5-13-85
Vol. 50 No. 92
Pages 19897-20084

federal register

Monday
May 13, 1985

Selected Subjects

Animal Diseases
Animal and Plant Health Inspection Service

Antibiotics
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Fisheries
National Oceanic and Atmospheric Administration

Marine Safety
Coast Guard

Meat Inspection
Food Safety and Inspection Service

Medicare
Health Care Financing Administration

Mortgage Insurance
Housing and Urban Development Department

Motor Vehicle Safety
National Highway Traffic Safety Administration

Public Housing
Housing and Urban Development Department

Radio
Federal Communications Commission

CONTINUED INSIDE

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

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

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

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

Selected Subjects

Contents

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

Separate Parts in This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
831 20064

9 CFR
145 19897
147 19897
307 19900
310 19900
317 19903
318 (2 documents) 19903–19905
327 19906
381 19906

14 CFR
39 19908
71 (2 documents) 19909
Proposed Rules:
71 (3 documents) 19950, 19951

17 CFR
12 19910
Proposed Rules:
12 19951

18 CFR
141 19912
389 19912

21 CFR
431 19917
436 19917
440 19917
442 19917
444 19917
446 19917
448 19917
449 19917
450 19917
452 19917
453 19917
455 19917
460 19917
536 19917
539 19917
540 19917
544 19917
546 19917
548 19917
555 19917

24 CFR
203 (2 documents) 19923, 19924
226 19924
234 19924
941 19927

30 CFR
914 19929
918 19931
Proposed Rules:
916 19953

33 CFR
100 19931
117 19932
165 19933
Proposed Rules:
100 19954
117 19955

38 CFR
21 (2 documents) 19933

40 CFR
Proposed Rules:
261 19956
266 19956

42 CFR
Proposed Rules:
403 20048

47 CFR
73 19936
Proposed Rules:
2 19956
73 19956
90 19956

49 CFR
Proposed Rules:
571 (2 documents) 19961–19986

50 CFR
611 19946
671 19948
672 19946
675 19946

Rules and Regulations

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 85-029]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the National Poultry Improvement Plan (NPIP) and its auxiliary provisions by: (1) Amending the definition of Salmonella to include the arizona group; (2) adding the microhemagglutination inhibition test and the enzyme-labeled immunosorbent assay (ELISA) test as supplemental tests for *M. gallisepticum* and *M. synoviae* for chicken breeding flocks and turkey breeding flocks and as a supplemental test for *M. meleagridis* for turkey breeding flocks; (3) establishing criteria for allowing egg yolk testing for monitoring testing for the *M. gallisepticum* and *M. synoviae* classifications for multiplier chicken breeding flocks; (4) establishing criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens"; (5) establishing criteria for classifying turkey breeding flocks as "U.S. M. Synoviae Clean"; (6) providing that primary breeding flocks of waterfowl and of exhibition poultry located in U.S. Pullorum-Typhoid Clean States may be qualified under certain conditions as "U.S. Pullorum-Typhoid Clean" with less than an annual test of 300 birds; (7) and establishing procedures for filling vacancies of certain positions on the General Conference Committee. It has been determined that changes (1) through (6) are necessary in order to incorporate in the NPIP the latest effective procedures to facilitate control of poultry diseases. The intended effect is to improve poultry and poultry products. It has been determined that change (7) is warranted in order to help provide orderly procedures for ensuring full and fair participation on the General Conference Committee.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 828, Federal Building, Hyattsville, MD 20782, (301) 436-5140.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on January 18, 1985 (50 FR 2684-2689), the Department proposed to amend portions of the provisions governing the National Poultry Improvement Plan and Auxiliary Provisions (contained in 9 CFR Parts 145 and 147 and referred to below as the regulations) by (1) amending the definition of Salmonella to include the arizona group; (2) adding the microhemagglutination inhibition test and the enzyme-labeled immunosorbent assay (ELISA) test as supplemental tests for *M. gallisepticum* and *M. synoviae* for chicken breeding flocks and turkey breeding flocks and as a supplemental test for *M. meleagridis* for turkey breeding flocks; (3) establishing criteria for allowing egg yolk testing for monitoring testing for the *M. gallisepticum* and *M. synoviae* classifications for multiplier chicken breeding flocks; (4) establishing criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens"; (5) establishing criteria for classifying turkey breeding flocks as "U.S. M. Synoviae Clean"; (6) providing that primary breeding flocks of waterfowl and of exhibition poultry located in U.S. Pullorum-Typhoid Clean States may be qualified under certain conditions as "U.S. Pullorum-Typhoid Clean" with less than an annual test of 300 birds; (7) and establishing procedures for filling vacancies of certain positions on the General Conference Committee.

Comments were solicited concerning the proposal for a 60-day period ending March 19, 1985. Three comments were received. These comments were from representatives of the poultry industry. These comments have been carefully considered and are discussed below. Based on the reasons set forth in the proposal, the provisions of the proposal have been adopted in the final rule except as explained below.

U.S. M. Gallisepticum Clean State, Meat-Type Chickens

The three comments concerned the proposal to establish a new § 145.34(b) to set forth a mechanism for designating a State as a "U.S. M. Gallisepticum Clean State, Meat-Type Chickens." Proposed § 145.34(b) provided the following:

U.S. M. Gallisepticum Clean State, Meat-Type Chickens. (1) A State will be declared a U.S. M. Gallisepticum Clean State, Meat-Type Chickens, when it has been determined by the Service that:

(i) No *M. gallisepticum* is known to exist nor to have existed in meat-type chicken breeding flocks in production within the State during the preceding 12 months;

(ii) All meat-type chicken breeding flocks in production are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iii) All hatcheries within the State which handle meat-type chicken products must handle products which are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iv) All shipments of meat-type chicken products other than those classified as U.S. M. Gallisepticum Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all meat-type chicken specimens that have been identified as being infected with *M. gallisepticum*;

(vi) All reports of *M. gallisepticum* infection in meat-type chickens are promptly followed by an investigation by the Official State Agency to determine the origin of the infection;

(vii) All meat-type chicken flocks found to be infected with *M. gallisepticum* are quarantined until marketed under supervision of the Official State Agency.

(2) Discontinuation of any of the conditions described in paragraph (b)(1) of this section, or if repeated outbreaks of *M. gallisepticum* occur in meat-type chicken breeding flocks described in paragraph (b)(1)(ii) of this

section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing.

The three commenters apparently were concerned that the terms "meat-type chicken products," "meat-type chicken specimens," "meat-type chickens," and "meat-type chicken flocks" as used in proposed § 145.34(b) would be interpreted to include products, specimens, chickens, and flocks from other than meat-type chicken breeding flocks. The commenters requested that the regulations be clarified to indicate that a State's eligibility for such a designation would depend solely on factors relating to meat-type chicken breeding flocks and would not depend on factors relating to any other types of poultry, such as exhibition poultry.

It was intended that the criteria for such designation be based solely on factors relating to meat-type chicken breeding flocks, which are a part of the commercial broiler industry. The designation was not intended for any other types of poultry, such as exhibition poultry. Therefore, in the final rule the references in § 145.34(b) to products, specimens, chickens, and flocks are clarified to indicate that they relate solely to meat-type chicken breeding flocks.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291, and has been classified as not a "major rule." The Department has determined that this action will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulations, among other things, provide for testing for pullorum-typhoid, *M. gallisepticum*, *M. synoviae*, and *M. meleagridis*. The blood testing and egg yolk testing provisions included in the final rule are designed to provide additional testing alternatives, for use at the flockowner's option. The criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens," and for classifying turkey breeding flocks as "U.S. M. Synoviae Clean" will allow recognition of those States and flocks that meet optimum control program standards. The amendments will not cause significant changes in the costs of producing or buying poultry and poultry products or in the amount of poultry and poultry products marketed.

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

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, National Poultry Improvement Plan.

Accordingly, Parts 145 and 147 of 9 CFR are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for 9 CFR Part 145 is revised to read as set forth below and the authority citations following all the sections in Part 145 are removed:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 145.1, paragraph (cc) is revised to read as follows:

§ 145.1 Definitions.

* * * * *

(cc) *Salmonella.* Any bacteria belonging to the genus Salmonella, including the arizona group.

* * * * *

3. In § 145.10, the text of paragraphs (c) and (e) is revised and a new paragraph (j) is added to read, respectively, as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(c) *U.S. M. Gallisepticum Clean.* (See § 145.23(c), § 145.23(f), § 145.33(c), § 145.33(f), § 145.43(c), and § 145.53(c).)

* * * * *

(e) *U.S. M. Synoviae Clean.* (See § 145.23(e), § 145.23(g), § 145.33(e), § 145.33(g), and § 145.43(e)).

* * * * *

(j) *U.S. M. Gallisepticum Clean State, Meat-Type Chickens.* (See § 145.34(b).)

Figure 11

4. In § 145.14, "or Arizona" is removed from the fourth sentence of paragraph (a)(10).

5. In § 145.14, paragraph (b)(1) is revised and a new paragraph (c) is added to read as follows:

§ 145.14 Blood testing.

* * * * *

(b) *For M. gallisepticum and M. synoviae:* (1) The official blood tests for *M. gallisepticum* and *M. synoviae* shall be the serum plate agglutination test, the tube agglutination test, the hemagglutination inhibition (HI) test, the microhemagglutination inhibition test, the enzyme-labeled immunosorbent assay (ELISA) test [1] or a combination of two or more of these tests. The HI test, the microhemagglutination inhibition test, and the ELISA test shall be used to confirm the positive results of other serological tests. HI titers of 1:40 or less may be interpreted as equivocal, and final judgment may be based on further samplings and/or culture of reactors.

* * * * *

[1] Procedures for the enzyme-labeled immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, "Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry," *Avian Diseases*, Vol. 27, No. 1, pp. 21–35, January–March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, "Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum," *Avian Diseases*, Vol. 27, No. 3, pp. 773–786, July–September 1983; and

H.B. Ortmayer and R. Yamamoto, "Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA)," *Proceedings, 30th Western Poultry Disease Conference*, pp. 63–66, March 1981.

(c) *For M. meleagridis.* The official blood tests for *M. meleagridis* are specified in § 145.43(d)(2).

6. Section 145.23 is amended by adding a new paragraph (c)(1)(ii)(C) to read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

7. In § 145.23, paragraph (e)(1)(ii) is revised to read as follows:

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 50 birds shall be tested: *Provided,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period; or

(*b*) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

8. Section 145.33 is amended by adding new paragraph (c)(1)(ii)(C) to read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

9. In § 145.33, paragraph (e)(1)(ii) is revised to read as follows:

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 50 birds shall be tested: *Provided,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period; or

(*b*) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

10. In § 145.34, a new paragraph (b) is added to read as follows:

§ 145.34 Terminology and classification; States.

* * * * *

(b) *U.S. M. Gallisepticum Clean State, Meat-Type Chickens.* (1) A State will be declared a U.S. M. Gallisepticum Clean State, Meat-Type Chickens, when it has been determined by the Service that:

(i) No *M. gallisepticum* is known to exist nor to have existed in meat-type chicken breeding flocks in production within the State during the preceding 12 months;

(ii) All meat-type chicken breeding flocks in production are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iii) All hatcheries within the State which handle products from meat-type chicken breeding flocks only handle products which are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iv) All shipments of products from meat-type chicken breeding flocks other than those classified as U.S. M. Gallisepticum Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all specimens from chickens from meat-type chicken breeding flocks that have been identified as being infected with *M. gallisepticum*;

(vi) All reports of *M. gallisepticum* infection in chickens from meat-type chicken breeding flocks are promptly followed by an investigation by the Official State Agency to determine the origin of the infection;

(vii) All chickens from meat-type chicken breeding flocks found to be infected with *M. gallisepticum* are quarantined until marketed under supervision of the Official State Agency.

(2) Discontinuation of any of the conditions described in paragraph (b)(1) of this section, or if repeated outbreaks of *M. gallisepticum* occur in meat-type chicken breeding flocks described in paragraph (b)(1)(ii) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing.

11. In § 145.43, paragraph (d)(2) is revised and a new paragraph (e) is added to read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(2) The official blood tests for *M. meleagridis* shall be the serum plate agglutination test, the tube agglutination test, or the microagglutination test. The hemagglutination inhibition (HI) test, microhemagglutination inhibition test, serum plate dilution test, microagglutination test and the enzyme-labeled immunosorbent assay (ELISA)[2] test may be used as supplemental tests to determine the status of the flock, in accordance with § 147.6(b).

* * * * *

(e) *U.S. M. Synoviae Clean.* (1) All birds, or a sample of at least 100 birds from flocks of more than 100 and each bird in flocks of 100 or less, have been tested for *M. synoviae* when more than 4 months of age in accordance with the procedures in § 145.14(b): *Provided,* That to retain this classification a minimum of 30 samples from male flocks and 60

---

[2] Procedures for the enzyme-labeled immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, "Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry," *Avian Diseases,* Vol. 27, No. 1, pp. 21–35, January–March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, "Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum," *Avian Diseases,* Vol. 27, No. 3, pp. 773–786, July–September 1983; and

H.B. Ortmayer and R. Yamamoto, "Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA)," *Proceedings, 30th Western Poultry Disease Conference,* pp. 63–66, March 1981.

samples from female flocks shall be retested at 28–30 weeks of age and at 4–6 week intervals thereafter.

(2) When reactors to the official test are found and can be identified, tracheal swabs and their corresponding blood samples from 10 (all if fewer than 10) reacting birds shall be submitted to an authorized laboratory for serological and cultural examination. If reactors cannot be identified, at least 30 tracheal swabs and their corresponding blood samples shall be submitted. In a flock with a low reactor rate (less than five reactors) the reactors may be submitted to the laboratory within 10 days for serology, necropsy, and thorough bacteriological examination. When reactors to the official test are found, the procedures outlined in § 147.6 will be used to determine the status of the flock.

(3) Flocks located on premises which, during 3 consecutive years, have contained breeding flocks qualified as U.S. M. Synoviae Clean, as described in paragraph (e)(1) above, may qualify for this classification by a negative blood test of at least 100 birds from flocks of more than 100 and each bird in flocks of 100 or less, when more than 4 months of age, and by testing a minimum of 30 samples from male flocks and 60 samples from female flocks at 28–30 weeks of age and at 45 weeks of age.

12. In § 145.53, paragraph (b)(5) is amended by changing the punctuation mark at the end of the paragraph from a period to a colon and adding a new proviso to read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(b) * * *

(5) * * * *And Provided further,* That when a flock is a waterfowl or exhibition poultry primary breeding flock located in a State which has been deemed to be a U.S. Pullorum-Typhoid Clean State for the past three years, and during which time no isolation of pullorum or typhoid has been made that can be traced to a source in that State, a bacteriological examination monitoring program or a serological examination monitoring program acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

13. The authority citation for 9 CFR Part 147 is revised to read as set forth below and the authority citations following all the sections in Part 147 are removed:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 147.6 [Amended]

14. In the heading for § 147.6 "Mycoplasma gallisepticum and Mycoplasma synoviae" is changed to "Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis."

15. In the material preceding the colon in paragraph (a) of § 147.6, "M. gallisepticum or M. synoviae:" is changed to "M. gallisepticum, M. synoviae, or M. meleagridis:".

16. Part 147 is amended by adding a new § 147.8 to read as follows:

§ 147.8 Procedures for preparing egg yolk samples for diagnostic tests.

The following testing provisions may be used for retaining the classification U.S. M. Gallisepticum Clean under § 145.23(c)(1)(ii)(C) and § 145.33(c)(1)(ii)(C), and for retaining the classification U.S. M. Synoviae Clean under § 145.23(e)(1)(ii)(*b*) and § 145.33(e)(1)(ii)(*b*).

(a) Under the supervision of an Authorized Agent or State Inspector, the eggs which are used in egg yolk testing must be selected from the premises where the breeding flock is located, must include a representative sample of 30 eggs collected from a single day's production from the flock, must be identified as to flock of origin and pen, and must be delivered to an authorized laboratory for preparation for diagnostic testing.

(b) The authorized laboratory must identify each egg as to the breeding flock and pen from which it originated, and maintain this identity through each of the following:

(1) Crack the egg on the round end with a blunt instrument.

(2) Place the contents of the egg in an open dish (or a receptacle to expose the yolk) and prick the yolk with a needle

(3) Using a 1 ml syringe without a needle, aspirate 0.5 ml of egg yolk from the opening in the yolk.

(4) Dispense the yolk material in a tube. Aspirate and dispense 0.5 ml of PBS (phosphate-buffered saline) into the same tube, and place in a rack.

(5) After all the eggs are sampled, place the rack of tubes on a vortex shaker for 30 seconds.

(6) Centrifuge the samples at 2500 RPM (1000 x g) for 30 minutes.

(7) Test the resultant supernatant for *M. gallisepticum* and *M. synoviae* by using test procedures specified for detecting IgG antibodies set forth for testing serum in § 147.7 (for these tests the resultant supernatant would be substituted for serum); except that a single 1:20 dilution hemagglutination inhibition (HI) test may be used as a screening test in accordance with the procedures set forth in § 147.7.

Note.—For evaluating the test results of any egg yolk test, it should be remembered that a 1:2 dilution of the yolk in saline was made of the original specimen.

§ 147.11 [Amended]

17. In § 147.11, "or arizonae" is removed from the first sentence of paragraph (h).

§ 147.21 [Amended]

18. In § 147.21, "and Arizona" is removed from the second sentence of paragraph (f).

19. In § 147.43, paragraph (c) is revised to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(c) Three regional members shall be elected at each Plan Conference. All members shall serve for a period of 4 years, subject to the continuation of the Committee by the Secretary of Agriculture, and may not succeed themselves: *Provided,* That an alternate member who assumed a Committee member vacancy following mid-term would be eligible for re-election to a full term. When there is a vacancy for the member-at-large position, the General Conference Committee shall make an interim appointment and the appointee shall serve until the next Plan Conference at which time an election will be held. If a vacancy occurs due to both a regional member and alternate being unable to serve, the vacant position will be filled by an election at the earliest regularly scheduled national or regional Plan Conference, where members of the affected region have assembled.

* * * * *

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

B.G. Johnson,

Acting Deputy Administrotor, Veterinary Services.

[FR Doc. 85–11482 Filed 5–10–85; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83-031F]

Swine Post-Mortem Inspection Procedures and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations by establishing new swine post-mortem staffing standards using a more efficient inspection procedure for one- and two-inspector swine slaughter configurations, and for three-inspector swine slaughter configurations with heads detached. For these configurations, the rule will increase the number of swine that can be inspected before a third inspector is required, as well as the number of sows and boars that can be inspected on a detached head inspection configuration. The rule also sets forth certain related facility requirements for inspection. This action allows higher production rates for the establishments and greater inspection efficiency for the Department.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Taylor, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2987.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Through the use of an improved inspection procedure, this rule could increase inspection efficiency and industry productivity in as many as 700 swine slaughter establishments, at little or no extra cost.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). Small and medium-sized establishments (with one or two inspectors) will benefit by gaining more flexibility in the planning of slaughter operations, as well as the opportunity to increase their productivity, at little or no extra cost.

Background

Introduction: Post-Mortem Inspection

Section 4 of the Federal Meat Inspection Act (21 U.S.C. 604) requires that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of the carcasses and parts of certain domestic food animals, including swine, when these animals are slaughtered in an establishment that is subject to inspection under the Act. Post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera (internal organs), and carcass of each animal slaughtered, for the purpose of detecting disease or other conditions that could render the carcass or any part thereof unfit for human food or otherwise adulterated.

With the appropriate facilities, equipment, and placement of inspection stations, a swine slaughtering establishment can set its own production rates, and the Food Safety and Inspection Service (FSIS) assigns sufficient inspectors to carry out inspection at that rate. In establishments with relatively low production rates, one inspector performs the inspection of the head, viscera, and carcass of each animal slaughtered at one station. In establishment with higher slaughter rates, two or more inspectors may be needed. On a two-inspector configuration, these three inspection tasks are divided between the two inspectors. On a line with three or more inspectors, each of these three inspection tasks is performed by a different inspector. Where two or more inspectors are required, they rotate between the tasks during the workday to equalize the workload.

New Post-Mortem Inspection Procedures for Large Establishments

On August 28, 1981, FSIS published an interim rule in the **Federal Register** (46 FR 43406) establishing new swine post-mortem inspection rates based on more efficient inspection procedures. The interim rule was adopted as a final regulation on August 4, 1982 (47 FR 33673). The new procedures applied only to those operations requiring three or more inspectors and where the swine heads are inspected while still attached to the carcass.[1] The 1981 interim rule expressed FSIS's intention to extend the new procedures to the other classes of establishments upon completion of additional studies, which is the main purpose of this rule.

Testing the New Procedures in Other Swine Establishments

Studies were undertaken to determine the impact, applicability, and effectiveness of the new procedures and staffing standards to establishments which require less than three inspectors and to those establishments with three inspectors where the swine heads are inspected after being detached from the carcasses.[2]

These studies were conducted at swine slaughter establishments operating with a one- or two-inspector line configuration and slaughtering both market hogs, and sows and boars. An evaluation of the elements in the one- and two-inspector configurations showed that most of the inspection tasks are identical to the inspection tasks on which the approved work measurement standards for the three- to seven-inspector configurations are based, and that it takes the same amount of time to perform the work in all configurations. As a result of these studies, the Department on September 12, 1984, in the **Federal Register** (49 FR 35782) proposed improved inspection procedures which appear to be as effective in detecting conditions relating to adulteration as the current procedures.

Factors Influencing Increased Rate of Inspection

1. Revised Post-Mortem Inspection Procedures. The revised post-mortem inspection procedures require fewer motions, and hence less effort and time to perform, than the procedure used prior to 1981. This has resulted from the installation of a mirror at the carcass station to eliminate turning the carcass, from the substitution of visual inspection for some of the palpation at the viscera station, and from the elimination of the requirement to turn and examine the carcass at the head station.

2. Attached and Detached Heads. The inspection of the head requires the

---

[1] The tests are reported in two studies titled "A Study on the Effectiveness of Current and Proposed Swine Post-Mortem Inspection" and "A Study on the Applicability of Proposed Swine Post-Mortem Inspection to Sows/Boars." Copies of these reports may be obtained without charge by writing to the Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] A copy of the report on these studies, "Work Measurement Staffing Standard for the One to Three Inspector Swine Slaughter Configurations," may be obtained without charge from Mr. Paul Taylor, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

examination of mandibular lymph nodes. These nodes are made accessible to the inspector in two ways. The head may be disjointed from the neck and left attached to the carcass by a flap of skin, or it may be removed and placed in a head rack, nose down, for the inspector's examination. Most establishments requiring three or more inspectors provide for the inspection of the head while it is still attached to the carcass by the flap of skin. However, most one- and two-inspector line configurations provide for the removal of the head from the carcass for inspection. Removal of the heads does not affect the inspection rate on market hog slaughter lines. The carcasses are short enough so that the market hog heads can be inspected while attached without requiring stooping by the inspector. Sow and boar heads hang nearer to the floor which requires the inspector to stoop and, therefore, more inspection time is necessary for sow and boar head inspection.

3. Addition of a Mirror at the Carcass Inspection Station. Mirrors are required for three or more inspector slaughter lines where the swine heads are inspected while still attached. The criteria for such mirrors are set forth in § 307.2(m)(6) of the Federal meat inspection regulations (9 CFR 307.2(m)(6)). The mirror allows the inspector to view the back of the carcass without turning the carcass which decreases the time required.

4. Arrangement of Facilities Determines the Inspector's Walking Distance. In one- and two-inspector configurations, the inspector must sometimes walk from one of the three inspection stations to another. The arrangement of the facilities, therefore, influences the rate of inspection. If the stations are located close to each other, the inspector can perform his/her duties with less walking time. The less walking involved, the more animals that can be inspected per hour and, thus, the faster the line speeds may be set.

The Proposal

On September 12, 1984, FSIS published a proposal in the **Federal Register** (49 FR 35782) to establish new swine post-mortem inspection procedures and staffing standards.

FSIS received two comments in response to the proposed rule—1 from an industry association and 1 from a State department of agriculture. Both commenters expressed full support of the proposal. FSIS is therefore adopting the proposal as published, except for minor changes made for clarification purposes, as described below.

The Final Rule

1. This rule requires mirrors at the carcass inspection stations on those sow and boar three-inspector lines where the heads are detached from the carcasses in addition to the current requirement that mirrors are required for three or more inspector slaughter lines where swine heads are inspected while still attached. In establishments where one or two inspectors are assigned, a mirror is not required unless the establishment desires to increase production to the point where an additional inspector must be assigned. In that event, the inspection service will have the option to require a carcass mirror rather than place another inspector in the establishment. Section 310.1(b)(3) has been amended to clarify that the inspection service, rather than the inspector, has the authority to require a mirror in such cases. The inspection rates on one- and two-inspector configurations may be slightly higher if mirrors are provided. Therefore, to receive the faster inspection rate, such establishments will be required to install mirrors meeting the criteria in § 307.2(m)(6).

2. The new staffing standards for one- and two-inspector lines are based upon the distance the inspector walks between the inspection stations. The new procedures provide an incentive for smaller plants to increase productivity by rearranging their facilities to minimize the distance between the inspection stations.

