's application for a subgrant if it complies with the requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(b) *Effect of approval.* SEA approval of a project application under paragraph (a) of this section requires the LEA to administer and operate its project in accordance with its application, any amendments, and project requirements in §§ 201.30-201.35. That approval, however, does not create for the LEA an entitlement to receive a subgrant for a period other than the first fiscal year.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805; Title I, Secs. 141-142, 20 U.S.C. 2761-62)

#### § 201.19 (Reserved)

### Subpart B—Determining the Amount of Grants and Subgrants

#### § 201.20 Amount available for an SEA grant.

(a) *General.* (1) The Secretary determines for each fiscal year the amount of the Chapter 1 migrant education program grant for which the SEA in each State may apply according to Section 141 of Title I.

(2) In applying Section 141(b)(1) of Title I, the Secretary determines for each fiscal year the number of migratory children aged five to seventeen in each

State on the basis of statistics from the Migrant Student Record Transfer System (MSRTS) or from any other system that the Secretary determines most accurately and fully reflects the actual number of migratory children residing in the State. Each SEA is required to submit accurate data that are necessary to make these determinations.

(b) *Special summer formula.* In making the adjustment required by Section 141(b) of Title I to reflect the special needs of migratory children for summer projects and the additional costs of operating those projects, the Secretary uses the best available information from the MSRTS or other system about the cost of operating summer projects and the number of children in each State participating in those projects.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141(b), 20 U.S.C. 2761(b))  
(Approved by the Office of Management and Budget under control number 1810-0520)

#### § 201.21 Determination of an SEA grant.

(a) *Estimated cost of a State migrant education program.* (1) An applicant SEA is entitled to receive a Chapter 1 migrant education grant in the amount the Secretary determines for each fiscal year, on the basis of the best information available to the Secretary at the time, is necessary to carry out the activities in its application.

(2) This amount may not exceed the total amount available to that SEA as determined by the Secretary under § 201.20.

(b) *Consideration of the cost of past and future activities and the amount of funds available.* In determining the amount of the Chapter 1 migrant education program grant to which an SEA is annually entitled, the Secretary considers—

(1) The amount for which the SEA may apply, as determined under § 201.20;

(2) The cost of completed program activities under previous migrant education program grants, under Section 554(a)(2) of Chapter 1 or Section 141 of Title I, and the number of children who were served;

(3) The estimated cost of activities not yet begun under the preceding grant and the number of children who will be served;

(4) In the case of a request for an increase in the grant that the Secretary previously determined to be necessary to carry out the annual activities in the approved SEA application, the estimated cost of providing additional program services before the end of the

grant period and the number of children who would receive additional services;

(5) The unused amount of the SEA's preceding migrant education program grant; and

(6) Any other relevant information.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141, 20 U.S.C. 2761)

#### § 201.22 Reallocation of excess funds.

(a) If the Secretary determines that the annual amount for which an SEA may apply, as determined under § 201.20, is more than the amount needed to carry out the activities in its application for that year, the Secretary may allocate some or all of this excess to one or more other SEAs whose amounts available under §§ 201.20 and 201.21 would otherwise be insufficient to serve the eligible migratory children in those States.

(b) The Secretary notifies an SEA if part of the amount available to it is being considered for reallocation. The SEA may—within 15 days after receiving that notice—request an opportunity to explain why a reallocation is not warranted. If the SEA does not request an opportunity to explain, or if—after the explanation—the Secretary determines that the total amount available to the SEA for that fiscal year exceeds the amount needed, the Secretary may reallocate the amount in excess.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 554(b), 20 U.S.C. 3803(b); Title I, Sec. 141, 20 U.S.C. 2761)

#### § 201.23 Amount available for State administration.

To defray the State's costs of administering all Chapter 1 programs in the State, including the migrant education program, the Secretary pays each State an amount equal to the amount spent by it for the proper and efficient performance of its duties under Chapter 1—provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Section 554(b) and (d) of Chapter 1.

(Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d); Title I, Sec. 194, 20 U.S.C. 2844)

#### § 201.24 Secretary's special arrangement for services (bypass).

(a) *General.* The Secretary may make a special arrangement with one or more public or nonprofit private agencies to carry out the migrant education program in a State if the Secretary determines that—

(1) An SEA is unwilling or unable to conduct an educational program for the

migratory children who are eligible to be served;

(2) The arrangement would result in more efficient and economic administration of the program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Availability of funds.* The Secretary may use all or part of the total amount of the Chapter 1 migrant education program grant available to the affected SEA—under §§ 201.20 and 201.21—to make one or more special arrangements.

(c) *Notice to the SEA.* The Secretary does not make a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(d) *Obligations of the operating agency.* If the Secretary makes a special arrangement for services through a public or nonprofit private agency, that operating agency shall administer its project in a manner consistent with an SEA's obligations under the regulations in this part.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 142(c), 20 U.S.C. 2762(c))

#### § 201.25 Amount of a subgrant to an LEA.

An SEA shall determine the amount of a subgrant to an LEA or other agency based on—

(a) The number of children to be served;

(b) The nature, scope, and cost of the proposed project; and

(c) Any other relevant criteria developed by the SEA consistent with the provisions of § 201.31, including the SEA's priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Secs. 141-142, 20 U.S.C. 2761-2762)

#### §§ 201.26-201.29 [Reserved]

### Subpart C—Project Requirements

#### § 201.30 Eligibility of a child to participate.

(a) A child may not be counted under § 201.20, or be provided with Chapter 1 migrant education program services, until an SEA or its operating agency has—

(1) Determined that the child is either a currently or formerly migratory child as defined under § 201.3; and

(2) Indicated in writing how the child's eligibility was determined.

(b) In determining the eligibility of a child, an SEA and its operating agency may seek and obtain credible information from any source, including

that provided by the child or his or her parent or guardian. Neither the SEA nor its operating agency is required to obtain documentary proof of either the child's eligibility of civil status from the child or his or her parent or guardian. However, the SEA and its operating agency are responsible for implementing procedures that ensure the correctness of the information on which the SEA or the operating agency relies.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141-142, 20 U.S.C. 2761-2762)

(Approved by the Office of Management and Budget under control number 1810-0520.)

#### § 201.31 Service priorities.

(a) An SEA and its operating agencies shall serve eligible migratory children—according to their needs—in the following order:

(1) School-aged currently migratory children.

(2) School-aged formerly migratory children.

(3) Preschool currently migratory children.

(4) Preschool formerly migratory children.

(b) If in order to provide Chapter 1 instructional services to school-aged currently migratory children, it would be necessary to provide day care or similar services to preschool-aged currently migratory children, and no other funds—other than Chapter 1 funds—are available for that purpose, an SEA or an operating agency may provide Chapter 1 instructional services instead of day care services to those preschool children as if those children had a priority higher than school-aged formerly migratory children.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 142 (a) and (b), 20 U.S.C. 2762 (a) and (b))

#### § 201.32 Annual needs assessment.

An SEA and its operating agencies that receive Chapter 1 migrant education program funds shall base their Chapter 1 migrant education program and projects on an annual assessment of educational needs that—

(a) Identifies migratory children who are eligible to be served under § 201.20(a);

(b) Requires, consistent with the service priorities in § 201.31, the selection of those migratory children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(2), 20 U.S.C. 3805(b)(2); Title I, Sec. 142(a), 20 U.S.C. 2762(a))

#### § 201.33 Special allowable costs for migrant programs.

In addition to the allowable costs for all Chapter 1 programs described in 34 CFR Part 204, the SEA may use funds available under § 201.20 (amount available for an SEA grant) to pay for necessary administrative functions that are unique to the State's Chapter 1 migrant education program as long as those functions resulted from the SEA's dual role of administering the program and providing program services.

(Sec. 544(a), 20 U.S.C. 3803(a); Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); Title I, Sec. 141, 20 U.S.C. 2761)

#### § 201.34 Coordination with other migrant programs and projects.

An SEA and its operating agencies shall plan and operate the activities described in their applications in coordination with migrant programs and projects of other groups or agencies that provide services to migrants in the area served by the SEA and its operating agencies, including migrant and seasonal farmworker projects administered under Section 402 of the Job Training Partnership Act of 1982 and under the Community Services Block Grant Act of 1981.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 142, 20 U.S.C. 2762; 29 U.S.C. 1592; 45 U.S.C. 9912)

#### § 201.35 Requirements for parent involvement.

(a) *General.* An agency that receives Chapter 1 funds shall design and implement its Chapter 1 program or projects in consultation with teachers of children being served and in consultation with the parents of the children being served.

(b) *Requirements for an operating agency advisory council.* An SEA shall require each operating agency to—

(1) Establish and consult with a parent advisory council; and

(2) Solicit actively parental involvement in the planning, operation, and evaluation of its projects.

(c) *Requirements for the State advisory council.* An SEA shall—

(1) Establish and consult with a parent advisory council; and

(2) Solicit actively parental involvement in the planning, operation, and evaluation of the State's migrant education program.

(d) *Advisory council procedures.* The SEA is responsible for ensuring that appropriate procedures are devised and made available to the State's migrant parents for establishment of and consultation with State and local parent

advisory councils. Those procedures must be consistent with the requirements of Section 125(a) of Title I.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); Title I, Sec. 142(a)(4), 20 U.S.C. 2762(a)(4))

§§ 201.36-201.39 [Reserved]

3. Part 203 is revised to read as follows:

**PART 203—FINANCIAL ASSISTANCE TO STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF INSTITUTIONALIZED NEGLECTED OR DELINQUENT CHILDREN INCLUDING CHILDREN IN ADULT CORRECTIONAL INSTITUTIONS**

**Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Serving Institutionalized Neglected or Delinquent Children**

**General**

- Sec.  
203.1 Purpose.  
203.2 Applicable regulations.  
203.3 Definitions for this program.  
203.4-203.9 [Reserved]

**Application Procedure**

- 203.10 State assurances.  
203.11 State agencies that may receive Chapter 1 funds.  
203.12 Submission of a project application by the State agency to the SEA.  
203.13 SEA approval of an application.  
203.14-203.19 [Reserved]

**Subpart B—Determining the Amount of Grants**

- 203.20 Amount of funds available for Chapter 1 grants.  
203.21-203.29 [Reserved]

**Subpart C—Project Requirements**

- 203.30 Annual needs assessment.  
203.31 Consultation with teachers and parents.  
203.32-203.39 [Reserved]

**Authority:** Secs. 552-556, 558, 591-596 of Pub. L. 97-35, 95 Stat. 464-466, 468-469, 480-482 (20 U.S.C. 3801-3805, 3807, 3871-3876), unless otherwise noted.

**Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Serving Institutionalized Neglected or Delinquent Children**

**General**

§ 203.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to State agencies for projects designed to meet the special educational needs of neglected or delinquent children—

(a) In institutions for neglected children;

(b) In institutions for delinquent children; and

(c) In adult correctional institutions.

(Sec. 552, 20 U.S.C. 3801; Sec. 554(a)(2)(C), 20 U.S.C. 3803(a)(2)(C); Title I, Secs. 151-152, 20 U.S.C. 2781-2782)

§ 203.2 Applicable regulations.

The regulations in this Part, 34 CFR 74.62, and 34 CFR Part 204 apply to projects for neglected or delinquent children for which the Secretary provides financial assistance under Chapter 1 to State agencies, as defined in § 203.3.

(Secs. 552-556, 20 U.S.C. 3801-3805; Sec. 558, 20 U.S.C. 3807)

§ 203.3 Definitions for this program.

(a) The definitions in 34 CFR 204.2 apply to the programs covered by this Part.

(b) In addition to the definitions referred to in paragraph (a) of this section the following definitions apply to this Part:

"Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Custody" means custody as defined by State law. However, for the purposes of this Part, a child who resides in an institution 24 hours a day is considered to be in the custody of the public agency that assigned him or her to the institution.

"Institution" means either an institution for neglected children, an institution for delinquent children, or an adult correctional institution.

"Institution for delinquent children" means a facility which has an average length of stay of at least 30 days and which is operated for the care of children who are in the custody of a public agency as a result of a determination under State law that they are delinquent.

"Institution for neglected children" means a facility which has an average length of stay of at least 30 days and which is operated for the care of children who are in the care of a public agency as a result of a determination of neglect under State law.

"Organized program of instruction" means an educational program (not beyond grade 12) which consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally-oriented subjects, and which is supported by other than Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

"State agency" means an agency of State government directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions. This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency. The term does not include an agency whose responsibility for these children is limited to the distribution of State financial assistance to other agencies that State law makes directly responsible for the free public education of these children.

(Secs. 552-556, 20 U.S.C. 3801-3805; Sec. 558, 20 U.S.C. 3807; Title I, Secs. 151 and 152(a), 20 U.S.C. 2781)

§§ 203.4-203.9 [Reserved]

**Application Procedure**

§ 203.10 State assurances.

A State that wishes to receive Chapter 1 funds for a project under this Part shall have on file with the Secretary assurances that—

(a) Have been properly submitted to the Secretary by the State educational agency (SEA) of that State; and

(b) Meet the requirements in Section 435 of the General Education Provisions Act as they relate to fiscal control and fund accounting procedures.

(Sec. 596, 20 U.S.C. 3876)

§ 203.11 State agencies that may receive Chapter 1 funds.

A State agency that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the State agency has on file with the SEA a current Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and  
(b) Has been approved by the SEA.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

(Approved by the Office of Management and Budget under control number 1810-0504)

§ 203.12 Submission of a project application by the State agency to the SEA.

(a) *Frequency of submission.* A State agency shall submit a Chapter 1 project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application. During subsequent years, the State agency's application must incorporate any updating reports required by paragraph (c) of this section.

(b) *Contents of the application.* The Chapter 1 project application submitted

by the State agency under this subpart must include—

(1) A satisfactory description of the Chapter 1 project to be conducted;

(2) The assurances in Section 556(b)(2)–(4) of Chapter 1;

(3) Data showing that the State agency has maintained fiscal effort on the same basis as is required for local educational agencies by Section 558(a) of Chapter 1; and

(4) A budget for the expenditure of Chapter 1 funds.

(c) *Amendments to the application: annual updating of information in a Chapter 1 application.* A State agency shall annually update its Chapter 1 application by submitting to its SEA—

(1) Data showing that the State agency has maintained fiscal effort on the same basis as is required for LEAs by Section 558(a) of Chapter 1;

(2) A budget for the expenditure of Chapter 1 funds;

(3) Any additional updating resulting from significant changes in the number or needs of children to be served, or the services to be provided; and

(4) Other information the SEA may request.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

(Approved by the Office of Management and Budget under control number 1810-0504)

#### § 203.13 SEA approval of an application.

(a) Standards for approval. An SEA may approve a State agency's application for Chapter 1 funds if that application meets the requirements of the Chapter 1 statute and the applicable regulations.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section requires the State agency to administer and operate its project in accordance with its application, any amendments, and project requirements in § 203.30–203.31. That approval, however, does not create for the State agency an entitlement to receive a subgrant for a period other than the first fiscal year.

(Sec. 556, 20 U.S.C. 3805; Title I, Sec. 152, 20 U.S.C. 2762)

#### §§ 203.14–203.19 [Reserved]

#### Subpart B—Determining the Amount of Grants

##### § 203.20 Amount of funds available for Chapter 1 grants.

(a) *Grants to State agencies.* (1) The Secretary annually notifies the SEA of the amount of funds that each State agency is eligible to receive in accordance with the provisions of Section 151 of Title I.

(2) The SEA shall notify each State agency of the amount available to it under paragraph (a) of this section, and from that amount shall make funds available to the State agency equal to the cost of programs and projects approved by the SEA in accordance with the procedures prescribed in §§ 203.12 and 203.13. The amount of funds made available to a State agency may not exceed the amount the agency is entitled to receive under paragraph (b)(1) of this section.

(b) *Amount of grants.* (1) The Secretary computes grants under Section 151 of Title I based on—

(i) Average daily attendance data determined in accordance with the provisions of paragraph (c) of this section, in the schools operated or supported by the State agencies; and

(ii) The applicable average per pupil expenditure data.

(2) On a date specified by the Secretary for each year, the SEA shall provide the Secretary with the data described in paragraphs (b)(1) (i) and (ii) of this section necessary for this computation.

(c) *Determination of average daily attendance.* (1) Average daily attendance is computed for each institution by—

(i) Calculating from daily attendance records the total number of days of attendance of children in the organized program of instruction, as defined in § 203.3, during the most recently completed school year; and

(ii) Dividing that total by 180.

(2) For the purpose of computing average daily attendance—

(i) A child is counted as being in a full day of attendance for each day he or she attends the organized programs of institution for three (3) or more hours; and

(ii) A child is counted as being in one-half (½) day of attendance for each day he or she attends the organized program of instruction for at least one (1) hour, but less than three (3) hours.

(3) To be counted in average daily attendance a child must be—

(i) In the custody of the public agency that assigned him or her to an institution;

(ii) One for whom a State agency is providing a free public education; and

(iii) For at least ten hours a week in an organized program of instruction for which daily attendance records are kept.

(4) For the purpose of computing an allocation under this Part, the Secretary may not count a child who is counted in average daily attendance under the provisions of Part B, Subpart 2 of Title I (Programs for Handicapped Children).

(Sec. 554, 20 U.S.C. 3803; Title I, Sec. 151, 20 U.S.C. 2781)

(Approved by the Office of Management and Budget under control number 1810-0060)

#### §§ 203.21–203.29 [Reserved]

#### Subpart C—Project Requirements

##### § 203.30 Annual needs assessment.

A State agency that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs of the children in the institution that—

(a) Requires the selection of those institutionalized children in the greatest need of special assistance; and

(b) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

(Approved by the Office of Management and Budget under control number 1810-0504)

##### § 203.31 Consultation with teachers and parents.

(a) An agency that receives Chapter 1 funds for programs supported under this Part shall design and implement its Chapter 1 project in consultation with teachers of the children being served and, to the extent feasible, in consultation with parents of the children being served.