3. As previously mentioned, when two inspectors are assigned to an establishment, the three inspection tasks are divided between them. Various combinations of inspection tasks have been included in this rule, some of which are more productive than others.

The inspection rate for market hog two-inspector configurations is the same for both attached and detached heads. Sow and boar rates for detached heads are different from those for attached heads because the inspection time is greater for attached heads due to the necessary stooping by the inspector. The "Note" following the footnotes under Tables 2 and 3 has been clarified by changing "On multiple-inspector kills" to "In multiple-inspector plants".

4. As previously discussed, the inspection rates for three or more inspector lines, with heads inspected while attached to the carcasses, were promulgated on August 4, 1982. Those rates were previously contained in two tables (9 CFR 310.1(b)(3))—one for butcher hogs and one for sows and boars. For purposes of organization, this rule combines the two tables into one as Table 4, making no distinction, except as otherwise noted, between swine slaughter lines with heads attached and those with heads detached. The "Note" following the footnote under Table 4 has been clarified by changing "On multiple-inspector kills" to "In multiple-inspector plants".

5. Staffing standards for various inspection station configurations are contained in this rule for those establishments that have low slaughter production rates. If such establishments desire increased production rates that would require an additional inspector, FSIS has the option of implementing a different inspection configuration rather than adding an inspector. This would require that such establishments install mirrors at the inspection stations as set forth in section 310.1(b)(3).

List of Subjects

9 CFR Part 307

Facilities, Meat inspection, Official establishment.

9 CFR Part 310

Meat inspection, Post-mortem inspection, Slaughter.

Final Rule

The Federal meat inspection regulations are revised as follows:

1. The authority citation for Parts 307 and 310 continues as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 307.2(m)(6) is revised to read as follows:

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) * * *

(6) For swine slaughter lines requiring three or more inspectors, and for those one- and two-inspector configurations where the establishment installs a mirror: At the carcass inspection station one glass or plastic, distortion-free mirror, at least 5 feet × 5 feet, mounted far enough away from the vertical axis of the moving line to allow the carcass to be turned, but not over 3 feet away, and so mounted that any inspector standing at the carcass inspection station can readily view the back of the carcass.

3. Section 310.1(b)(3) is revised to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b) * * *

(3) *Swine Inspection.* The following inspection staffing standards are applicable to swine slaughter configurations. The inspection standards for all slaughter lines are based upon the observation rather than palpation, at the viscera inspection station, of the spleen, liver, heart, lungs, and mediastinal lymph nodes. In addition, for one- and two-inspector lines, the standards are based upon the distance walked (in feet) by the inspector between work stations; and for three or more inspector slaughter lines, upon the use of a mirror, as described in § 307.2(m)(6), at the carcass inspection station. Although not required in a one- or two-inspector slaughter configuration, except in certain cases as determined by the inspection service, if a mirror is used, it must comply with the requirements of § 307.2(m)(6).

TABLE 1.—ONE INSPECTOR—STAFFING STANDARDS FOR SWINE

Distance walked[1] in feet is—	Maximum inspection rates (head per hour)			
	Market hogs (heads attached or detached)		Sows and boars (heads detached)	
	Without mirror	With mirror	Without mirror	With mirror
0 to 5	140	150	131	143
6 to 10	134	144	126	137
11 to 15	129	137	122	132
16 to 20	124	132	117	127
21 to 25	120	127	113	122
26 to 30	116	122	110	118
31 to 35	112	116	106	114
36 to 40	108	114	103	110
41 to 45	105	110	100	106
46 to 50	101	107	97	103
51 to 55	98	103	94	100
56 to 60	96	100	91	97
61 to 65	93	97	89	94
66 to 70	90	95	87	92
71 to 75	88	92	85	89
76 to 80	86	89	82	87
81 to 85	84	87	80	85
86 to 90	82	85	79	83
91 to 95	80	83	77	81
96 to 100	78	81	75	79

[1] Distance walked is the total distance that the inspector will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, head, and washbasin).

TABLE 2.—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS

Distance walked[1] in feet by inspector B is—	Maximum inspection rates (head per hour with heads attached or detached)		
	Line configuration		
	Carcass,[2] head viscera[3]	Viscera,[2] head carcass[3]	Head,[2] viscera carcass[3]
Without Mirror			
0 to 5	151-253	151-271	151-296
6 to 10	151-239	151-255	151-277
11 to 15	151-226	151-240	151-260
16 to 20	151-214	151-227	151-244
21 to 25	151-204	151-215	151-231
With Mirror			
0 to 5	151-253	151-303	151-318
6 to 10	151-239	151-283	151-304
11 to 15	151-226	151-265	151-289
16 to 20	151-214	151-249	151-270
21 to 25	151-204	151-235	151-254

[1] Distance walked is the total distance that inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).
[2] Inspector A.
[3] Inspector B.

Note.—In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 3.—TWO INSPECTORS—STAFFING STANDARDS FOR SOWS AND BOARS

Distance walked[1] in feet by inspector B is—	Maximum inspection rates (head per hour)			
	Line Configuration			
	Carcass,[2] head viscera,[3] heads detached	Viscera,[2] head carcass,[3] heads detached	Head,[2] viscera carcass,[3] heads detached	Head,[2] viscera carcass,[3] heads attached
Without Mirror				
0 to 5	144-248	144-254	144-267	144-267
6 to 10	144-235	144-240	144-253	144-253
11 to 15	144-222	144-227	144-239	144-239
16 to 20	144-211	144-215	144-226	144-226
21 to 25	144-201	144-205	144-214	144-214
With Mirror				
0 to 5	144-248	144-292	144-305	144-292
6 to 10	144-235	144-273	144-291	144-280
11 to 15	144-222	144-256	144-272	144-268
16 to 20	144-211	144-241	144-255	144-255
21 to 25	144-201	144-228	144-240	144-240

[1] Distance walked is the total distance that inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).
[2] Inspector A.
[3] Inspector B.

Note.—In multiple-inspector plans, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE

Maximum inspection rates (head per hour with heads attached)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
Market hogs:				
319 to 506	1	1	1	3
507 to 540	1	2	1	4
541 to 859	2	2	1	5
860 to 1,022	2	3	1	6
1,023 to 1,106	3	3	1	7
Sows and boars:				
306 to 439	1	1	1	3
306 to 462 [1]	1	1	1	3
440 to 475	2	1	1	4
476 to 752	2	2	1	5
753 to 895	3	2	1	6
896 to 964	3	3	1	7

[1] This rate applies if the heads of sows and boars are *detached* from the carcasses at the time of inspection.

Note.—In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11479 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 317 and 318

[Docket No. 84-028F]

Agar-Agar in Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of agar-agar as a stabilizer and thickener in certain meat food products (canned jellied meat food products). The Food and Drug Administration (FDA) has affirmed this substance as generally recognized as safe (GRAS) for use in foods under certain conditions. The petitioner has supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2), for amending the Federal meat inspection regulations to permit the requested use. The Administrator has determined that it is appropriate to add agar-agar to the list of acceptable binders commonly used in foods.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Written comments to U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, D.C. 20250. (See also "Comments" under "**SUPPLEMENTARY INFORMATION.**")

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries, Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the optional use of agar-agar as a binder in certain meat food products. The current Federal meat inspection regulations provide only for the labeling of agar jelly when it is used as a packing substance (9 CFR 317.8(b)(17)). Industry will benefit from this action through the ability to use a wider variety of binders (stabilizers and thickeners).

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this rule will impose no new requirements on industry. The implementation of this rule will merely allow meat processors to use a new class of thickeners and stabilizers in meat food products.

Comments

This is a final rule consistent with the provisions of § 318.7(a) (2) and (3) of the Federal meat inspection regulations (9 CFR 318.7(a) (2) and (3)). As such, no prior request for public comments is required (see "Background" for rationale). However, interested persons may inform the Department of any available data which raise questions about this action within the 60 day period between publication and the effective date of this final rule.

Background

The Agency has been petitioned by Trinity Alimentari Italia S.p.A. through James Hurson Associates, Inc., Arlington, Virginia to amend the existing regulations to allow the use of agar-agar as a stabilizer and/or thickener in certain meat food products—canned jellied meat food products.

The petitioner maintains that agar has a higher gel strength and higher melting temperature at lower concentrations than similar gelling agents, which makes agar-agar advantageous for sterilization and retorting. The physical and chemical properties of agar-agar are consistent with the petitioner's processing requirements for its canned meat food products. The petitioner has supplied analytical data at FSIS's request supporting its claims and indicating that wholesomeness is not affected when products are processed with this gel ingredient. The data are available from the Standards and Labeling Division at the address given under "**FOR FURTHER INFORMATION CONTACT.**"

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Agency published a final rule on new procedures for the approval of added substances in meat products. The final rule amended the Code of Federal Regulations, Title 9, § 318.7. Under this rule, applicants are required to show that a proposed added substance has been approved as GRAS (generally recognized as safe) by the Food and Drug Administration (FDA) as a food additive or color additive for use in meat or meat food products, and is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. If this is established, the use of the added substance will be permitted upon further determination by the Administrator that the requested use in meat products will not render the product adulterated or misbranded, it is suitable as well as functional for that particular product, and it is used at the lowest level necesssary to accomplish the technical effect.

The substance for which approval has been requested has been listed and affirmed as GRAS by FDA. Agar-agar was affirmed as GRAS in the **Federal Register** of April 3, 1979 (44 FR 19389) and is listed in 21 CFR 184.1115.

The Administrator concurs with FDA's conclusions regarding the safety of agar-agar. He further finds that information provided by the petitioner in addition to other available data, indicate that (a) the proposed use of this substance will have an appropriate technical effect on the product and (b) the substance will be used at the lowest level necessary to accomplish its intended technical effect.

Therefore, the Agency is amending the Federal meat inspection regulations to include agar-agar in the table of approved substances in Part 318, Title 9, Code of Federal Regulations.

The Agency is also amending the labeling provisions in Part 317 (9 CFR Part 317) to encompass the approval of agar-agar by requiring a qualifying statement contiguous to the product name identifying this substance when it is used. This is being done in order that the product will not be misbranded.

Indexing Terms: Pursuant to 1 CFR 18.20, following are the index terms for this regulation:

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, and Meat and meat food products.

9 CFR Part 318

Food additives, Meat inspection.

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*; 33 U.S.C. 1254 unless otherwise noted.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

2. Section 317.8 is amended by adding a new paragraph (b)(35) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(35) When agar-agar is used in canned jellied meat food products, as permitted in Part 318 of this subchapter, there shall appear on the label in a prominent manner, contiguous to the product name, a statement to indicate the use of agar-agar.

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat 584, 84 Stat. 91, 21 U.S.C. 71 *et seq.*, 601 *et seq.*, unless otherwise noted.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

4. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), the substance agar-agar is added to the chart of substances approved for use in the preparation of products, and is placed in alphabetical order under the class of substances entitled "Binders."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Binders	Agar-agar	To stabilize and thicken.	Thermally processed canned jellied meat food products.	0.25 percent of finished product.
*	*	*	*	*

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11478 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 318

[Docket No. 84-031F]

Protective Film Consisting of Water, Corn Syrup Solids, Sodium Alginate, Calcium Chloride and Sodium Carboxymethylcellulose

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of a mixture of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethylcellulose to form an edible protective film of calcium alginate on freshly dressed meat carcasses. The Food and Drug Administration (FDA) has determined these substances to be generally recognized as safe (GRAS) for use in foods. The petitioner has supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2) for amending the Federal meat inspection regulations to permit the requested use. The film will have several benefits including reducing dehydration. Carcasses coated with the protective film will be marked to denote the presence and the composition of the film.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, D.C. 20250.

(See also "Comments" under "Supplementary Information.").

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Service, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the discretionary use of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethylcellulose to form an edible protective film of calcium alginate on freshly dressed meat carcasses. Industry may benefit from this action through the ability to protect dressed carcasses against shrinkage and surface deterioration. Minor benefits are described in the Background Statement.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because this will impose no new requirements on industry. The implementation of this final rule will merely allow the meat industry to use a new type of surface protection to help maintain meat carcass quality. Costs for equipment, material and markings would be incidental and offset by the elimination of fabric shrouds and reduction of shrinkage. The choice to use the mixture is voluntary.

Comments

This is a final rule consistent with the provisions of Section 318.7 of the Federal meat inspection regulations (9 CFR 318.7). As such, no request for comments is being made. However, interested parties may inform the Agency of any additional information which raises questions about this action during the 60 day period between publication of this rule and its effective date.

Background

Food Research, Inc., Tampa, Florida has requested that FSIS permit freshly dressed meat carcasses to be sprayed with certain GRAS substances which form an edible protective film coating on the surface of the sprayed carcass. This coating is claimed by Food Research, Inc. to reduce dehydration during storage, inhibit surface deterioration, improve the surface for subsequent grade marking, and eliminate the need for costly fabric shrouding of carcasses. Tests approved by the Department have been carried out to determine the efficacy of the procedures, and analysis of the data indicates that treating carcasses as proposed does result in the claimed beneficial effects. Testing data will be available from the Department, upon request.

The coating of carcasses with the subject protective film has been under intermittent investigation for about ten years by FSIS, the petitioner and meat slaughterers. Several plants have been involved in the development of equipment and process techniques. Agency personnel have monitored all testing conducted in official establishments. Specialists in FSIS in statistics, process control procedures, and standards and labeling have reviewed the materials, procedures and test results and have found the process to be acceptable for commercial use.

The process consists of spraying freshly dressed, weighed, and washed carcasses with two solutions. The first solution consists of water, corn syrup solids and sodium alginate which is sprayed on the carcass. Immediately after application of the first spray a second spray consisting of water, calcium chloride and sodium carboxymethylcellulose is applied. The calcium chloride reacts with the sodium alginate to form an insoluble film of calcium alginate which performs the protective function. The quantity of solutions required to form the film is not more than 1.5% of the carcass weight. Evaporation of moisture results in less than 0.2% of the carcass weight consisting of the substances used in forming the protective film.

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Agency published a final rule on new procedures for the approval of certain added substances in meat and poultry products. Under that rule, applicants are required to show (1) that a proposed added substance has been previously approved by FDA for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe

(GRAS), and (2) that the substance is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. Once this is established, the use of the added substance will be permitted upon a further determination by the Administrator that (1) its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the stated technical effect, and (2) that the substance will not render the product adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act.

In this case, these substances have been listed or affirmed as GRAS in 21 CFR Parts 182 or 184, respectively. Calcium chloride and sodium alginate are affirmed as GRAS and are listed in 21 CFR 184.1193 and 184.1724, respectively. Sodium carboxymethylcellulose is listed as a multiple purpose GRAS food substance in 21 CFR 182.1745. Calcium alginate, the substance formed by reaction of calcium chloride with sodium alginate, is affirmed as GRAS at 21 CFR 184.1187. Corn syrup solids are listed in section 318.7(c)(1) of the meat inspection regulation (9 CFR 318.7(c)(1)) as substances which may generally be added to meat and meat food products. Furthermore, FDA has stated in a letter dated April 20, 1981 that it would consider calcium chloride, sodium alginate, sodium carboxymethylcellulose, calcium alginate, and corn syrup solids to be GRAS for use as a protective coating on meat carcasses when used in accordance with good manufacturing practice.

The Administrator concurs with FDA's conclusions regarding the safety of these substances for their proposed use. He further finds that information provided by the petitioner and other data available to the Agency indicate that (1) the proposed use of these substances is functional and suitable for the product, (2) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (3) the use of these substances will not render the product on which it is used, adulterated, misbranded, or otherwise not in accordance with the requirements of the Act.

Carcasses which have been coated with the protective film will be marked with a statement that identifies the presence and composition of the film, e.g., "Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride, and sodium carboxymethylcellulose." Trimmings from coated carcasses will be labeled to denote the presence of the coating material. However, processed products made in part from such trimmings need not declare the film components on labels as they are considered incidental additives on the basis of the minute amount present and the lack of technical effect. The requirement that chilled weight not exceed hot weight is to ensure that the carcass does not gain weight by the process.

Therefore, the Department is amending the table of approved substances in 9 CFR 318.7(c)(4), Federal meat inspection regulations, to include the use of calcium chloride, sodium alginate, sodium carboxymethylcellulose, and corn syrup solids in solutions to form an edible protective film of calcium alginate on freshly dressed meat carcasses.

Indexing Terms: As required by 1 CFR 18.20, the following are the indexing terms for this regulation:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

1. The authority citation for Part 318 (9 CFR 318) continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91 (21 U.S.C. 71 *et seq.*, 601 *et seq.*), unless otherwise noted.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENT; REINSPECTION AND PREPARATION OF PRODUCTS (AMENDED)

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), a new Class of Substance named "Film forming agents" is added to the chart of approved substances in alphabetical order following "Emulsifying agents."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amounts
*	* *	*	* *	*
Film forming agents.	A mixture consisting of water, sodium alginate, calcium chloride, sodium carboxymethyl-cellulose, and corn syrup solids.	To reduce cooler shrinkage and help protect surface.	Freshly dressed meat carcasses. Such carcasses must bear a statement "Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethyl-cellulose.	Formulation may not exceed 1.5% of hot carcass weight when applied. Chilled weight may not exceed hot weight.
*	* *	*	* *	*

Done at Washington, D.C. on: April 26, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11477 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 327 and 381

[Docket No. 83-040F]

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On July 23, 1984, the Food Safety and Inspection Service (FSIS) published an emergency interim rule, effective immediately, to ensure that "refused entry" product will not enter into United States' commerce. The interim rule prohibits the reentry into the United States of any meat or poultry product that has been refused entry into United States' commerce. FSIS learned that some "refused entry" product, after being exported to other countries, is being reshipped to the United States for export. FSIS solicited comments on the interim rule and, in considering all comments received, has determined that the interim rule shall be made a final rule.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has made a determination that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. (See Effect on Small Entities statement.)

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). This rule strengthens the current regulation by prohibiting the return to the United States of any previously designated "refused entry" product which was required to permanently leave the United States in the initial regulation.

Background

On August 19, 1982, FSIS published in the **Federal Register** (47 FR 36109) an interim rule, effective immediately, establishing new procedures for handling imported product to decrease the likelihood that "refused entry" meat and poultry product will enter into United States' commerce. FSIS had received information from the Department of Agriculture's Office of the Inspector General revealing that some product that had been refused entry at United States' ports because it was adulterated or misbranded had entered into the United States for use as human food.

The interim rule was made a final rule on April 13, 1983, with an effective date of May 13, 1983 (48 FR 15587). The rule provides, among other things, stricter controls on the movement and sale of "refused entry" product, one of which requires that such product be exported to another country within 45-day period unless the owner or consignee, within 45 days, causes it to be destroyed as human food or converts it to animal food.

As a result of information received and follow-up investigations, FSIS learned that some "refused entry" product had been exported to another country within the 45-day limitation but then returned to the United States through another port and/or under license provided for the transshipment of product not intended for sale in the United States. This practice defeats the intent of the April 13, 1983, final rule, which is to decrease the likelihood that adulterated product will enter into United States' commerce. Based on these recent events, and the minimal inspection resources that can be devoted to controlling such product, FSIS determined it necessary to modify its regulations to protect the consuming public from "refused entry" product. Therefore, on July 23, 1984, FSIS published in the **Federal Register** (49 FR 29567) an interim rule, effective immediately, revising the Federal meat and poultry products inspection regulation by clearly prohibiting the reentry into the United States of any meat or poultry product that had been refused entry into United States' commerce.

Comments on the Interim Rule

FSIS received one comment in response to the interim rule. The commenter, a meat importers association, expressed concern over the prohibition of transshipment of product from the original export vessel to another vessel within United States' port zones. The commenter asserts that the reexportation of "refused entry" product is usually in conjunction with resale to a third market, noting that most such product is wholesome product refused entry because of excess fat and similar deviations from product requirements. The final destination of this product may only be accessible via one specific port in the United States which may not necessarily be the original port of entry. It was suggested that the language of the interim rule be amended to allow such transshipment in a timely manner to properly dispose of the "refused entry" product.

The intent of the interim rule was not to inhibit the export of "refused entry" product from the United States. "Refused entry" product frequently is located at a port in the continental United States where there are no ships sailing to the country to which the product is destined. This requires the "refused entry" product to be shipped to a port where a vessel is sailing to the product's final destination. For example, such product may be shipped from the original port of entry in the continental United States to Puerto Rico where it can be loaded into smaller vessels for delivery to the final destination of the Caribbean Basin countries.

In this example, the product was not exported and then returned to the United States. The Federal Meat Inspection Act applies to the Commonwealth of Puerto Rico or organized territories, as well as all States. Therefore, the product was merely transshipped between domestic ports prior to its disposal. Only when that product leaves Puerto Rico would it be considered to have left the United States. Note, however, that the 45 days allowed for removal of "refused entry" product from the United States is not extended for any such such transshipment.

Under the regulations (9 CFR 327.13(a)(3)), such transshipment between U.S. ports within the 45-day limit may be made with the consent of the Administrator based on full information provided by the shipper concerning the identification of the vessel involved in the transshipment and the times of arrival and departure from Puerto Rico or other United States' ports. The type of shipment the commenter is addressing in his letter would not be prohibited. The shipper would contact the Foreign Programs Division, International Programs, Food Safety and Inspection Services, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–7610.

Final Rule

After careful consideration of the comment received on the interim rule, the Administrator has determined that the interim rule should be published as permanent regulations as set forth below.

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

Part 327 of the Federal meat inspection regulations (9 CFR Part 327) and Part 381 of the poultry products inspection regulations (9 CFR 381) are revised as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 continues reads as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 327.13 is amended by revising a new paragraph (a)(7) to read as follows:

§ 327.12 Samples; inspection of consignments; refusal of entry; marking.

(a) * * *

(7) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

PART 381—[AMENDED]

3. The authority citation for Part 381 continues reads as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

4. Section 381.202(a) is amended by revising a new subparagraph (6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(6) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

Done at Washington, DC, on: April 25, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11480 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-6-AD; Amdt. 39-5060]

Airworthiness Directives; British Aerospace Model 3101 Jetstream Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Model 3101 Jetstream airplanes which requires inspection of the engine rear turbine bearing oil feed pipe for proper clearance between the oil feed pipe and the bleed air pre-cooler. BAe has reported that insufficient clearance can exist which can cause damage to the oil feed pipe, loss of the engine oil, and subsequent engine failure. This AD will detect and correct improper oil feed pipe clearances to preclude engine failure.

DATES: *Effective:* June 18, 1985. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) No. 71-A-JM7418, dated May 25, 1984, applicable to this AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100. 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. H. Chimerine, 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. B. Sexton, FAA, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the engine rear turbine bearing oil feed pipe for proper clearance between the oil feed pipe and the bleed air pre-cooler on certain BAe Model 3101 Jetstream airplanes was published in the Federal Register on March 12, 1985 (50 FR 9806). The proposal resulted from BAe having received a report of fouling between the rear turbine oil feed pipe on the right hand side of the engine and the bleed air pre-cooler which caused chafing of the oil feed pipe. Investigation has revealed that the clearance between the oil pipe and the bleed air pre-cooler can be less than required. Failure of the oil feed pipe will lead to loss of engine oil and subsequent engine failure. As a result, BAe has issued ASB No. 71-A-JM7418, dated May 25, 1984, which specifies (1) an initial inspection of the oil feed pipe for chafing and adequate clearance from the bleed air pre-cooler and (2) corrective actions for any airplane which does not meet the specified clearance criteria.

The United Kingdom Civil Aviation Authority (UKCAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB No. 71-A-JM7418, dated May 25, 1984, and the mandatory classification of this Alert Service Bulletin by the UKCAA and determined that a Notice of Proposed Rulemaking was appropriate.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately eleven airplanes affected by the AD. The cost of complying with the AD is estimated to be $2,750 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

British Aerospace: Applies to Model 3101 Jetstream (serial numbers 601 to 624 inclusive, and 627), airplanes certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure that adequate clearance exists between the rear turbine bearing oil feed pipe and the bleed air pre-cooler accomplish the following:

(a) Inspect the rear turbine bearing oil feed pipe for chafing and for adequate clearance between the rear turbine bearing oil feed pipe and the bleed air pre-cooler on LH and RH engines in accordance with sub-paragraphs (a), (b) and (c) of the *Part A—Inspection* requirement of paragraph 2 of British Aerospace (BAe) Alert Service Bulletin No. 71-A-JM7418.

(1) If no damage is apparent and clearance is 0.25 inches (6.35 mm) or greater, no further action is required.

(2) If clearance is less than 0.25 inches and no pipe damage is apparent repeat the

inspection required by paragraph (a) of this AD at intervals not to exceed 400 hours time-in-service or until either BAe Modification JM7418 or BAe Modification JM7388 is accomplished.

(3) If pipe damage is apparent, prior to further flight, accomplish either BAe Modification JM7418 or BAe Modification JM7388.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(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. 97-449, January 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on June 18, 1985.

Issued in Kansas City, Missouri, on May 2, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-11457 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANE-26]

Control Zone; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a New Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

EFFECTIVE DATE: 0901 G.M.T., July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139.

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide protected airspace for Instrument Flight Rules aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedures (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire [50 FR 90].