(b) To meet the consultation requirement in paragraph (a) of this section, an agency operating projects for neglected or delinquent children may, but is not required to, establish and use parent advisory councils.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

#### §§ 203.32–203.39 [Reserved]

4. New Part 204 is added to read as follows:

#### PART 204—GENERAL DEFINITIONS AND ADMINISTRATIVE, PROJECT, FISCAL, AND DUE PROCESS REQUIREMENTS FOR CHAPTER 1 PROGRAMS

##### Subpart A—General Definitions and Applicability

Sec.

204.1 Applicability of regulations in this Part.

204.2 Definitions.

204.3 Acronyms that are frequently used.

204.4–204.9 [Reserved].

##### Subpart B—General Administrative Requirements

204.10 Recordkeeping requirements.

204.11 Access to records and audits.

204.12 Audit claims.

## Sec.

- 204.13 State rulemaking and other SEA responsibilities. [Reserved]  
 204.14 Availability of funds.  
 204.15-204.19 [Reserved]

**Subpart C—Project Requirements**

- 204.20 Sufficient size, scope, and quality of project.  
 204.21 Annual meeting of parents. [Reserved]  
 204.22 Allowable costs. [Reserved]  
 204.23 Evaluation. [Reserved]  
 204.24-204.29 [Reserved]

**Subpart D—Fiscal Requirements**

- 204.30 Maintenance of effort. [Reserved]  
 204.31 Waiver of the maintenance of effort requirement. [Reserved]  
 204.32 Supplement, not supplant. [Reserved]  
 204.33-204.39 [Reserved]

**Subpart E—Due Process Procedures**

- 204.40 General.  
 204.41 Jurisdiction.  
 204.42 Definitions.  
 204.43 Eligibility for review. [Reserved].  
 204.44 Written notice.  
 204.45 Filing an application for review.  
 204.46 Review of the written notice.  
 204.47 Acceptance of the application.  
 204.48 Rejection of the application.  
 204.49 Intervention.  
 204.50 Practice and procedure. [Reserved]  
 204.51 The Panel's decision.  
 204.52 Opportunity to comment on the Panel's decision.  
 204.53 The Secretary's decision. [Reserved]  
 204.54 Cease and desist hearing.  
 204.55 Cease and desist written report and order.  
 204.56 Enforcement of a cease and desist order.  
 204.57-204.59 [Reserved]

Authority: Secs. 552-556, 558, 591-596 of Pub. L. 97-35, 95 Stat. 464-465, 465-469, 490-482 [20 U.S.C. 3801-3805, 3807, 3871-3876], unless otherwise noted.

**Subpart A—General Definitions and Applicability****§ 204.1 Applicability of regulations in this Part.**

The regulations in this Part apply to all Chapter 1 programs except where otherwise noted.

(Secs. 552-556, 20 U.S.C. 3801-3805; Sec. 558, 20 U.S.C. 3807; Secs. 591-596, 20 U.S.C. 3871-3876)

**§ 204.2 Definitions.**

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this Part:

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means, except where otherwise stated—

(1)(i) Persons up to age 21 who are entitled to a free public education not above grade 12;

(ii) Preschool children; and  
 (2) For the purposes of the Chapter 1 State-operated program for handicapped children, persons aged birth to 21.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Preschool children" means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Public," as applied to an agency, organization, or institution, means under the administrative supervision or control of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(c) Any term used in the provisions of Title I referenced in Section 554 of the Education Consolidation and Improvement Act of 1981 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title I.

(d) The definitions in 34 CFR Part 77 (Definitions That Apply to Department Regulations) that apply generally to education programs do not apply to programs covered by this Part.

(e) Additional definitions pertaining to the due process procedures in §§ 204.40-204.56 are found in § 204.42.

(Secs. 552-556, 20 U.S.C. 3801-3805; Sec. 558, 20 U.S.C. 3807; Sec. 595, 20 U.S.C. 3875)

**§ 204.3 Acronyms that are frequently used.**

The following acronyms are used frequently in this Part and in 34 CFR Parts 200 through 203:

"LEA" means local educational agency.

"SEA" means State educational agency.

(Secs. 525-556, 20 U.S.C. 3801-3805; Sec. 558, 20 U.S.C. 3807; Sec. 595, 20 U.S.C. 3875)

**§§ 204.4-204.9 [Reserved]****Subpart B—General Administrative Requirements****§ 204.10 Recordkeeping requirements.**

(a) The SEA and any other agency that receives Chapter 1 funds shall use fiscal control and fund accounting

procedures that will ensure proper disbursement of and accounting for Chapter 1 funds.

(b) The SEA and any other agency that receives Chapter 1 funds shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under Chapter 1.

(c) All records required under this section must be retained—

(1) For five years after the completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits concerning the Chapter 1 project have been finally resolved.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 437(a) of GEPA, 20 U.S.C. 1232f(a); Sec. 596(a), 20 U.S.C. 3876(a))

(Approved by the Office of Management and Budget under control number 1810-0504)

**§ 204.11 Access to records and audits.**

(a) *Federal responsibilities.* (1)(i) For the purpose of evaluating and reviewing the use of Chapter 1 funds, the Secretary and the Comptroller General of the United States, and their authorized representatives, shall have access to any records and personnel that may be related or pertinent to programs assisted with Chapter 1 funds.

(ii) Any agency that receives Chapter 1 funds shall agree to cooperate with the Inspector General of the Department in the conduct of audits authorized by the Inspector General Act of 1978, including providing access to information and access to agency personnel for the purpose of obtaining explanations of the information.

(2) Unless the Secretary decides to compromise an audit claim under § 204.12(b), an SEA shall repay to the Department the amount of Chapter 1 funds that the Department determines after an audit was not spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in 34 CFR 74.62, which implements the Office of

Management and Budget Circular A-102, Attachment P.

(2)(i) An agency that receives Chapter 1 funds shall repay to the SEA the amount of Chapter 1 funds determined by the State not to have been spent in accordance with applicable law.

(ii) If the SEA recovers funds under paragraph (b)(2)(i) of this section during the period in which the misspent Chapter 1 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 1 funds and—

(A) If the agency repaying is an LEA or operating agency—

(1) Reallocate those funds for proper use to eligible LEAs and operating agencies other than the agency that was found to have misspent the funds;

(2) Return the funds for proper use to the LEA or operating agency from which they were recovered; or

(3) Return the funds to the Department; and

(B) If the agency repaying is a State agency—

(1) Return the funds for proper use to the agency from which they were recovered; or

(2) Return the funds to the Department.

(iii) If the Chapter 1 funds that an SEA recovers under paragraph (b)(2)(i) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 437(b) of GEPA, 20 U.S.C. 1232f(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 7304; Secs. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. 95-452 [5 U.S.C. App.]; Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 [42 U.S.C. 4212])

#### § 204.12 Audit claims.

(a) *Establishment of claims.* After a State or Federal audit is conducted, the Department may establish an audit claim.

(b) *Compromise.* In deciding whether to compromise audit claims, or in recommending possible compromise to the United States Department of Justice (the Federal agency that reviews proposed compromises of claims in excess of \$50,000), the Secretary takes into account—

(1) The cost of collecting the claim;

(2) The probability of the claim being upheld;

(3) The nature of the violation;

(4) Whether the practices of the agency receiving Chapter 1 funds that

resulted in the audit findings have been corrected and will not recur;

(5) Whether collection would be in the public interest or practical;

(6) Whether the agency receiving Chapter 1 funds is in all respects in compliance with Chapter 1;

(7) The extent to which the agency receiving Chapter 1 funds agrees to use non-Federal funds to supplement Chapter 1 programs; and

(8) Other relevant considerations.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103)

#### § 204.13 State rulemaking and other SEA responsibilities. [Reserved]

#### § 204.14 Availability of funds.

(a) An SEA or any other agency that receives Chapter 1 funds may obligate funds during the Federal fiscal year for which the funds were appropriated and during the succeeding Federal fiscal year.

(b) The SEA or any other agency shall return to the Department any funds not obligated by the end of the succeeding Federal fiscal year.

(c)(1) Chapter 1 funds are obligated when an SEA or any other agency—

(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 1 funds allocated for a particular Federal fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to any other agency is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

#### §§ 204.15-204.19 [Reserved]

#### Subpart C—Project Requirements

##### § 204.20 Sufficient size, scope, and quality of project.

An agency that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

##### § 204.21 Annual meeting of parents. [Reserved]

##### § 204.22 Allowable costs. [Reserved]

##### § 204.23 Evaluation. [Reserved]

##### §§ 204.24-204.29 [Reserved]

#### Subpart D—Fiscal Requirements

##### § 204.30 Maintenance of effort. [Reserved]

##### § 204.31 Waiver of the maintenance of effort requirement. [Reserved]

##### § 204.32 Supplement, not supplant. [Reserved]

##### §§ 204.33-204.39 [Reserved]

#### Subpart E—Due Process Procedures

##### § 204.40 General.

(a) Sections 204.41 through 204.56 contain rules for the conduct of proceedings arising under Chapter 1 regarding—

(1) The review of final audit determinations;

(2) Withholding hearings;

(3) Cease and desist proceedings; and

(4) Other proceedings designated by the Secretary.

(b) If the Secretary designates other proceedings to the Education Appeal Board under paragraph (a)(4) of this section, the designation may specify that certain of the rules governing Board proceedings are modified as may be appropriate.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

##### § 204.41 Jurisdiction.

Under Chapter 1, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings;

(c) Conduct cease and desist proceedings; and

(d) Conduct other proceedings designated by the Secretary.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

##### § 204.42 Definitions.

For the purposes of §§ 204.40 through 204.56, the following definitions apply:

"Appellant" means an SEA that requests—

(a) A review of a final audit determination;

(b) A withholding hearing; or

(c) A hearing in other proceedings designated by the Secretary.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice by an authorized Department official issued after an audit disallowing expenditures made by a recipient under Chapter 1.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel, consisting of at least three members of the Board, designated by the Board Chairperson to conduct any case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under the regulations in this part;

(b) The authorized Department official who issued the final audit determination being appealed, notice of an intent to withhold funds, the cease and desist complaint, or any other notice that the Board has jurisdiction to review; and

(c) Any person, group, or agency whose application to intervene is approved.

"Recipient" means the named party or entity that initially received Federal funds under Chapter 1.

"Withholding" means stopping payment of Federal funds under Chapter 1 to a recipient and stopping the recipient's authority to charge costs under Chapter 1 for the period of time the recipient is in violation of a requirement.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

#### § 204.43 Eligibility for review [Reserved]

#### § 204.44 Written notice.

(a) *Written notice of a final audit determination.* (1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 1.

(2) In the written notice, the authorized Department official—

(i) Lists the disallowed expenditures made by the recipient;

(ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;

(iii) Cites the requirements with which the recipient has allegedly failed to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written notice of an intent to withhold funds.* (1) An authorized Department official issues a written notice to a recipient under Chapter 1 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 1. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(d) *Written notice of other determinations.* (1) The Secretary may issue a written notice to a recipient under Chapter 1 of any other determination with regard to the recipient's use of these funds.

(2) That notice indicates that the Secretary has designated the Board to

hear any application for review that the recipient may file and specifies that the recipient may file an application for review within 30 calendar days of receipt of the notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

#### § 204.45 Filing an application for review.

(a) An appellant seeking review of a final audit determination, a withholding hearing, or other determination designated by the Secretary shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives the written notice.

(b) In the application, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons support that position.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

#### § 204.46 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination, intent to withhold funds, or other determination after an application is received under § 204.45 to ensure that the written notice meets the applicable requirements in § 204.44.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 204.44, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the appellant of that decision.

(c) If the official makes the appropriate modifications and the appellant wishes to pursue its appeal to the Board, the appellant shall amend its application within 30 calendar days of the date it receives the modifications.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

#### § 204.47 Acceptance of the application.

If the appellant files an application that meets the requirements of § 204.45, the Board Chairperson—



(a) Issues, within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and to the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the Federal Register prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and the parties an initial hearing record that includes—

(1) The written notice;

(2) The appellant's application; and

(3) Other relevant documents, such as audit reports.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

#### § 204.48 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 204.45, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

(1) Collect the expenditures disallowed in the final audit determination;

(2) Withhold funds; or

(3) Carry out the decision described in the written determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

#### § 204.49 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene must contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e))

#### § 204.50 Practice and procedure. [Reserved]

#### § 204.51 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, a notice of an intent to withhold funds, or other final determination within 180 days after receiving the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

#### § 204.52 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 204.51 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within seven days of the date the party receives the initial comments and recommendations.

(c) *Forwarding comments.* The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

#### § 204.53 The Secretary's decision. [Reserved]

#### § 204.54 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234c(b))

#### § 204.55 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 454 (c), (d) of GEPA, 20 U.S.C. 1234c (c), (d))

#### § 204.56 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 1 without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454 (e) of GEPA, 20 U.S.C. 1234c(e))

#### §§ 204.57-204.59 [Reserved]

Note.—This Appendix will not be codified in the Code of Federal Regulations.

### Appendix—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking—for the migrant education program, the institutionalized neglected or delinquent children program, and the general definitions and administrative, project, fiscal and due process requirements for Chapter 1 programs—published on December 3, 1982. Each comment is followed by a response that indicates a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of these final regulations to which they pertain.

#### Part 201—General

**Comment.** Many commenters recommended that the Secretary include specific language in the final regulations that requires SEAs, LEAs, and other operating agencies to participate fully in the Migrant Student Record Transfer System (MSRTS) as was required in 34 CFR 204.54(c).

**Response.** No change has been made. The Secretary believes that the statute (Sections 141(b) and 142(a)(1) of Title I), as incorporated into Chapter 1, provides sufficient direction and incentive for the SEAs' full participation in MSRTS. Sections 201.12, 201.20, and 201.33 of these regulations imply that SEAs and their operating agencies must participate fully in and implement MSRTS as one of a series of functions of migrant education.

**Comment.** Several commenters raised concerns about the decreasing amount of funds available annually for the Migrant Education Basic State Formula Grant Program.

**Response.** No change has been made. The amount of funds made available annually for the operation of the Migrant Education Basic State Formula Grant Program is determined each year through the Congressional appropriations process.

**Comment.** Several commenters recommended that these regulations be amended to contain language that specifically authorizes interstate and intrastate projects to provide services for eligible migratory children.

**Response.** No change has been made. Section 142(a)(1) of Title I provides that payments will be used for programs and projects designed to meet the special educational needs of migratory children and to coordinate such programs and projects with similar programs and projects in other States. Further, Section 141(a)(1) expressly makes Migrant Education Basic State Formula Grant

funds available to an SEA "or a combination of such agencies." Section 201.10(b) of these regulations clarifies that a combination of SEAs may apply for migrant education program funds that benefit eligible migratory children in those States.

**Comment.** Several commenters recommended that the revision of the proposed regulations include a continuing authorization for the discretionary Migrant Education Interstate and Intrastate Coordination Program. This program was previously included in the final regulations for the basic program.

**Response.** No change has been made. Final regulations for the Migrant Interstate and Intrastate Coordination Program (34 CFR Part 205) were published separately in the **Federal Register**, July 29, 1983 at 48 FR 34644.

**Comment.** Many commenters recommended that the regulations be revised to continue the provision of day care services to eligible migratory families who require the services. Commenters stated that the availability of these types of services is critical to ensuring that all migratory children attend school.

**Response.** No change has been made. The statute in Section 142(a)(5) and (b) of Title I establishes a service priority in favor of school-aged migratory children. By law, services to school-aged migratory children must take precedence over services to preschool children. Day care services can be authorized only in special circumstances. The SEA's program plan must demonstrate that identified currently and formerly migratory children will be served, and day care services will be provided only as a supporting service when necessary to enable eligible, school-aged migratory children to participate in Chapter 1 educational services.

**Comment.** Several commenters recommended that the Secretary revise the proposed regulations to include language contained in the former regulations with regard to the withholding of funds. The commenters believed that inclusion of a section on withholding would clarify the situation for the program participants.

**Response.** No change has been made. It is not necessary to restate in the regulations the authority to withhold funds, or the conditions under which funds may be withheld from a State. Those subjects are treated in Section 592 of the ECIA. Due process procedures that are applicable, if a decision to withhold funds is made, are found in Subpart E of Part 204.

#### Section 201.1 Purpose.

**Comment.** One commenter observed that § 201.1(a) states that the purpose of the migrant education program is to establish or improve programs, while the statute adds the phrase "... either directly or through local educational agencies..." (Section 141(a)(1), 20 U.S.C. 2761(a)(1)). The commenter asked why, while the rest of the regulations shows LEAs can be involved, this part of the statute was omitted from the statement of purpose.

**Response.** No change has been made. It is not necessary to repeat provisions of the Act in their entirety. The statute specifically provides that services to eligible migratory children may be rendered directly by the SEA, or through LEAs or other operating agencies. This purpose is reinforced in § 201.10 of these regulations.

**Comment.** A commenter called attention to § 201.1(b) which reads "... including the transfer of school records and other information about eligible migratory children." The commenter observed that the statute reads "... including the transmittal of pertinent information with respect to school records of such children..." and asked why the wording was changed (the regulation appears to expand the class of information).