Interested parties were invited to participate in this Rulemaking Proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in this Notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a New Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

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

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

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

§ 71.171 Lebanon, New Hampshire Control Zone [Amended]

Following the words "Lebanon, New Hampshire", insert: "within 4 miles each side of the DV LOM 007° bearing (023° Magnetic) extending from the 5 mile radius to 9.5 miles northeast of the DV LOM"; (The remainder is unchanged.)

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); [49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.69)

Issued in Burlington, Massachusetts, on May 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11458 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-16]

Transition Area; Moab, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published description of the Moab, Utah, transition area. An airway referred to in the description has been renumbered. This action does not increase the size of the transition area but makes only an editorial change in the description.

DATES: Effective date—0901 G.m.t., July 15, 1985. Comments must be received on or before June 28, 1985.

ADDRESS: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

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

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this is in the form of a final rule, which involves editorial changes to the description of the Moab, Utah, transition area and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the

regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make an editorial change to the published description of the Moab, Utah, transition area. Airspace docket 84–ANM–18 (50 FR 15540) redescribed an airway contained in the description of this transition area, i.e., V–187W/391 to V–391. This action does not enlarge the size of the transition area but makes only an editorial change in the description.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

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

Moab, Utah [Amended]

Replace "V–187W" with "V–391."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on May 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–11459 Filed 5–10–85; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On November 19, 1984, the Commission issued its opinion and order in *Newman v. Bache Halsey Stuart Shields, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 22,432 (November 19, 1984), which established a new method, to be derived from 28 U.S.C. 1961(a), for calculating interest on reparation awards. This decision supersedes § 12.407(d)(1984), which prescribed the former method for interest computation, for all cases in which the initial decision (or a final decision in a voluntary decisional proceeding) is filed on or after November 19, 1984. The Commission is amending § 12.407(d) to conform the provisions of that regulation to the change effected by the *Newman* decision.

DATE: Effective date is May 13, 1985.

ADDRESS: Interested persons wishing to comment may submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention of the Secretariat. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 1984, the Commission adopted § 12.407(d) of its rules relating to reparation proceedings,[1] which

[1] 17 CFR § 12.407(d) (1984). Section 12.407(d) applies to all reparation cases in which the complaint was filed on or after April 23, 1984. *See* 17 CFR 12.1(c) (1984).

prescribed a method of calculating interest on reparation awards. § 12.407(d) provided that interest on reparation awards should be computed according to section 6621 of the Internal Revenue Code, a method of calculation utilized in tax cases for judgments in favor of or against a U.S. taxpayer. That rate was computed once annually by the Secretary of the Treasury and was based on adjustments to the prime lending rate which banks charged their most preferred customers.[2]

Since § 12.407(d) was adopted, however, the Commission, by adjudication, has changed the method by which interest on reparation awards shall be calculated. In *Newman v. Bache Halsey Stuart Shields, Inc.*,[3] the Commission announced that for initial decisions rendered on and after November 19, 1984, it would abandon the method of interest rate computation derived from section 6621 of the Internal Revenue Code in favor of a rate computed in accordance with 28 U.S.C. 1961(a) (1982), which governs interest rate calculations for money judgments awarded in federal district courts.[4] Accordingly, the Commission has determined to amend § 12.407(d) of its reparation rules to conform the interest rate provisions of that rule to its *Newman* decision. The amendment to § 12.407(d) establishes 28 U.S.C. 1961(a) (1982) as the new reference for calculating interest on reparation awards.

Consistent with 28 U.S.C. 1961(a) (1982), the interest rate to be applied to any particular reparation award is the "coupon issue yield equivalent . . . of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date" of the initial decision (or final decision in a voluntary decisional proceeding).[5] The amount of interest due in connection with a reparation award is computed by multiplying the number of days that interest has accrued by a fraction, the numerator of which is the equivalent coupon issue yield multiplied by the amount of the reparation award, and the denominator of which is the number 365.[6]

Once the relevant coupon issue yield equivalent is ascertained (*i.e.*, by looking to the most recent treasury bill auction prior to the date of the initial decision),[7] that same rate applies to the computation of interest on the reparation award regardless of: (1) Whether there are subsequent appeals (which ultimately sustain all or part of the award); (2) how long the reparation award remains unpaid; and (3) whether coupon issue yield equivalents determined in subsequent Treasury bill auctions vary from the relevant coupon issue yield equivalent.[8] Moreover, the Commission announced in the *Newman* decision that the relevant date for ascertaining the rate of prejudgment interest in summary and formal decisional proceedings shall be the same as the date for the determining the rate of postjudgment interest—which is the date of the initial decision.[9]

Section 4(a) of the Administrative Procedure Act, 5 U.S.C. 553 (1982), generally provides that a notice of proposed rulemaking must be published in the **Federal Register** and that an opportunity for comment be afforded to the public when an agency proposes new regulations. However, the notice and comment requirements do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest." [10] For the following reason, we find the notice and comment procedure contemplated by 5 U.S.C. 553 to be unnecessary.[11]

---

[2] *See* 127 Cong. Rec. S 14699 (Dec. 8, 1981, daily ed.).

[3] Comm. Fut. L. Rep. (CCH) ¶ 22,432, at 29,919 (November 19, 1984).

[4] *Id.*, at 29,919.

[5] If the initial decision is rendered on the same day as a Treasury bill auction, the coupon issue yield equivalent derived from the previous treasury bill auction would apply.

[6] For purposes of illustration only, the following method of calculation would achieve the correct result. Assume that the relevant coupon issue yield equivalent is a rate of 14.62%, that the amount of the reparation award is $20,000, and that twelve days of interest have accrued.

The following equation will provide the correct amount of interest.

$$\frac{(\text{Coupon issue yield equivalent} \times \text{amt. of judgment}) \times (\text{Number of days of interest has accrued})}{365}$$

$$\text{or} \quad \frac{.1462 \times \$20{,}000}{365} \times 12 = \$96.13$$

[7] The Administrative Office of the U.S. Courts issues a regular advisory on the rate, which refers to the coupon issue yield equivalent within the meaning of 28 U.S.C. 1961(a) as the "equivalent coupon issue yield." It is also available by telephone, at (202) 287–4100.

[8] *See Newman, supra*, at p.29,919.

[9] *Id.*

[10] 5 U.S.C. 553(b)(B) (1982).

[11] For the same reason, we have determined not to delay the effective date of this rule for the thirty day period contemplated by 5 U.S.C. 553(d). *See* 5 U.S.C. 553(d)(3) (1982).

As indicated, earlier, the Commission has already announced by way of adjudication a substantive change in its procedure of computing interest on reparation awards—from a method derived from 26 U.S.C. 6621 (1982) to a method derived from 28 U.S.C. 1961(a) (1982). This change became effective on November 19, 1984, and applied to "all initial decisions awarding reparations after the date of this opinion and order."[12] The *Newman* rule has been regularly followed without controversy. The amendment of § 12.407(a) effected hereby only codifies the Commission's holding in *Newman v. Bache Halsey Stuart Shields, Inc.*, and does not in itself impose any new or different substantive rights or liabilities upon any parties subject to the rule as amended.[13]

II. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies when promulgating rules to consider the economic impact of the rules on small business entities. Because the rule promulgated herein simply codifies an amendment to the reparation rules brought about through adjudication, the rule itself would have no economic impact on any small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as amended herein, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

§ 12.407 [Amended]

2. In Part 12, § 12.407(d) is revised to read as follows:

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961(a) from the date directed in the final order to the date of payment.

* * * * *

Issued in Washington, D.C., on May 3, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-11117 Filed 5-10-85; 8:45 am]

BILLING CODE 6351-01-M

[12] *Newman, supra*, at p. 29,919.

[13] The Commission is concurrently proposing a further amendment to § 12.407(d) that would allow compounding of interest that has accrued for more than a year, in accordance with 28 U.S.C. 1961(d) (1982). The subject of compounding was not addressed in the Commission's *Newman* decision and, hence, the Commission is inviting public comment on its proposal to permit compounding of interest.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 389

[Docket No. RM85-12-000; Order No. 418]

Amendments to FERC Form No. 1, Addition of Rule Requiring Filing of Form No. EIA-714, and Elimination of Rule Concerning FERC Form No. 12

Issued May 8, 1985

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is deleting from FERC Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others, certain schedule pages which required the reporting of data that will now be reported on other forms. The Commission is adding to its rules a requirement for electric utilities to file Form No. EIA-714. Also, the Commission is removing from its regulations a provision requiring the filing of FERC Form No. 12. That regulation does not require the filing of information that covers any year after 1981. The information collected under the various provisions of this rule is used to help the Commission meet its responsibilities under the Federal Power Act.

DATE: This rule will be effective June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8504.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Charles G. Stalon.

Amendments to FERC Form No. 1, Addition of Rule Requiring Filing of Form No. EIA-714, and Elimination of Rule Concerning FERC Form No. 12; Docket No. RM85-12-000.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others,[1] by deleting certain schedule pages which required data that will now be reported on the Energy Information Administration's (EIA)[2] Form No. EIA-860. The Commission also adds to 18 C.F.R. § 141.51 a requirement that the same entities file Form No. EIA-714, which is required by both the Commission and then EIA. Finally, the Commission eliminates from the Commission's rules a provision which at one time required the filing of FERC Form No. 12,[3] but which does not require

[1] The regulation which requires filing this form is 18 CFR 141.1 (1984).

[2] The EIA is part of the Department of Energy. It is the government's primary collector of energy information. Department of Energy Organization Act, 42 U.S.C. 7103 (1982).

[3] The regulation which required filing this form is 18 CFR 141.51 (1984). The entities which were required to file this form were those which operate facilities for the generation, transmission, or distribution of electric energy, whose systems generate all or part of system requirements, who have an owned operable generating capacity of more than 25 megawatts, and for whom the sum of net energy for system plus firm sales for resale exceeds 100,000 megawatthours per year.

that information for any year after 1981 be filed.

The information collected under the various provisions of this rule is used to help the Commission meet its responsibilities under the Federal Power Act (FPA).[4] This rulemaking is part of the Commission's continuing effort to simplify its forms and reduce duplication in reporting requirements.

II. Background

FERC Form No. 12, which is being replaced by Form No. EIA-714, is an annual form which was required to be filed for years up through 1981 by certain public and private entities which operate facilities for the generation, transmission, or distribution of electric energy. The form was last collected in 1983 and covered 1981 data. The form collected information about the electric power systems of those entities, including their generating and transmission facilities and transactions with other electric utility systems. The Commission uses the information to analyze utility operations in order to resolve wholesale electric rate cases and hydroelectric licensing proceedings; to determine the prudence of utility operations and investments and the value of equivalent electric energy, and to understand and make decisions respecting the electrical network of jurisdictional and nonjurisdictional entities. For example, the information is used to analyze issues raised by proposed interconnection agreements, wheeling contracts, and applications to recover construction work in progress.

On February 7, 1983,[5] the Commission issued a final rule which stated that Form No. 12 would be required for the last time for 1981 data and would be replaced by a new form being developed by the Commission and EIA jointly—Form No. EIA-714—for data on 1982 and succeeding years. However, that rulemaking did not delete from the Commission's regulations the specific provision pertaining to FERC Form No. 12, 18 CFR 141.51.

The Commission's Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others, requires some data which will now be collected by EIA on Form No. EIA-860. On January 19, 1982,[6] the Commission announced its plans to examine the operating data schedules of Form No. 1 as part of its evaluation of Form No. 12. In the final rule on Form No. 12, the Commission noted that the Form No. EIA-714 would be designed to eliminate the duplication between Form No. 12 and Form No. 1.

III. Description of Changes and Comment Anaylsis

As noted, the changes made in this rule are part of the Commission s continuing effort to simplify its forms and reduce duplication whenever possible.

A. Amendments to FERC Form No. 1

The following schedules are deleted from FERC Form No. 1 for the reporting year ending December 31, 1985, and thereafter:

—Steam-Electric Generating Plant Statistics (Large Plant) (page 404)
—Changes Made or Scheduled to be Made in Generating Plant Capacities (page 411)
—Steam-Electric Generating Plants (pages 412–413)
—Hydroelectric Generating Plants (pages 414–415)
—Pumped Storage Generating Plants (pages 416–418)
—Internal-Combustion Engine and Gas-Turbine Generating Plants (pages 420–421)

B. Requirement To File Form No. EIA-714; Deletion of FERC Form No. 12

Section 141.51 of the Commission's regulations is amended to require filing Form No. EIA-714, rather than FERC No. 12. Form No. EIA-714 must be filed by May 1 of each year for the preceding year, beginning with data for calendar year 1985. It must also be filed for the period after 1981, when the FERC Form No. 12 was last filed, on the following schedule: data for 1982 are due July 15, 1985; data for 1983 are due August 15, 1985; data for 1984 are due September 15, 1985. The Form No. EIA-714 will be used for the same purposes as the FERC Form No. 12, as described in the Background section above.

C. Comments on Form No. EIA-714

The Commission notes in general that the data requirements in Form No. EIA-714 are based on those in the old FERC Form No. 12 and thus are not new requirements.

The following comment discussion addresses the comments received and is organized according to the schedules in the proposed form.

1. General Comments

Commenters generally support Form No. EIA-714 as an improvement over FERC Form No. 12. They state that the new form is better organized, more readable, and easier to complete. Some also note that there was duplication between the previously proposed Form No. EIA-714A and FERC Form No. 1. The Commission agrees, and this duplication was eliminated through prior modifications to Form No. EIA-860 and the Form No. EIA-714.

Many of the comments request clarification of the instructions or of the terms used in Form No. EIA-714. The Commission and EIA have clarified this language as much as possible; further questions about the meaning of the terms or how to fill out the form should be addressed to EIA for assistance.

One commenter suggests that the EIA and the Commission collect data from power pools and use only regional or power pool level data. The agencies would then direct any specific questions to individual utilities. Commenters also suggest various other sources from which data could be drawn.

The Commission uses other sources as much as possible, but none of them provides data at the individual system level, where they are needed. As explained in the discussion of the Commission's use of Form No. 12 (which Form No. EIA-714 is replacing) in the Background section, above, the data are needed to understand how interconnected networks operate so that informed decisions can be made about matters such as proposed interconnection agreements and individual utility proposals to recover in current rates construction work in progress.

Some commenters say that the value of the data gathered by the Form No. EIA-714 is outweighed by the burden of collecting the information. The Commission does not agree. It needs the data to meet its statutory responsibilities, as described above, and the EIA-714 is designed to be less burdensome than its predecessor, FERC Form No. 12.

A few commenters ask that they be allowed to report the information on a fiscal rather than calendar year basis, since they operate on this basis. The requirement for calendar year data is not new to Form No. EIA-714. Further, the required information is operational rather than accounting data, so use of the fiscal year is not appropriate. Moreover, comparative analyses would be hindered with some utilities reporting on a fiscal year basis and others reporting on a calendar year basis.

2. Cover, General Instructions, Definitions, etc.

Several commenters request clarification of who must submit the form. This language has been clarified as much as possible. In addition, the

[4] 16 U.S.C. 792–828c (1982).
[5] Revision of Power System Statement: Form No. 12, 48 FR 6,699 (Feb. 15, 1983) (Order No. 282).
[6] 47 FR 1,267 (Jan. 12, 1982).

Commission has prepared a mailing list, and EIA will inform those entities of which it is aware who must submit the form.

One commenter argues that information should be required only for utilities regulated by the Commission. The Commission does not agree. The Commission will use the data in the EIA–714 to understand how an individual jurisdictional utility interacts with the other electric systems to which it is interconnected. In order to understand the operation of interconnected systems, the Commission needs information on all the elements, including those interconnected utilities not under its jurisdiction.

One commenter asks that a threshold be set allowing small systems not to report. The Commission notes that there is already such a threshold in the form. The instructions for the form and this rule in § 141.51 state that the form is to be submitted only for systems that own generating capacity of more than 25 megawatts and for which the sum of net energy for system and firm sales for resale exceeds 100,000 megawatthours for the reporting year.

One commenter asks whether a utility that operates two systems, only one of which qualifies as a "system" for Form No. EIA–714 purposes, must submit data only for the qualifying system. Data are required only for the qualifying system, but the utility may submit data for its combined systems if they better represent its operations.

A commenter explains that it wheels electricity to its customers over another utility's lines, which are not in the commenter's system. The other utility wheels electricity of its customers over the commenter's system. Under the definition of a system as "facilities operated as a unit under one control," the commenter suggests that neither utility would claim these two groups of customers and the data would not be reported. If a utility wishes to include or to exclude such a load in its report to be sure that its loads are accurately reported, it should contact EIA for coordination of energy accounting between reporting systems.

Several commenters ask for clarification of the definitions of "borderline customer," "wheeling customer," "net capability," "partial requirements customer," "in-load," "net energy for load," and "net energy for system." These definitions have been clarified.

3. Capability and Output of Generating Plants

a. *General Comments.* A commenter asks how dual-fueled combustion turbines (oil or gas) should be reported. They should be reported as "combustion turbine," regardless of how they are fueled. The fuel type does not matter, if the unit is a combustion turbine. A commenter asks that another plant code be added for "run-of-river" hydroelectric plants. Run-of-river plants are included as "conventional hydroelectric," and the instructions have been modified to make this clear.

A commenter suggests that run-of-river units should not be treated as "base load" units. Hydroelectric units are not required to be identified as "base load" or otherwise, and need only be reported under the Conventional Hydroelectric grouping.

Several commenters want to know whether an operator of a plant owned partially by others should report their shares as energy delivered on Schedule 2. A new instruction on this schedule makes it clear that in this situation, the respondent may either report the energy on this schedule as output or on the "Energy Transfers" schedule as energy received.

A commenter asks whether a large gas-fired unit designed for base load, but used only for summer load, is a base load or a peaking unit. It could be either, depending on whether it is used all summer or only for parts of each day. The instructions have been rewritten to make it clear that units need not be categorized as such on the form.

b. *Net Capability at Time of System Peak Load.* Several commenters say that they consider units on reserve shutdown (such as combustion turbines, which can be started up quickly) to be available, but not needed. The instructions have been rewritten to classify such units as units not available to meet load.

c. *Pumping Energy.* A commenter asks whether energy required for pumping water upstream for a pumped storage project should be excluded from net generation. It should, since this energy is not available to meet the utility's load, and the instructions have been rewritten to make this clear.

d. *Integrated Net Demand at Peak.* Several commenters state that they cannot produce exact data. Estimated data are acceptable if the respondent adequately explains why exact data are not available.

e. *New Data Requests.* Several commenters suggest that unit rather than station data be collected. The Commission needs data for stations operated within the reporting system. The Form No. EIA–860, which collects data on a unit basis, does not necessarily define the system within which the units are operated.

A commenter suggests that if station data are required, it should also include the number of generating units, the number of annual scheduled maintenance days, the number of forced outage delays, and the 5-year forced outage rate. This information is available on FERC Form No. FERC–580.

4. Energy Transfers

a. *Data Availability and Usefulness.* Numerous commenters say that energy transfer data by transaction type are not available, especially for short-term energy purchases and sales. This requirement has been deleted.

Several commenters assert that they do not always know the provider or recipient of the energy transferred because the transactions are with power pools or agencies serving as brokers for small utilities. The Form No. EIA–714 does not require the name of the particular provider or recipient, just the name of the system of which the recipient is a part.

b. *Jointly-Owned Generating Units.* A commenter argues that if data reported on Schedule 2 are to be metered quantities, the power received from off-system jointly-owned units cannot be distinguished from other energy received by the system. The metering will not reveal the source of the energy, but the utility has other records which show what power was received from an off-system, jointly-owned unit.

c. *Duplicate Data Collection.* A commenter points out that similar data are required by the California Public Utilities Commission. However, this Commission's needs cannot be met by collecting data from State agencies. Not all states collect energy transfer data, and those that do may not collect them in a format adequate for the Commission's needs.

d. *In-Load and Borderline Transfers.* A commenter suggests that borderline energy transfers (in which a customer of one system receives energy from another system by arrangement between the systems) should be reported with other energy transfers instead of being combined with in-load energy transfers. The Commission does not agree. Borderline energy transfers are equivalent to in-load energy transfers in that the load responsibility is on the utility that actually makes the transfer.

e. *Energy Transfer Data.* A commenter states that energy transfer data should be collected at the time of the annual system peak load. In the Commission's view, this would undermine the value of the information. The annual system peak load is measured for only a one-hour period.

5. System Net Generation and Energy Transfers

a. *Usefulness of Data.* Several commenters question the usefulness of the data collected on this page. The Commission finds that the data are useful. These data are used to assess the system's ability to satisfy monthly loads and how it met its load responsibility, which is part of the analysis necessary to determine the system's power surplus adequacy and reliability. One commenter says that comparisons between system net capability and system peak are not meaningful in determining ability to meet firm load. The Commission generally finds such comparisons meaningful, although they may not be in individual instances.

b. *Reporting Burden.* Several commenters argue that the data on Schedule 3, Part A have never been collected on a monthly basis. The Commission disagrees. FERC Form No. 12 collected the same data on a monthly basis.

A commenter says that EIA could complete Schedule 3, Part A itself with the data provided in Schedules 1 and 2. Again, the Commission disagrees. EIA could not disaggregate accurately these data into monthly information.

A commenter suggests eliminating columns g and h (net energy for load and net energy for system), arguing that EIA can calculate the data and pointing out that the Commission eliminated the same data from FERC Form No. 12. Upon further consideration, the Commission has determined that the data should not be eliminated. The presence of columns g and h should improve the quality of the data submitted, because respondents will be able to verify their calculated figures.

6. System Peak Load

a. *General.* A commenter argues that the value of the data required by this schedule does not justify the burden. The Commission does not believe that it is excessively burdensome. The information is essential for comparing one year with the next so that trends can be seen, and the Commission believes the burden is justified by the value of the information.

b. *Data Duplication.* Several comments say that Forms EP–411 and EIA–119M collect most of the same data. The Commission does not agree that Form EP–411 collects the same data. Form EP–411 collects capability data for regional electric reliability councils and reporting parties, while Form No. EIA–714 collects capability data for individual electric systems. With respect to any alleged duplication in Form EP–119M, that form will be replaced now with the Form No. EIA–714.

c. *Data on Net Capability.* Commenters argue that the data on net capability are not available at the time of system peak load or that they are not useful data. The Commission disagrees. These data can be obtained, and although this involves some burden, the data are important because they enable the Commission to see the overall picture of power flow at the time of system peak. This information is useful in determining transmission usage for allocating wheeling costs among when wheeling customers, for instance.

d. *Maximum Hourly Load.* Several commenters say that sixty-minute integrated demand data are not available. One commenter recomments collecting 15-minute integrated demand data.

Instruction 1 provides two alternatives if 60–minute data are not available: adjusting available data or reporting available data with a note specifying the time interval.

e. *Minimum Hourly Load.* Several commenters say that the minimum hourly load data are not available, that the burden of collecting the data is excessive, or that the data will be useless, since the entire load curve is not known. The Commission and EIA have reduced the burden as much as practicable by requiring this information and hourly loads for three typical weeks rather than for an entire year. These data should provide a general picture of annual load without creating an excessive burden.

7. System Hydroelectric Data

a. *General.* A commenter suggests collecting seasonal instead or monthly data. The commission does not believe that it is overly burdensome for respondents to submit monthly data, particularly since only systems with substantial hydroelectric capacity have to report the data and much of the information will not change every year.

b. *Updating.* Commenters make various suggestions concerning when this schedule should be updated. Some suggest that every third or fifth year would be sufficient, while others assert that updates are necessary only when system capability changes significantly.

The form need only be updated every five years. This should provide reasonably up-to-date information without creating an unjustified burden. It is also consistent with the updating requirements for the rest of the form.

c. *Size of Hydroelectric Facilities Reporting.* Commenters suggest various thresholds for the size on the hydroelectric capability for which data must be reported. The form contains such a Threshold: a respondent must report these data only if hydroelectric generation is more than 10% of annual system net generation.

One commenter says that run-of-river facilities should be excluded, arguing that such projects often are not available with significant contributions. The Commission does not agree. Run-of-river plants generate significant amounts of energy, although they cannot store energy. The objective of this schedule is to collect information on how much energy would be generated.

8. System Load Data by Specified Week

a. *Data Duplication.* One commenter says that this schedule is unnecessary, because the Edison Electric Institute (EEI) compiles national load data and makes them available to EIA. However, the EEI data are primarily for investor-owned utilities and are not in the format that the Commission needs.

b. *Frequency of Data Collection.* A commenter suggests that detailed annual data are not necessary and that data could be collected every five years. The Commission agrees, and has changed the instructions to require these data every five years.

9. Summer and Winter Peak Load and Annual Energy Forecasts

a. *Data Duplication.* Several commenters argue that Form No. EP–411 collects 10-year load forecasts which duplicate this part of Form No. EIA–714. The Commission does not agree. Form No. EP–411 collects forecasts for regional electric reliability councils and reporting subregions, whereas Form No. EIA–714 collects forecasts for individual electric utility systems. Reporting parties usually consist of more than one electric system.

b. *Accuracy of 15- and 20-year Forecasts of Net Energy for Load and Peak Demand.* Several commenters contend that forecasts beyond ten years are speculative, which reduces their usefulness. The form now requires only 15-year forecasts. Although the Commission recognizes that such forecasts are not as accurate as shorter-term predictions, they are still useful.

c. *Seasonal peak load forecasts.* One commenter says that it does not make winter forecasts because its winter peak load is significantly less than its summer peak load. It recommends eliminating the reporting requirement if winter load is less than 75% of summer peak load. The Commission rejects this suggestion. The data are needed to reconstruct load curves for the whole year, and the

Commission does not believe this requirement to be unduly burdensome.

A utility comments that it records 15-minute rather than 60-minute integrated demand and says that it would be burdensome to furnish 60-minute data. Revised Instruction 1 makes it clear that this is acceptable.

d. *Annual energy forecast.* One commenter states that the date on which the forecast was made and the time period it covers should be reported. The Commission does not agree that the date of the forecast is needed. All that is important is that the forecast be current as of the filing date. The time period covered by the forecast is already required.

10. Distribution of System Load by Service Area

a. *Need for Data.* Numerous commenters argue that the data required on this schedule are not useful or accurate, because there are many options for designating a service area and respondents change service areas from year to year. The Commission needs this schedule to analyze physical flows of energy in the system. Collection will be made every five years to minimize the reporting burden. The Commission will take into account the kinds of changes the comments mention. It does not anticipate much change, based on its experience with the FERC Form No. 12.

b. *Availability and Usefulness of Data.* Several commenters say that energy data are not always available by primary substation. Others say that the distribution of system load data is not available by service area and that peak load data are not available by service area. The Commission will accept estimated data where necessary.

11. High Voltage Line Data

a. *Availability and Usefulness of Data.* Many commenters argue that much of the data required on this schedule are not available and not useful. The Commission needs these data to understand the use of system transmission facilities. The information is useful in rate filings for review of specific facilities and their interconnected systems. To reduce the burden, the form now requires only one off-peak month, and the Commission has deleted the October data element.

b. *Line Load Data.* One commenter suggests that annual maximum one-hour line load be collected, arguing that this would indicate actual line load better than the load at the time of system peak. Other comments say that data on maximum possible line load at time of system peak are not available.

As the instructions note, the Commission will accept simulations. The form uses the load at the time of system peak because this is the basis used by the other schedules and there is a need for consistency.

12. System Maps and Diagrams

a. *Level of Detail.* Numerous commenters object to the level of detail required. They argue that the information is not available in such detail and would not be useful. The final form demands less detail. It should be possible for most utilities to use the maps and diagrams that they prepare for their own use.

b. *Annual Updates Versus Resubmission.* One commenter says that requiring a complete system description every year will greatly increase the cost of maintaining a transmission system data base. The commenter argues that because most of the data do not change from year to year, collecting only the annual changes would be adequate.

The Commission believes, on the contrary, that the request for available maps and diagrams should minimize respondents' burden while giving the Commission a current and complete description of the electric system. Requesting annual changes would force either respondents or the Commission or EIA to compare current maps and diagrams with those produced a year earlier.

c. *Data Confidentiality.* One commenter says that some of the required data are confidential. The Commission disagrees. System maps and diagrams submitted on FERC Form No. 12 are currently available in the Commission's public reading room.

IV. Compliance with APA Public Participation Provisions

The Commission finds that there is no need for further public comment on Form No. EIA–714, since EIA has already solicited comments on behalf of both the Commission and EIA.[7] The Commission has considered the comments and responded to them above, where appropriate. The Commission therefore finds that further public comment on this aspect of the rule is unnecessary under section 553 of the Administrative Procedure Act (APA).[8]

The deletion from the Commission's regulations of the requirement to file FERC Form No. 12 has no substantive effect, because this information has not been required for years after 1981. The changes to Form No. 1 also have no substantive effect; the same information will now be picked up and made available to the public on Form No. EIA-860. Thus, the Commission finds under section 553 of the APA that public comment on these aspects of this rule is unnecessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[9] requires agencies to prepare certain statements, descriptions, and analyses of rules that would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule would not have such an impact.

Most electric utilities do not fall within the RFA's definition of a small entity.[10] Since the reporting burden on any small entity covered by this rule would either be reduced by this rule or remain unchanged, any economic impact from this rule will be beneficial. The Commission does not believe that this impact will be "significant" within the terms of the RFA. Pursuant to the RFA, therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act Statement and Effective Date

The requirement in this rule that utilities file Form No. EIA–714 has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1984). On March 20, 1985, OMB approved the information collection requirements of Form No. EIA–714 and issued OMB Control Number 1902–0140.[11]

---

[7] Request for Comment on Proposed Form EIA–714A, "Annual Electric Power System Report," 49 Fed. Reg. 3,685 (Jan. 30, 1984).

[8] 5 U.S.C. 553 (1982).

[9] 5 U.S.C. 601–612 (1982).

[10] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. See also SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[11] OMB's aproval of FERC Form No. 12 lapsed several years ago, so no further OMB action on this aspect of the rule is needed.

The changes in the information collection provisions in FERC Form No. 1 are being submitted to OMB for its approval under the Paperwork Reduction Act and OMB's regulations. Interested persons can obtain information on the proposed information collection provisions in Form No. 1 by contacting the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 (Attention: Jan Macpherson, (202) 357-8470). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will be effective June 12, 1985. If OMB has not approved the changes to FERC Form No. 1 by that date, the Commission will publish a notice in the **Federal Register** suspending the effectiveness of this aspect of the rule.

List of Subjects

18 CFR Part 141

Electric power, Reporting and record-keeping requirements, Statements and reports (schedules).

18 CFR Part 389

Reporting and record-keeping requirements.

In consideration of the foregoing, the Commission amends Parts 141 and 389, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 389—[AMENDED]

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1980).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "141.51" in numerical order in the section column, and "0140" in the corresponding position in the OMB Control Number column.

PART 141—[AMENDED]

3. The authority citation for Part 141 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791a-828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. §§ 2601-2645 (1982), unless otherwise noted.

4. Section 141.51 is revised to read as follows:

§ 141.51 Form No. EIA-714, Annual Electric Power System Report.

(a) *Who must file.* Any electric utility, as defined under Section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602 (1982), must complete and file with the Energy Information Administration Form No. EIA-714, Annual Electric Power System Report, for every system that:

(1) Generates all or part of its load requirements;

(2) Owns and/or operates operable generating capacity of more than 25 megawatts (MW); and

(3) Has net system and firm sales for resale in excess of 100,000 megawatthours (MWh) for the reporting year.

(b) *When to file.*—(1) *General.* Form No. EIA-714 must be filed on or before each May 1 for the preceding calendar year, beginning with data covering calendar year 1985, which must be filed on or before May 1, 1986.

(2) *1982-1984 data.* Data covering 1982 are due July 15, 1985. Data covering 1983 are due August 15, 1985. Data covering 1984 are due September 15, 1985.

(c) *What to file.* An original and three conformed copies of the Form No. EIA-714 must be filed, in accordance with the instruction in that form.

[FR Doc. 85-11516 Filed 5-10-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 431, 436, 440, 442, 444, 446, 448, 449, 450, 452, 453, 455, 460, 536, 539, 540, 544, 546, 548, and 555

[Docket No. 83N-0378]

Antibiotic Drugs; Deletion of Safety Test

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to delete the original safety test requirement for antibiotic drugs for both human and veterinary use. Because of greatly improved manufacturing technology since the early years of antibiotic drug manufacture, and because of FDA's ability to assure use of other specific tests and improved manufacturing technology through its review of antibiotic applications and factory inspections, the agency has determined that the original safety test requirement is unnecessary.

DATES: Effective June 12, 1985; comments, notice of participation, and request for hearing by June 12, 1985; data, information, and analyses to justify a hearing by July 12, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1984 (49 FR 30325), corrected on August 20, 1984 (49 FR 33025), FDA proposed to amend the antibiotic drug regulations to delete the safety test requirement for antibiotic drugs for both human and veterinary use.

As discussed in the proposal, there has been a significant improvement in the extraction and chromatographic separation of antibiotic drug substances from fermentation broths since the imposition of the safety test requirement in 1945. This improvement in manufacturing technology has resulted in the production of highly purified antibiotic drug substances. Based on antibiotic Forms 5 and 6 application reviews and factory inspections conducted by FDA under section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374), the agency has determined that methods, facilities, and conditions of production for all FDA-regulated antibiotic drugs are adequate in design and application to preclude the presence of the extraneous toxic impurities that the safety test was intended to detect. In addition to the overall improvement in antibiotic manufacturing technology, individual regulations for these antibiotic drugs prescribe other special tests (e.g., identity, pyrogen, chromatographic potency assay) that provide assurance of the absence of extraneous toxic impurities.

Interested persons were given until September 28, 1984, to submit written comments on this proposal and until August 29, 1984, to submit requests for an informal conference. Eight comments were received in response to the proposal. All comments supported the proposal. No requests for an informal conference were received.

In the **Federal Register** of August 30, 1984 (49 FR 34350), FDA amended the

antibiotic regulations to remove §§ 442.19 and 442.219 (21 CFR 442.19 and 442.219). Accordingly, all references to these sections made in the proposed rule have been removed in the final rule.

In the **Federal Register** of October 10, 1984 (49 FR 39670), FDA amended the antibiotic regulations to provide for the inclusion of accepted standards for a new antibiotic drug, clavulanate potassium, and its use with amoxicillin trihydrate in two new antibiotic dosage forms. In the **Federal Register** of November 16, 1984 (48 FR 45420), FDA amended the new animal drug regulations to provide for approval of a new animal drug application for amoxicillin trihydrate and clavulanate potassium film-coated tablets. In the same issue of the **Federal Register** (48 FR 45421), FDA also amended the new animal drug regulations to provide for approval of amoxicillin trihydrate for intramammary infusion. Sections 440.103d, 440.103e, 540.103g, and 540.803 (21 CFR 440.130d, 440.130e, 540.103g, and 540.803) that were promulgated in those regulations contain a safety test requirement for the amoxicillin trihydrate used in making batches of these dosage forms. In order to update these regulations to be in conformance with the agency's determination that the safety test is unnecessary, references to these sections have been included in the final rule.

The following sections, which should have been included in the proposal for revision, were inadvertently omitted: §§ 540.103d(a)(3)(i)(*a*); 540.103e(a)(3)(i)(*a*); 540.103f(a)(3)(i)(*a*); and 544.275(a)(3)(i)(*a*). These sections are included for revocation in this final rule.

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the final rule deletes a testing requirement, thus reducing overall assay costs for manufacturers of antibiotic drugs under this final rule. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

21CFR Part 431

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

21 CFR Part 442

Antibiotics, cepha.

21 CFR Part 444

Antibiotics, oligosaccharide.

21 CFR Part 446

Antibiotics, tetracycline.

21 CFR Part 448

Antibiotics, peptide.

21 CFR Part 449

Antibiotics, antifungal.

21 CFR Part 450

Antibiotics, antitumor.

21 CFR Part 452

Antibiotics, macrolide.

21 CFR Part 453

Antibiotics, lincomycin.

21 CFR Part 455

Antibiotics.

21 CFR Part 460

Antibiotics.

21 CFR Part 536

Animal drugs, Antibiotics.

21 CFR Part 539

Animal drugs, Antibiotics, bulk.

21 CFR Part 540

Animal drugs, Antibiotics, penicillin.

21 CFR Part 544

Animal drugs, Antibiotics, oligosaccharide.

21 CFR Part 546

Animal drugs, Antibiotics, tetracycline.

21 CFR Part 548

Animal drugs, Antibiotics, peptides.

21 CFR Part 555

Animal drugs, Antibiotics, chloramphenicol.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 431, 436, 440, 442, 444, 446, 448, 449, 450, 452, 453, 455, 460, 536, 539, 540, 544, 546, 548, and 555 are amended as follows:

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

1. The authority citation for Part 431 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 431.53 [Amended]

2. Part 431 is amended in § 431.53 *Fees* by removing the item "Safety test" from the table in paragraph (b)(1).

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

3. The authority citation for Part 436 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 436.33 [Removed and Reserved]

4. Part 436 is amended by removing and reserving § 436.33 *Safety test.*

PART 440—PENICILLIN ANTIBIOTIC DRUGS

5. The authority citation for Part 440 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

6. Part 440 is amended by reserving and revising the following: Sections 440.3(a)(1)(ii) and (b)(2); 440.5(a)(1)(ii) and (b)(2); 440.7(a)(1)(ii) and (b)(2); 440.7a(a)(1)(iv) and (b)(4); 440.8 (a)(1)(ii) and (b)(2); 440.9a (a)(1)(iv) and (b)(4); 440.11 (a)(1)(ii) and (b)(2); 440.13a (a)(1)(iv) and (b)(4); 440.15 (a)(1)(ii) and (b)(2); 440.17 (a)(1)(ii) and (b)(2); 440.19 (a)(1)(iv) and (b)(2); 440.19a (a)(1)(ii) and (b)(4); 440.25 (a)(1)(ii) and (b)(2); 440.29 (a)(1)(ii) and (b)(2); 440.29a (a)(1)(iv) and (b)(4); 440.36a (a)(1)(iv) and (b)(4); 440.37a (a)(1)(iv) and (b)(4); 440.41 (a)(1)(ii) and (b)(2); 440.41a (a)(1)(iv) and (b)(4); 440.49 (a)(1)(ii) and (b)(2); 440.49a (a)(1)(iv) and (b)(4); 440.51 (a)(1)(ii) and (b)(2); 440.55a (a)(1)(iv) and (b)(4); 440.71 (a)(1)(ii) and (b)(2); 440.73 (a)(1)(ii) and (b)(2); 440.74a (a)(1)(iv) and (b)(4); 440.80a (a)(1)(iv) and (b)(4); 440.81a (a)(1)(iv) and (b)(4); 440.83a (a)(1)(iv) and (b)(4); 440.90a (a)(1)(iv) and (b)(4); 440.207(b)(4); 440.210(b)(4); 440.219b(b)(4); 440.229b(b)(4); 440.236(b)(4); 440.241(b)(4); 440.249(b)(4); 440.255b(b)(4); 440.255c(b)(4); 440.255d(b)(4); 440.274b(b)(4); 440.274c(b)(4); 440.280b(b)(4); 440.281b(b)(4); 440.1080a (a)(1)(iv) and (b)(4); 440.1081a (a)(1)(iv) and (b)(4).

7. By removing the word "safety." wherever it appears from the following: Sections 440.3(a)(3)(i); 440.5(a)(3)(i); 440.7(a)(3)(i); 440.7a(a)(3)(i); 440.8(a)(3)(i); 440.9a(a)(3)(i); 440.11(a)(3)(i); 440.13a(a)(3)(i); 440.15(a)(3)(i); 440.17(a)(3)(i); 440.19(a)(3)(i); 440.19a(a)(3)(i); 440.25(a)(3)(i); 440.29(a)(3)(i); 440.29a(a)(3)(i); 440.36a(a)(3)(i);

440.37a(a)(3)(i); 440.41(a)(3)(i); 440.41a(a)(3)(i); 440.49(a)(3)(i); 440.49a(a)(3)(i); 440.51(a)(3)(i); 440.55a(a)(3)(i); 440.71(a)(3)(i); 440.73(a)(3)(i); 440.74a(a)(3)(i); 440.80a(a)(3)(i); 440.81a(a)(3)(i); 440.83a(a)(3)(i); 440.90a(a)(3)(i); 440.103a(a)(3)(i)(*a*); 440.103b(a)(3)(i)(*a*); 440.103c(a)(3)(i)(*a*); 440.103d(a)(3)(i)(*a*); 440.103e(a)(3)(i)(*a*); 440.105a(a)(3)(i)(*a*); 440.105b(a)(3)(i)(*a*); 440.105c(a)(3)(i)(*a*); 440.105d(a)(3)(i)(*a*); 440.107a(a)(3)(i)(*a*); 440.107b(a)(3)(i)(*a*); 440.107c(a)(3)(i)(*a*); 440.107d(a)(3)(i)(*a*); 440.107e(a)(3)(i)(*a*); 440.108a(a)(3)(i)(*a*); 440.108b(a)(3)(i)(*a*); 440.111(a)(3)(i)(*a*); 440.115a(a)(3)(i)(*a*); 440.115b(a)(3)(i)(*a*); 440.117a(a)(3)(i)(*a*); 440.117b(a)(3)(i)(*a*); 440.119a(a)(3)(i)(*a*); 440.119b(a)(3)(i)(*a*); 440.125a(a)(3)(i)(*a*); 440.125b(a)(3)(i)(*a*); 440.129(a)(3)(i)(*a*); 440.141b(a)(3)(i)(*a*); 440.141a(a)(3)(i)(*a*); 440.141c(a)(3)(i)(*a*); 440.149a(a)(3)(i)(*a*); 440.149b(a)(3)(i)(*a*); 440.151a(a)(3)(i)(*a*); 440.151b(a)(3)(i)(*a*); 440.155c(a)(3)(i)(*a*); 440.155d(a)(3)(i)(*a*); 440.171a(a)(3)(i)(*a*); 440.171b(a)(3)(i)(*a*); 440.171c(a)(3)(i)(*a*); 440.173a(a)(3)(i)(*a*); 440.173b(a)(3)(i)(*a*); 440.173c(a)(3)(i)(*a*); 440.173d(a)(3)(i)(*a*); 440.180a(a)(3)(i)(*a*); 440.180c(a)(3)(i)(*a*); 440.180f(a)(3)(i)(*a*); 440.180g(a)(3)(i)(*a*); 440.207(a)(3)(i)(*b*); 440.210(a)(3)(i)(*b*); 440.219b(a)(3)(i)(*b*); 440.229b(a)(3)(i)(*b*); 440.236(a)(3)(i)(*b*); 440.241(a)(3)(i)(*b*); 440.249(a)(3)(i)(*b*); 440.255b(a)(3)(i)(*b*); 440.255c(a)(3)(i)(*c*); 440.255d(a)(3)(i)(*b*); 440.274a(a)(3)(i)(*a*); 440.274b(a)(3)(i)(*b*); 440.274c(a)(3)(i)(*b*); 440.280(a)(3)(i)(*b*); 440.281b(a)(3)(i)(*b*); 440.1080a(a)(3)(i); and 440.1081a(a)(3)(i).

8. In paragraph (a)(1) of §§ 440.207; 440.210; 440.219b; 440.236; 440.241; 440.249; 440.255b; 440.255c; 440.255d; 440.274b; 440.274c; 440.280b; and 440.281b by removing the sentence "It passes the safety test" wherever it appears.

§§ 440.229b [Amended]

9. In § 440.229b(a)(1), by revising the third sentence to read as follows: "It is sterile and nonpyrogenic."

PART 442—CEPHA ANTIBIOTIC DRUGS

10. The authority citation for Part 442 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

11. Part 442 is amended by removing and reserving the following: Sections 442.6 (a)(1)(ii) and (b)(2); 442.8a (a)(1)(iv) and (b)(4); 442.9a (a)(1)(iv) and (b)(4); 442.11a (a)(1)(iv) and (b)(4); 442.13a (a)(1)(iv) and (b)(4); 442.14a (a)(1)(iv) and (b)(4); 442.21 (a)(1)(ii) and (b)(2); 442.23a (a)(1)(iv) and (b)(4); 442.25a (a)(1)(iv) and (b)(4); 442.27 (a)(1)(ii) and (b)(2); 442.29a (a)(1)(iv) and (b)(4); 442.40 (a)(1)(ii) and (b)(2); 442.40a (a)(1)(iv) and (b)(4); 442.41 (a)(1)(ii) and (b)(2); 442.208(b)(4); 442.209(b)(4); 442.225b(b)(4); 442.225c(b)(4); and 442.240a(b)(4).

12. By removing the word "safety," wherever it appears from the following: Sections 442.6(a)(3)(i); 442.8a(a)(3)(i); 442.9a(a)(3)(i); 442.11a(a)(3)(i); 442.13a(a)(3)(i); 442.14a(a)(3)(i); 442.21(a)(3)(i); 442.23a(a)(3)(i); 442.25a(a)(4)(i); 442.27(a)(3)(i); 442.29a(a)(3)(i); 442.40(a)(3)(i); 442.40a(a)(3)(i); 442.41(a)(3)(i); 442.106a(a)(3)(i)(*a*); 442.106b(a)(3)(i)(*a*); 442.106c(a)(3)(i)(*a*); 442.121a(a)(3)(i)(*a*); 442.121b(a)(3)(i)(*a*); 442.127a(a)(3)(i)(*a*); 442.127b(a)(3)(i)(*a*); 442.127c(a)(3)(i)(*a*); 442.140a(a)(3)(i)(*a*); 442.140b(a)(3)(i)(*a*); 442.140c(a)(3)(i)(*a*); 442.141(a)(3)(i)(*a*); 442.208(a)(3)(i)(*b*); 442.209(a)(3)(i)(*b*); 442.225b(a)(3)(i)(*b*); 442.225c(a)(3)(i)(*b*); and 442.240a(a)(3)(i)(*b*).

13. In paragraph (a)(1) of §§ 442.208; 442.209; 442.225b; 442.225c; and 442.240a by removing the sentence "It passes the safety test." wherever it appears.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

14. The authority citation for Part 444 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

15. Part 444 is amended by removing and reserving the following: Sections 444.6 (a)(1)(ii) and (b)(2); 444.20 (a)(1)(ii) and (b)(2); 444.20a (a)(1)(iii) and (b)(3); 444.30 (a)(1)(ii) and (b)(2); 444.30a (a)(1)(iii) and (b)(3); 444.42(a)(1)(ii) and (b)(2); 444.42a (a)(1)(iv) and (b)(4); 444.50 (a)(1)(ii) and (b)(2); 444.62 (a)(1)(ii) and (b)(2); 444.70a (a)(1)(iv) and (b)(4); 444.80(a)(1)(ii) and (b)(2); 444.81a (a)(1)(iv) and (b)(4); 444.206(b)(4); 444.220(b)(3); 444.230(b)(3); 444.262(b)(4); 444.270b(b)(4); 444.280(b)(4); and 444.942a(a)(1)(ii).

16. By removing the word "safety" or "toxicity" wherever it appears from the following: Sections 444.20(a)(3)(i); 20a(a)(3)(i); 444.30(a)(3)(i); 444.30a(a)(3)(i); 444.42(a)(3)(i); 444.42a(a)(4)(i); 444.50(a)(3)(i); 444.62(a)(3)(i); 444.70a(a)(3)(i); 444.80(a)(3)(i); 444.81a(a)(3)(i); 444.130(a)(3)(i)(*a*); 444.142a(a)(3)(i)(*a*); 444.142b(a)(3)(i)(*a*); 444.150a(a)(3)(i)(*a*); 444.150b(a)(3)(i)(*a*); 444.206(a)(3)(i) (*a*) and (*b*); 444.220(a)(3)(i) (*a*) and (*b*); 444.230(a)(3)(i)(*b*); 444.262(a)(3)(i) (*a*) and (*b*); 444.270b(a)(3)(i)(*b*); 444.280(a)(3)(i)(*b*); 444.320a(a)(3)(i)(*a*); 444.320b(a)(3)(i)(*a*); 444.342a(a)(3)(i)(*a*); 444.342b(a)(3)(i) (*a*), (*b*), and (*c*); 444.342c(a)(3)(i)(*a*) and (*b*); 444.342d(a)(3)(i)(*a*) and (*b*); 444.342g(a)(3)(i)(*a*); 444.342h(a)(3)(i)(*a*)and (*b*); 444.342i(a)(3)(i)(*a*) and (*b*); 444.342j(a)(3)(i)(*a*) and (*b*); 444.342k(a)(3)(i)(*a*) and (*b*); 444.380a(a)(3)(i)(*a*); 444.380b(a)(3)(i)(*a*); 444.942a(a)(4)(i); and 444.942b(a)(3)(i)(*a*) and (*b*).

17. In paragraph (a)(1) of the following sections remove references as follows: Section 444.142a, remove "(iv)" from the fifth sentence; § 444.142b, remove "(iv)" from the fifth sentence; 444.342a, remove "(iv)" from the fifth sentence; § 444.342b, remove "(iv)" from the fourth and fifth sentences and "(ii)" from the sixth sentence; § 444.342c, remove "(iv)" from the fifth and sixth sentences; § 444.342d, remove "(iv)" from the fifth and sixth sentences; § 444.342g, remove "(iv)" from the sixth sentence; § 444.542f, remove "(iv)" from the fifth sentence and "(ii)" from the sixth sentence; and § 444.942b, remove "(iv)" from the fifth and sixth sentences.

18. In paragraph (a)(1) of §§ 444.206; 444.220; 444.230; 444.262; 444.270b; and 444.280 by removing the sentence "It passes the safety test." wherever it appears.

19. In paragraph (a)(1) of §§ 444.442g; 444.442h; 444.520a; 444.520b; and 444.542a by removing ", except safety" or "and, if for ophthalmic use, paragraph (a)(1)(iv) of that section" wherever they appear.

§ 444.542a [Amended]

20. By revising § 444.542a(a)(3)(i)(*a*) to read "The neomycin sulfate used in making the batch for potency, pH, and identity."

§ 444.542f [Amended]

21. By revising § 444.542f(a)(3)(i)(*a*) to read "The neomycin sulfate used in making the batch for potency, moisture, pH, and identity."