**Response.** No change has been made. The Secretary has determined that the Title I statute, as incorporated into Chapter 1, authorizes the transmittal of pertinent and useful educational and health records from school district to school district so as to promote the well-being of children served by the system. Educational materials may include mathematics, reading, and language arts skill achievement records, as well as other essential data.

#### Section 201.2 Applicable regulations.

**Comment.** Several commenters expressed concern about the change in interpretation regarding applicability of 34 CFR Part 76 (EDGAR) and other regulations that were formerly applicable to the final regulations for the Title I migrant education program.

**Response.** No change has been made. The provisions contained in EDGAR, with the exception of 34 CFR 74.62, do not apply to Chapter 1 formula grant programs, including the migrant education formula grant program. The Secretary previously announced the inapplicability of EDGAR to the Chapter 1 programs in the **Federal Register**, 34 CFR 76.1, published November 19, 1982, at 47 FR 52354. Rather than continuing to comply with the provisions of EDGAR,

SEAs have the flexibility to apply equivalent procedures of their own that facilitate effective financial management and control. However, agencies choosing to comply with the provisions of EDGAR will meet the requirements for fiscal accountability contained in Chapter 1.

*Section 201.3 Definitions for this program.*

*Definition of "currently migratory child"*

*Comment.* Many commenters offered a variety of remarks and objections to the proposed definition that would require regular schooling to be interrupted as a condition of eligibility. These included expressions of belief that the proposal would encourage transiency of children during the school term, and would result in a much greater data gathering burden. Some commenters also questioned the Secretary's authority to change the definition from that in the previous Title I migrant education program regulations.

*Response.* A change has been made. Section 1 of Pub. L. 98-211 (Technical Amendments to ECIA enacted December 8, 1983) mandates use of the definition of "currently migratory child" in effect on June 30, 1982, in regulations published under Title I. The final regulation reflects the statutory requirement.

*Definition of "migratory agricultural worker" and "migratory fisherman"*

*Comment.* Many commenters objected to the "primary occupation requirement" included in the proposed definitions of "migratory agricultural worker" and "migratory fisherman." Commenters objected to the possible increased data burden they believed might result from such a definition, and questioned the efficacy of making this change.

*Response.* A change has been made. Section 1 of Pub. L. 98-211 mandates use of the definition of "migratory agricultural worker" and "migratory fisherman" in effect on June 30, 1982, in regulations published under Title I. The final regulations reflect the statutory requirement.

*Definition of "formerly migratory child"*

*Comment.* Many commenters were concerned about a reduction in the period of eligibility for program services for those children who are classified as formerly migratory children. Conversely, several commenters recommended a decrease in the period of eligibility from five to two or three years during which a child could be considered to be formerly migratory rather than any restrictive

change in the definition of "currently migratory child."

*Response.* No change has been made. The proposed regulations did not provide for a reduction in the number of years a child could remain eligible as a formerly migratory child. The statute provides that a formerly migratory child is eligible to be served for a period not in excess of five years following the determination the child is no longer eligible as currently migratory.

*Comment.* One commenter recommended that the eligibility criteria for the program be expanded to include children of refugees who may ultimately join the established migratory streams. Although children of these refugees are not currently eligible, the commenter observed that they have been involved in agriculture in their home countries and have had to relocate in the United States for many varied reasons.

*Response.* No change has been made. Chapter 1 of the ECIA does not provide a special authorization for children of refugees, who do not come to this country for the purpose of seeking temporary or seasonal work in agricultural or fishing activities. Children of refugees can become eligible only if they meet the statutory conditions.

*Definition of "agricultural activity"*

*Comment.* Several commenters recommended that the Secretary expand the proposed definition of "agricultural activity" to include workers whose employment is not in, but is dependent upon, seasonal agricultural work. The proposed additions would include mill yard workers who unload logs from vehicles at the lumber mill site and initially process them.

*Response.* No change has been made. The inclusion as eligible migratory workers of those who are involved in such industrial processing of forest products would violate the statutory purpose for which the Chapter 1 migrant education funds are appropriated and distributed.

*Other definitions.*

*Comment.* Several commenters objected to the elimination of the definition of the term "guardian" that was included in prior regulations for the program. The commenters recommended that the Department define the term in order to avoid confusion that might result if States apply different meanings to it.

*Response.* A change has been made. The definition contained in the prior regulations under Title I has been included.

*Section 201.10 Eligibility of an SEA to participate as a grantee.*

*Comment.* A commenter indicated that Section 141(a) of Title I, 20 U.S.C. 2761(a), does not expressly authorize grants to States to allow them to conduct programs "... through arrangements with public or nonprofit agencies. ..." The commenter observed that such groups are only mentioned in the Section 142(c) "By-Pass Provision" as eligible for direct action by the Secretary. The commenter asked why the regulations permit SEAs to subgrant to or make special arrangements with these agencies, and requested the specific statutory authority for this inclusion in the regulations.

*Response.* No change has been made. Sections 141 and 142 of Title I, as incorporated into Chapter 1 of the ECIA, make the SEA responsible for the proper administration of the State's migrant education program. In the exercise of that responsibility and subject to the Secretary's approval of the State plan, the SEA has authority to determine how the State's program will best be conducted. Therefore, in those instances where the State operates its migrant education program and projects through subgrants to LEAs, the SEA has authority to bypass LEAs not choosing or failing to serve eligible migratory children. If the SEA refuses or fails to provide services to eligible migrant children, the Secretary may intervene and exercise the formal "bypass authority" contained in Section 142(c) of Title I. These regulations are substantially the same as § 204.1(b) of the former Title I regulations.

*Section 201.11 Documents an SEA must submit to receive a grant.*

*Comment.* Several commenters recommended modifications to this section of the regulations, such as requiring a State monitoring and enforcement plan, and changing the submission schedule for State plans. Another commenter asked what the Secretary means by the phrase "properly submitted to the Secretary."

*Response.* No change has been made. Sections 141(a) and 142(a) of Title I provide that the Secretary shall provide migrant program funding to an SEA for any fiscal year upon his determination that the SEA's program and projects so funded meet applicable program requirements. The statute does not require the SEA annually to submit descriptions of its State's program and projects where the programs and projects do not materially change from

one year to another. Therefore, in keeping with the purpose of the Chapter 1 program to eliminate burdensome and unnecessary paperwork, and consistent with the three-year applicant provision for LEAs under both Title I (Section 121) and Chapter 1 (Section 556), the SEA will only be required to submit an application once every three years.

However, as provided in § 201.12(b), the SEA will continue to be required to submit annually a request for funding and an update describing any significant changes in its program and projects that result from changes in the number of eligible migrant children or their specific needs. These updates will be incorporated into the State's application. The Secretary is aware that the mobility of migrant children and resultant changes in funding and program needs may make it impractical to address all the requirements contained in § 201.12 for a three-year period. In these circumstances, annual updates should include the required information.

Chapter 1 does not authorize submission of a State monitoring and enforcement plan. Specific requirements for the content of the application and areas to be covered in updates can be found in § 201.12. The regulations contain only those requirements specified in Chapter 1. In addition, the language "properly submitted to the Secretary" means submitted in accordance with State law and procedures.

*Comment.* Several commenters recommended that a change be made in proposed § 201.11 to require specificity in the content of a State plan. The commenters believed that the proposed regulations would not ensure that the Secretary would have sufficiently current knowledge of specific on-going program activities in each SEA to permit a determination that the State plan meets the statutory requirements of Section 142 of Title I.

*Response.* A change has been made. The regulations require the application to be specific and contain sufficient information to permit the Secretary to determine whether it complies with the statute and regulations. Section 201.12 of the regulations now enumerates the specific types of information that must be included in an SEA's State plan for the Secretary's approval prior to its receipt of funds for the operation of a program. The modified requirements are discussed further in the response to comments made on § 201.12.

*Section 201.12 Contents of an SEA's application and updating information.*

*Comment.* Many commenters recommended that the Secretary be

much more specific about the types and sufficiency of information that must be included in the State plan in order for an SEA to receive the Secretary's approval and funding. The commenters believed that the proposed regulations are too vague and do not require the SEAs to supply sufficient information to enable the Secretary to determine that the SEA's program and projects will comply, at a minimum, with the statutory requirements contained in Section 142 of Title I as incorporated by reference into Section 554(a)(2) of Chapter 1.

In addition, the commenters believed that before approving an application the Secretary should be assured that the SEA had assessed the special educational needs of the children to be served, provided information on identification and recruitment strategies, planned for staff training, proposed interstate and intrastate coordination of programs, and developed program goals and objectives. Some commenters maintained that the content of a State plan prepared in accordance with § 201.12 of the proposed regulations appears to be too minimal when the plan is considered as the primary SEA planning document.

*Response.* A change has been made. This section has been amended to provide the application requirements specifically included in Section 142(a) of Title I and Sections 556 and 558 of the ECIA that must be addressed in the SEA's application for migrant education program services. This section also provides the circumstances in which an SEA must update its application.

*Comment.* Many commenters recommended that the Secretary retain the Title I requirement that SEAs perform an annual assessment of educational needs of eligible children. The commenters believed that the preparation of an annual needs assessment is crucial to the Secretary's ability to determine that the SEA has appropriately designed the program to benefit the State's eligible children.

*Response.* A change has been made. As provided in Section 556 of the Act (made a part of Section 142 by the Technical Amendments), and included in § 201.12 and § 201.32 of the final regulations, an annual assessment of educational needs continues to be required. The annual assessment must identify the eligible migratory children, require the selection of the migratory children in the greatest need of special assistance, and determine needs with sufficient specificity to ensure concentration on them.

*Comment.* Several commenters believed that the Secretary had proposed to remove existing

requirements for assessment of eligible children's health, nutritional, and social service needs. The commenters believed that these needs have to be met before the children will be adequately prepared to participate in normal educational programs. Commenters stated that failure to permit services to be provided for such needs may affect the performance of children in the educational programs.

*Response.* No change has been made. Section 555(c) of Chapter 1 permits "other expenditures authorized under Title I." The authorization to meet the special educational needs of migrant children contained in Sections 141 and 142 of Title I encompasses the provision of necessary supporting services.

*Section 201.13 Approval of an SEA's application.*

*Comment.* Several commenters proposed that an addition be made that specifically authorizes the Secretary to require revisions to the State plan submitted by an SEA if the Secretary does not consider its initial submission adequate. The commenters recommended that, in addition to permitting the Secretary to request revisions, the regulations should discuss review procedures similar to those contained in § 204.14 of the Title I regulations. In addition, some commenters were concerned about how the Secretary will determine compliance with § 201.13 and with the limited requirements contained in § 201.12.

*Response.* A change has been made. Section 201.13 now states the standards for approval the Secretary will use the effect of approving the application and any updates. Section 201.12 has been rewritten to specify the information that must be included in each application and any updates to permit the Secretary to evaluate properly an application for assistance and to approve it. The regulations, as written, provide the Secretary the authority to review the content of the application and to award grants only if satisfied that the State had demonstrated that the requirements of Chapter 1 have been and will be met. The Secretary has the necessary implicit authority to seek supplemental SEA information and application revisions.

*Comment.* A commenter asked why the Section 556(b)(3) requirement on substantial progress is set out and highlighted, when other requirements, e.g., evaluation, are not. The commenter also asked why the requirements in Section 142(a) of Title I, still applicable under Chapter 1, are omitted.

*Response.* No change has been made. Pub. L. 98-211 clarifies the requirements

for approval of an SEA's application. As amended, Section 142(a)(3) provides that the basic objectives of Section 556, other than paragraph (b)(1), and Section 558 of the ECIA are applicable to the migrant education program and must be addressed in the SEA's application. Those specific requirements are incorporated into § 201.12 of these regulations. Chapter 1 regulations continue to emphasize as did the former Title I regulations (34 CFR 204.14) that the Secretary will approve an SEA's application, if, among other conditions, the SEA's proposed program and projects hold "reasonable promise of making substantial progress" toward meeting the educational needs of migratory children.

*Section 201.17 Submission of an LEA's project application to the SEA.*

*Comment.* Several commenters recommended that the Secretary adopt more stringent LEA and operating agency application requirements. Other commenters believed that the flexibility permitted in the proposed regulations would result in irresponsible use of LEA staff time, lax documentation and monitoring, and audits and other accountability problems.

*Response.* A change has been made. The regulations provide that the SEA, as the grantee, is responsible for ensuring that LEA projects fulfill the SEA's migrant education program requirements efficiently and economically. Information necessary for the Secretary to evaluate and approve an SEA's application is specified in the revised § 201.12. The SEA is responsible to the Secretary for the use of all migrant education program funds. The SEA has the authority and responsibility to request the operating agencies to furnish data and information which are required for the SEA to submit an appropriate program application that meets the Chapter 1 and regulatory requirements. It also has the authority to permit LEAs and other operating agencies to submit subgrant applications once every three years, provided that those applications are annually updated to reflect changes in the number and needs of migrant children to be served.

*Comment.* Several commenters recommended that the Secretary revise the requirements for subgrantee applications. The commenters believed that subgrantees should prepare a descriptive application which specifies the project's objectives, demonstrates consistency with the State plan, and describes how limited-English proficiency children will benefit fully from the services provided. Specifically, the commenters recommended that the

Secretary retain the requirements described in §§ 204.32 and 204.33 of the Title I regulations.

*Response.* A change has been made. The regulations specify that the LEA application shall contain information necessary to determine that the project comports with the SEA program application. Further, § 201.12 has been written to provide the minimum requirements for proposed State agency applications. Requirements contained in §§ 201.16 and 201.17 are sufficient to enable the State to fulfill its responsibility to ensure that the State's and LEAs' projects comply with Chapter 1 and regulatory requirements and meet the objectives of the migrant education formula grant program.

*Section 201.18 Approval of an LEA's project application for a subgrant, and*

*Section 201.23 Amount for State administration.*

*Comment.* One commenter believed it unnecessary to include these two sections in regulations since they appear to duplicate the statute.

*Response.* No change has been made. The Secretary believes the relationship between the SEA's application and the LEAs' applications requires clarification. Section 201.18 provides that in addition to the standards prescribed by statute and regulations, the SEA will utilize provisions of the approved State application to review applications the operating agencies submit to the SEA. Because the migrant education program is, by statute, State administered, the SEA's description of programs and projects to be supported with Chapter 1 funds is the basis on which the SEA may fund local operating agency projects. The SEAs, thereby, retain discretion to fund varied local projects that are within the scope of their own approved State applications.

Section 201.23 serves as a reminder to SEAs that Federal funds allotted specifically for SEA administration of Chapter 1 include a portion for the administration of the migrant education program.

*Comment.* One commenter asked the rationale for § 201.18(b) and what potential problem it addresses.

*Response.* A change has been made. The proposed regulations were intended to clarify LEA responsibilities in implementing the SEA's migrant education program. Thus, when an LEA's application, or amended portion of it, is approved by the SEA without the SEA's knowledge of all of the relevant facts, the SEA's approval of the project application does not diminish the LEA's responsibility to adhere to program

requirements. The regulations have been amended to clarify the LEA's affirmative responsibilities as agent of the SEA in administering and operating the State's migrant education program and projects.

The SEA is responsible to the Department for administering and operating the State's Chapter 1 migrant education program and projects. Because it must have the necessary latitude to assure its program plan annually reflects changes in the needs and numbers of the State's migrant children, § 201.18(b) has also been revised to clarify that the SEA's approval of a project application for up to three years will not obligate the SEA to fund that project in years other than the first fiscal year.

*Comment.* One commenter implied concern that the public would have difficulty confirming that an LEA's migrant education project conforms with the State's application and applicable requirements unless the approved State application could be reviewed.

*Response.* No change has been made. As was previously announced, 34 CFR Parts 74, 76, 77, and 78 (except § 74.62) do not apply to programs funded under Chapter 1. The SEAs may instead apply equivalent procedures of their own for financial management and control of programs. Public review of approved project applications has previously been provided for in § 76.106 of EDGAR. The Secretary is confident that all SEAs and LEAs receiving Chapter 1 funds will continue to be responsive to public inquiries regarding the use of public funds.

*Section 201.20 Amount available for an SEA grant.*

*Comment.* Several commenters pointed out that the statute authorizes an adjustment to the funding formula to calculate an SEA's entitlement under the program to compensate for the additional costs of providing summer projects for eligible children. They urged that the regulations should be revised to reflect a different adjustment than is now being used.

*Response.* No change has been made. The Secretary recognizes that the statutory language provides for adjustment to the funding formula for eligible currently migratory children in attendance at summer projects. The Department's formula for determining a State's entitlement already provides for adding summer full-time equivalents (FTEs) to the FTE of children in the State during the calendar year. The Secretary believes this provision appropriately recognizes costs of operating summer programs.

*Comment.* Several commenters recommended that the formula utilized to calculate funding levels for SEAs be adjusted to compensate for those students 18 years old or older who are still enrolled in a high school program or are otherwise attempting to earn a secondary school diploma.

*Response.* No change has been made. The funding parameters in § 201.20 reflect the funding formula provided in Section 141(b) of Title I, which limits the number of migratory children who generate migrant education program funding to those migratory children five through seventeen years of age.

*Comments.* A commenter cited the portion of proposed § 201.20(a)(2) " \* \* \* or any other system the Secretary believes most accurately reflects the actual number of migratory children \* \* \* and Section 141(b)(1) of Title I which reads " \* \* \* or such other system as he may determine most accurately and fully reflects the actual number of migratory children. \* \* \* and Section 141(b)(1) of Title I which reads " \* \* \* or such other system as he may determine most accurately and fully reflects the actual number of migratory children \* \* \* ". The commenter questioned whether the proposed change in language was intended to increase the Secretary's discretion.

*Response.* A change has been made. No additional discretion was intended. The final regulations express the statutory language.

*Comment.* One commenter noted that if the amount of migrant education program grant funds allocated to each State is to be properly determined, the Department will need to receive accurate estimates of the number of eligible migrant children in each State. The commenter implied that the proposed regulations did not provide sufficient clarification of the SEA's responsibilities to provide accurate data on the status of the migrant children in question.

*Response.* A change has been made. An SEA's responsibility to provide accurate information to the national system for record transfers is implicit in its participation in that system. The Secretary agrees that § 201.20 should be amended to clarify the SEA's continued responsibility to ensure the accuracy of eligibility and other information it submits to the MSRTS so the number of FTEs obtained annually reflects those currently and formerly migratory children, aged five to seventeen, who are eligible to be served.

#### *Section 201.21 Determination of an SEA grant.*

*Comment.* One commenter questioned by paragraph (a)(2) of the proposed regulations concerning the maximum amount available to the SEA as determined by the Secretary refers to § 201.22.

*Response.* A change has been made. The reference to § 201.22 was in error and has been deleted.

#### *Section 201.23 Amount available for State administration.*

*Comment.* One commenter recommended that the Secretary consider setting regulatory standards for State-level administrative organization of the migrant education program. The commenter believed that duplicative services such as regional offices within a State need to be eliminated.

*Response.* No change has been made. The proposal that the Secretary set regulatory standards for State-level administrative organization and the elimination of substructures that are purported to be duplicative of services provided at other administrative levels, would conflict with the declared policy of the ECIA. Section 552 of the Act states assistance is to be provided in " \* \* \* a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control \* \* \* ". Congress also finds that Federal assistance " \* \* \* will be more effective if education officials \* \* \* are freed from overly prescriptive regulations and administrative burdens \* \* \* ". Creation and utilization of regional offices that are reasonable and necessary are matters of State discretion and are outside the scope of Federal Government involvement.

*Comment.* One commenter expressed the belief that, as drafted, the regulation was confusing because it did not expressly refer to the SEA's use of migrant education program funds.

*Response.* A change has been made. Under Section 194 of Title I, incorporated into ECIA by Section 554 of Chapter 1, the State receives a separate allocation of up to one percent of its total Chapter 1 funds to defray costs of administering the Chapter 1 programs. Thus, separately distributed migrant education program funds may not be used to defray these general and usual administrative expenses. Section 201.23 has been amended to clarify that these expenses are to be paid from the up-to-one percent allotment. However, expenses that are unique to the SEA's administration of the migrant education

program may be paid from the SEA's Chapter 1 migrant education program funds, as provided in § 201.33.

#### *Section 201.24 Secretary's special arrangement for services (bypass).*

*Comment.* Several commenters recommended that the Secretary revise this section to include the specific standards that will be used to determine that a special arrangement for services is warranted. In addition, the commenters believed that there is a greater need to bypass LEAs than to bypass SEAs.

*Response.* A change has been made. The Secretary does not believe that the creation of such express standards is warranted. Procedures remain flexible to permit application to a variety of situations which may arise. The SEA is the responsible agency to establish or improve education programs which meet the special educational needs of children of migratory agricultural workers or migratory fishers. The SEA may determine whether the most effective means of delivering services to those children is satisfactorily accomplished by providing the services directly, through LEAs, or through public or nonprofit private agencies.

In reviewing these comments, the Secretary has noted that, as proposed § 201.24(d) would require that if a special arrangement is made with a public or nonprofit private agency to operate the State's migrant education program, that agency should administer the program according to obligations of the operating agency under the regulations. The reference to the "operating agency's" responsibilities was inadvertent. Because the public or nonprofit private agency would act as the SEA in the State, it would be responsible for administering the program consistent with the SEA's obligations under the regulations. An appropriate change to this effect has been made.

*Comment.* One commenter requested clarification as to when the three criteria listed in § 201.24(a) are met. Specifically, information was requested as to when and how the Secretary determines that a bypass will result in more efficient administration of the program.

*Response.* No change has been made. The Secretary believes the regulations adequately state the conditions that the Secretary must find to exist before a special arrangement may be made.

*Comment.* A commenter stated the statute reads " \* \* \* would result in more efficient and economic

administration \* \* \* and asked why the term was omitted.

*Response.* A change has been made. The omission of "and economic administration" was not intentional, and the phrase has been included in § 201.24.

*Section 201.25 Amount of a subgrant to an LEA.*

*Comment.* A commenter questioned whether paragraph (c) of the regulations would authorize the SEA to determine the amount of an LEA's subgrant on relevant criteria that conflicted with the service priorities contained in § 201.31.

*Response.* A change has been made. Because the SEA is responsible to the Department for administering and operating the State's approved migrant education program and projects, the service priorities contained in § 201.31 apply to the migrant education program and projects in the State. For clarity, appropriate conforming language has been added to § 201.25.

*Section 201.30 Eligibility of a child to participate.*

*Comment.* Many commenters believed that the requirement that SEAs and LEAs provide adequate documentation to verify "primary employment," "interruption," and "regular school year" pursuant to proposed changes in the definition of a migratory child, would be very difficult and costly to meet and is inconsistent with the purpose of the ECIA.

*Response.* A change has been made. Consistent with Pub. L. 98-211, the definitions of currently migratory child, migratory agricultural worker, and migratory fisher remain the same as those in the previous Title I regulations. Consequently, the regulations do not require documentation of "primary employment," "interruption," or "regular school year."

*Comment.* Many commenters were concerned about whether, if a postexpenditure audit is conducted, an SEA's or LEA's eligibility determination made on credible information from any source would be questioned. Many commenters recommended that more specific guidance be given both to individuals responsible for identification and recruitment and to the audit agency so that it may accept the State's judgment.

*Response.* A change has been made. The Secretary believes the regulations provide the SEA and LEA sufficient authority and flexibility to establish reliable and valid means of identifying and verifying eligible migratory children, and providing for their special educational needs. In order to ensure accountability for the use of Federal

grant funds, SEAs and LEAs must implement procedures for ensuring they accurately obtain all information pertinent to child eligibility, as provided in § 201.30. Section 201.30 has been amended to reflect this SEA and LEA responsibility.

*Section 201.31 Service priorities.*

*Comment.* Many commenters recommended that the Secretary amend the proposed language that allows project services to be provided for formerly migratory children to clarify that such services may be provided only when the needs of the currently migratory children have been met. Other commenters recommended that more emphasis should be placed on children classified as formerly migratory children, as many were still experiencing a disadvantage in educational attainment.

*Response.* A change has been made. While many children classified as formerly migratory may have special educational needs that are unmet, Section 142(b) of Title I, as incorporated into Chapter 1 of the ECIA, requires that currently migratory children be "given priority to . . . consideration of programs and activities" contained in the SEA's Chapter 1 migrant education program application. The Secretary believes that, as drafted, the proposed § 201.31 may have appeared to conflict with the statute by seeming to authorize SEAs and operating agencies to provide services to formerly migratory children at the expense of some currently migratory children with unmet special educational needs. State and local agencies continue to have some latitude to determine that, without detriment to the State's currently migratory children, a program or project serving such children may also serve children who are formerly migratory. However, in order to emphasize the service priorities required by Section 142(b) of Title I, § 201.31 has been modified by eliminating the potentially confusing references to situations when formerly migratory children may be served.

*Comment.* Many commenters recommended that the Secretary utilize the language contained in the current regulations to clarify the intended service priorities. The commenters believed that the current language more clearly expresses the statute's intent.

*Response.* A change has been made. The regulations now contain the language contained in the Title I regulations.

*Comment.* One commenter recommended that the proposed regulations be rewritten to place the priority for program services on

preschool-aged migratory children before providing services to school-aged children.

*Response.* No change has been made. Section 142(a)(5) of Title I, as incorporated into Chapter 1, requires that provisions made for the preschool educational needs of migratory children ". . . not detract from the operation of programs and projects . . ." for older migratory children ". . . after considering funds available . . ." for their operation.

*Comment.* Several commenters recommended a revision to this section that more clearly indicates the Secretary's intent. The commenters feared that the language in the proposed regulations might cause a decrease in services to mobile migratory children because operating agencies might find it easier to provide services to children who are not transitory.

*Response.* A change has been made. As described above, § 201.31 has been modified to clarify the statutory requirement that priority is given to currently migratory children in the receipt of special educational services and, as necessary, support services.

*Comment.* One commenter suggested that this section might be improved if it were made clearer that the SEA or LEA is to make a specific determination that providing services to preschool children will not detract from services to be provided to other eligible migratory children.

*Response.* No change has been made. The Secretary does not believe that such a proposal is necessary. Moreover, because the provision of services must be made on the basis of an annual needs assessment (§201.32), the SEA and operating agencies will have already made that determination.

*Section 201.32 Annual needs assessment.*

*Comment.* One commenter stated that the requirement of an annual needs assessment will take an inordinate amount of time and involve an appreciable amount of data gathering. For these reasons, the commenter recommended that the Secretary revise this requirement to permit needs assessments to be conducted less frequently.

*Response.* No change has been made. The requirement that the assessment of educational needs be conducted annually is found in Section 556(b) of the ECIA, whose basic objectives are incorporated into Section 142(a)(3) of Title I. Section 19 of Pub. L. 98-211 clarified the annual nature of the requirement for the migrant education

program by its express incorporation of Section 556(b) into Section 142(a)(3) of Title I.

*Comment.* A commenter questioned the rationale for applying this provision to State programs, since Section 556(b)(2) of Chapter 1 seems to apply only to LEAs.

*Response.* No change has been made. As noted above, the requirement of an annual needs assessment to be conducted by the SEA and operating agencies is not a new requirement but was carried over from the Title I program by Section 142(a)(3) of Title I as incorporated into Section 554 of the ECIA. Pub. L. 98-211 subsequently has clarified that the annual needs assessment requirement applies to the SEA's programs.

*Comment.* One commenter questioned why the requirement that migrant programs be based on annual needs assessments was not applicable to both the SEA and its operating agencies.

*Response.* A change has been made. The regulations have been changed to clarify their applicability to both the SEA and its operating agencies.

*Comment.* One commenter recommended that the annual needs assessment used by the SEA and its operating agencies requires that the migrant children receiving assistance be those with the greatest need for it. The commenter asserted that, otherwise, the needs assessment might not serve as the focus for determining what kind of program and projects migrant children need.

*Response.* A change has been made. The proposed regulations were intended to ensure that the needs assessment would provide the SEA and its operating agencies with sufficient detailed information on the needs of eligible migratory children to permit appropriate program planning to meet those needs. In view of the commenter's concern, and in keeping with the needs assessment requirement in Section 556(b)(2) of the ECIA, as amended by Section 2(c) of Pub. L. 98-211, the regulations have been changed to reflect that the SEA and its operating agencies must serve those migratory children who are in the greatest need for assistance as determined by the annual needs assessment. Conversely, the SEA and its operating agencies should eliminate the provision of services to those migratory children who may be technically eligible, but who lack special educational needs.

*Comment.* Several commenters recommended that the process of selecting children in most need of assistance on the basis of the annual needs assessment be consistent with the

service priorities favoring currently migratory children in Section 142 (a)(5) and (b) of Title I.

*Response.* A change has been made. Paragraph (b) of § 201.32 has been modified to reflect that the selection of children to be served must be consistent with applicable service priorities contained in § 201.31 of these regulations.

*Section 201.33 Special allowable costs for migrant programs.*

*Comment.* Several commenters believed that the proposed regulations were too vague. They questioned whether the proposed regulations were intended to change the scope of allowable costs previously permitted under Title I and requested clarification of the possible types of permissible special allowable costs that the regulations anticipate.

*Response.* No change has been made. Enactment of the ECIA has not changed the scope of allowable costs previously permitted under the Title I program. However, the Secretary believes that inclusion of a list of possible types of permissible costs would not add to the regulation, and may be incorrectly viewed as restrictive or exclusive.

*Comment.* Several commenters recommended that the proposed regulations be amended to include specific authorization for the use of program funds to provide necessary supporting services such as health and clothing needs. The commenters believed that in some cases provision of these services is necessary before eligible children will benefit from school attendance.

*Response.* No change has been made. The migrant education program is authorized as a program supplying educational services; SEAs and their operating agencies must determine the special educational needs of the migratory children who will participate in the program. It is not specifically a program that provides family support services. If an SEA or its operating agency determines that providing a supporting service is necessary to help meet those educational needs, it may authorize the provision of that service, including health services.

*Section 201.34 Coordination with other migrant programs and projects.*

*Comment.* A commenter recommended that the regulations be amended to clarify that the requirement exists for both the SEA and its operating agencies to coordinate with other migrant education programs and projects.

*Response.* A change has been made. Section 201.34 now requires both the SEA and its operating agencies to plan and operate migrant activities with appropriate coordination with other migrant programs and projects.

*Comment.* Some commenters recommended that this section be specifically amended to include a requirement that the SEA plan and operate the activities in its annual program in coordination with migrant and seasonal farmworker projects administered under Section 402 of the Job Training Partnership Act of 1982.

*Response.* A change has been made. The regulation provides for coordination with programs administered under either Section 402 of the Job Training Partnership Act of 1982 or the Community Services Block Grant Act of 1981. These laws superseded Section 303 of the Comprehensive Employment and Training Act and Title III of the Economic Opportunity Act of 1964, respectively. Coordination is an express requirement of the SEA's State plan by virtue of Section 142(a)(2) of Title I.

*Comment.* A commenter asked for the specific statutory authority for this requirement.

*Response.* A change has been made. Section 554(a) of ECIA and Section 142(a) (1) and (2) of Title I require adequate coordination with other migrant programs and projects. The citation of statutory authority has been changed to reflect both of these provisions, as well as the statutory provisions that clarify that Section 303 of the Comprehensive Employment and Training Act and Title III of the Economic Opportunity Act of 1964, cited in Section 142(a)(2) of Title I, have been superseded by the statutes cited in these regulations.

*Section 201.35 Requirements for parent involvement.*

*Comment.* Many commenters recommended that the Department continue to require parent advisory councils at the State and operating agency levels. Many commenters believed that the Department's position would have deprived parents of their right and opportunity to participate in their children's education, and that the position violates statutory requirements.

*Response.* A change has been made. By the enactment of the Technical Amendments to ECIA, December 8, 1983, Congressional action made clear that parental participation in the migrant education program through local and State parent advisory councils is a requirement of the Act. The final



regulation reflects the statutory requirement.

Section 142(a)(4) of Title I states: ". . . that in planning and carrying out programs and projects at both the State and local educational agency level, there has been and will be appropriate consultation with parent advisory councils established in accordance with regulations of the Commissioner (consistent with the requirements of Section 125(a))." Section 554 of the ECIA retains Section 142(a)(4), and § 201.35 of the regulations repeats the statutory provision that parent advisory councils must be established in a way that is consistent with Section 125(a) of Title I.

#### Section 203.2 Applicable regulations.

*Comment.* One commenter, noting that Section 554(a)(2)(C) of Chapter 1 incorporated all of Subpart 3 of Part B of Title I, questioned why the Department was issuing new regulations to carry out this program.

*Response.* No change has been made. The regulations that governed programs operating under Subpart 3 of Part B of Title I were published on April 4, 1978, prior to the enactment of the Education Amendments of 1978, and therefore do not completely reflect the provisions of Subpart 3 of Part B. Moreover, certain Title I provisions which applied by reference to Subpart 3 of Part B do not apply to Chapter 1. Accordingly, new regulations are appropriate.

*Comment.* Several commenters recommended that this section be revised to make 34 CFR Parts 76 and 77 applicable to projects operated under Part 203.

*Response.* No change has been made. In order to afford SEAs and LEAs maximum flexibility, the Secretary has decided not to require agencies to comply with 34 CFR Parts 76 or 77 in administering and implementing Chapter 1 projects.

#### Section 203.3 Definitions for this program.

*Comment.* One commenter recommended that the definition of the term "institution for delinquent children" be revised to eliminate the requirement that the average length of stay be at least 30 days.

*Response.* No change has been made. The requirement that the average length of stay be at least 30 days first appeared in the Title I regulations to help ensure the effective use of Federal funds. Education activities of lesser duration are unlikely to benefit the child, and so this long-standing requirement has been retained.

*Comment.* One commenter questioned the meaning of the final sentence in the

definition of the term "State agency" in this section, asking what type of agency it was directed to.

*Response.* No change has been made. That sentence clarifies the statutory requirement that these Chapter 1 funds go only to State agencies directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions. Clearly, an agency whose institutionalized neglected or delinquent youth are, by State law, provided a free public education by an LEA or another agency is not directly responsible for providing that education.

#### Section 203.10 State assurances.

*Comment.* Several commenters interpreted § 203.10 as containing all requirements governing applications submitted by a State agency to an SEA and recommended that language be added to state specifically what information must be included in such an application.

*Response.* No change has been made. Section 203.10 requires a State to have on file with the Secretary certain assurances. The State agencies that actually operate the projects must submit applications to the SEA that meet the requirements of § 203.12. Requiring more detailed items to be included in an application would inappropriately limit an SEA's flexibility.

#### Section 203.12 Submission of project applications by the State agency to the SEA.

*Comment.* Several commenters recommended that this section be revised to require annual applications.

*Response.* A change has been made. The statute authorizes applications for a period of not more than three years. In determining the frequency of applications and updates, SEAs should consider the nature of the population to be served by the project. The revised regulation requires updating of applications resulting from significant changes in the number or needs of children to be served, or the services to be provided.