22. By revising § 444.542f(a)(3)(i)(*b*) to read "The gramicidin used in making the batch for potency, moisture, residue on ignition, melting point, crystallinity, and identity."

§ 444.942a [Amended]

23. By revising § 444.942a(b) to read *"Tests and methods of assay; potency, moisture, pH, and identity.* Proceed as directed in § 444.42a(b)(1), (5), (6), and (7)."

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

24. The authority citation for Part 446 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

25. Part 446 is amended by removing and reserving the following: Sections 446.10(a)(1)(ii) and (b)(2); 446.10a(a)(1)(iv) and (b)(4); 446.15(a)(1)(ii) and (b)(2); 446.16(a)(1)(ii) and (b)(2); 446.20(a)(1)(ii) and (b)(2); 446.20a(a)(1)(iv) and (b)(4); 446.21(a)(1)(ii) and (b)(2); 446.50(a)(1)(ii) and (b)(2); 446.60(a)(1)(ii) and (b)(2); 446.65(a)(1)(ii) and (b)(2); 446.65a(a)(1)(iv) and (b)(4); 446.66(a)(1)(ii) and (b)(2); 446.67(a)(1)(ii) and (b)(2); 446.67a(a)(1)(iv) and (b)(4); 446.75a(a)(1)(iv) and (b)(4); 446.76a(a)(1)(iv) and (b)(4); 446.80(a)(1)(ii) and (b)(2); 446.81(a)(1)(ii) and (b)(2); 446.81a(a)(1)(iv) and (b)(4); 446.82(a)(1)(ii) and (b)(2); 446.181b(b)(2)(ii); 446.220(b)(4); 446.260(b)(4); 446.265(b)(4); 446.267(b)(4); 446.275a(b)(4); 446.276a(b)(4); and 446.281d(b)(4).

26. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 446.10(a)(3)(i); 446.10a(a)(3)(i); 446.15(a)(3)(i); 446.16(a)(3)(i); 446.20(a)(3)(i); 446.20a(a)(3)(i); 446.21(a)(3)(i); 446.50(a)(3)(i); 446.60(a)(3)(i); 446.65(a)(3)(i); 446.65a(a)(3)(i); 446.66(a)(3)(i); 446.67(a)(3)(i); 446.67a(a)(3)(i); 446.75a(a)(3)(i); 446.76a(a)(3)(i); 446.80(a)(3)(i); 446.81(a)(3)(i); 446.81a(a)(3)(i); 446.82(a)(3)(i); 446.110(a)(3)(i)(*a*); 446.115a(a)(3)(i)(*a*); 446.115b(a)(3)(i)(*a*); 446.115c(a)(3); 446.116a(a)(3)(i)(*a*); 446.116c(a)(3)(i)(*a*); 446.116d(a)(4); 446.120a(a)(3)(i)(*a*); 446.120b(a)(3)(i)(*a*); 446.120c(a)(3)(i)(*a*); 446.121(a)(3)(i)(*a*); 446.150a(a)(3)(i)(*a*); 446.150b(a)(3)(i)(*a*); 446.160a(a)(3)(i)(*a*); 446.160b(a)(3)(i)(*a*); 446.160c(a)(3)(i)(*a*); 446.165a(a)(3)(i)(*a*); 446.165c(a)(3)(i)(*a*) and (*b*); 446.165d(a)(3)(i)(*a*); 446.165e(a)(3)(i)(*a*) and (*b*); 446.166(a)(3)(i)(*a*); 446.167(a)(3)(i)(*a*); 446.180a(a)(3); 446.180b(a)(4); 446.180c(a)(3)(i)(*a*); 446.181b(a)(3); 446.181d(a)(3)(i)(*a*); 446.181e(a)(3)(i)(*a*); 446.182(a)(3)(i)(*a*); 446.220(a)(3)(i)(*b*); 446.260(a)(3)(i)(*b*); 446.265(a)(3)(i)(*b*); 446.267(a)(3)(i)(*b*); 446.275a(a)(3)(i)(*b*); 446.275b(a)(3)(i)(*a*); 446.276a(a)(3)(i)(*b*); 446.276b(a)(3)(i)(*a*); 446.281c(a)(3)(i)(*a*); 446.281d(a)(3)(i)(*b*); 446.282(a)(3)(i)(*a*); 446.310(a)(3)(i)(*a*); 446.367c(a)(3)(i)(*a*); 446.367e(a)(3)(i)(*a*) and (*b*); 446.381a(a)(3)(i)(*a*); and 446.381b(a)(3)(i)(*a*).

27. In paragraph (a)(1) of §§ 446.181b; 446.220; 446.260; 446.265; 446.267; 446.275a; 446.276a; and 446.281d by removing the sentence "It passes the safety test." or "It is nontoxic." wherever it appears.

28. In paragraph (a)(1) of §§ 446.265, in the ninth sentence; 446.267, in the ninth sentence; 446.581c, in the seventh sentence; and 446.581d, in the fifth sentence by removing the words "safety," and "safety, and".

29. In paragraph (a)(1) of §§ 446.467; 446.510; 446.567a; 446.567b; 446.567c; 446.567e; and 446.667 by removing the words ", except safety" wherever they appear.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

30. The authority citation for Part 448 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

31. Part 448 is amended by removing and reserving the following: Sections 448.10(a)(1)(ii) and (b)(2); 448.10a(a)(1)(iii) and (b)(4); 448.13(a)(1)(ii) and (b)(2); 448.13a(a)(1)(iii) and (b)(3); 448.15a(a)(1)(iii) and (b)(3); 448.20a(a)(1)(iii) and (b)(4); 448.21(a)(1)(ii) and (b)(2); 448.25(a)(1)(ii) and (b)(2); 448.30(a)(1)(ii) and (b)(2); 448.30a(a)(1)(iv) and (b)(4); 448.910(a)(1)(ii) and (b)(2); 448.913(a)(1)(ii) and (b)(2); and 448.930a(a)(1)(ii) and (b)(2).

32. By removing the word "safety," from the following: Sections 448.10(a)(3)(i); 448.10a(a)(3)(i); 448.13(a)(3)(i); 448.13a(a)(3)(i); 448.15a(a)(3)(i); 448.20a(a)(3)(i); 448.21(a)(3)(i); 448.25(a)(3)(i); 448.30(a)(3)(i); 448.30a(a)(3)(i); 448.121(a)(3)(*a*); 448.310b(a)(i)(3)(*a*), (*b*), and (*c*); 448.310c(a)(3)(i)(*a*); 448.313a(a)(3)(i)(*a*) and (*b*); 448.313b(a)(3)(i)(*a*) (*b*), and (*c*); 448.321(a)(3)(i)(*a*); 448.513d(a)(3)(i)(*a*), (*b*), and (*c*); 448.513e(a)(3)(i)(*a*), (*b*), and (*c*); 448.910(a)(4)(i); 448.913(a)(4)(i); 448.930a(a)(4)(i); and 448.930b(a)(3)(i)(*a*).

33. In paragraph (a)(1) of §§ 448.421; 448.430; 448.510a; 448.510d; 448.510e; 448.513a; 448.513b; 448.513c; and 448.513f by removing ", except safety" or ", except for safety" wherever it appears.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

34. The authority citation for Part 449 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

35. Part 449 is amended by removing and reserving the following: Sections 449.4(a)(1)(iii) and (b)(3); 449.4a(a)(1)(iii) and (b)(3); 449.20(a)(1)(ii) and (b)(2); 449.50(a)(1)(ii) and (b)(2); and 449.204(b)(3).

36. By removing the word "safety," wherever it appears from the following: Sections 449.4(a)(3)(i); 449.4a(a)(3)(i); 449.20(a)(3)(i); 449.50(a)(3)(i); 449.104(a)(3)(i)(*a*); 449.120a(a)(3)(i)(*a*); 449.120b(a)(3)(i)(*a*); 449.120c(a)(3)(i)(*a*); 449.120d(a)(3)(i)(*a*); 449.150a(a)(3)(i)(*a*); 449.150b(a)(3)(i)(*a*); 449.150c(a)(3)(i)(*a*); 449.204(a)(3)(i)(*b*); 449.550b(a)(3)(i)(*a*); and 449.650b(a)(3)(i)(*a*);

§ 449.204 [Amended]

37. In § 449.204(a)(1) by removing the sentence "It passes the safety test."

§§ 449.550c, 449.550e, 449.550g, and 449.550h [Amended]

38. In paragraph (a)(1) of §§ 449.550c; 449.550e; 449.550g; and 449.550h by removing the phrase "except safety" wherever it appears.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

39. The authority citation for Part 450 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 450.10a, 450.45, and 450.245 [Amended]

40. Part 450 is amended by removing and reserving the following: Sections 450.10a(a)(1)(iv) and (b)(4); 450.45(a)(1)(ii) and (b)(2); and 450.245(b)(4).

§ 450.10a, 450.45, and 450.245 [Amended]

41. In §§ 450.10a(a)(3)(i); 450.45(a)(3)(i); and 450.245(a)(3)(i)(*b*) by removing the word "safety," wherever it appears.

§ 450.245 [Amended]

42. In § 450.245(a)(1), by removing the sentence "It passes the safety test."

PART 452—MACROLIDE ANTIBIOTIC DRUGS

43. The authority citation for Part 452 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

44. Part 452 is amended by removing and reserving the following: Sections 452.10(a)(1)(ii) and (b)(2); 452.15(a)(1)(ii) and (b)(2); 452.25(a)(1)(ii) and (b)(2); 452.25a(a)(1)(iii) and (b)(3); 452.30a(a)(1)(iii) and (b)(4); 452.35(a)(1)(ii) and (b)(2); 452.75(a)(1)(ii) and (b)(2); 452.225(b)(3); and 452.232(b)(4).

45. By removing the word "safety," wherever it appears from the following: Sections 452.10(a)(3)(i); 452.15(a)(3)(i); 452.25(a)(3)(i); 452.25a(a)(3)(i);

452.30a(a)(4)(i); 452.35(a)(3)(i); 452.75(a)(3)(i); 452.110a(a)(3)(i)(*a*); 452.110b(a)(3)(i)(*a*); 452.110c(a)(3)(i)(*a*); 452.115a(a)(3)(i)(*a*); 452.115b(a)(3)(i)(*a*); 452.115c(a)(3)(i)(*a*); 452.115d(a)(3)(i)(*a*); 452.115e(a)(3)(i)(*a*); 452.115f(a)(3)(i)(*a*); 452.125a(a)(3)(i)(*a*); 452.125b(a)(3)(i)(*a*); 452.125c(a)(3)(i)(*a*); 452.125d(a)(3)(i)(*a*); 452.125e(a)(3)(i)(*a*); 452.135a(a)(3)(i)(*a*); 452.135b(a)(3)(i)(*a*); 452.135c(a)(3)(i)(*a*); 452.175a(a)(3)(i)(*a*); 452.175b(a)(3)(i)(*a*); 452.175c(a)(3)(i)(*a*); 452.175d(a)(3)(i)(*a*); 452.225(a)(3)(i)(*b*); 452.232(a)(3)(i)(*b*); 452.310(a)(3)(i)(*a*); and 452.710(a)(3)(i)(*a*).

§§ 452.110b, 452.310, and 452.710 [Amended]

46. In paragraph (a)(1) of the following sections remove references as follows: Section 452.110b, remove "(ii)" from the sixth sentence; § 452.310, remove "(ii)" from the sixth sentence; and § 452.710, remove "(ii)" from the fourth sentence.

§§ 452.225 and 452.232 [Amended]

47. In paragraph (a)(1) of §§ 452.225 and 452.232 by removing the sentence "It passes the safety test." wherever it appears.

§ 452.510b [Amended]

48. In § 452.510(b)(a)(1) by removing the words "safety and" from the sixth sentence.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

49. The authority citation for Part 453 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

50. Part 453 is amended by removing and reserving the following: Sections 453.20(a)(1)(iii) and (b)(3); 453.21(a)(1)(ii) and (b)(2); 453.22(a)(1)(iii) and (b)(3); 453.22a(a)(1)(v) and (b)(5); 453.30(a)(1)(ii) and (b)(2); 453.30a(a)(1)(iii) and (b)(3); 453.222(b)(4); and 453.230(b)(3).

51. By removing the word "safety," wherever it appears from the following: Sections 453.20(a)(3)(i); 453.21(a)(3)(i); 453.22(a)(3)(i); 453.22a(a)(3)(i); 453.30(a)(3)(i); 453.30a(a)(3)(i); 453.120(a)(3)(i)(*a*); 453.121a(a)(3)(i)(*a*); 453.121b(a)(3)(i)(*a*); 453.130a(a)(3)(i)(*a*); 453.130b(a)(3)(i)(*a*); 453.222(a)(3)(i)(*b*); and 453.230(a)(3)(i)(*b*).

§ 453.130b [Amended]

52. In § 453.130b(a)(1), remove the reference "(ii)" from the fifth sentence.

§§ 453.222 and 453.230 [Amended]

53. In paragraph (a)(1) of §§ 453.222 and 453.230 by removing the sentence "It passes the safety test." wherever it appears.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

54. The authority citation for Part 455 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

55. Part 455 is amended by removing and reserving the following: Sections 455.10(a)(1)(ii) and (b)(2); 455.10a(a)(1)(iv) and (b)(4); 455.11(a)(1)(ii) and (b)(2); 455.12a(a)(1)(iv) and (b)(4); 455.20(a)(1)(ii) and (b)(2); 455.50(a)(1)(ii) and (b)(2); 455.51(a)(1)(ii) and (b)(2); 455.51a(a)(1)(iv) and (b)(4); 455.70(a)(1)(ii) and (b)(2); 455.80a(a)(1)(v) and (b)(5); 455.85(a)(1)(ii) and (b)(2); 455.85a(a)(1)(iii) and (b)(3); 455.90a(a)(1)(iii) and (b)(3); 455.210(b)(4); 455.230(b)(4); and 455.251(b)(4).

56. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 455.10(a)(3)(i); 455.10a(a)(3)(i); 455.11(a)(3)(i); 455.12a(a)(3)(i); 455.20(a)(3)(i); 455.50(a)(3)(i); 455.51(a)(3)(i); 455.51a(a)(3)(i); 455.70(a)(3)(i); 455.80a(a)(3)(i); 455.85(a)(3)(i); 455.85a(a)(4)(i); 455.90a(a)(3)(i); 455.110(a)(3)(i)(*a*); 455.111(a)(3)(i)(*a*); 455.120(a)(3)(i)(*a*); 455.150(a)(3)(i)(*a*) (both sentences); 455.151a(a)(3)(i)(*a*); 455.151b(a)(3)(i)(*a*); 455.170a(a)(3)(i)(*a*); 455.170b(a)(3)(i)(*a*); 455.185(a)(3)(i)(*a*); 455.210(a)(3)(i)(*b*); 455.230(a)(3)(i); 455.251(a)(3)(i)(*b*); 455.290(a)(3)(i)(*a*); 455.310a(a)(3)(i)(*a*); 455.310b(a)(3)(i)(*a*); and 455.390(a)(3)(i)(*a*).

§§ 455.150, 455.251, and 455.310c [Amended]

57. In paragraph (a)(1) of § 455.150 by removing "(ii)" from the fifth and sixth sentences; in § 455.251(a)(1) by revising the fourth sentence to read "It is sterile and nonpyrogenic." and by removing "(iv)" from the seventh sentence; and in § 455.310c(a)(1) by removing "(iv)" from the sixth sentence.

§§ 455.210 and 455.230 [Amended]

58. In paragraph (a)(1) of §§ 455.210 and 455.230 by removing the sentence "It passes the safety test." wherever it appears.

§§ 455.410 and 455.510d [Amended]

59. In paragraph (a)(1) of §§ 455.410 and 455.510d by removing the words ", except safety" and ", concerning safety" wherever they appear.

§ 455.310c [Amended]

60. In paragraph (a)(4)(i)(*a*) of § 455.310c by removing the phrase ", and for toxicity if the ointment is intended for ophthalmic use".

§ 455.310d [Amended]

61. In paragraph (a)(3) of § 455.310d by removing the words "and toxicity".

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

62. The authority citation for Part 460 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise amended; 21 CFR 5.10.

§ 460.42 [Amended]

63. Part 460 is amended in § 460.42(a)(1) in the seventh sentence by removing the word "toxicity,".

PART 536—TESTS FOR SPECIFIC ANTIBIOTIC DOSAGE FORMS

64. The authority citation for Part 536 is revised to read as follows:

Authority: Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357, 360b); 21 CFR 5.10, 5.83.

§ 536.50 [Amended]

65. Part 536 is amended in § 536.507 by removing and reserving paragraph (c).

§ 536.513 [Amended]

66. In § 536.513(b) by removing "toxicity," and ", and § 440.80a(b)(5)(iii)".

PART 539—BULK ANTIBIOTIC DRUGS SUBJECT TO CERTIFICATION

67. The authority citation for Part 539 is revised to read as follows:

Authority: Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357, 360b); 21 CFR 5.10, 5.83.

68. Part 539 is amended by removing and reserving the following: Sections 539.3 (a)(1)(iv) and (b)(4); 539.15 (a)(1)(iv) and (b)(4); 539.170 (a)(1)(ii) and (b)(2); 539.210a (a)(1)(ii) and (b)(2); 539.210b (a)(1)(ii) and (b)(2); 539.310a (a)(1)(ii) and (b)(2); and 539.310b (a)(1)(ii) and (b)(2).

69. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 539.3(a)(3)(i); 539.15(a)(3)(i); 539.170(a)(4)(i); 539.210a(a)(4)(i); 539.210b(a)(4)(i); 539.310a(a)(3)(i); and 539.310b(a)(3)(i).

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

70. The authority citation for Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

71. Part 540 is amended by removing and reserving the following: Sections 540.114(a)(1)(ii) and (b)(2); 540.114a(a)(1)(iii) and (b)(3); 540.203(b)(4); 540.207b(b)(4); and 540.274d(a)(1)(iv) and (b)(3).

72. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 540.103a(a)(3)(i)(*a*); 540.103b(a)(3)(i)(*a*); 540.103c(a)(3)(i)(*a*); 540.103d(a)(3)(i)(*a*); 540.103e(a)(3)(i)(*a*); 540.103f(a)(3)(i)(*a*); 540.103g(a)(3)(i)(*a*); 540.105(a)(3)(i)(*a*); 540.107a(a)(4)(i)(*a*); 540.107b(a)(3)(i)(*a*); 540.107c(a)(3)(i)(*a*); 540.107d(a)(3)(i)(*a*); 540.107e(a)(3)(i)(*a*); 540.114(a)(3)(i); 540.114a(a)(3)(i); 540.119(a)(3)(i)(*a*); 540.129a(a)(3)(i)(*a*); 540.129b(a)(3)(i)(*a*); 540.129c(a)(3)(i)(*a*); 540.203(a)(3)(i)(*b*); 540.207a(a)(3)(i)(*a*); 540.207b(a)(3)(i)(*b*); 540.274c(a)(4); 540.803(a)(3)(i)(*a*); 540.814(a)(3)(i)(*a*); 540.814a(a)(3)(i)(*a*); 540.815(a)(3)(i)(*a*); 540.815a(a)(3)(i)(*a*); 540.829(a)(3)(i)(*a*); 540.874e(a)(1); and 540.874f(a)(3)(i)(*a*) and (*b*).

§§ 540.203 and 540.207b [Amended]

73. In paragraph (a)(1) of §§ 540.203 and 540.207b by removing the sentence "It passes the safety test." wherever it appears.

§ 540.274c [Amended]

74. In § 540.274c(a)(1), in the last sentence, by revising the phrase "§ 440.74a(a)(1) (ii), (iii), and (iv) of this chapter." to read § 440.74a(a)(1) (ii) and (iii) of this chapter."

§ 540.274d [Amended]

75. In § 540.274d(a)(4)(ii) (*a*), (*b*), and (*c*) by removing the words "toxicity and".

§ 540.380a [Amended]

76. In § 540.380a(a)(1), in the fifth sentence, by removing the phrase "and (iv)" in the cross-reference to § 440.80a(a)(1); in the sixth sentence by removing the phrase "and except § 440.80a(a)(1)(iv) of this chapter"; and by removing the next to the last sentence that reads "The 1-ephenamine penicillin G used conforms to the requirements of § 440.65a(a)(1) except paragraph (a)(1) (ii), (iii), and (iv) of that section."

§ 540.380a [Amended]

77. In § 540.380a(a)(4)(i)(*a*) by removing the words", and for toxicity if the ointment is intended for ophthalmic use."

§ 540.380b [Amended]

78. In § 540.380b(a)(1) in the sixth sentence, by revising the phrase "except paragraph (a)(1) (ii), (iii), and (iv)" to read "except paragraph (a)(1) (ii) and (iii)"; and in the next to the last sentence, by removing the phrase "except the standard for toxicity".

§ 504.874e [Amended]

79. In § 504.874e(a)(1), in the fifth sentence, by revising the phrase "except § 440.74a(a)(1) (ii), (iii), and (iv)." to read "except sterility and pyrogens.", and in the last sentence by removing the word "safety,".

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

80. The authority citation for Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

81. Part 544 is amended by removing the word "safety" wherever it appears from the following: Sections 544.170a(a)(4)(ii) (*b*), (*c*), and (*d*); 544.170b(a)(4)(i); 544.173a(a)(4)(ii)(*b*); 544.173b(a)(4)(ii)(*b*); 544.173d(a)(4)(ii)(*b*); 544.173e(a)(4)(ii)(*b*); 544.211a(b)(3); 544.211b (a)(4)(ii)(*a*) and (b)(3); 544.274(a)(4)(ii)(*a*); 544.275(a)(3)(i)(*a*); 544.370a (a)(4)(i) and (b)(2); 544.373a(a)(1); and 544.373b(a)(1).

§§ 544.170b and 544.173c [Amended]

82. In paragraph (a)(1) of §§ 544.170b and 544.173c by removing the sentence "It passes the safety test." wherever it appears.

§§ 544.170b, 544.173c, and 544.211b [Amended]

83. By removing and reserving the following: Sections 544.170b(b)(2); 544.173c(b)(3); and 544.211b(a)(1)(ii).

§ 544.170a [Amended]

84. In § 544.170a(a)(1) in the fourth sentence by revising the phrase "except § 444.70a(a)(1), (ii), (iii), and (v)" to read "except for sterility, pyrogens, and depressor substances," and by revising the fifth sentence to read "The polymyxin used conforms to the standards as prescribed by § 448.30(a)(1) of this chapter."

§§ 540.211a and 540.211b [Amended]

85. In paragraph (b)(3) of §§ 544.211a and 544.211b by removing the number "(4)" in the cross-reference to § 444.70a(b).

§ 544.370a [Amended]

86. In § 544.370a(b)(2) by revising the cross-reference "§ 444.70a(b) (2) through (7)" to read "§ 444.70a(b) (2), (3), and (5) through (7)."

§ 544.370b [Amended]

87. In § 544.370b(a)(1) by revising the phrase "§ 444.70a(a)(1) of this chapter, except paragraph (a)(1) (ii), (iii), (iv), and (v) of that section" to read "§ 444.70a(a)(1) of this chapter, except for sterility, pyrogens, and depressor substances," and by revising "§ 452.10(a)(1) of this chapter, except paragraph (a)(1) (ii), (v), (vi), and (viii) of that section." to read "§ 452.10(a)(1), except for residue on ignition, heavy metals, and crystallinity."

§ 544.373a [Amended]

88. In § 544.373a(a)(1) by revising the phrase "requirements of § 444.70a(a)(1) of this chapter, except paragraph (a)(1), (ii), (iii), (iv), (v), and (vi) of that section." to read "requirements of § 444.70a(a)(1) (i), (vii), and (viii) of this chapter."

§ 544.373b [Amended]

89. In § 544.373b(a)(1) by revising the phrase "requirements of § 444.70a(a)(1) of this chapter, except paragraph (a)(1) (ii), (iii), (iv), and (v) of that section." to read "requirements of § 444.70a(a)(1) (i), (vi), (vii), and (viii) of this chapter."

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

90. The authority citation for Part 546 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

91. Part 546 is amended by removing the word "toxicity," wherever it appears from the following: Sections 546.110b(a)(4)(ii)(*b*); 546.110c(a)(4)(ii)(*b*); 546.110d(a)(5)(ii)(*b*); 546.110g(a)(4)(ii)(*b*); 546.113a(a)(4)(ii)(*b*); and 546.312a(a)(1)(iii).

92. By removing the word "safety," wherever it appears from the following: Sections 546.180e(a)(3)(i)(*a*); 546.180g(a)(3)(i) (*a*) and (*b*); 546.180h(a)(3)(i) (*a*) and (*b*); and 546.180i(a)(3)(i) (*a*) and (*b*).

§ 546.180h [Amended]

93. In § 546.180h(a)(1) by revising the cross-reference "§ 446.81a(a)(1) of this chapter, except for § 446.81a(a)(1) (ii), (iv), and (v)." to read "§ 446.81a(a)(1) of this chapter, except for sterility and depressor substances.

§ 546.312a [Amended]

94. In § 546.312a(a)(1)(iii) by revising the cross-reference "§ 444.70a(a)(1) of this chapter, except paragraph (a)(1)(ii), (iii), (iv), and (v) of that section." to read "§ 444.70a(a)(1) of this chapter, except for sterility, pyrogens, and depressor substances."