*Comment.* Several commenters recommended that language be added to this section to specify which requirements from Section 556(b) (2) through (4) of Chapter 1 are applicable to programs operated under Part 203.

*Response.* A change has been made. The word "applicable" has been deleted, clarifying that all of the requirements in Section 556(b) (2) through (4) apply to projects operated under Part 203.

#### Section 203.20 Amount of funds available for Chapter 1 grants.

*Comment.* A number of commenters questioned the rationale for the provisions in § 203.20(c)(3)(iii) requiring children to be in State-funded organized programs of instruction for at least ten hours per week in order to qualify for Chapter 1 services. Under Title I, children were required to be in a State-funded organized program of instruction for at least five hours per week.

*Response.* No change has been made. An instructional program of only five hours per week does not form an adequate basis for Chapter 1 to supplement. This issue was discussed at length during the 1978 reauthorization hearing conducted by the Subcommittee on Elementary, Secondary, and Vocational Education of the House Education and Labor Committee. Review of the information requested by that Committee regarding (1) the number of hours per week instructional classes are usually offered by State supported institutions participating in the program, and (2) the hours per week children usually attend classes reveals that the average in both cases is greater than the ten-hour requirement established by these regulations. U.S. Congress, House, Committee on Education and Labor, *A Report on the Education Amendments of 1978*, H.R. 15, 95th Cong., 2d sess., 1978, p. 40.

*Comment.* One commenter questioned the authority for the provision prohibiting a child from being counted both under Part 203 and under the Chapter 1 State-operated Programs for Handicapped Children.

*Response.* No change has been made. Funds under Part 203 are distributed on the basis of average daily attendance in schools in institutions for neglected or delinquent children or in adult correctional institutions. Funds under the Chapter 1 State-operated Programs for Handicapped Children are distributed on the basis of the average daily attendance in schools, operated or supported by a State agency, for handicapped children. A particular school might be operated for handicapped children or for children in institutions for neglected or delinquent children, but not for both. Accordingly, the child should be counted based on which type of school he or she attends.

*Comment.* One commenter recommended revising this section to provide that State agencies' grants be determined on the basis of either class enrollment or October 1 caseload.

*Response.* No change has been made. The statute specifies different criteria

for determining grants to State and to local institutions. Section 151 of Title I, incorporated into the ECIA by Section 554 of Chapter 1, requires that State agencies' grants be distributed on the basis of per pupil expenditure and average daily attendance data.

*Section 203.30 Annual needs assessment.*

*Comment.* One commenter questioned the rationale for applying Section 556(b)(2) of Chapter 1 (annual needs assessment) to State agencies operating projects under Part 203. The commenter pointed out that the statute appears to make Section 556(b)(2) applicable only to LEAs.

*Response.* No change has been made. The technical amendments to ECIA, Pub. L. 98-211, clarify that all of Section 556, except paragraph (b)(1), applies to this program.

*Comment.* Several commenters recommended including specific guidelines, such as those contained in the former §203.12(b), for State agencies to use in conducting needs assessments.

*Response.* No change has been made. Including these guidelines in regulations could interfere with SEAs' and State agencies' discretion in the matter.

*Section 204.1 Applicability of regulations in this part.*

*Comment.* Several commenters questioned the rationale for not making 34 CFR Part 76 applicable to all Chapter 1 programs. The commenters felt that not requiring compliance with 34 CFR Part 76 might result in many inefficiently managed projects.

*Response.* No change has been made. The decision to make 34 CFR Part 76, as well as nearly all the other EDGAR provisions, inapplicable to Chapter 1 was intended to allow States greater flexibility in administering this program than they had under Title I. Even though EDGAR does not apply, agencies must use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, Chapter 1 funds, according to Section 596(a) of the ECIA. Agencies may meet this requirement by relying on the provisions in EDGAR or by applying equivalent procedures of their own.

*Section 204.2 Definitions.*

*Comment.* One commenter, noting that the term "agency" is used throughout Part 204, suggested that the term be defined in this section.

*Response.* No change has been made. Generally, when the term "agency" is used, it applies to any entity that receives Chapter 1 funds. When the regulations refer to a particular type of

agency, the term SEA, LEA, or State agency is used.

*Comment.* One commenter questioned whether the definition of "preschool children," by including children below the age at which an agency provides free public education, authorized agencies to charge parents a fee for services supported with Chapter 1 funds.

*Response.* No change has been made. An agency may not require parents to pay for services supported with Chapter 1 funds.

*Section 204.10 Recordkeeping requirements.*

*Comment.* One commenter questioned whether SEAs and LEAs would have complete discretion for developing procedures for ensuring accountability, and whether the Department would be bound to accept whatever procedures are adopted. The commenter further questioned whether auditors would "second-guess" agencies' procedures.

*Response.* No change has been made. Sections 555(d) and 556(b) of Chapter 1 require agencies to keep records and provide information as may be required for fiscal audit and program evaluation. Under their application approval authority in Section 556(b) of Chapter 1, SEAs may specify what records agencies that receive Chapter 1 funds must keep. The Secretary will not question an agency's procedures for ensuring accountability as long as these procedures ensure the proper disbursement of, and accounting for, Chapter 1 funds according to the applicable statutory and regulatory requirements.

*Comment.* One commenter, stating that the statute appears to treat SEAs and LEAs differently with regard to recordkeeping, questioned why the regulations did not do so. The commenter further questioned whether and to what degree SEAs could impose specific recordkeeping requirements on LEAs.

*Response.* No change has been made. The statute requires both SEAs and other agencies that receive Chapter 1 funds to keep records and provide information as may be required for fiscal audit and program evaluation. An SEA may, under Section 556(b), impose on other agencies that receive Chapter 1 funds whatever specific recordkeeping requirements it believes are necessary for the SEA to fulfill its responsibilities for fiscal audit and program evaluation.

*Comment.* One commenter recommended that the regulations be revised to specify what information an SEA will be expected to report to the Secretary.

*Response.* No change has been made. There are no reporting requirements that an SEA would have to meet pursuant to §204.10.

*Sections 204.11 Access to records and audits.*

*Comment.* Several commenters questioned the rationale for applying the requirements of 34 CFR 74.62 to Chapter 1 grantees. The Commenters felt that these requirements are overly burdensome and unnecessary.

*Response.* No change has been made. Attachment P to OMB Circular A-102 establishes audit requirements that apply generally to all State and local governmental agencies receiving Federal assistance, and so it applies implicitly to Chapter 1 grantees. 34 CFR 74.62 makes these requirements expressly applicable to agencies participating in programs administered by the Department of Education.

*Comment.* One commenter recommended that the regulations include a list of the specific items that Federal auditors will review during audits of SEAs.

*Response.* No change has been made. Under the Inspector General Act of 1978 (Pub. L. 95-452), financial and compliance audits conducted by the Department's Inspector General will cover selected Federal requirements that apply to the agency being audited. Because specific areas are reviewed in different audits, it is not possible to specify which areas will be reviewed in all audits. However, the Office of Management and Budget (OMB) issued a compliance supplement to Attachment P of OMB Circular A-102. This supplement contains information on the major compliance requirements of Chapter 1 which must be reviewed as part of organization-wide audits.

*Comment.* One commenter, interpreting this section to exempt private nonprofit operating agencies receiving Chapter 1 funds from the requirement that they be audited, recommended that language be added requiring these agencies to be audited.

*Response.* No change has been made. This issue will be treated separately in regard to regulations issued under the Single Audit Act.

*Comment.* One commenter noted that Section 1744 of the Omnibus Budget Reconciliation Act of 1981 authorized access to records by the Comptroller General but not the Secretary, and questioned whether Section 437(b) of the General Education Provisions Act (GEPA) should be cited as authority for § 204.11(a).

*Response.* A change has been made. Section 437(b) of GEPA has been added as authority for this section.

*Comment.* One commenter questioned why Section 434 of GEPA was not cited as authority for this section.

*Response.* No change has been made. The provision in Section 434 of GEPA pertaining to audits that applies to Chapter 1 is paragraph (a)(2) which authorizes, but does not require, the Secretary to request a plan on audits. Because § 204.11 does not require an audit plan, there is no need to cite Section 434 of GEPA as authority.

*Comment.* Two commenters remarked that the Title I regulations provide for broad access to project records but that access would be unduly restricted under the proposed regulations.

*Response.* No change has been made. Section 204.11 accurately reflects the statutory provisions pertaining to access to records that are applicable to Chapter 1 programs.

#### Section 204.12 Audit claims.

*Comment.* One commenter questioned why § 204.12(d) omitted the requirement in Section 452(f)(1) of GEPA that the practice not only has been corrected, but also that it will not recur. The commenter also questioned why the dollar limit on the Secretary's authority to compromise audit claims was not mentioned.

*Response.* Both changes have been made. The regulations have been revised to include a provision that the Department considers whether the practice has been corrected and will not recur in compromising audit claims and to specify that compromises of claims in excess of \$50,000 must be approved by the U.S. Department of Justice.

#### Section 204.14 Availability of funds.

*Comment.* One commenter questioned whether this section authorized agencies to refrain from spending Chapter 1 funds in the fiscal year for which they were appropriated and to spend them in the next fiscal year. Several commenters were confused about the meaning of this section.

*Response.* No change has been made. Agencies that receive Chapter 1 funds are expected to spend those funds according to plan in the project year for which they are appropriated. However, subject to SEAs and the Department's reallocation authority in 34 CFR 200.45-200.46, and 34 CFR 201.22, agencies that have carryover funds may expend those funds according to plan in the fiscal year succeeding the year for which the funds were appropriated.

#### Section 204.20 Sufficient size, scope, and quality of project.

*Comment.* Several commenters recommended adding language to this section establishing standards for determining whether projects meet the size, scope, and quality requirements. One commenter was particularly concerned that the SEA and auditors would apply different standards, thereby leading to unnecessary audit exceptions.

*Response.* No change has been made. The imposition of any such standards in these regulations would be inconsistent with the Secretary's goal of affording agencies that receive Chapter 1 funds flexibility in operating their Chapter 1 projects.

*Comment.* Several commenters recommended adding language to this section requiring Chapter 1 projects to be based on needs assessment and other data.

*Response.* No change has been made. There is no need to add the suggested language to this section because Section 556(b)(2) of Chapter 1 already requires Chapter 1 projects to be based on an annual assessment of educational needs. This requirement is implemented in the individual program regulations for Chapter 1.

*Comment.* One commenter recommended adding language to strongly encourage the use of individualized educational plans for Chapter 1 participants.

*Response.* No change has been made. Although Section 129 of Title I encouraged the use of individualized educational plans, the Chapter 1 statute does not incorporate that Title I provision and contains no such suggestion. As Section 554(c) of Chapter 1 states, provisions of Title I that are not specifically made applicable by Chapter 1 are not applicable to programs authorized under Chapter 1. The Secretary notes, however, that the provisions of Part B of the Education of the Handicapped Act relating to individualized education programs apply to recipients of funds under that Act with respect to handicapped children.

#### Section 204.41 Jurisdiction.

*Comment.* Several commenters recommended revising this section to include termination hearings held in connection with an agency's use of Chapter 1 funds.

*Response.* No change has been made. Neither ECIA nor applicable language in GEPA discusses termination hearings in connection with Chapter 1, and the Secretary has therefore chosen not to

give such jurisdiction to the Education Appeal Board (EAB).

*Comment.* Several commenters recommended qualifying the terms "withholding hearings" and "cease and desist proceedings" with the language "initiated by an authorized Department official in connection with the Chapter 1 program."

*Response.* No change has been made. The suggested language is inappropriate in this section because an authorized Department official does not initiate proceedings. Rather, as clearly indicated in § 204.44, the Secretary or an authorized Department official issues the written notice from which a recipient of Chapter 1 funds may appeal.

*Comment.* Several commenters recommended including "other proceedings as designated by the Secretary" in this section.

*Response.* A change has been made. As authorized by Section 541(a) of GEPA, the Secretary may designate other proceedings under Chapter 1 to be heard by the EAB.

#### Section 204.42 Definitions.

*Comment.* Several commenters recommended revising the definition of the term "appellant" to include an SEA or other recipient.

*Response.* No change has been made. Under Chapter 1, the Secretary normally makes final audit determinations, conducts withholding hearings, and designates other proceedings only with respect to SEAs.

*Comment.* Several commenters recommended that the definition of the term "hearing" be revised to include "a conference, review of written submissions, an oral argument, or a full evidentiary hearing."

*Response.* No change has been made. The definition provided is sufficiently broad to include the recommendation.

*Comment.* Several commenters recommended revising the definition of the term "party" to include authorized Department officials who issue termination hearings or hearings regarding a matter described in 34 CFR 78.2(a)(4).

*Response.* A change has been made. The current definition of "party" has been amended to include the authorized Department official who issues a Chapter 1 determination that is designated by the Secretary to be reviewed by the EAB.

*Comment.* Several commenters recommended adding definitions for the terms "suspension" and "termination."

*Response.* No change has been made. These terms are not used in the provisions in §§ 204.40-204.56.

*Section 204.44 Written notice.*

*Comment.* One commenter questioned the authority for using a cease and desist hearing as an alternative to a withholding hearing.

*Response.* No change has been made. Section 454(a) of GEPA specifically authorizes the Secretary to issue a cease and desist order in lieu of proceeding to withhold funds.

*Section 204.48 Restriction of the application.*

*Comment.* One commenter questioned the authority for allowing the Board Chairperson to decide whether to accept or reject an application for review of a final audit determination or an intent to withhold funds.

*Response.* No change has been made. Section 451(e)(6) of GEPA authorizes the Secretary to issue regulations on matters necessary to carry out the functions of the Board. Section 452(b) authorizes the Board to accept or reject applications for review. The Secretary has determined that this function can best be handled by the Board Chairperson.

*Section 204.52 Opportunity to comment on the Panel's decision.*

*Comment.* One commenter questioned why the timelines for steps listed in this section are short.

*Response.* The timelines in this section are the same as those used for several years under Title I and other programs. These timelines have proven to be reasonable and therefore are being retained in these regulations. *Additional Comments: Consultation with teachers and parents.*

Several comments regarding the requirements for consultation with teachers and parents, published in the proposed rules at § 204.21, were also received. In response to these comments, the Secretary has determined that regulations on this matter should be included in the individual program regulations rather than in Part 204. Final regulations can be found in 34 CFR 200.53 (Financial Assistance to Local Educational Agencies to Meet Special Educational Needs of Disadvantaged Children); § 201.35 (Financial Assistance

to State Educational Agencies to Meet the Special Educational Needs of Migratory Children); and 34 CFR 203.31 (Financial Assistance to State Agencies to Meet Special Educational Needs of Institutionalized Neglected or Delinquent Children Including Children in Adult Correctional Institutions.)

Part 204 will contain the requirement for an annual meeting of parents.

*Comment.* Many commenters recommended revising § 204.21 to require the use of parent advisory councils (PACs) to meet the parent consultation requirement. Their recommendations were generally based on their experience that PACs contribute to the program. Some commenters believe that Section 142(a)(4) of Title I requiring PACs for migrant programs remains in effect.

*Response.* A change has been made in § 201.35 in view of the technical amendments to the ECIA (Pub. L. 98-211), which clarify that Congress intended that parent advisory councils be required for the Chapter 1 migrant education program at the State and local levels. No change has been made in §§ 200.53 and 203.31. The legislative history makes clear that LEAs may, but are not required to, establish PACs to comply with the consultation requirement. See 127 Cong. Rec. H5645 (daily ed. July 29, 1981).

*Comment.* A number of commenters questioned the authority and justification for adding the phrase "to the extent feasible" to the provision requiring that Chapter 1 projects be designed and implemented in consultation with the parents of the children being served.

*Response.* A change has been made. The phrase "to the extent feasible" has been deleted from § 201.35(a). The phrase is only used in § 203.31 so that agencies serving institutionalized neglected or delinquent youth can operate projects that comply with the Chapter 1 requirement without undue burden.

*Comment.* Several commenters questioned why the regulations required consultation with parents of the children

"to be served" when the statute uses the phrase "being served."

*Response.* A change has been made. Sections 200.53, 201.35, and 203.31 use the language "children being served."

*Comment.* One commenter questioned why the regulations referred to an LEA's discretionary use of PACs in negative terms, i.e., "is not required to establish and use parent advisory councils" when the congressional report language upon which the provision is based makes the same point using positive terms, i.e., "it is an option of the LEA. . . ."

*Response.* No change had been made in Parts 200 and 203. Sections 200.53 and 203.31 state that an agency may use parent advisory councils, thereby indicating that their use is optional. However, at the LEA level, PACs are required for the migrant education program (§ 201.35)

*Comment.* One commenter recommended that § 204.21 be revised to require that Chapter 1 project designs reflect teacher/parent input and ongoing involvement.

*Response.* No change has been made. The language in §§ 200.53, 201.35, and 203.31 is consistent with the statute and legislative intent regarding teacher and parent consultation.

*Comment.* One commenter questioned whether § 204.21 would, by no longer requiring PACs, require an excessive amount of documentation by LEAs to demonstrate compliance.

*Response.* No change has been made. In general, the elimination of the requirement that LEAs use advisory councils should decrease, not increase, the compliance burden associated with this requirement. LEAs are nevertheless required to document appropriate consultation with parents and teachers.

*Comment.* One commenter recommended adding language to § 204.21 to require agencies to consult with PACs or appoint surrogate parents if parents are not available.

*Response.* No change has been made. Nothing in the Chapter 1 statute authorizes the Secretary to impose this requirement.