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

95. The authority citation for Part 548 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

96. Part 548 is amended by removing the word "safety," wherever it appears from the following: Sections 548.112a(a)(3)(i)(*a*); 548.112b(a)(3)(i) (*a*) and (*b*); 548.112d(a)(3)(i) (*a*) and (*b*); and 548.314a(a)(3)(i) (*a*), (*b*), and (*c*).

§ 548.112d [Amended]

97. In § 548.112d(a)(1) by removing the phrase ", and in addition, it passes the safety test".

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

98. The authority citation for Part 555 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

99. Part 555 is amended by removing the word "safety," wherever it appears from the following: Sections 555.110a(a)(3)(i)(*a*); 555.110b(a)(3)(i)(*a*); 555.110c(a)(4)(i)(*a*); 555.111(a)(3)(i)(*a*); 555.210(a)(4)(i)(*b*); and 555.310d(a)(3)(i)(*a*).

§ 555.210 [Amended]

100. In § 555.210 by removing the sentence "It passes the safety test." from paragraph (a)(1), and by removing and reserving paragraph (b)(4).

§ 555.310e [Amended]

101. In § 555.310e(a)(1) by removing the phrase ", except safety."

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before June 12, 1985, a written notice of participation and request for hearing, and (2) on or before July 12, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11467 Filed 5–10–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. N–85–1506; FR–2101]

Mortgagee Approval; Revision of Fee Schedule

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

ACTION: Mortgagee Approval—Revision of Fee Schedule Notice.

SUMMARY: HUD is revising the amount of application fees it charges to mortgagees that apply for HUD–FHA approved status and the amount of annual recertification fees they must pay to retain their approved status. The Department's Authority for imposing fees and establishing amounts is contained in regulations at 24 CFR 203.2(a)(11).

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Lender Activities and Land Sales Registration, Room 9146, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–5000, Telephone (202) 755–6924 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 24 CFR 203.2(a)(11) HUD established a mortgagee application and annual recertification fee schedule in 1980 by publication of a Notice in the **Federal Register** on October 14, 1980. (45 FR 67779). The purpose of this fee schedule is to help defray the administrative cost to the Department of approving and monitoring mortgagees participating in HUD's mortgage insurance programs. The 1980 fee schedule has never been revised.

Since 1980 the Department has significantly increased its monitoring of mortgagee activities as part of an overall effort to assist mortgagees in orginating quality loans, prevent program violations, and avoid unnecessary losses to HUD's insurance funds. This has resulted in increased administrative costs to the Department. To defray this increased cost, this Notice raises the amount of application and annual recertification fees it charges to mortgagees by $50. It also establishes a fee of $100 to be charged to HUD-approved Loan Correspondents requesting the approval of additional sponsors. The fee for additional Loan Correspondent sponsors is needed because of a significant increase in the number of applications by Loan Correspondents for approval of additional sponsors, with associated increases in HUD's administrative costs.

The Department is reducing its application fee for HUD-approved Authorized Agents from $250 to $100, the same amount as is payable by HUD mortgagees for approval of a branch office. HUD regulations (24 CFR 203.3(e)) have, since 1983, required Authorized Agents to be HUD-approved mortgagees and, as such, they are required to pay appropriate mortgagee application and annual recertification fees. Also, operating experience by HUD since 1980 has shown that the administrative costs of approving Authorized Agents does not warrant retaining the higher original application fee.

Accordingly, the following revised schedule of application fees and annual fees for mortgagees will take effect on May 1, 1985:

Application Fees

All mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR § 203.7, must submit a nonrefundable application fee to HUD of $300 for their home office and $100 for

each branch office that will submit applications to HUD.

All mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR § 203.7, must submit to HUD upon application for approval of an Authorized Agent, a nonrefundable application fee of $100.

All Loan Correspondents as described in 24 CFR § 203.5 must submit a nonrefundable application fee of $100 to HUD for each new, additional sponsor, where such request for approval is made after the initial application for HUD-approved status has been filed.

The application fees must be submitted to the HUD Field Office having jurisdiction over the mortgagee's home office, branch office or Authorized Agent's facility. An application by a Loan Correspondent for an additional sponsor must be submitted to the HUD Field Office having jurisdiction over the Loan Correspondent's home office.

The appropriate application forms may be obtained from HUD Field Offices. Applications submitted without the required fees or with an incorrect payment will be returned to the applicant.

Annual Fees

All approved mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR§ 203.7, must remit to HUD an annual recertification fee of $200 for their home office and $100 for each branch office approved to submit applications to HUD, in order to retain HUD-approved status.

Payment of the annual recertificiation fees must be submitted with Form HUD 92001V, Yearly Verification Report, which HUD mails annually to all approved mortgagees. Mortgagees must remit their annual fee with Form HUD 92001V to: *Department of Housing and Urban Development, P.O. Box 100170, Atlanta, Georgia 30384.*

Government institutions and National Mortgage Associations, as described in 24 CFR § 203.7, must submit Form HUD 92001V, Yearly Verification Report, even though they are not required to remit the annual fee.

Form HUD 92001V, Yearly Verification Report, has been approved by the OMB and assigned approval number 2502-0017.

Authority: Sections 203 and 211 of the National Housing Act, 12 U.S.C. 1709, 1715b.

Dated: May 1, 1985

Shirley McVay Wiseman,

Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-11528 Filed 5-10-85; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Parts 203, 226, and 234

[Docket No. R-85-1173; FR-1935]

Single Family and Condominium Mortgage Insurance; Changes to Loan-to-Value Limitation for Modestly Priced Homes

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

ACTION: Final rule.

SUMMARY: This rule implements a provision of the Housing and Urban-Rural Recovery Act of 1983 which authorizes a higher loan-to-value ratio for a HUD-insured owner-occupied home or family unit with an appraised value of $50,000 or less. Because a higher loan-to-value ratio means the purchaser needs a smaller minimum downpayment, this amendment will help those persons traditionally served by FHA—homebuyers with sound credit and income and strong motivation to support mortgage debt, but with a limited amount of liquid assets to provide a larger downpayment. This amendment will particularly help first-time homebuyers who do not have equity in a previous home to use for a downpayment.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Brian Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, D.C. 20410. Telephone: (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1701-1749) authorizes the Federal Housing Administration (HUD/FHA) to insure mortgages for single family residences. This authority includes one-to four-family residences (see section 203) and one-family units in condominiums (see section 234).

HUD/FHA insures lenders against losses on insured home morgages, thereby lowering lenders' risk and encouraging a flow of credit for homeownership. The Department's insurance program has increased the opportunity for homeownership—one of the fundamental objectives of the Department. The limits on how much the Department may insure are set by the National Housing Act. Maximum mortgage amounts depend on whether the buyer intends to live in the home, the appraised value of the property, the number of family units in the dwelling, and the prevailing housing prices in the area. The insured mortgage amount cannot exceed a fixed percentage of the appraised value, called the loan-to-value ratio.

In most single family mortgages, when the mortgagor (purchaser) is going to occupy the residence, the loan-to-value ratio is the sum of the 97 percent of the first $25,000 of the appraised value plus 95 percent of the appraised value in excess of $25,000. Appraised value is defined as the estimated value of the property plus estimated closing costs or the acquisition cost, whichever is less. (See 24 CFR 203.18 and 234.27 for loan-to-value ratios in other circumstances.)

Section 424 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) amends section 203(b) of the NHA by establishing a special loan-to-value ratio for owner-occupied modestly priced homes. If the appraised value of the property (estimated value plus estimated closing costs) does not exceed $50,000, section 424 allows a loan-to-value ratio of 97 percent of the entire appraised value of the property as of the date the mortgage is accepted for insurance. Section 420 of the same Act provides that the maximum mortgage limits authorized for one-family residences under section 203(b) of the NHA also apply to section 234 condominium units. (See rule implementing section 420 in the April 11, 1984 issue of the **Federal Register**, 49 FR 14336.)

The Proposed Rule

On October 10, 1984 (49 FR 39686), the Department proposed amendments to Parts 203 and 234 to implement section 424 of the 1983 Act to increase the loan-to-value ratio for owner-occupied, modestly priced single family homes, including condominium units. The proposed change would reduce the minimum downpayment requirement for purchasers of modestly priced single family homes. Under current loan-to-value limitations, a $50,000 home requires a $2,000 minimum downpayment. As proposed, the rule would require a $1,500 minimum downpayment on a $50,000 home. This reduction in the necessary initial cash investment would permit more moderate and middle income homebuyers to own

their own homes. Because the 1983 Act specifically limits this loan-to-value limitation to owner-occupants, the proposed rule would amend HUD's regulations to make it clear that investor-owners may not qualify for this special low downpayment.

The proposed rule also contained technical amendments to Part 226, Armed Services Housing—Civilian Employees, to make it consistent with Part 203.

In addition, the proposed rule stated that the Secretary had made the finding required by the 1983 Act that the implementation of this provision will not adversely affect the actuarial soundness of HUD's single family mortgage insurance programs, taking into account the already higher loan-to-value ratio resulting from the advance payment of mortgage insurance premiums in effect for most of the section 203 programs. The Secretary made such a finding, and submitted his report to Congress at the time the proposed rule was submitted to Congress in September, 1984, for prepublication review.

This Rule

Today's document adopts the proposed rule as final without change. While the Department received seven comments on the proposal, all were positive. Two comments were from banks, four were from professional organizations, and one was from an individual. The two issues raised by commenters are discussed below.

The first comment recommended expansion of the rule to include property whose value exceeds $50,000. The Department has no discretion to expand the rule in the manner suggested. As discussed in the proposed rule and earlier in this document, section 203(b)(2) of the National Housing Act establishes the maximum mortgage amounts eligible for insurance, including specific loan-to-value ratios. It is only because Congress amended section 203(b)(2) for homes valued at $50,000 or less that we are able to implement today's rule. Any expansion of the program would require statutory amendment.

The second comment expressed concern that the benefits of today's rule not be offset by increased payments required in the one-time mortgage insurance premium program. The Department does not regard implementation of the higher loan-to-value ratio provided for in this rule as requiring any change in the one-time mortgage insurance premium program. The Department could only implement the one-time mortgage insurance premium program (applicable to most Mutual Mortgage Insurance Fund programs) after it had determined that the program would not adversely affect the actuarial soundness of the Fund. Similarly, the one-time mortgage insurance rate must be based on a formula assuring actuarial soundness. And, too, the 97 percent loan-to-value ratio provision could only be implemented after the Department determined that it anticipated no increased actuarial risk to the Fund.

What this means is that the Department must, and does, reserve the option of increasing the one-time mortgage insurance premium rate, or withdrawing the one-time mortgage insurance premium program, if future experience demonstrates that these programs pose a significant risk to the actuarial soundness of the Fund.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

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

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule merely carries out a statutory policy and does not impose any new administrative or economic burdens on small entities.

This rule was listed as item number 48 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (see 49 FR 41684, 41702) under Executive Order 12291 and the Regulatory Flexibility Act.

The applicable Catalog of Federal Domestic Assistance program numbers are: 14.108; 14.117; 14.123; 14.133; 14.159; 14.161; 14.165; 14.172; and 14.175.

List of Subjects

24 CFR Part 203

Home improvement; Loan programs: Housing and community development; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy

24 CFR Part 226

Government employees; Mortgage insurance.

CFR Part 234

Mortgage insurance; Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Parts 203, 226, and 234 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 is revised to read as set forth below and any authority citation following any section in Part 203 is removed.

Authority: Secs. 203 and 211, National Housing Act, (12 U.S.C. 1709, 1715b).

2. Section 203.18 is amended by revising paragraphs (a)(2), (a)(3) and the introductory language of paragraph (c) to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) * * *

(1) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

(c) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See § 203.18(a)(3).) A mortgage executed by an owner who is not the occupant of the property may equal:

* * * * *

3. In § 203.50, paragraphs (f)(1) and (f)(2) are amended by removing the reference "§ 203.18(a) (1) and (2)" and adding in its place the reference "§ 203.18(a) (1) and (3)".

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

4. The authority citation for 24 CFR Part 226 is revised to read as set forth below and any authority citation following any section in Part 226 is removed.

Authority: Secs. 807, 809, National Housing Act, (12 U.S.C. 1748f, 1748h–l).

5. Section 226.5 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) * * *

(1) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(2) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(1) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value to the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

6. The authority citation for 24 CFR Part 234 is revised to read as set forth below and any authority citation following any section in Part 234 is removed.

Authority: Secs. 211, 234, National Housing Act, (12 U.S.C. 1715b, 1715y).

7. Section 234.27 is amended by revising paragraphs (a)(2), (a)(3), and the introductory language of paragraph (d) to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) * * *

(1) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a family unit is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance, unless the family unit—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such family unit had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a family unit is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the family unit does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the family unit exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-

paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

(d) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See § 234.27(a)(3).) A mortgage executed by an owner who is not the occupant of the property may equal:

* * * * *

Dated: May 2, 1985.

Shirley McVay Wiseman,

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

[FR Doc. 85-11526 Filed 5-10-85; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-84-1196; FR-1975]

Public Housing Development; Prototype Costs

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

ACTION: Final rule.

SUMMARY: This rule amends the Department's public housing development regulations governing the calculation of prototype cost limits. Under this final rule, currently published unit prototype costs will be used to compute dwelling construction and equipment cost limits and total development cost ceilings. This change will promote greater control of project costs and encourage cost savings.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410-5000, telephone (202) 426-0938. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department's regulations at 24 CFR Part 941 govern procedures for the development to public housing projects under the United States Housing Act of 1937. Under these procedures, HUD is required to establish project prototype cost limits (PPCLs). These PPCLs represent the ceiling amounts that may be approved for dwelling construction and equipment for projects involving new construction. Additionally, total development cost (TDC) caps for all projects are computed by multiplying a set percentage times the PPCL. See 24 CFR § 941.406(a).

The method of computing PPCLs is described in 24 CFR 941.204. Under this rule, the Department is required to publish unit prototype costs annually in the **Federal Register.** These unit prototype costs represent the dwelling construction and equipment costs for modest housing of various unit sizes and structure types for economically similar areas. At the time that HUD invites a proposal under 24 CFR 941.402 or approves a proposal under 24 CFR 941.403, HUD is required to establish a base project prototype cost for the project, based on the then-current unit prototype costs for the involved structure and the number and types of units to be in the structure. HUD computes the PPCL by multiplying the base project prototype cost times an adjustment factor based on a commercial index that reflects cost changes occuring after the effective date of the unit prototype costs.

On October 10, 1984, the Department published a proposed rule in the **Federal Register** (49 FR 39694) to amend 24 CFR 941.204. Under the proposed rule, PPCLs would be based on the currently effective unit prototype costs, rather than the unit prototype costs that were effective when HUD invited or approved a particular proposal. Indexing of the unit prototype costs would be discontinued.

Interested parties were invited to submit comments by December 10, 1984. Comments were received from: Area Housing Commission, Pensacola, Florida; San Diego Housing Commission; Housing Authority of the City of San Luis Obispo, California; Department of Housing and Community Development, Fairfax County, Virginia; Housing Authority of the County of Santa Cruz, California; Housing Authority of the City of Reno, Nevada; and Boston Housing Authority.

One commenter alleged that the real problem that the proposed rule attempts to address is one of excessive processing time for public housing development. This commenter stated that the proposed regulations should be withdrawn until HUD takes steps to reduce excessive processing time.

Through issuances such as Handbook 7417.1 Rev-1, HUD has attempted to reduce the amount of time between HUD's invitation for proposals under 24 CFR 941.403 (or HUD's approval of a proposal under 24 CFR 941.402) and the date of execution of the construction contract (conventional) or the contract of sale (turnkey). Notwithstanding these efforts, the Department must provide a method to ensure that PPCLs and TDCS keep pace with cost changes during development.

Several commenters argued that the PPCLs and TDCs computed under the proposed rule would not adequately reflect inflation occurring after publication of the unit prototype costs and that the rule would result in cost limits that would be too difficult to meet. To ensure reasonable cost limits, these commenters suggested that the final rule: (1) Retain the existing method of computing PPCLs; (2) modify the proposed rule by permitting the use of indexed PPCLs whenever inflation exceeds a stated level (*e.g.*, five percent per year); or (3) provide that the TDCs will be computed as 175 percent of PPCLs, rather than the 145 and 160 percent figures stated at 24 CFR 941.406(a).

The Department has not revised the proposed rule in response to these comments. PPCLs and TDCs developed for projects under this rule will adequately reflect development costs for comparable housing in economically similar marketing areas. While PPCLs and TDCs computed under the final rule will not consider inflation (or deflation) occurring during the year following the effective date of the unit prototype costs, this omission is not significant. In recent periods, the rate of inflation has stabilized at relatively low levels. Indeed, the most recent government figures indicate that inflation was 3.7 percent during 1984. "Economic Indicators—January 1985," Prepared for the Joint Economic Committee by the Council of Economic Advisors (United States Government Printing Office, 1985). Even if inflation were to increase dramatically during some future period, this increase should not significantly delay public housing development since PHAs may exceed PPCLs by up to 10 percent with the approval of the Secretary under 24 CFR 941.204(e).

Two Commenters believed that the proposed rule is workable only if the regulations require HUD to publish the unit prototype annually and if HUD can demonstrate that it is able to update the schedules annually. The requirement for annual publication of the unit prototype costs is already included in the regulations at 24 CFR 941.204(b). HUD's ability to meet this annual schedule is demonstrated by our publication record. In the past, HUD published prototype costs on January 20, 1984 (49 FR 2608) and December 6, 1984 (49 FR 47772).

Finally, one commenter questioned the accuracy of HUD's past annual unit prototype determinations. In all annual notices establishing unit prototype costs, the Department has stated that it will permit the submission of written comments and will make appropriate amendments to the cost determinations based on these comments (see 49 FR 47772). Parties seeking the revision of our unit prototype cost determinations are encourged to submit appropriate comments in these proceedings. This rulemaking, however, is not the appropriate forum for consideration of these issues.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

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

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the proposed amendment is intended to have the effect of containing development costs for public housing projects, it may have an economic impact on builders or developers of public housing, some of whom may constitute small entities, but it is not believed that the number of small entities affected will be substantial.

This rule was listed as item 255 in the Department's Semiannual Agenda of Regulations published October 22, 1984 (49 FR 41684, 41737) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2577–0036.

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

List of Subjects in 24 CFR Part 941

Loan programs—housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

Accordingly, 24 CFR Part 941 is amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR Part 941 is revised to read as set forth below and any authority citation following any section in Part 234 is removed.

Authority: Section 6, U.S. Housing Act of 1937, (42 U.S.C. 1437(d)).

2. In 24 CFR 941.204 paragraphs (c), (d), and (e) are revised to read as follows:

§ 941.204 Prototype costs.

* * * * *

(c) *Project Prototype Cost Limit.* Except as provided in paragraph (d) of this section, the Field Office shall establish the project prototype cost limit as follows. When the Field Office invites proposals under § 941.403 or when it approves a proposal submitted under § 941.402, the Field Office shall determine the project prototype cost limit by multiplying the most recently published applicable unit prototype cost limit for each structure type by the number of units for a specific bedroom type. The cumulative total will be the project prototype cost limit. The project prototype cost limit shall be recalculated, if necessary, to reflect changes to unit prototype costs published in the **Federal Register** that became effective on or before the date of execution of the construction contract (conventional) or on or before the date of execution of the contract of sale (turnkey).

(d) *Exceptions.* For turnkey projects funded after October 1, 1980 for which the PHA has been notified of proposal approval before [effective date of the regulations] and for conventional projects funded after October 1, 1980 on which the PHA has advertised for bids before June 24, 1985, the project prototype cost limit will be calculated as follows:

(1) The Field Office shall establish the base project prototype cost at the time it invites proposals under § 941.403, or at the time it approves a proposal submitted under § 941.402. The base project prototype cost shall be computed by multiplying the then-current applicable unit prototype cost by the number of units for that unit size and structure type and then adding the amounts for all units in the proposed project.

(2) The Field Office, using a commercial construction cost index specified by the Assistant Secretary, shall determine the percentage of actual changes (increases or decreases) in construction costs from the effective date of the unit prototype cost to the execution date of the construction contract or contract of sale. The resulting percentage is the prototype cost adjustment factor.

(3) The Field Office shall determine the project prototype cost limit by multiplying the base project prototype cost by the prototype cost adjustment factor.

(e) *Request to Exceed Project Prototype Cost Limit.* The amount approvable by the Field Office for dwelling construction and equipment may not exceed the project prototype cost limit as computed in paragraphs (c) or (d) above. The limit may be exceeded (in accordance with section 6(b) of the Act) by up to ten percent, with the approval of the Assistant Secretary. (Approval of the Assistant Secretary to exceed 100 percent prototype costs is also required for projects being processed under a Program Reservation issued before October 1, 1980.) A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed.

(Approved by the Office of Management and Budget under OMB Control Number 2577–0036)

Date: May 1, 1985.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 85–11527 Filed 5–10–85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On February 7, 1985, the State of Indiana submitted to OSM Senate Bill 28 containing modifications to the Indiana statute concerning coal mining sites operating under interim program permits, the Small Operator Assistance Program (SOAP), suspension or revocation of permits, bond forfeiture, effluent limitations, program fees, interest rates on escrowed penalty payments, and permit condition violations. On March 22, 1985, Indiana submitted a modified version of the bill, containing non-substantial changes to the February 7 submission.

OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. The Federal rules at 30 CFR Part 914 which codify the Indiana permanent regulatory program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 13, 1985.

ADDRESSES: Copies of the Indiana program and the administrative Record on the Indiana Program are available for public inspection and copying during business hours at:

Office of Surface Mining, Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone (317) 269–2600.

Office of Surface Mining, Room 5124, 1100 L Street, N.W., Washington, D.C.; Telephone: (202) 343–7896.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1982, the Secretary of the Interior approved the Indiana State Program subject to the correction of nine minor deficiencies. The approval was effective July 29, 1982 (47 FR 32071, July 26, 1982). The Secretary removed the last of the conditions on August 19, 1983 (48 FR 37626). Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register.**

II. Discussion of Program Amendments

On February 7, 1985, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment is titled Senate Bill No. 28. On March 22, 1985, the State submitted a modified version of the bill, containing non-substantial changes to the February 7 submission. This statutory amendment modifies requirements concerning coal mining sites operating under interim program permits, the Small Operator Assistance Program (SOAP), suspension or revocation of permits, bond forfeiture, effluent limitations, program fees, interest rates on escrowed penalty payments, and permit condition violations.

On March 18, 1985, OSM announced receipt of the amendments and procedures for a public comment period and for a public hearing on the substantive adequacy of the proposed amendments (50 FR 10791).

The March 22, 1985 modified amendment was entered into the public record as document number IND–0430 on March 26, 1985, to allow for public review and comment. Since no requests for public meetings or hearings were received, a public hearing scheduled for April 12, 1985, was not held. The comment period ended on April 17, 1985.

III. Director's Findings

A. General Findings

The Director finds, in accordance with 30 CFR 732.17, that the amendments submitted by Indiana on February 7, 1985, as modified on March 22, 1985, meet the requirements of SMCRA and the Federal regulations. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be consistent with SMCRA and no less effective than the Federal regulations. The amended provisions are cited at the end of this notice in the amendatory language for § 914.15. Indiana has also made some non-substantive changes to its statute. The Director finds these changes consistent with SMCRA and the Federal regulations.

B. Specific Findings

1. The proposed amendment would amend the Indiana Code at IC 13–4–6–1.5 and at IC 13–4–6–1.6 to provide that all coal mining activities that operate under a permit issued under IC 13–4–6 (the Indiana interim program statute) or Acts 1978, Pub. L. 159, Acts 1979, Pub. L. 314, Acts of 1980, Pub. L. 101, or Acts 1981, Pub. L. 331 (all applying to the Indiana interim permits), would be subject to certain requirements. These requirements are those contained in: IC 13–4.1–11, Indiana statutory requirements for inspections, monitoring and enforcement; IC 13–4.1–12, State statutory requirements for fines and penalties; IC 13–4.1–13, State statutory requirements for judicial review; the Federal statutory requirements for interim program operations found in Sections 502, 510(d) and 522(e) of SMCRA; and the Federal regulatory requirements for interim program operations found in 30 CFR 710 through 716.

The Director finds that these provisions would restore the State's statutory enforcement authority for enforcement of interim standards on interim program permits in the State. The provisions would make these permits subject to State enforcement for any violations of Federal statutory and regulatory requirements for interim program permits, except for provisions of 30 CFR 717. Provisions of 30 CFR 717 relate to underground mines of which there are no interim sites remaining in Indiana. Therefore, the Director finds these provisions to be consistent with

and no less effective than Federal requirements.

2. IC 13–4.1–1–7 is added to the Indiana Code to provide that persons operating without a permit are subject to the criminal, civil and regulatory provisions of Article 13–4.1. IC 13–4.1–3–1 is amended to delete dates which define operations which must hold a valid mining permit, so that all operators in the State must hold such permits.

The Director finds these provisions consistent with SMCRA section 502 and 30 CFR 773.11, which require a permit to engage in surface coal mining and reclamation operations.