# **federal register**

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Tuesday  
April 30, 1985

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## **Part IX**

### **Department of Health and Human Services**

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**Social Security Administration**

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**20 CFR Parts 404 and 416  
Old-Age, Survivors, and Disability  
Insurance and Supplemental Security  
Income for the Aged, Blind, and  
Disabled; Determining Disability and  
Blindness; Proposed Rules**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

[Reg. Nos. 4 and 16]

**Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness**

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** Section 2 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98-460, provides a standard of review for determining whether disability continues—such disability being the major requirement for payment of disability benefits under the Social Security Act. This statute provides that disability entitlement stops for those beneficiaries who have any medical improvement in their impairment(s) and who can perform substantial gainful activity (SGA) or to whom certain exceptions to medical improvement apply. The standard of review provision is intended to promote uniform administration of the disability programs.

These proposed regulations set out a review process the objective of which is to assure an accurate, fair, administratively efficient and nationally consistent review process within the meaning of the law. The proposed regulations are designed to clearly explain how the new review process will work including the definition of medical improvement—that no benefits will be terminated unless substantial evidence shows that medical improvement has occurred or one of the exceptions to medical improvement applies and that (except for certain limited situations) the person can do SGA.

**DATE:** Comments must be received on or before June 14, 1985.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by

making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7337.

**SUPPLEMENTARY INFORMATION:**

**Background**

The purpose of these proposed regulations is to implement section 2 of Pub. L. 98-460, which provides the standard of review for determining whether disability continues.

Under the Social Security Act and regulations prior to October 9, 1984, (the effective date of Pub. L. 98-460) there was no requirement that there be any medical improvement in a person's impairment(s) before his or her benefits based on disability could be terminated. A decision to continue or cease benefits was based on current evidence which established whether a person was able to do SGA. A sequential evaluation process (see 20 CFR 404.1520 and 416.920) was followed.

A person's entitlement to benefits could also be terminated if he or she demonstrated the ability to do SGA following completion of a trial work period, actually performed SGA (where he or she was not entitled to a trial work period); failed to cooperate with us in a review of whether he or she remained disabled; his or her whereabouts were unknown (except in title XVI cases in which suspension would be the proper action); or he or she failed, without good cause, to follow prescribed treatment that could be expected to restore the ability to work.

Pub. L. 98-460 (section 2) requires that the Secretary prescribe regulations to implement the standard of review for determining whether disability continues, including a medical improvement provision (with certain exceptions). Section 2 is intended to promote administration of the program in a uniform manner nationwide by making explicit to the public, to State agencies which make disability determinations for the Social Security Administration (SSA), and to other adjudicators in the system the standard to be applied in determining continuing eligibility for benefits—the standard as set forth in statute.

The Congressional Conference Committee Report on the new statute noted that agreement was reached "to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might

make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review . . . could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls."

This provision, which is reflected in these proposed implementing regulations, permits that a recipient of Social Security disability benefits or Supplemental Security Income (SSI) disability benefits or related benefits may be "determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment(s) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by" substantial evidence of at least one of the following:

1. There has been any medical improvement in the individual's impairment(s) (other than improvement not related to his or her ability to work) and is able to engage in substantial gainful activity (SGA);
2. That (except for SSI recipients eligible to receive benefits under section 1619) new medical evidence and a new assessment of the individual's residual functional capacity demonstrate that, although there has not been any medical improvement in the individual's impairment(s), (a) he or she is a beneficiary of advances in medical or vocational therapy or technology, related to his or her ability to work, and is able to perform SGA, or (b) he or she has undergone vocational therapy, related to his or her ability to work, and is able to perform SGA;
3. That, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment(s) is not as disabling as it was considered to be at the time of the most recent prior disability determination and that, therefore, the individual is able to engage in SGA; or
4. That, as demonstrated on the basis of evidence on the record at the time of any prior favorable disability determination or newly obtained evidence relating to that determination, a prior determination was in error.

Regardless of the new medical improvement provision, disability can be found to have ceased if the prior determination was fraudulently obtained or if the beneficiary is engaged in SGA (except for SSI recipients eligible to receive benefits under section 1619 of the Social Security Act), cannot be located, or fails, without good cause,

to cooperate in the continuing disability review (CDR) or to follow prescribed treatment which would be expected to restore his or her ability to engage in SGA.

The law requires that any determination under this standard be made on a neutral basis—without any initial inference being drawn from the fact that an individual had previously been determined to be disabled—and on the basis of all evidence (both prior and new) available in the case file concerning the individual's prior or current condition.

Similar provisions, modified to reflect the concept of ability to perform gainful activity, apply to widows, widowers, and surviving divorced spouses.

It should be noted that these proposed regulations generally do not address the issue of when benefits or a period of disability will be terminated under these rules. This issue was the subject of an earlier Notice of Proposed Rulemaking. (See 48 FR 21970, May 16, 1983.) The final regulations will include the changes resulting from both proposals.

#### Regulatory Provisions

The following discussion outlines how the regulations implement the various statutory provisions.

The proposed regulations set out standards of review for continuing eligibility to Social Security disability benefits. Those standards make it clear that decisions will be made on a neutral basis—without any initial inference being drawn from the fact that the individual had been determined to be disabled—and based upon all evidence (both prior and new) available in the case file concerning the individual's prior or current condition. They also make clear that upon review, eligibility for such benefits will cease only if substantial evidence shows that there has been any medical improvement in the individual's impairment(s) (or one of the exceptions to medical improvement applies) and that (except in certain limited situations) the person can do SGA.

Existing regulations provide a sequential evaluation process which is used in determining whether individuals are disabled. Under the existing regulations applicable to decisions of continuing disability, current work activity, severity and duration of the impairment(s), ability to do past work, and (considering age, education and work experience) ability to do other work are considered, in that order. These proposed regulations provide that the issue of medical improvement and the exceptions to medical improvement will be considered after a decision of

medical severity is reached, before any determination is made that an individual can perform past work or other work.

These proposed regulations define medical improvement as any increase in the individual's ability to do basic work activities since the most recent favorable medical determination as demonstrated by the medical evidence (and other evidence) relating to the impairment(s) which was present at the time of the most recent medical decision that a person was disabled or continued to be disabled. The basis for this definition is twofold: first, the statutory definition of disability is related to functional capacity to do basic work activities, i.e., the inability to engage in SGA; and second, the statute requires that medical improvement not related to the person's ability to work be disregarded. ("Functional capacity to do basic work activities" is not a new concept in the disability program. It is simply a more descriptive phrase that is equivalent to "ability to do basic work activities".)

Further, under these regulations medical improvement is decided based on whether there has been any medical improvement in the impairment(s) which was present at the time of the most recent medical decision that a person was disabled or continued to be disabled.

There are two groups of exceptions to medical improvement.

The first group of exceptions to medical improvement include situations where although medical improvement has not occurred, the ability to do SGA is now shown by current evidence. The basic objective of defining this first group of exceptions is to indicate situations where the person's entitlement to benefits should be terminated because the person is shown to be presently able to engage in SGA, even though medical improvement had not occurred. As the Senate Finance Committee report (Report No. 98-466, p.9) indicates, it was not Congress' intention "to grandfather people onto the benefit rolls who can perform substantial gainful activity. . . ."

The second group covers certain congressionally recognized situations where cessation is appropriate without a finding that the individual can engage in SGA.

These regulations define all of the exceptions in a straightforward manner to show what types of cases will be excepted from medical improvement.

The exceptions are:

1. Substantial evidence shows that the person can do SGA and has been the beneficiary of advances in medical or

vocational therapy or technology (related to the person's ability to work).

2. Substantial evidence shows that the person can do SGA and has undergone vocational therapy (related to ability to work).

3. Substantial evidence shows that based on new or improved diagnostic techniques or evaluations, the person is not so disabled as was believed at the time of the most recent prior decision and therefore the person can do SGA.

4. Substantial evidence shows that a prior decision was in error.

5. The person is actually performing substantial gainful activity.

6. The prior decision was fraudulently obtained.

7. The person fails (without good cause) to cooperate in a review of his or her entitlement to benefits.

8. The person cannot be located.

9. The person fails (without good cause) to follow prescribed treatment which would be expected to restore ability to do substantial gainful activity.

The last four exceptions represent situations where benefits will be terminated without a finding that the individual can engage in substantial gainful activity.

There are about 4.7 million people receiving disability benefits and all are subject to review. The review process is carried out by 54 State agencies, over 800 federal reviewers and almost 800 administrative law judges. The magnitude of the task and the need for a nationally consistent determination system mandate a clearly stated process of review which assures fair, equitable, accurate and administratively efficient decisions. Therefore, a review process is described in these proposed regulations which is partially based on the well-established sequential evaluation process used to determine ability to do SGA in initial disability decisions. It is, however, modified to include medical improvement as a distinct step, making it clear that any decision that disability has stopped must be based on a decision that medical improvement occurred or that one of the exceptions applies.

Decisions of medical improvement (or that an exception applies) require certain basic findings (i.e., those concerning medical severity and, where appropriate, residual functional capacity) as do decisions that a person cannot do SGA. Thus, these regulations direct that decisions regarding inability to do SGA (i.e., continuance decisions) can be made in accordance with the present sequential evaluation process. When supported by the evidence a decision of continuance can be made

without consideration of whether medical improvement has occurred.

A decision to find disability to have stopped, however, can only be made if medical improvement (or one of the exceptions) is shown. An explanation of the basis for the decision and how it was reached will be required to support both continuance and cessation decisions. Where more than one basis for cessation is known to apply, that fact will be reflected.

The proposed rules in §§ 404.1579, 404.1586, 404.1594, and 416.994 tell how we will apply the standards, discuss the evaluation process we will use to determine whether an individual continues to be disabled, and provide explanations of terms used in these proposed regulations.

These proposed regulations have been written to carry out both the letter and intent of the law in order to provide for a fair, accurate, nationally consistent review of continuing entitlement to disability benefits in accordance with statutory requirements.

#### Regulatory Procedures

*Executive Order No. 12291*—Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule".

We have determined that any major cost impact has been produced by section 2 of Pub. L. 98-460 and not these proposed regulations, which would merely implement the statutory provision. Cost impacts directly resulting from the regulations themselves are minor. Therefore, we have determined that these regulations do not constitute a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

*Paperwork Reduction Act of 1980*—These proposed regulations will impose no new reporting and recordkeeping requirements subject to clearance by the Office of Management and Budget.

*Regulatory Flexibility Act*—We certify that these proposed regulations, if promulgated, will not have a significant impact on a substantial number of small entities since they primarily affect only individuals receiving title II or title XVI benefits because of disability. They will have some effect on those States which supplement the Federal SSI benefit and those States where Medicaid eligibility is tied to SSI eligibility. However, a regulatory flexibility analysis as required under Pub. L. 96-354, the Regulatory Flexibility Act, is not necessary.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No.

13.807, Supplemental Security Income Program)

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 8, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 8, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

#### PART 404—[AMENDED]

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart P of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended 53 Stat. 1368, as amended, 68 Stat. 1080, 1081, and 1082, as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302); sec. 505(a) and (c) of Pub. L. 96-265, 94 Stat. 473, sec. 2 of Pub. L. 98-460, 98 Stat. 1794, unless otherwise noted.

2. Section 404.1501 is amended by revising paragraphs (d) and (j) to read as follows:

##### § 404.1501 Scope of subpart.

(d) Our general rules on evaluating disability if you are filing a new application are stated in §§ 404.1520 through 404.1523. We describe the steps that we go through and the order in which they are considered.

(j) Our rules on when disability continues and stops are contained in §§ 404.1579 and 404.1588 through 404.1598. We explain what your responsibilities are in telling us of any events that may cause a change in your disability status, when you may have a trial work period, and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in deciding whether you are still disabled.

3. Section 404.1579 is revised to read as follows:

##### § 404.1579 How we will decide whether your disability continues.

(a) *General.* If you are entitled to benefits as a disabled widow, widower, or surviving divorced spouse, there are a number of factors we consider in deciding whether your disability continues.

(1) *Evidence and basis for decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) or other medical or nonmedical sources. Our procedures for obtaining evidence are set out in §§ 404.1512 through 404.1518. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(2) *Medical Condition.* By medical condition, we mean your impairment(s) and its effect on your ability to do basic work activities. In deciding whether there has been any medical improvement in your impairment(s) and whether the other provisions of this section are applicable, we will consider whether there has been any medical improvement in the impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled.

(3) *Point of Comparison.* For purposes of medical improvement and those exceptions to medical improvement which require comparison, we will compare your current functional capacity to do basic work activities with your functional capacity to do basic work activities as it relates to your impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled.

(4) *Evaluation Steps.* To assure that all relevant factors are considered in evaluating your disability and to help us determine at the earliest possible point in the evaluation process whether you are still disabled we will consider—

(i) Are your engaging in substantial gainful activity? If yes (and any applicable trial work period has been completed), we will find disability to have ceased.

(ii) Does your impairment(s) meet or equal the Listing of Impairments in Appendix 1?

(iii) Has there been any medical improvement in your impairment(s) i.e. has your functional capacity to do basic work activities increased or does not of



the exceptions to medical improvement apply?

Evaluation steps (i) and (ii) are stated in § 404.1578 and explained in more detail throughout this subpart. Medical improvement is explained in paragraph (b) of this section. The first group of exceptions to medical improvement is explained in paragraph (c) of this section, and the second group of exceptions to medical improvement is explained in paragraph (d) of this section. If at any point in this evaluation process the evidence shows that you continue to be disabled, we will find that your disability continues without further consideration unless some other basis for cessation exists. If there has not been any medical improvement in your impairment(s) and none of the exceptions to medical improvement applies, we will find that your disability continues. We will find that your disability ends if—

(iv) there has been any medical improvement in your impairment(s) or one of the first group of exceptions to medical improvement applies, and

(v) we determine under evaluation step (i) or (ii) of this subsection that you are able to engage in gainful activity.

We will also find that your disability ends if one of the second group of exceptions to medical improvement applies. In this situation the decision will be made without a determination that you can engage in gainful activity.

(b) *Medical Improvement.* Medical improvement is any increase in your functional capacity to do basic work activities since the most recent favorable medical determination. This will be determined by a comparison of prior and current evidence, including medical and other relevant evidence as it relates to your impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled. A substitution of judgment alone regarding your functional capacity to do basic work activities based on unchanged medical findings will not be considered medical improvement. (How functional capacity to do basic work activities is assessed is set out in § 404.1545).

**Example:** You were awarded disability benefits due to rheumatoid arthritis of a severity as described in Listing 1.02 of Appendix 1 to this subpart. At that time you had joint pain, swelling and tenderness of your fingers and wrists which persisted in spite of therapy. Laboratory findings were positive for rheumatoid arthritis. Current medical evidence shows that your condition has responded favorably to therapy so that your fingers and wrists are no longer swollen or painful. You have only mild limitation of motion and some reduced strength in your

hands. Since your ability to do basic work activities has increased, we will find that there has been medical improvement in your impairment(s).

A finding that your impairment(s) meets or equals an impairment listed in Appendix 1 of this subpart means that you are presumed to be unable to perform basic work activities.

(c) *First group of exceptions to medical improvement.* If substantial evidence shows that there has not been any medical improvement in your impairment(s) (see paragraph (b) of this section), we will consider the following exceptions to medical improvement. If one of these exceptions applies and you are able to engage in gainful activity, we will find that your disability ends.

(1) *Substantial evidence shows that you are the beneficiary of advances in medical therapy or technology (related to your ability to work).* Advances in medical therapy or technology are improvements in treatment methods which may favorably affect your ability to perform basic work activities. We will apply this exception when you have been the beneficiary of services which reflect these advances. This decision will be based on new medical evidence.

(2) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your condition is not as disabling as it was considered to be at the time of the most recent favorable decision.* This exception applies when substantial evidence demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, your impairment(s) is not as disabling as it was considered to be at the time of the most recent medical decision that you were disabled or continued to be disabled. New or improved diagnostic or evaluative techniques are techniques which may disclose that your condition is less disabling than was originally thought at the time of the most recent favorable medical decision. Changing methodologies and advances in medical and other diagnostic and evaluative techniques have given rise to improved methods for documenting and evaluating medical evidence and residual functional capacity. Where such methods, properly used, permit the development of more accurate, objective and valid results, they will be used.

Where these new or improved diagnostic or evaluative techniques are used to determine or document your functional capacity to do basic work activities and where this new determination shows that you are not as disabled as was previously considered, such evidence may serve as a basis for finding that you are no longer disabled.

This exception includes only those new or improved diagnostic or evaluative techniques which became generally available after the most recent favorable decision. Changes in diagnostic or evaluative techniques appearing in the Listing of Impairments found in Appendix 1 of this Subpart will be regarded as one type of new or improved evaluative techniques, as illustrated by the following example.

**Example:** Serum creatinine levels (Listing 6.02C) have replaced blood urea nitrogen (BUN) levels as indicators of renal dysfunction since the time of your last favorable medical decision. Current evidence including serum creatinine and creatinine clearance levels could show that your condition, which was previously evaluated based on BUN levels, is not now as disabling as was previously thought.