3. IC 13–4.1–3–3.5 is added as a new section to specify when operators who have received assistance under the Small Operator Assistance Program would be required to reimburse the Department.

The Indiana statutory provisions are substantially the same as the Federal regulatory provisions in 30 CFR 795.12. Therefore, the Director finds the amendatory provision no less effective than the Federal rule.

4. IC 13–4.1–5–8 is added as a new section to allow the Natural Resources Commission to suspend or revoke a permit if the permit is not revised as required by the Commission.

Although the Federal rules do not contain a counterpart to this rule, the rule expressly states a power that is implied for the regulatory authority in the Federal rules. The Director finds the rule no less effective than 30 CFR 774.13 for permit revisions and 30 CFR 843.13 for suspension or revocation of permits.

5. IC 13–4.1–6–9 is added as a new section to establish statutory provisions for bond forfeiture.

The Director finds the Indiana provisions consistent with the overall bonding requirements in SMCRA sections 509 and 519, and no less effective than 30 CFR 800.50, forfeiture of bonds, when considered with the State's regulatory provisions for bond forfeiture.

6. IC 13–4.1–8–1 is amended to change requirements pertaining to additions of suspended solids to streamflow.

The provisions is modified to change the requirements [similar to SMCRA section 515(b)(10)(B)(i)] that surface coal mining and reclamation operations be conducted to prevent to the extent possible using the best technology currently available (BTCA) "additional contributions * * * of suspended solids to streamflow or runoff outside the permit area" in excess of applicable State or Federal laws, to the requirement that operations prevent to the extent possible using BTCA, "violations of the effluent limitations for coal mining operations established under applicable State or Federal law."

The Director finds this provision consistent with SMCRA section 515(b)(10)(B)(i) since the amended Indiana provision is broader than the Federal provision and encompasses the requirements contained in the Federal provision.

7. IC 13–4.1–10–1 is amended to provide that the Natural Resources Commission shall fix a fee to cover the cost of "implementing the program established under this section."

"This section" refers to Section 1 of IC 13–4.1–10, which relates to the training, examination and certification of blasters. The Director finds this provision consistent with section 719 of SMCRA. Although the Federal provision does not provide for a fee, the State's inclusion of such provision does not render the requirement inconsistent with or less effective than the Federal provision.

8. IC 13–4.1–12–1 would be amended at subsection (d) to set the annual interest rate for escrowed penalty payments at eight percent.

SMCRA section 518(c) requires that the annual interest rate for escrowed penalty payments be "at the rate of 6 percent, or at the prevailing Department of Treasury rate, whichever is greater." The Director finds that the amended Indiana provision provides protection to the person whose penalty payments have been escrowed comparable to that provided by the Federal provision, and finds the provision consistent with the Federal provision.

9. IC 13–4.1–12–2 is amended with respect to violations of subsection (a), which addresses violations of the Surface Mining Act provisions (IC 13–4.1). The amended provisions subject persons who violate subsection (a) to requirements of appropriate sections of IC 13–4.1, and provide for possible denial of a permit application for such violators. The Director finds this provision consistent with the provisions in SMCRA section 521.

10. Various non-substantive and editorial changes are proposed throughout these sections. The Director finds that these editorial changes do not change the effect of the sections.

IV. Public Comments

There were no public comments received on these amendments to the Indiana State program.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: May 1, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

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

2. 30 CFR 914.15 is amended by adding a new paragraph (f) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendments are approved effective May 13, 1985. Revisions to the Indiana Statute as contained in Senate Bill 28, submitted February 7, 1985, as modified on March 22, 1985. The bill amends provisions at IC 13–4–6–1.5, IC 13–4.1–3–1, IC 13–4.1–8–1, IC 13–4.1–10–1, IC 13–4.1–12–1, and IC 13–4.1–12–2; and adds IC 13–4–6–1.6.

IC 13-4.1-1-7, IC 13-4.1-3-3.5, IC 13-4.1-5-8, and IC 13-4.1-6-9.

[FR Doc. 85-11354 Filed 5-10-85; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 918

Permanent State Regulatory Program of Louisiana

AGENCY: Office of Surface Mining Reclamation and Enforcemernt (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSM is announcing his decision to modify the deadline for Louisiana to promulgate and submit rules governing the training, examination and certification of blasters. On January 22, 1985, Louisiana requested an extension of time to promulgate rules concerning blaster certification. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension until May 31, 1986, to submit a proposed blaster certification program.

DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Louisiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On January 22, 1985, Louisiana requested an extension until May 31, 1986, to promulgate blaster certification rules. The Louisiana Department of Natural Resources, Office of Conservation, the regulatory authority for Louisiana program, advised OSM that the State would require the additional time in order to promulgate and submit proposed rules on blaster certification. The letter stated the first actual surface mining operations are not scheduled to begin until the third quarter of 1985.

Further, as previously discussed with OSM, the State does not anticipate the need for blasting for surface mining operations in Louisiana. This is due to the physical nature of the unconsolidated overburden materials associated with coal and lignite in Louisiana. In the interim, Louisiana would recognize and accept as valid a current blasters certification legitimately obtained from any other State Regulatory Authority (or the Federal Government) having an approved blaster certification program pursuant to 30 CFR Part 850.

In the February 28, 1985 **Federal Register** (50 FR 8147), OSM proposed the extension of May 31, 1986, for Louisiana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 1, 1985. No comments were submitted to OSM during the comment period.

Directors' Determination

In accordance with the State's request, the Director has decided to extend the deadline for Louisiana to submit a proposed blaster training and certification program until May 31, 1986.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702 of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1985.

J. Steven Griles,

Deputy Asst. Secretary for Land and Minerals Management.

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

PART 918—LOUISIANA

30 CFR Part 918 is amended to read as follows:

1. The authority citation for Part 918 continues to read as follows:

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

2. 30 CFR Part 918 is amended by adding § 918.16 to read as follows:

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17, Louisiana is required to submit for OSM'S approval the following proposed program amendments by the dates specified.

(a) By May 31, 1986, Louisiana shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters, and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) [Reserved]

[FR Doc. 85-10668 Filed 5-10-85; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-08]

Special Local Regulations: Energy Spells Progress Air Show Over the Columbia River at Kennewick, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Energy Spells Progress Air Show to be performed above the Columbia River at Kennewick, Washington. This event will be held on May 18, 1985, from 2:00 p.m. to 3:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on May 18, 1985, at 2:00 p.m. and terminate on May 18, 1985, at approximately 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lt M.P. Rand, USCG, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217 (503) 240–9333.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until April 15, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt M.P. Rand, USCG, project officer, U.S. Coast Guard Marine Safety Office, Portland, Oregon, and LCdr D. Gary Beck, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulations

The Energy Spells Progress Air Show is being held as part of Energy Spells Progress Week. A portion of the air show is scheduled to be conducted above the Columbia River between the S.R. 12 Bridge and the eastern end of Hydro Island at Kennewick, Washington. This air show is sponsored by Energy Spells Progress, a non-profit organization, and this rule making is undertaken at their request. FAA regulations require that no spectators be below where the air show aerobatics are to be held. A large number of spectators is expected to gather in the waters near the air show. To promote the safety of both the spectators and the participants, this special regulation is required. The economic impact of this regulation is expected to be minimal as it affects a short section of the Columbia River with light commercial traffic and will be in effect for approximately one hour.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Regulations.

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–1304 to read as follows:

§ 100.35–1304 Energy Spells Progress Air Show Over the Columbia River at Kennewick, Washington.

(a) *Regulated Area:* By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of the Columbia River at Kennewick, Washington, from the western side of the S.R. 12 Bridge to the eastern end of Hydro Island from 2:00 p.m., May 18, 1985, until approximately 3:00 p.m. May 18, 1985.

(b) *Special Local Regulations:* (1) Vessels or persons shall not enter or remain in the area described in paragraph (a) during the hours this regulation is in effect.

(2) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard vessels bounding the area described in paragraph (a). The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 30, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85–11497 Filed 5–10–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD7–85–03]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is temporarily revising the seasonal regulations governing the Sunrise Boulevard bridge, Broward County, Florida to make them applicable year-round through November 14, 1986. This change is being made because all vehicular traffic is using the 2-lane westbound bridge while the eastbound bridge is being replaced. This action will accommodate the needs of vehicular traffic and yet provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on 16 May 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia C. Reyes, Bridge Administration Specialist at (305) 350–4103.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published proposed rules (50 FR 9288) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 19, 1985. In each notice interested persons were given until April 22, 1985 to submit comments. The Coast Guard is making these regulations effective May 16, 1985, less than 30 days after publication of this final rule, because traffic has already been detoured to the westbound bridge. Permitting unrestricted bridge openings until a full 30 days have elapsed would cause severe traffic congestion.

Drafting Information

The drafters of these regulations are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

In response to the proposal, eight letters of support were received. Two of the letters were on behalf of one hundred property owners of the Sunrise East Condominium Association. Four letters not only favored the extended regulations, but suggested making them permanent. No objections to the proposal were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 3, Code of Federal Regulations, is amended by revising § 117.261(t) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(t) The draw of the Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale, shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m., the draw need be opened only on the quarter-hour and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(G)(3))

Dated: April 30, 1985.

A.R. Larzelere,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 85-11500 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[CGD 8-84-07]

Safety Zone; Corpus Christi Ship Channel, Corpus Christi, TX

Correction

In FR Doc. 85-9618, beginning on page 15743, in the issue of Monday, April 22, 1985, make the following correction:

On page 15744, second column, second line of § 165.808(b), "33 CFR 165.33" should have read "33 CFR 165.23".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effect of the Veterans' Benefits Improvement Act of 1984 Upon VEAP

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulation.

SUMMARY: This regulatory change implements a provision of the Veterans' Benefits Improvement Act of 1984 which affects people eligible to receive benefits under VEAP (Post-Vietnam Era Veterans' Educational Assistance Program). This regulatory change will acquaint the public with the way in which this Act affects VEAP.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement Act of 1984 contains a provision which sets new monthly benefit rates for some VEAP recipients who are pursuing a high school diploma or equivalency certificate. The law allows the VA and the Department of Defense no discretion in this matter. The new rates are prescribed by law effective October 1, 1984. These technical amendments simply update the rates shown in VA regulations. Public participation in this regulatory change, therefore, is unnecessary. The VA and the Department of Defense find that good cause exists for making this regulatory change final without publishing a notice of proposed rulemaking.

Since a notice of proposed rulemaking is not required and will not be published for this change, the change does not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(b). Therefore, this change is not subject to the requirements of that Act.

The VA and the Department of Defense have determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 27, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator, Veterans Administration.

E.A. Chavarrie,

Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended by revising paragraphs (b)(1) (i) through (iv) in § 21.5136 to read as follows:

§ 21.5136 Benefit payments—secondary school programs.

* * * * *

(b) *Monthly rate.* * * *

(1) * * *

(i) $376 for full-time training.

(ii) $283 for three-quarter time training.

(iii) $188 for half-time training.

(iv) $94 for quarter-time training.

(38 U.S.C. 1641, 1691; Pub. L. 98-543)

* * * * *

[FR Doc. 85-11411 Filed 5-10-85; 8:45 am]

BILLING CODE 8320-01-M

---

38 CFR Part 21

Veterans Education; Increased Rates of Educational Assistance Veterans' Benefits Improvement Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543) which affect people eligible to receive benefits under the dependents' educational assistance program or the G.I. Bill. They also implement the provisions of that Act which affect veterans eligible to train under the Emergency Veterans' Job Training Program. These regulations will show

how this Act affects these three programs.

EFFECTIVE DATES: The effective date for the amendments to §§21.4612 and 21.4632 is October 24, 1984. The effective date for all other amended regulations is October 1, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, 810 Vermont Ave. NW, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: Various regulations in the 38 C.F.R. §§ 21.1000, 21.3000, and 21.4000 series are amended to reflect higher rates of payment provided by law to recipients of dependents' educational assistance and to recipients of educational assistance under the G.I. Bill. Some regulations are also amended to reflect extensions of some deadlines which previously existed in the Emergency Veterans' Job Training Program.

The VA finds that good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. All the changes contained in these regulations are specifically required by law. Public participation in this rulemaking is, therefore, unnecessary.

The VA is making these regulations effective retroactively on October 1, 1984 and October 24, 1984. Retroactive effect is justified because these are liberalizing regulations which merely place in the Code of Federal Regulations changes which are required by law.

Moreover, the VA finds that good cause exists for proposing that these regulations, like the sections of the statute they implement, shall be made retroactively effective on October 1, 1984 and October 24, 1984. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date for these regulations would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitle by law to it.

The VA has determined that these regulations are not major rules as that term is defined by E.O 12291, entitled Federal Regulations. The regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that the regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the rate changes affect individual benefit recipients. The other changes affect either veterans or businesses. However, the impact on businesses will be the result of the underlying law. The regulations themselves will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational rehabilitation.

Approved: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended as follows:

1. In § 21.1041, paragraph (d)(2)(ii)(B) is revised to read as follows:

§ 21.1041 Periods of entitlement.

* * * * *

(d) *Extension.* * * *

(2) * * *

(ii) * * *

(B) The additional amount that $1,053 will provide, whichever is less;

(38 U.S.C. 1786(a); Pub. L. 98-543)

* * * * *

2. In § 21.1045, paragraph (g)(2) (vi) and (vii) are revised and (viii) is added so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

* * * * *

(g) *Entitlement charge: correspondence course.* * * *

(2) * * *

(vi) $327 paid after September 30, 1980, and before January 1, 1981,

(vii) $342 paid after December 31, 1980, and before October 1, 1984, and

(viii) $376 paid after September 30, 1984.

(38 U.S.C. 1786(a); Pub. L. 89-358; Pub. L. 92-540; Pub. L. 93-508; Pub. L. 93-602; Pub. L. 94-502; Pub. L. 95-202; Pub. L. 96-466; Pub. L. 98-543)

* * * * *

3. In § 21.3046, paragraph (c)(4)(ii) is revised to read as follows:

§ 21.3046 Periods of eligibility—spouses and surviving spouses.

* * * * *

(c) *Extension to ending date.* * * *

(4) * * *

(ii) The total additional amount of instruction that $1,053 will provide.

(38 U.S.C. 1711(b); Pub. L. 98-543)

4. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) *Duration of special restorative training.* The VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of $119 per calendar month. See §§ 21.3303 and 21.3333(b).

(38 U.S.C. 1741(b), 1742; Pub. L. 88-361; Pub. L. 88-433; Pub. L. 93-508; Pub. L. 93-602; Pub. L. 94-502; Pub. L. 95-202; Pub. L. 96-466; Pub. L. 98-543)

* * * * *

5. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate effective October 1, 1984 except as provided in paragraph (c) of this section.

Course	Monthy rate	Accelerated charges
Special restorative training	$376	If costs for tuition and fees average in excess of $119 per month, rate may be increased by such amount in excess of $119. (38 U.S.C. 1742).

(b) *Accelerated charges.* (1) Effective October 1, 1984, the VA may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $12.58 that the special training allowance exceeds the basic monthly rate of $376.

(2) The VA will:

(i) Charge fractions of more than one-half day as 1 day;

(ii) Disregard fractions of one-half or less; and

(iii) Record charges when the eligible child is entered into training.

(38 U.S.C. 1742; Pub. L. 93-508; Pub. L. 93-602; Pub. L. 94-502; Pub. L. 95-202; Pub. L. 96-466)

* * * * *

6. In § 214.136, paragraph (a) and paragraph (c)(2) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$376	$448	$510	$32
¾ time	283	336	383	24
½ time	189	224	255	17
Less than ½ but more than ¼ times [1]	188	([2])	([2])	
¼ times or less [1]	94	([3])	([3])	
Cooperative, other than farm cooperative (full time only)	304	355	404	23
Apprentice or on-job (full time only but see footnote [4] below.) Payment designated training assistance allowance:				
First 6 months	274	307	336	14
Second 6 months	205	239	267	14
Third 6 months	136	171	198	14
Fourth 6 months and succeeding periods	68	101	131	14
Correspondence	55 percent of the established charge for number of lessons completed by the veteran and serviced by the school.[4]			
Flight training	60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.[5] Allowance paid monthly based on actual flight training received. See § 21.1045(e)			
Farm cooperative:				
Full time	304	355	404	23
¾ time	228	266	303	18
½ time	152	178	202	12

[1] If a veteran under chapter 34 receiving benefits under § 21.4272(h) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94, as appropriate per month if the maximum allowance is not initially authorized. (38 U.S.C. 1682(e); Pub. L. 98-543)

[2] See para. (b).

[3] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[4] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. Those veterans and service persons who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g).

(Pub. L. 97-35, sec. 2004(b))

[5] If a veteran or serviceperson enrolls in a flight course before September 2, 1980, he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. If a veteran or serviceperson enrolls in a flight course after September 1, 1980, and before September 1, 1981, and is not entitled to receive 90 percent of the established charge for the course, he or she will receive 80 percent of the established charge for the course provided he or she remains continuously enrolled in his or her program. If a veteran or serviceperson enrolls in a flight course during September 1981, and this does not form part of a continuous enrollment begun before September 1, 1981, he or she will receive 60 percent of the established charge for that portion of the course completed during September 1981. He or she will receive no payment for any portion if the course completed after September 30, 1981. If, after September 30, 1981, a veteran or serviceperson receives flight training after breaking the continuity of his or her enrollment or after enrolling in a flight course for the first time, the VA will make no payment for the flight training. The VA will consider the continuity of enrollment broken any time the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months. (Pub. L. 97-35, sec. 2003 and 2006).

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 90-77, Pub. L. 90-631, Pub. L. 91-219, Pub. L. 92-540, Pub. L. 93-508, Pub. L. 94-502, Pub. L. 95-202, Pub. L. 96-466, Pub. L. 98-543)

* * * * *

(c) *Active duty.* * * *

(2) The appropriate rate from this table:

Measurement	Rates effective Oct. 1, 1984
Full time	$376
¾ time	283
½ time	188
Less than ½, but more than ¼ time	188
¼ time or less	94

(38 U.S.C. 1682; Pub. L. 90-77, Pub. L. 90-219, Pub. L. 92-540, Pub. L. 93-508, Pub. L. 93-602, Pub. L. 94-502, Pub. L. 95-202, Pub. L. 96-466, Pub. L. 98-543) (Oct. 1, 1984)

* * * * *

7. In § 21.4137, paragraph (a) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses [1]	Monthly rate
Institutional:	
Full time	$376.
¾ time	$283.
½ time	$188.
Less than ½ but more than ¼ time [2]	$188.
¼ time or less [2]	$94.
Cooperative, other than farm cooperative (full time only).	$304.
Apprentice or On-Job (full time only but see footnote [3] below) Payment designated training assistance allowance:	
First 6 months	$274.
Second 6 months	$205.
Third 6 months	$136.
Fourth 6 months and succeeding periods.	$68.
Farm cooperative:	
Full time	$304.
¾ time	$228.
½ time	$152.
Correspondence	50 percent of the established charge for number of lessons completed by eligible spouse and serviced by the school [4]. Allowance paid quarterly. (38 U.S.C. 1788, Pub. L. 97-35).

[1] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94 as appropriate per month, if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3); Pub. L. 95-202, Pub. L. 96-466, Pub. L. 98-543)

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser. Eligible spouses or surviving spouses who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. Those spouses and surviving spouses who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons. (Pub. L. 97-35, sec. 2004(b)).

* * * * *

8. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or § 21.4137, the VA will authorize the cost of the

tutorial assistance in an amount not to exceed $84 per month effective October 1, 1984. (38 U.S.C. 1692(b); Pub. L. 91–219; Pub. L. 92–540; Pub. L. 93–508; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

(d) *Entitlement charge.* The VA will make no charge against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of $1,008 effective October 1, 1984. (38 U.S.C. 1690, 1692, 1693; Pub. L. 91–219; Pub. L. 93–508; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

9. In § 21.4279, paragraph (b)(1) is revised to read as follows:

§ 21.4279 Combination correspondence-residence program.

* * * * *

(b) * * *

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month entitlement charged for each $376 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 96–466, Pub. L. 98–543)

* * * * *

10. In § 21.4503, paragraph (b)(2) (iii) and (iv) are removed and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* * * *

(i) $376, effective October 1, 1984 for eligible persons and veterans enrolled in a course other than a flight training course, and

(ii) $317, effective January 1, 1981, for veterans enrolled in a flight training course.

(38 U.S.C. 1798(b); Pub. L. 93–508, Pub. L. 94–502, Pub. L. 95–202, Pub. L. 96–466, Pub. L. 98–543)

* * * * *

11. in § 21.4612, paragraph (c)(2) is revised to read as follows:

§ 21.4612 Applications and certifications.

* * *

(c) *Certificates.* * * *

(2) A certificate expires 90 days from the date on which it is furnished to the veteran. A certificate may be renewed for an additional 90 days if at the time the veteran applies for renewal, the provisions of paragaph (b) of this section are met. (Pub. L. 98–77, sec. 5; Pub. L. 98–543, sec. 212)

12. In § 21.4632, paragraph (e)(2) (i) and (ii) are revised to read as follows:

§ 21.4632 Payments.

* * * * *

(e) *Limitations on payments.* * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after February 28, 1985;

(ii) For any job training program which begins after September 1, 1985; (Pub. L. 98–543, sec. 212)

* * * * *

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

[FR Doc. 85–11410 Filed 5–10–85; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–750; FCC 85–125]

Processing of FM and TV Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to provide an initial filing window period for applications for new commercial FM service and for applications to facilities in this service. Applications filed during the window would be grouped for consolidated consideration, with mutually exclusive applications being evaluated in comparative hearings. After a window closes, applications for a vacant allotment and for modifications to facilities affecting such vacant allotments or other existing facilities will be processed on a "first come/first serve" basis. This action is taken in an effort to expedite service to the public and to provide increased certainty and efficiency in the applications processing system.

DATES: To provide a transitional period, the *Order* freezes the filing of all commercial FM applications until 30 days following the date of publication in the Federal Register.

The freeze on applications is effective on the date of adoption of the *Report and Order*, March 14, 1985. Rule changes will become effective on June 12, 1985. FCC Form changes will become effective upon approval by the Office of Management and Budget.

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

FOR FURTHER INFORMATION CONTACT: Lane Howard Moten, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications; MM Docket No. 84–750.

Adopted: March 14, 1985.

Released: May 6, 1985.

By the Commission.

Introduction

1. The Commission has before it a *Notice of Proposed Rule Making* (*"Notice"*) in the above-captioned proceeding,[1] and comments filed in response thereto. The *Notice* proposed replacing the existing two-step cut-off procedure utilized to process applications for new commercial FM and TV stations and modifications to existing stations in these services [2] with an alternative processing system designed to expedite authorization of new or expanded service to the public.[3] Under the proposed approach, the Commission would announce a one-time, fixed filing period—or "window"—governing all applications for currently vacant channels in the commercial FM and TV Tables of Allotments or for modifications to existing facilities.[4] All

[1] FCC 84–356 [released September 7, 1984], 49 FR 36523 [September 18, 1984].

[2] Parallel provisions for the processing of television and FM applications are contained, respectively, in Sections 73.3572 and 73.3573 of the Commission's rules.

[3] We observed in the *Notice* that "we do not contemplate application of these procedures to noncommercial FM and TV channels" because of the "special problems of . . . applicants [for such channels] in securing funding, staff and programming before applying for a new station." *Notice* at n.10. We are convinced that our initial reasoning on this matter remains valid. Accordingly, we will not generally apply the new processing standards adopted herein to applications for reserved, noncommercial channels. In certain limited cicumstances, however, where conflicts between noncommercial and commercial facilities occur, "first come/first serve" procedures applicable to commercial licensing will affect noncommercial applicants. *See* n.35 and para. 37 *infra*.

[4] The FM "Table of Allotments" is found in § 73.202 of the Commission's rules and the TV "Table of Assignments" is found in § 73.606. Both tables shall be referred to herein as "Tables of Allotments." At present, the FM Table contains 76 available commercial channels and the TV Table contains 129 vacant commercial channels. A list of these vacant allotments will be published in the near future. Our decision, however, in the *Report and Order* in BC Docket No. 80–90, 94 FCC 2d 152 (1983), and subsequent implementing actions, will add some 689 new allotments to the FM Table. *See* n.12 *infra*.

mutually exclusive applications filed during the window would be subject to comparative hearings to determine the best applicant. If only a single acceptable application is filed during the window, then that application alone would be grantable, subject to the usual qualification criteria. In the event a window closes and no acceptable applications have been filed during the window period, a "first come/first serve" processing standard would then apply whereby the first acceptable aplication received would cut off the filing rights of any subsequent applicants. Applications for allotments added by future Commission orders would be subject to similar filing windows, as announced in the appropriate allotment order.[5]

2. Commenters were invited to address the legal ramifications of the proposed changes, with particular reference to the notice requirements, to review the practical efficacy of the proposal, and finally to comment on the specifics of the proposal, including the appropriate duration of the window periods. After careful review of the record and analysis of the probable costs and benefits of the proposed changes, we are persuaded that, with certain modifications, adoption of the alternative processing procedures set forth in the *Notice* is warranted.