(3) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence shows that the evidence we considered in making any prior favorable determination demonstrates that an error was made, e.g., the evidence in your file does not pertain to you or some of the evidence in your file, such as pulmonary function study values, was misread. We will also apply this exception if new and material evidence relating to any prior favorable decision shows that it was in error, e.g., a tumor thought to be malignant was later shown to be benign. If the evidence supporting our prior decision does not conform to our documentation standards including but not limited to those in Appendix 1 of this Subpart, the lack of documentation may be considered an error. Additionally, error includes situations where evidence now includes a better, more conclusive diagnostic technique or evaluation which was available at the time of the prior decision but not used in the prior decision. Substantial evidence must show that had the current evidence been available at the time of the prior decision the claim would not have been allowed or continued. A substitution of current judgment alone for that used in the prior favorable decision will not be the basis for applying this exception. In addition, error will not be found where the prior file has been lost and relevant portions cannot be reconstructed. We will, as in other cases, obtain current evidence to evaluate your present condition. This exception to medical improvement based on error will be applied under the conditions set out above, even though some of the conditions for reopening the prior decision (§ 404.988) may not be met.

(4) *You are currently engaging in substantial gainful activity.* Before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 404.1592. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether you continue to have a disabling impairment(s) (§ 404.1511) for purposes of deciding your eligibility for a reentitlement period (§ 404.1592a).

(d) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you can engage in gainful activity.

(1) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 404.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(3) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will determine that your disability has ended. The month your disability ends will be the first month in which the question arose and we could not find you.

(4) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 404.1539(c)). The month your disability ends will be

the first month in which you failed to follow the prescribed treatment.

(e) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to explain why we should not do so. Sections 404.1595 and 404.1597 describe your rights (including appeal rights) and the procedures we will follow.

4. Section 404.1586 is amended by revising paragraph (a)(1) to read as follows:

**§ 404.1586 Why and when we will stop your cash benefits.**

(a) \* \* \*

(1) The month your vision, as shown by current medical evidence, does not meet the definition of blindness and your disability does not continue under the rules in § 404.1594.

5. Section 404.1592 is amended by revising paragraph (e)(2) to read as follows:

**§ 404.1592 The trial work period.**

(e) \* \* \*

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled (see § 404.1594).

6. Section 404.1593 is amended by revising the cross-reference in the last sentence to § 404.1594(d)(2).

7. Section 404.1594 is revised to read as follows:

**§ 404.1594 How we will decide whether your disability continues.**

(a) *General.* If you are entitled to disability benefits as a disabled worker or as a person disabled since childhood, there are a number of factors we consider in deciding whether your disability continues.

(1) *Evidence and basis for decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) or other medical or nonmedical sources. Our procedures for obtaining evidence are set out in §§ 404.1512 through 404.1518. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(2) *Medical Condition.* By medical condition, we mean your impairment(s) and its effect on your functional capacity to do basic work activities. In deciding whether there has been any medical improvement in your impairment(s) and whether the other provisions of this section are applicable, we will consider whether there has been any medical improvement in the impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled.

(3) *Point of Comparison.* For purposes of medical improvement and those exceptions to medical improvement which require comparison, we will compare your current functional capacity to do basic work activities with your functional capacity to do basic work activities as it relates to your impairment(s) which was present at the time of this most recent medical decision that you were disabled or continued to be disabled.

(4) *Evaluation Steps.* To assure that all relevant factors are considered in evaluating your disability and to help us determine at the earliest possible point in the evaluation process whether or not you are still disabled we will consider the following factors and take the actions described.

(i) Are you engaging in substantial gainful activity? If yes (and any applicable trial work period has been completed), we will find disability to have ceased (see (c)(5) below).

(ii) Do you currently have a severe impairment or a severe combination of impairments? If you do not have a severe impairment or a severe combination of impairments, has there been any medical improvement in your impairment(s) (see paragraph (b) of this section), i.e., has your functional ability to do basic work activities increased? If there has been any medical improvement in your impairment(s), disability will be found to have ceased. If there has not been any medical improvement in your impairment(s), disability will be found to continue unless one of the exceptions to medical improvement applies.

(iii) If you have a severe impairment (or a severe combination of impairments), does it meet or equal the severity of an impairment listed in Appendix 1? If yes, disability will be found to continue. If no, a residual functional capacity assessment will be prepared. We will then determine whether there has been any medical improvement in your impairment(s) (see paragraph (b) of this section). If there has not been any medical improvement

in your impairment(s), does one of the exceptions apply? If there has not been any medical improvement in your impairment(s) and none of the exceptions to medical improvement applies, disability will be found to continue.

(iv) If there has been medical improvement or if one of the first group of exceptions to medical improvement applies, we will use the residual functional capacity assessment in determining whether you can do work you have done in the past. If yes, disability will be found to have ceased.

(v) If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education and past work experience can you do other work? If yes, disability will be found to have ceased. If no, disability will be found to continue.

These evaluation steps are explained in more detail throughout this subpart. Medical improvement is explained in paragraph (b) of this section. The first group of exceptions to medical improvement are explained in paragraph (c) of this section, and the second group of exceptions to medical improvement are explained in paragraph (d) of this section. If at any point in this evaluation process the evidence shows that you continue to be disabled, we will find that your disability continues without further consideration unless some other basis for cessation exists. We will find that your disability continues if there has not been any medical improvement in your impairment(s) and none of the exceptions to medical improvement applies unless some other basis for cessation exists. We will also find that your disability continues if we determine that you are not able to engage in substantial gainful activity. We will find that your disability ends if there has been any medical improvement in your impairment(s) and you are able to engage in substantial gainful activity; or if one of the first group of exceptions to medical improvement applies and you are able to engage in substantial gainful activity; or if one of the second group of exceptions to medical improvement applies.

(b) *Medical Improvement.* Medical improvement is any increase in your functional capacity to do basic work activities since the most recent favorable medical determination. This will be determined by a comparison of prior and current evidence, including medical and other relevant evidence as it relates to your impairment(s) which

was present at the time of the most recent medical decision that you were disabled or continued to be disabled. A substitution of judgment alone regarding your functional capacity to do basic work activities based on unchanged medical findings will not be considered medical improvement. How your functional capacity to do basic work activities is assessed is set out in § 404.1545.

#### Examples

*Example 1:* You have a back problem and had a laminectomy to relieve the nerve root impingement and weakness in your left leg. At the time of our prior decision you were able to lift no more than 10 pounds occasionally, stand less than 6 hours, and sit no more than one-half hour at a time. You had a successful fusion operation on your back about one year before our current review of your entitlement. At the time of our review the weakness in your leg has decreased, but you have some loss of range of motion in your back. However, you are now able to lift 15 pounds frequently and 25 pounds occasionally and have no limitation on your ability to sit, walk, or stand. Medical improvement has occurred because there has been an increase in your ability to do basic work activities.

*Example 2:* You are 65 inches tall and weighed 246 pounds at the time your disability was established. You had venous insufficiency and edema in your legs. At that time you were able to sit for 6 hours but were able to stand or walk only occasionally. At the time of our review of your continuing entitlement to disability benefits, you had undergone a vein stripping operation. You now weigh 239 pounds and have intermittent edema. Other than some decrease in your discomfort on walking there has been no change in your functional capacity to do basic work activities. Medical improvement has not occurred because there has been no increase in your ability to do basic work activities.

A finding that your impairment(s) meets or equals an impairment listed in Appendix 1 of this Subpart means that you are presumed to be unable to do basic work activities (see § 404.1525(a)). A finding that your current impairment(s) is not severe (see § 404.1521) means there is no significant limitation of your ability to do basic work activities.

(c) *First group of exceptions to medical improvement.* If substantial evidence shows that there has not been any medical improvement in your impairment(s) (see paragraph (b) of this section), we will consider the following exceptions to medical improvement. If one of these exceptions applies and you are able to engage in substantial gainful activity, we will find that your disability ends.

(1) *Substantial evidence shows that you are the beneficiary of advances in*

*medical or vocational therapy or technology (related to your ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which may favorably affect your ability to do basic work activities. We will apply this exception when you have been the beneficiary of services which reflect these advances. This decision will be based on new medical evidence and a new residual functional capacity assessment. (See § 404.1545.)

(2) *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).* Vocational therapy (related to your ability to work) may include but is not limited to additional education, training, or work experience. This decision will be based on new medical evidence and a new residual functional capacity assessment. (See § 404.1545.)

*Example 1:* You enrolled in and completed a specialized training course which qualifies you for a job in data processing and new medical evidence and a new assessment of your residual functional capacity demonstrate that you can engage in substantial gainful activity.

*Example 2:* Your vocational rehabilitation agency sent you to a trade school. Upon completion of the course, you are qualified to do small appliance repair and new medical evidence and a new assessment of your residual functional capacity demonstrate that you can engage in substantial gainful activity.

(3) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your condition is not as disabling as it was considered to be at the time of the most recent favorable decision.* This exception applies when substantial evidence demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, your impairment(s) is not as disabling as it was considered to be at the time of the most recent medical decision that you were disabled or continued to be disabled. New or improved diagnostic or evaluative techniques are techniques which may disclose that your condition is less disabling than was originally thought at the time of the most recent favorable medical decision. Changing methodologies and advances in medical and other diagnostic and evaluative techniques have given rise to improved methods for documenting and evaluating medical evidence and residual functional capacity. Where such methods, properly used, permit the development of more accurate, objective and valid results, they will be used. Where these new or improved

diagnostic or evaluative techniques are used to determine or document your functional capacity to do basic work activities and where this new determination shows that you are not as disabled as was previously considered, such evidence may serve as a basis for finding that you are no longer disabled. This exception includes only those new or improved diagnostic or evaluative techniques which became generally available after the most recent favorable decision. Changes in diagnostic or evaluative techniques appearing in the Listing of Impairments found in Appendix 1 of this Subpart will be regarded as one type of new or improved evaluative techniques, as illustrated by the following example.

*Example:* Serum creatinine levels (Listing 6.02C) have replaced blood urea nitrogen (BUN) levels as indicators of renal dysfunction since the time of your last favorable medical decision. Current evidence including serum creatinine and creatinine clearance levels could show that your condition, which was previously evaluated based on BUN levels, is not now as disabling as was previously thought.

(4) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence shows that the evidence we considered in making any prior favorable determination demonstrates that an error was made, e.g., the evidence in your file does not pertain to you or was misread. We will also apply this exception if new and material evidence relating to any prior favorable decision shows that it was in error, e.g., a tumor thought to be malignant was later shown to be benign. If the evidence supporting our prior determination is available but does not conform to our documentation standards including but not limited to those reflected in Appendix 1 of this Subpart, the lack of documentation may be considered an error. Additionally, error includes situations where evidence now includes a better, more conclusive diagnostic technique or evaluation which was available at the time of the prior decision but not used in the prior decision. Some additional examples of error are:

- (i) some of the evidence in your file was misinterpreted e.g., pulmonary function study values were misread;
- (ii) an adjudicative standard was misapplied e.g., the wrong vocational rule was applied.

Substantial evidence must show that had the current evidence been available at the time of the prior decision the claim would not have been allowed or continued. A substitution of current

judgment alone for that used in the prior favorable decision will not be the basis for applying this exception. In addition, error will not be found where the prior file has been lost and relevant portions cannot be reconstructed. We will, as in other cases, obtain current evidence to evaluate your present condition. This exception to medical improvement based on error will be applied under the conditions set out above, even though some of the conditions for reopening the prior decision (§ 404.988) may not be met.

(5) *You are currently engaging in substantial gainful activity.* Before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 404.1592. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether you continue to have a disabling impairment(s) (§ 405.1511) for purposes of deciding your eligibility for a reentitlement period (§ 404.1592a).

(d) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you can engage in substantial gainful activity.

(1) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 404.911 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(3) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will determine that your disability has ended. The month your disability ends will be the first month in

which the question arose and we could not find you.

(4) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 404.1530(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(e) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to explain why we should not do so. Sections 404.1595 and 404.1597 describe your rights (including appeal rights) and the procedures we will follow.

8. Section 404.1598 is revised to read as follows:

**§ 404.1598 If you become disabled by another impairment(s).**

If a new severe impairment(s) begins in or before the month in which your last impairment(s) ends, we will find that your disability is continuing. The new impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity, or severe enough so that you are still disabled under § 404.1594.

**PART 416—[AMENDED]**

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Subpart I of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended; 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475 (42 U.S.C. 1302, 1382, and 1383); sec. 2 of Pub. L. 98-460, 98 Stat. 1794.

2. Section 416.901 is amended by revising paragraphs (d) and (l) to read as follows:

**§ 416.901 Scope of subpart.**

(d) Our general rules on evaluating disability if you are filing a new application are stated in §§ 416.920 through 416.923. We describe the steps that we go through and the order in which they are considered.

(l) Our rules on when disability or blindness continues and stops are

contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.

3. Section 416.992 is amended by revising paragraph (d)(2) to read as follows:

**§ 416.992 The trial work period.**

(d) \* \* \*

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled (see § 416.994).

**§ 416.933 [Amended]**

4. Section 416.993 is amended by revising the cross-references in the last sentence to §§ 416.994(b)(8)(ii) and 416.994(c)(4)(ii).

5. Section 416.994 is revised to read as follows:

**§ 416.994 How we will decide whether your disability continues.**

(a) *General.* There are a number of factors we consider in deciding whether your disability continues. Different rules apply depending on whether you are an adult or a child (under age 18). Additional rules apply if you were found disabled under a State plan. All these rules are explained in paragraphs (b), (c), and (d). The following factors are common to all decisions under this section.

(1) *Evidence and basis for decision.* Our decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that you have previously been determined to be disabled. We will consider all evidence you submit, as well as all evidence we obtain from your treating physician(s) or other medical or nonmedical sources. Our procedures for obtaining evidence are set out in §§ 416.912 through 416.918. Our determination regarding whether your disability continues will be made on the basis of the weight of the evidence.

(2) *Medical condition.* By medical condition, we mean your impairment(s) and its effect on your functional capacity to do basic work activities. In deciding whether there has been any medical improvement in your impairment(s) and whether the other provisions of this section are applicable, we will consider whether there has been any medical improvement in the impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled.

(3) *Point of comparison.* For purposes of medical improvement and those exceptions to medical improvement which require comparison, we will compare your current functional capacity to do basic work activities with your functional capacity to do basic work activities as it relates to your impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled.

(4) *Before we stop your benefits.* If we find you are no longer disabled, before we stop your benefits, we will give you a chance to explain why we should not do so. Subparts M and N of this Part describe your rights and the procedures we will follow.

(b) *Disabled persons age 18 or over (Adults).* To assure that all relevant factors are considered in evaluating your disability and to help us determine at the earliest possible point in the evaluation process whether or not you are still disabled, we will consider the following factors and take the actions described.

(1) Are you engaging in substantial gainful activity? If yes (and any applicable trial work period has been completed), we will find disability to have ceased (see (b)(7)(v) below).

(2) Do you currently have a severe impairment or a severe combination of impairments? If you do not have a severe impairment or a severe combination of impairments, has there been any medical improvement in your impairment(s), (see paragraph (b)(6) of this section) i.e., has your functional capacity to do basic work activities increased? If there has been any medical improvement in your impairment(s), disability will be found to have ceased. If there has not been any medical improvement in your impairment(s), disability will be found to continue unless one of the exceptions to medical improvement applies.

(3) If you have a severe impairment (or a severe combination of impairments), does it meet or equal the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of

this chapter? If yes, disability will be found to continue. If no, a residual functional capacity assessment will be prepared. We will then determine whether there has been any medical improvement in your impairment(s). If there has not been any medical improvement in your impairment(s), does one of the exceptions apply? If there has not been any medical improvement in your impairment(s) (see paragraph (b)(6) of this section) and none of the exceptions to medical improvement applies, disability will be found to continue.

(4) If there has been medical improvement or if one of the first group of exceptions to medical improvement applies, we will use the residual functional capacity assessment in determining whether you can do work you have done in the past. If yes, disability will be found to have ceased.

(5) If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education and past work experience can you do other work? If yes, disability will be found to have ceased. If no, disability will be found to continue.

These evaluation steps are explained in more detail throughout this Subpart. Medical improvement is explained in paragraph (b)(6) of this section. The first group of exceptions to medical improvement are explained in paragraph (b)(7) of this section, and the second group of exceptions to medical improvement are explained in paragraph (b)(8) of this section. If at any point in this evaluation process the evidence shows that you continue to be disabled, we will find that your disability continues without further consideration unless some other basis for cessation exists. We will find that your disability continues if there has not been any medical improvement in your impairment(s) and none of the exceptions to medical improvement applies. We will also find that your disability continues if we determine that you are not able to engage in substantial gainful activity unless some other basis for cessation exists. We will find that your disability ends if there has been any medical improvement in your impairment(s) and you are able to engage in substantial gainful activity; or if one of the first group of exceptions to medical improvement applies and you are able to engage in substantial gainful activity; or if one of the second group of exceptions to medical improvement applies.

(6) *Medical Improvement.* Medical improvement is any increase in your functional capacity to do basic work activities since the most recent favorable medical determination. This will be determined by a comparison of prior and current evidence, including medical and other relevant evidence, as it relates to your impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled. A substitution of judgment alone regarding your functional capacity to do basic work activities based on unchanged medical findings will not be considered medical improvement. How your functional capacity to do basic work activities is assessed is set out in § 416.945.

#### Examples

*Example 1:* You have a back problem and had a laminectomy to relieve nerve root impingement and weakness in your left leg. At the time of our prior decision you were able to lift no more than 10 pounds occasionally, stand less than 6 hours and sit no more than one-half hour at a time. You had a successful fusion operation on your back about one year before our current review of your entitlement. At the time of our review the weakness in your leg has decreased, but you have some loss of range of motion in your back. However, you are now able to lift 15 pounds frequently and 25 pounds occasionally and have no limitation on your ability to sit, walk, or stand. Medical improvement has occurred because there has been an increase in your ability to do basic work activities.

*Example 2:* You are 65 inches tall and weighed 246 pounds at the time your disability was established. You had venous insufficiency and edema in your legs. At that time you were able to sit for 6 hours but were able to stand or walk only occasionally. At the time of our review of your continuing entitlement to disability benefits, you had undergone a vein stripping operation. You now weigh 239 pounds and have intermittent edema. Other than some decrease in your discomfort on walking there has been no change in your functional capacity to do basic work activities. Medical improvement has not occurred because there has been no increase in your ability to do basic work activities.

A finding that your impairment(s) meets or equals an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter means that you are presumed to be unable to perform work-related functions (basic work activities) (see § 416.925(a)). A finding that your current impairment(s) is not severe (see § 416.921) means there is no significant limitation of your ability to do basic work activities.

(7) *First group of exceptions to medical improvement.* If substantial evidence shows that there has not been

any medical improvement in your impairment(s) [see paragraph (b)(6)], we will consider the following exceptions to medical improvement. If one of these exceptions applies and you are able to engage in substantial gainful activity, we will find that your disability ends.

(i) *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which may favorably affect your ability to do basic work activities. We will apply this exception when you have been the beneficiary of services which reflect these advances. This decision will be based on new medical evidence and a new residual functional capacity assessment. (See § 416.945.) This exception does not apply if you are eligible to receive special SSI cash benefits as explained in § 416.261.

(ii) *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).* Vocational therapy (related to your ability to work) may include but is not limited to additional education, training, or work experience. This decision will be based on new medical evidence and a new residual functional capacity assessment. (See § 416.945.) This exception is not applicable if you are eligible to receive special SSI cash benefits as explained in § 416.261.

*Example 1:* You enrolled in and completed a specialized training course which qualifies you for a job in data processing and new medical evidence and a new assessment of your residual functional capacity demonstrate that you can engage in substantial gainful activity.

*Example 2:* Your vocational rehabilitation agency sent you to a trade school. Upon completion of the course, you are qualified to do small appliance repair and new medical evidence and a new assessment of your residual functional capacity demonstrate that you can engage in substantial gainful activity.

(iii) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your condition is not as disabling as it was considered to be at the time of the most recent favorable decision.* This exception applies when substantial evidence demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, your impairment(s) is not as disabling as it was considered to be at the time of the most recent medical decision that you were disabled or continued to be disabled. New or improved diagnostic or evaluative techniques are techniques

which may disclose that your condition is less disabling than was originally thought at the time of the most recent favorable medical decision. Changing methodologies and advances in medical and vocational diagnostic and evaluative techniques have given rise to improved methods for documenting and evaluating medical evidence and residual functional capacity. Where such methods, properly used, permit the development of more accurate, objective and valid results, they will be used. Where these new or improved diagnostic or evaluative techniques are used to determine or document your functional capacity to do basic work activities and where this new determination shows that you are not as disabled as was previously considered, such evidence may serve as a basis for finding that you are no longer disabled. This exception includes only those new or improved diagnostic or evaluative techniques which became generally available after the most recent favorable decision. Changes in diagnostic or evaluative techniques appearing in the Listing of Impairments found in Appendix 1 of Subpart P of Part 404 of this chapter will be regarded as one type of new or improved evaluative techniques, as illustrated by the following example.

*Example:* Serum creatinine levels (Listing 6.02C) have replaced blood urea nitrogen (BUN) levels as indicators of renal dysfunction since the time of your last favorable medical decision. Current evidence including serum creatinine and creatinine clearance levels could show that your condition, which was previously evaluated based on BUN levels, is not now as disabling as was previously thought.

(iv) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence shows that the evidence we considered in making any prior favorable determination demonstrates that an error was made, e.g. the evidence in your file does not pertain to you or was misread. We will also apply this exception if new and material evidence relating to any prior favorable decision shows that it was in error, e.g. a tumor thought to be malignant was later shown to be benign. If the evidence supporting our prior determination is available but does not conform to our documentation standards including but not limited to those reflected in Appendix 1 of Subpart P of Part 404 of this chapter, the lack of documentation may be considered as error. Additionally, error includes situations where evidence now includes

a better, more conclusive diagnostic technique or evaluation which was available at the time of the prior decision but not used in the prior decision. Some additional examples of error are:

(A) some of the evidence in your file was misinterpreted e.g., pulmonary function study values were misread;

(B) an adjudicative standard was misapplied e.g., the wrong vocational rule was applied.

Substantial evidence must show that had the current evidence been available at the time of the prior decision the claim would not have been allowed or continued. A substitution of current judgment alone for that used in the prior favorable decision will not be the basis for applying this exception. In addition, error will not be found where the prior file has been lost and relevant portions cannot be reconstructed. We will, as in other cases, obtain current evidence to evaluate your present condition. This exception to medical improvement based on error will be applied under the conditions set out above, even though some of the conditions for reopening the prior decision (§ 416.1488) may not be met.

(v) *You are currently engaging in substantial gainful activity.* Before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 416.992. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply if you are eligible to receive special SSI cash benefits as explained in § 416.261. This exception also does not apply in determining whether you continue to have a disabling impairment(s) (§ 416.911) for purposes of deciding your eligibility for a reentitlement period (§ 416.992a).

(8) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that you can engage in substantial gainful activity.

(i) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.1488.

(ii) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability was ended if you fail (without good cause) to do what we ask. § 416.1411 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(iii) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will suspend your benefits until we are able to locate you. If we cannot locate you within 12 calendar months, your eligibility for benefits will be terminated (see § 416.1335).

(iv) *You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.* If treatment has been prescribed for you which would be expected to restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 416.930(c)). The month your disability ends will be the first month in which you failed to follow the prescribed treatment.

(c) *Disabled persons under age 18 (Children).* In deciding whether your disability continues, there are a number of factors we consider.

(1) *Evaluation Steps.* To assure that all relevant factors are considered in evaluating your disability and to help us determine at the earliest possible point in the evaluation process whether you are still disabled we will consider the following factors and take the actions described.

(i) Are you engaging in substantial gainful activity? If yes (and any applicable trial work period has been completed), we will find disability to have ceased.

(ii) Does your impairment(s) meet or equal the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter, and

(iii) Has there been any medical improvement in your impairment(s) (see paragraph (c)(2) of this section) i.e., has your functional capacity to do basic work activities increased or does one of the exceptions to medical improvement apply?

Evaluation steps (i) and (ii) are stated in § 416.923 and explained in more detail throughout this subpart. Medical improvement is explained in paragraph (c)(2) of this section. The first group of exceptions to medical improvement are explained in paragraph (c)(3) of this section, and the second group of exceptions to medical improvement are explained in paragraph (c)(4) of this section. If at any point in this evaluation process the evidence shows that you continue to be disabled, we will find that your disability continues without further consideration unless some other basis for cessation exists. If there has not been any medical improvement in your impairment(s) and none of the exceptions to medical improvement applies, we will find that your disability continues. We will find that your disability ends if—

(iv) There has been any medical improvement in your impairment(s) or one of the first group of exceptions to medical improvement applies, and

(v) We determine under evaluation step (ii) of this subsection that the severity of your impairment(s) no longer compares to the severity which would make an adult (a person age 18 or over) disabled.

We will also find that your disability ends if one of the second group of exceptions to medical improvement applies. In this situation the decision will be made without a comparison of the severity of your impairment(s) to the severity of that which would make an adult disabled.

(2) *Medical Improvement.* Medical improvement is any increase in your functional capacity to perform age-appropriate activities since the most recent favorable medical determination. This will be determined by a comparison of prior and current evidence, including medical and other relevant evidence as it relates to your impairment(s) which was present at the time of the most recent medical decision that you were disabled or continued to be disabled. A substitution of judgment alone regarding your functional capacity based on unchanged medical findings will not be considered medical improvement.

#### Examples

*Example 1:* A child was allowed as meeting Listing 101.08 due to chronic osteomyelitis of the knee. At that time he had redness and drainage of the infected site which persisted despite therapy. Current evidence shows that he has responded to intensive medication and treatment. He has had no episodes of acute activity or drainage for the past 8 months and has only mild limitation of knee motion. Because the child's functional

capacity has increased he is found to have medical improvement in his impairment.

*Example 2:* Under the medical equivalence provisions of § 416.926, a child was found disabled based on a deformed leg and a hearing impairment. At the time the child's disability was reevaluated, an operation had resulted in minor improvement in the leg deformity, the hearing impairment had deteriorated somewhat, and, in addition, the child now had a seizure disorder with infrequent seizures. Medical improvement will not be found, because considering the impairments present at the time of the prior favorable medical decision, the child's functional capacity has not increased.

A finding that your impairment(s) meets or equals an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter means that you are presumed to be unable to perform age-appropriate activities.

(3) *First group of exceptions to medical improvement.* If substantial evidence shows that there has not been any medical improvement in your impairment(s) [see paragraph (c)(2)], we will consider the following exceptions to medical improvement. We will find that your disability ends if one of these exceptions applies and the severity of your impairment(s) no longer compares to the severity which would make an adult (a person age 18 or over) disabled.

(i) *Substantial evidence shows that you are the beneficiary of advances in medical therapy or technology.* Advances in medical therapy or technology are improvements in treatment methods which may favorably affect your condition. We will apply this exception when you have been the beneficiary of services which reflect these advances. This decision will be based on new medical evidence. This exception does not apply if you are eligible to receive special SSI cash benefits as explained in § 416.261.

(ii) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your condition is not as disabling as it was considered to be at the time of the most recent favorable decision.* This exception applies when substantial evidence demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, your impairment(s) is not as disabling as it was considered to be at the time of the most recent medical decision that you were disabled or continued to be disabled. New or improved diagnostic or evaluative techniques are techniques which may disclose that your condition is less disabling than was originally thought at the time of the most recent favorable medical decision. Changing methodologies and advances in medical and other diagnostic and evaluative

techniques have given rise to improved methods for documenting and evaluating medical evidence and residual functional capacity. Where such methods, properly used, permit the development of more accurate, objective and valid results, they will be used. Where these new or improved diagnostic or evaluative techniques are used to determine or document your functional capacity to do age-appropriate activities and where this new determination shows that you are not as disabled as was previously considered, such evidence may serve as a basis for finding that you are no longer disabled. This exception includes only those new or improved diagnostic or evaluative techniques which became generally available after the most recent favorable decision. Changes in diagnostic or evaluative techniques appearing in the Listing of Impairments found in Appendix 1 of Subpart P of Part 404 of this chapter will be regarded as one type of new or improved evaluative techniques.

(iii) *Substantial evidence demonstrates that any prior disability decision was in error.* We will apply the exception to medical improvement based on error if substantial evidence shows that the evidence we considered in making any prior favorable determination demonstrates that an error was made, e.g., the evidence in your file does not pertain to you or some of the evidence in your file, such as pulmonary function study values, was misread. We will also apply this exception if new and material evidence relating to any prior favorable decision shows that it was in error, e.g., a tumor thought to be malignant was later shown to be benign. If the evidence supporting our prior determination is available but does not conform to our documentation standards including but not limited to those in Appendix 1 of Subpart P of Part 404 of this chapter, the lack of documentation may be considered an error. Additionally, error includes situations where evidence now includes a better, more conclusive diagnostic technique or evaluation which was available at the time of the prior decision but not used in the prior decision. Substantial evidence must show that had the current evidence been available at the time of the prior decision the claim would not have been allowed or continued. A substitution of current judgment alone for that used in the prior favorable decision will not be the basis for applying this exception. In addition, error will not be found where the prior file has been lost and relevant portions cannot be reconstructed. We will, as in other cases, obtain current

evidence to evaluate your present condition. This exception to medical improvement based on error will be applied under the conditions set out above, even though some of the conditions for reopening the prior decision (§ 416.1488) may not be met.

(iv) *You are currently engaging in substantial gainful activity.* Before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period as set out in § 416.992. We will find that your disability has ended in the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply if you are eligible to receive special SSI cash benefits as explained in § 416.261. This exception also does not apply in determining whether you continue to have a disabling impairment(s) (§ 416.911) for purposes of deciding your eligibility for a reentitlement period (§ 416.992a).

(4) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that you are no longer disabled. In these situations the decision will be made without a determination that the severity of your impairment(s) no longer compares to the severity which would make an adult (a person age 18 or over) disabled.

(i) *A prior determination was fraudulently obtained.* If we find that any prior favorable determination was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.1488.

(ii) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without good cause) to do what we ask. Section 416.1411 discusses how we will decide whether you have good cause for failure to cooperate. The month in which your disability ends will be the first month in which you failed to do what we asked.

(iii) *We are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will suspend your benefits until we are able to locate you. If we cannot locate you within 12 calendar



months, your eligibility for benefits will be terminated (see § 416.1335).

(iv) *You fail to follow prescribed treatment which would be expected to restore your ability to perform age-appropriate activities.* If treatment has been prescribed for you which would be expected to restore your ability to perform age-appropriate activities, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have good cause for failing to follow that treatment, we will find that your disability has ended (see § 416.930(c)). The month your disability ends will be

the first month in which you failed to follow the prescribed treatment.

(d) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were found to be disabled under a State plan, we will first evaluate your condition under the rules explained in paragraphs (a), (b), or (c) above. If we are not able to find that your disability continues on the basis of these rules, we will then evaluate your condition under the appropriate State plan. If we are not able to find that your disability continues under these State plan criteria, we will find that your disability ends.

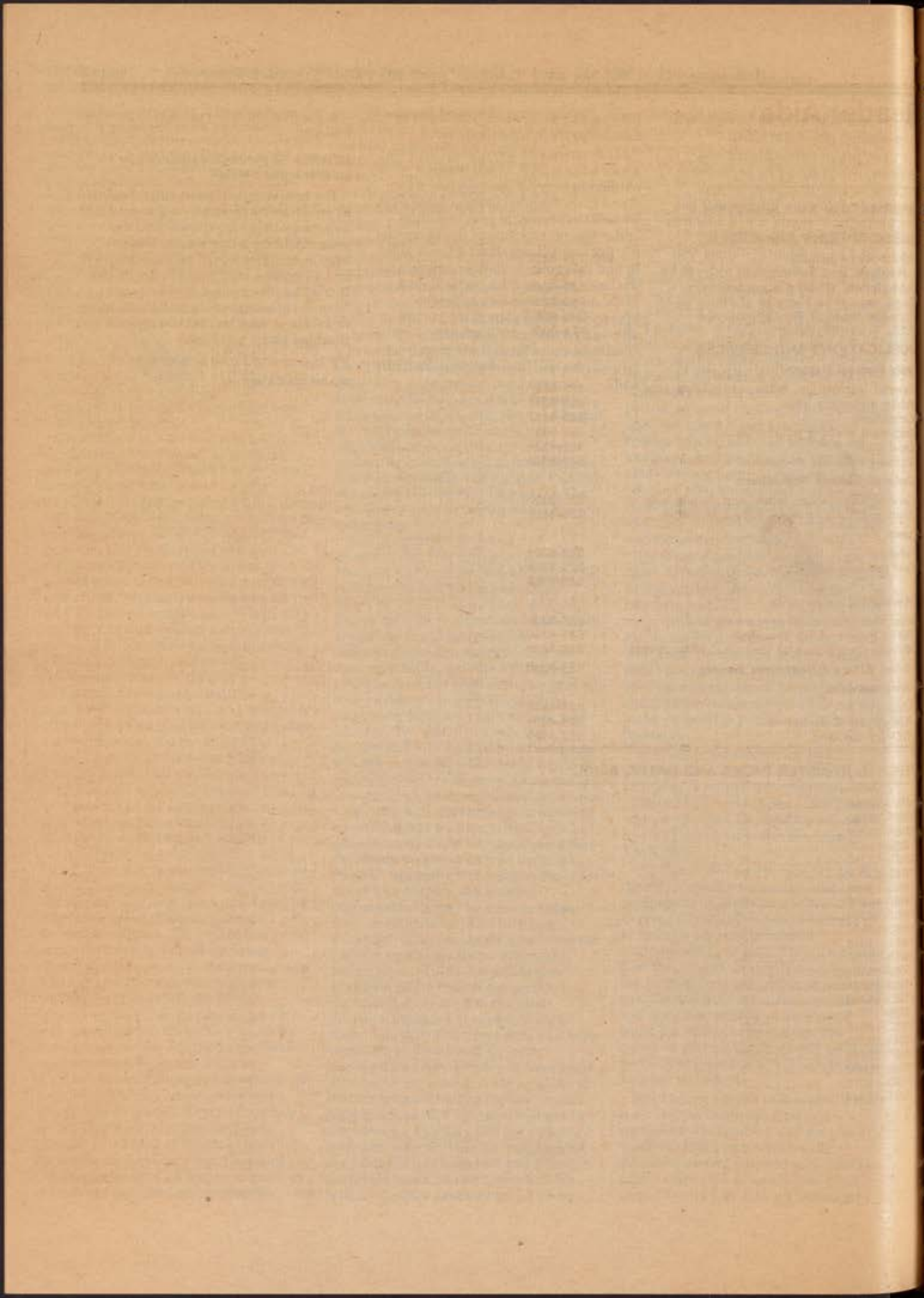
6. Section 416.998 is revised to read as follows:

**§ 416.998 If you become disabled by another impairment(s).**

If a new severe impairment(s) begins in or before the month in which your last impairment(s) ends, we will find that your disability is continuing. The new impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity, or severe enough so that you are still disabled under § 416.994.

[FR Doc. 85-10474 Filed 4-29-85; 8:45 am]

BILLING CODE 4190-11-M



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Federal Register

Vol. 50, No. 83

Tuesday, April 30, 1985

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