Comments

3. The commenting parties generally opposed the changes,[6] contending that a filing window will encourage a "gold rush" mentality with its attendent mass filings and abuse by professional application promote. The National Association of Broadcasters and Dow, Lohnes, and Albertson argue that the proposed process substitutes artificial regulatory incentives for actual demand and that broadcasters will be forced to file defensive modification applications in order to avoid being "locked out" of future facilities changes. Most commenters also point to the Commission's experiences with date-certain filing procedures, such as those governing the low power television, cellular radio and multichannel multipoint distribution services, and maintain that the problems in these services of massive application filings and the Commission's inability to timely process those applications will be repeated here if we implement the proposed changes. Many commenters fear that a sudden influx of applications, which they predict will result from the proposed processing system, will force the Commission to adopt a lottery mechanism for TV and FM services. Several commenters suggest, as well, that actions less drastic than implementation of a filing window and "first come/first serve" procedure can achieve the Commission's stated goals yet avoid the dangers they see inherent in our proposal. They contend, for example, that requiring more stringent showings as to financial qualifications and site availability would cut down on "strike" applications.

4. Citizens Communications Center and Black Citizens for a Fair Media ("CCC–BCFM"), as well as other commenters, express concern that the proposed 45 day duration for the filing window will particularly disadvantage minorities, women and small businesses. They maintain that only well-financed and established entities will be able to respond within such a limited time frame. These commenters also focus on the "first come/first serve" aspect of the proposed changes, asserting that no public interest rationale has been advanced for barring competing applications after the window is closed. They argue that the public is best served when the Commission's applications processing procedures emphasize selection of the best possible candidate rather than expedition of service or administrative savings.

5. Commenters supporting the proposed changes agree with our suggestion in the *Notice* that the new procedures will deter strike applications and promote rapid service to the public. Newport Engineering specifically contends that the reduction in comparative hearings, and the expenses and delays attendant to such hearings, resulting from the elimination of existing cut-off procedures will particularly benefit minorities and small businesses.[7]

Discussion

6. As an initial matter, we have decided to apply the window filing and "first come/first serve" processing system to FM services only. Upon review, it became apparent that the TV processing line, because of significantly lower applications volume, has not experienced the range and intensity of problems that have faced the FM processing line. There is no appreciable backlog in TV nor is there the pressure of a large number of new allocations such as the 689 new channels added to the FM Tables as a result of Docket 80–90. Therefore, television applications will continue to be processed under their current rules.

7. The Table of Allotments for FM broadcast frequencies is designed to promote "fair, efficient and equitable distribution" of these services among various communities.[8] The Commission's role in designing an appications process to assign these frequencies is not simply to administer spectrum allocations or to prevent stations from interfering with one another. Rather, the Commission also strives to ensure that an expansive menu of programming alternatives is made rapidly available to the American public. In developing processing guidelines, then, the Commission must strike a balance between the dual and sometimes divergent goals of selecting the best possible applicant and the commitment to bring new service to the public as expeditiously as possible.

8. In an effort to limit delays in the authorization of new broadcast service, our current processing rules utilize a cut-off list procedure to restrict the filing rights of applicants. Under these rules, once a channel is assigned through a rule making, a construction permit application can be filed. After an initial review, the lead application is placed on an "A" cut-off list. The public notice announcing the "A" cut-off list states that the lead application is acceptable for filing. This notice alerts the public to the cut-off date (at least 30 days subsequent) by which applications mutually exclusive with and petitions to deny the lead application must be filed. The lead applicant is permitted, as a matter of right, to make major amendments to its application during this period. The second stage of the process involves an initial review of applications filed in response to the "A" cut-off list, a determination as to which of these applications are mutually exclusive with the lead application, and, finally, publication of a list—the "B" cut-off list—enumerating such applications. The "B" list sets forth a date for filing petitions to deny against those applicants on the "B" list and for filing minor amendments as a matter of right.

[5] A more detailed description of the filing window—"first come/first serve" processing system is provided at paragraph 27–36, *infra*.

[6] Parties filing comments in this proceeding are: Lauren Colby; Doug McConnell; Black Citizens for a Fair Media and Citizens Communications Center, filing jointly; National Association of Broadcasters; National Radio Broadcasters Association; Dow, Lohnes, & Albertson; International Broadcasting System; Thomas C. Smith; South Wisconsin Co. and Terry Posey, filing jointly; Cohen and Dippell; Newport Engineering; and, Eric Hilding

[7] Reply comments were filed by the National Radio Broadcasters Association, CCC–BCFM and A.D. Ring and Associates. These commenters reiterated their opposition to the proposed processing scheme, maintaining that the Commission will not achieve any real benefit by its adoption.

[8] 47 U.S.C. § 307.

9. Our experience indicates that this cut-off processing procedure, particularly the publication of the "A" cut-off list which identifies the lead applicant and gives notice that its application is on file with the Commission, has had the effect of facilitating competing applications that are intended to block or delay the initial application. Such applications are anticompetitive in nature and effectively postpone service to the public by precipitating unnecessary comparative hearings.[9] Beyond delay, of course, these hearings also visit substantial costs on both the lead applicant and the Commission. Further, as we stated in the *Notice*, "these costs and delays may deter investors in new broadcast ventures and may have a deleterious effect on an individual applicant's ability to finance a new broadcast station."[10]

10. Additionally, we have noted the filing of what appear to be purely speculative applications that take advantage of the effort and expense of the initial applicant and the announced availability of its application by copying costly engineering data from the lead application. These applications seem to be motivated by a desire to elicit a settlement from the lead applicant or to simply enhance the filing party's chances of success by substantially and inexpensively increasing the number of active applications before the Commission on its behalf. Like blocking applications, these speculative filings encumber and delay the processing of the applications of "ready, willing and able" applicants and thus contravene our processing policy objectives of expediting service to the public and minimizing administrative costs for both applicants and the Commission.

11. We also are concerned that our existing approach to processing minor modification applications lacks sufficient certainty and, as a result, may be wasteful of the Commission's and applicants' resources. Currently, when an application for a minor modification is filed, notice of its acceptance is given and it is placed in line for processing. Applications in conflict or mutually exclusive with the minor modification application may be filed up until the day the latter application is granted. Thus, after full review of the modification application itself is complete, the Commission is required to search its applications files in an effort to determine prior to grant whether conflicting applications have been filed. Further, since there is some unavoidable delay between receipt and posting of modification applications, it is impossible to make this determination without manually sorting through the most recent filings. It is possible, therefore, to grant a modification application and subsequently discover a timely filed conflicting application which would necessitate revoking the grant and reopening the application process. This uncertain and time-consuming process has proven frustrating both to the Commission and to applicants and is clearly undesirable.

12. Moreover, our concern with efficiency and finality in modification processing is considerably heightened by our recent decision significantly expanding the scope of facilities changes deemed to be minor modifications.[11] That action should increase appreciably the number of applications to be processed under minor modification standards and underscores the necessity that these standards be clear, certain and workable.

13. Finally, the need to reduce processing delays affecting applications for new stations and modifications and to more effectively utilize our applications processing resources has become increasingly urgent as the Commission continues planning for the expected influx of FM applications for the 669 new allocations stemming from our decision in BC Docket No. 80-90.[12] This large group of newly-designated allocations must not become entangled in a processing morass if our underlying objective of substantially expanding the availability of FM broadcast service to the public is to be achieved.

14. Despite the reservations expressed by the commenters, we are pursuaded that the filing window and "first come/first serve" processing system outlined in the *Notice* can significantly ameliorate the foregoing problems. The filing window approach, for example, should dramatically reduce the filing of anticompetitive and speculative applications. These applications depend inherently on access by potential competing applicants to the lead application prior to the filing deadline. The existing "A" cut-off list processing system ensures such availability by utilizing the lead application to trigger the 30 day filing period for mutually exclusive applications. By contrast, the new processing system will generally use the allotment order adding a new channel to the Tables to trigger a filing window for applications directed to that channel.[13] Potential applicants must file during this window, without the assurance of prior access to other applicants' applications, or risk losing the channel to an applicant that does file in the window or that files first after the window closes. Similarly, the "first come/first serve" aspect of the new processing system will reduce delays in authorizing service and encourage "ready, willing and able" applicants by eliminating the competing application stage in cases where the channel in question has already been subject to a filing window and applications have not been forthcoming. The revised processing standards will also remedy the present uncertainty associated with minor modification applications. After an initial filing window prescribed in this *Report and Order*, most minor modification applications filed by existing FM stations would be subject to "first come/first serve" standards whereby an applicant's rights would vest upon filing.

15. In sum, we believe the proposed processing system offers numerous benefits. Before examining the details of this processing scheme, however, and the specific objections to it of various commenting parties, we must first consider whether our proposed approach properly accommodates the procedural rights of prospective broadcast applicants to a hearing, as delineated in existing case law.

16. The Commission traditionally has balanced an applicant's right to a comparative hearing with the public's interest in having frequencies occupied and operating. As we observed in the *Notice*, the Communications Act of 1934, as amended, does not specifically provide for the filing of mutually exclusive applications for new facilities. The Act does provide that applications for new facilities cannot be granted for thirty days following public notice of their acceptance for filing and that those

[9] Comparative broadcast hearings may require as long as two to three years to complete.

[10] *Notice* at para. 2.

[11] In the *First Report and Order* in MM Docket No. 83-1377, FCC 84-298 (adopted June 27, 1984), the Commission changed the definition of minor modification to encompass all changes in power, antenna location or antenna height, without regard to their effect on coverage area.

[12] The *First Report and Order* in MM Docket No. 84-231, FCC 84-640 (adopted December 19, 1984), added 669 channels to the FM Table, thereby implementing our decision in the *Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983).

[13] Application filing windows for vacant channels currently on the Tables, of course, were not prescribed in the original allotment orders adding those channels. This *Report and Order* will serve that purpose. Furthermore, as explained below, we will announce filing windows for allotments added as a result of our actions in Dockets 80-90 and 84-231 by separate public notices in order to control the Commission's workload. In all cases, however, the filing windows will be independent of any lead application for the channel concerned.

applications cannot be denied without affording the applicant the right to a hearing. 47 U.S.C. § 309. In *Ashbacker* v. *FCC*, 326 U.S. 327 (1945), the Court construed these provisions to require the Commission to consider two mutually exclusive broadcast applications, both of which had been accepted for filing, in a comparative hearing before denying one and granting the other. The Court noted, however, that the Commission could promulgate regulations limiting the filing rights of competing applicants.[14] Thus, while *Ashbacker* requires comparative hearings in choosing between mutually exclusive applicants, it leaves to the Commission's discretion the circumstances under which applications are considered mutually exclusive.[15]

17. The Commission has exercised this discretion over the years and limited the filing rights of competing applicants in order to provide certainty, to avoid disruptions in the processing procedures for high demand services or to further other compelling public interest objectives. In the *Report and Order* in MM Docket No. 83–1148,[16] for example, we determined that competing applications should not be permitted to be filed against the application of an incumbent licensee for a higher class channel where additional channels of similar class were available for which other applicants could compete. In this situation, the Commission found that expedition of service and the promotion of enhanced service from existing licensees outweighed the interest in selecting licensees by comparative processes.[17] Similarly, in the domestic one-way paging service, the Commission insulates certain applicants proposing to change frequencies from competing applications in order to expedite service and encourage the negotiation and settlement of frequency conflicts.[18] Finally, the use of cut-off procedures has been acknowledged by the Court as a reasonable and necessary limitation on the statutory right to a comparative hearing.[19] However, any regulations limiting the right to a hearing must give fair notice to the public of what is being cut-off.[20] Therefore, although the Commission can be flexible in establishing "housekeeping" rules,[21] applicants must be treated equally and fairly by giving them notice of the due dates for their applications.

18. Under the window filing the "first-come/first serve" processing system full and complete notice is achieved. Each frequency added to the Table of Allotments is the result of a notice and comment rule making in which the public has had an opportunity to participate. Thus, inclusion in and publication of the Tables in the **Federal Register** constitutes notice to the world of a channel's availability.[22] By designating "window" filing dates, all interested parties will be on notice that the Commission will grant the vacant channel to a sole qualified applicant who files or that it will designate mutually exclusive applicants for a comparative hearing.[23] Under the "first come/first serve" aspect of our proposal, all vacant channels that are not applied for during the window will be granted to the first qualified applicant to file. Of course, the statutory right to file petitions to deny will be preserved to assure that any allegations that an application is inconsistent with the "public interest, convenience and necessity" may be raised.[24] We believe this system fully comports with the requirements of *Ashbacker* and subsequent cases.

19. Turning from legal requirements to policy considerations, many of the commenters maintain that the proposed processing system will create a "gold rush" mentality with applicants filing out of fear of being foreclosed rather than in response to marketplace stimulus. To the extent the window filing and "first come/first serve" system motivates interested parties to act quickly rather than to wait for the lead applicant to come forward, we believe it directly furthers the public interest. A fallow frequency on the Tables of Allotments represents a loss to the community and the public benefits from serious candidates moving quickly to bring service on line. To the extent commenters may be suggesting that parties will file protectively even though economic conditions do not warrant proceeding, we are not convinced that this possibility poses any real risk.

20. Many commenters point to the flood of applications received in other services subject to "date-certain" application proceses, *i.e.*, low power television, cellular radio, and multichannel multipoint distribution, as evidence supporting their predictions of a large influx of applications if the proposed processing criteria are implemented. Beyond the fact that these are all new services, several factors distinguish our decision here from those referred to by commenters. First, all applications received during the window for FM channels are subject to full comparative hearings if mutually exclusive applications are received. The substantial effort and expense involved in such proceedings should serve to discourage frivolous and speculative applications.

21. Moreover, we now have the advantage of hindsight in reviewing our past experiences with date-certain filings and we are acutely aware of previous shortcomings. Those experiences and useful suggestions by various commenters in this proceeding have prompted us to take a "hard-look" approach to the processing of applications in order to deter the frivolous filings that frustrate ready applicants and the Commission's processing systems.

22. Several commenters suggested that site availability certification be utilized to deter speculative applications. We think this proposal has merit. The Commission has held that although an applicant need not necessarily go as far as to demonstrate absolute assurance, an applicant should be able to show some reasonable assurance that the site for each proposed transmitting antenna is available. A mere possibility that a site will be available is not sufficient. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). Commission requirements will be satisfied when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the

---

[14] *See Ashbacker* v. *FCC*, 326 U.S. 327, 33 n.9.

[15] *MCI Airsignal International, Inc.*, FCC 84–397, Mimeo No. 34965 (released August 17, 1984).

[16] FCC 84–358, 49 FR 34007 (August 28, 1984), 56 RR 2d 1253 (1984).

[17] *See Report and Order* in MM Docket No. 83–1148, FCC 84–358, Mimeo No. 34861 (released August 16, 1984).

[18] *See MCI Airsignal International, Inc.*, *supra* n. 15 and *Digital Electronic Message Service*, 88 FCC 2d 1716, 1723 and nn.10, 12 (1982).

[19] *Radio Athens v. FCC*, 401 F.2d 398, 400–401 (D.C. Cir. 1968).

[20] *See Ridge Radio v. FCC*, 292 F.2d 770, n.6 (D.C. Cir. 1961).

[21] *Century Broadcasting Corp. v. FCC*, 310 F.2d 864, 867 (D.C. Cir. 1962).

[22] Window processing may be found appropriate for nontabled services when another event constitutes notice. *See Report and Order* in MM Docket No. 83–1350 (Low Power Television and Translator Service), 49 FR 47837 (December 7, 1984).

[23] There is now substantial Commission precedent for the use of filing "windows" or date-certain processing to expedite service. Date-certain procedures have been used, for example, in processing common carrier [*First Report and Order*, 89 FCC 2d 1337 (1982)], private radio [*Second Report and Order*, 90 FCC 2d 1281 (1982)], and low power television [*Report and Order* in MM Docket No. 83–1350, *supra* n.22] applications.

[24] The Communications Act of 1934, as amended, section 309(d)(1) secures the right of any party in interest to file a petition to deny and § 73.3504 of the Commission's rules sets forth the procedures for making such filings.

proposed site will be available for the intended purpose. Therefore, we are adding a question to FCC Form 301 [25] which will require an applicant to certify that reasonable assurance has been obtained from the property owner that the site will be available. In the interim, before the changed Form 301 is available, applicants should attach such certification to the old form. The certification will include a reference to the name and telephone number of the person contacted. This additional step simply requires verification of our current policy and will aid in deterring frivolous applications that frustrate our processing goals. To that same end, the Commission will contact, on a random basis, the property owners or their agents who have been named in an application to determine whether the required assurances have been obtained.

23. As a further component of our "hard look" approach we are instituting a tender review of applications. Under our previous system, many errors in key portions of the applications remained undetected until considerable processing time and effort had already been expended. Discovery of fundamental errors so far along in the processing chain resulted in significant delays both in disposing of the flawed applications and in processing problem-free but mutually exclusive applications as well as impeded the disposition of unrelated, problem-free applications. Therefore, to prevent carelessly prepared, unprocessable applications from burdening the processing system, we will require applications to be substantially complete at tender or they will be returned, thereby losing their filing status. In order to assist applicants in satisfying our tender standards, we are attaching hereto as Appendix "D" a detailed list of the criteria utilized in evaluating the substantial completeness of applications. This strict approach to the tenderability of applications comports with our concurrent commitment to strictly enforce construction permit schedules. [26] Both will deter the filing of speculative applications by parties not ready, willing and able to construct.

24. As an additional component of our "hard-look" approach, we reiterate our position with respect to multiple applications. Applicants will not be permitted to "flood the Commission's processing line and hearing docket with multiple applications many of which could not be granted under our multiple ownership rules." *Storer Broadcasting Co.*, 43 FCC 1254, 1256 (1953). Accordingly, we shall regard Section 73.3555 as establishing the maximum number of applications acceptable for filing by an applicant. Applications tendered in excess of this number shall be considered inconsistent with § 73.3518 and returned as unacceptable for filing. In this regard, we note that stations in which the applicant currently holds a cognizable ownership interest would be taken into account in determining the maximum number of acceptable applications. [27]

25. The Commission believes that important benefits can be obtained from this "hard-look" approach. First, the reduction of frivolous and speculative applications will enable us to expedite the processing of applications tendered by serious candidates who are "ready, willing and able" to rapidly bring service to the public. Secondly, streamlining our processing procedures will minimize the Commission's administrative costs, enabling us to make more efficient use of our limited staff and other resources. These benefits are critical to making the window filing and "first come/first serve" process work smoothly and with minimal delay in processing large numbers of applications.

26. Finally, several commenters maintain that minorities, women and small businesses are disadvantaged by the short filing cycles which they believe will result from the adoption of the proposed processing system. We note, however, that a routine notice and comment rule making proceeding to establish a new allotment requires at least 90 days to complete. Adding this period to the 45 days normally required before an allotment order becomes effective and the subsequent 30-day filing window, yields a lead time of at least 165 days in which interested parties may prepare applications. This length of time seems entirely adequate to avoid any disadvantage to minorities, women or small businesses in availing themselves of newly allotted channels. Similarly, in the case of the estimated 669 new channels allocated in the wake of our decision in BC Docket No. 80-90, all interested parties will have fully adequate time to prepare. The *First Report and Order* in MM Docket No. 84-231, which specified the channels which would be added to the FM Table and the communities in which such channels would be available, was adopted in December 1984. [28] Today, in a companion item, we are announcing a random selection system that will be used to determine the sequence in which these allotments will be opened for applications. [29] The first window in a series of windows for these allocations will probably open sometime this summer and subsequent windows will be opened on a rolling basis until all are completed. Therefore, even for the first availability, parties will have had several months to prepare and will have several years for the last allocation in this group. Finally, we note that the new processing system is intended to reduce the incidence of unnecessary comparative hearings and to expedite applications processing generally. We believe this will directly benefit minorities and other prospective applicants with limited resources. [30]

The Filing Window—"First Come/First Serve" Processing System

27. The following is a brief discussion of the details of the applications processing system we are today adopting. For purposes of clarity, we will break the system discussion into two parts: (A) treatment of applications filed within the window period and (B) treatment of applications for channel allotments that received no applications during their filing windows and are thus subject to "first come/first serve" processing.

A. The Window Processing System

28. With respect to channels which, as of the adoption date hereof, are either already in the Table and available for

[25] "Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station." *See* Appendix B.

[26] Section 73.3598(b) of the Commission's Rules specifies a 12-month construction period for new FM stations or modifications to existing FM facilities. The Commission will not favorably consider applications for extensions of this time to construct except in the most unusual circumstances. *See* Public Notice, "Guidelines Established for Processing of Applications for Additional Time Within Which to Construct AM and FM Broadcast Stations," released May 14, 1984, Mimeo No. 4144. Failure to comply with the construction deadlines imposed by the permit will result in forfeiture of the authorization pursuant to § 73.3599 of the Commission's Rules.

[27] In the event that multiple applications exceeding the prescribed limits are filed on the same day, the Commission will sequentially consider them in whatever order they are reached on the processing line until the multiple ownership limit is reached. Any remaining applications will be returned.

[28] *See* n.12 *supra*.

[29] *Second Report and Order* in MM Docket No. 84-231, FCC 85-124, adopted March 14, 1985.

[30] Congress, in its Conference Report on lotteries, stated "It is clear that the current comparative hearing has not resulted in the award of significant numbers of licenses to minority groups. Many minority applicants are simply unable to participate in comparative hearings which often take a considerable period of time and require substantial economic resources." H.R. Rep. No. 97-765 (accompanying H.R. 3239), 97th Cong., 2d Sess. 44 (1982).

application or will be added to the Table pursuant to orders previously adopted by the Commission but which are not yet effective, the 30-day filing window will open on the thirty-first (31st) day after the dat of publication of this *Report and Order* in the **Federal Register** and will close on the sixtieth (60th) day after such publication. An existing licensee or permittee should file an application for modification during this window period if its proposed change would affect or be affected by potential operations on a vacant channel allotment or by modifications to other existing stations.

29. For future allotments, we will use the Commission's decision to add a channel to the FM Table of Allotments as the invitation to all interested parties to file applications for that channel. Each *Report and Order* designating a new channel will identify a window filing period which will begin upon the effective date of the allotment *Order* and continue for not less than 30 days thereafter. In the case of the 689 new allocations created by Docket 80-90, the Audio Services Division of the Commission's Mass Media Bureau will issue Public Notices establishing applicable window filing periods as its workload permits.

30. All applications filed within the relevant window period will be processed for consolidated consideration, with appropriate opportunities for the filing of petitions to deny. Any mutually exclusive applications for new facilities or for modifications to existing facilities filed during the window will be grouped for comparative hearings.

31. In evaluating applications, any and all amendments filed before the close of the applicable filing window will be considered with the application. Applications will be thereafter restricted as to when amendments may be filed.[31] Applications which have been found acceptable for tender purposes will be placed on publicly released *Notices of Tenderability*. From the release of such notice, applicants will have a 30 day period to amend or perfect their applications at will and as a matter of right. However, if an incomplete application has been inadvertently accepted for tender, it will be stripped of its file number and returned; it may not be perfected to pass tender review. Amendments may only go to the acceptability or grantability of an application.[32] The amendment period will have one further restriction, an application may not retain window status if it is amended, even for perfecting purposes, after the window closes and the effect of such amendment is to produce a conflict with an application filed prior to the amendment. We believe this restriction is essential to maintain the integrity of the new processing system and that it is fully consistent with *James River Broadcasting v. FCC*, 393 F.2d 581 (D.C. Cir. 1968). That case held that the Commission had violated its own rules in refusing to permit an applicant to perfect its application with an amendment and to retain its initial filing status. The court also stated that, as a policy matter, perfecting amendments should be allowed "[so] long as the defect can be removed without otherwise injuring any public or private interests . . . ." *Id.* at 584. First, we note that the processing rules that were the basis for *James River* are herein dramatically changed. In any event, to permit a perfecting amendment that creates a conflict with an application filed prior to such amendment harms the public interest in expedition of service and processing certainty that the window processing system seeks to accomplish. Under such a system, we would be unable to process otherwise grantable applications on the possibility that unrelated applications might be amended to produce a conflict. Moreover, to allow such amendments to retain priority as to intervening applications for other channels or in other communities would prejudice the private interests of the applicants for these other channels who sought in good faith to initiate service to the public. Finally, the nonacceptance of a perfecting amendment in *James River* resulted in an applicant being foreclosed from the comparative process because, by being disqualified and thereby missing the cut-off date, he lost his opportunity to compete for a license. Here, the limitation on perfecting amendments that create a conflict with prior applicants results not in foreclosure but simply in site restriction.

32. Following the passage of the 30-day amendment period, the application and any amendments will be studied for acceptability, i.e., compliance with the technical requirements for FM facilities. If the application is found acceptable, it will be placed on a publicly released "Notice of Acceptability" inviting the filing of petitions to deny. If the application is found to be unacceptable, it will be returned. Resubmission of such an application with a curative amendment will not gain it *nunc pro tunc* status since applicants were afforded 30 days after the release of the *Notice of Tenderability* to amend their applications into acceptable form. To permit curative amendments after that period poses too great a threat to the orderly functioning of our new processing procedures.

B. The " First Come/First Serve" Processing System

33. If no applications are filed during the window, the first acceptable application for the channel will cut-off the filing rights of subsequent applications for that channel and applications for any channel in conflict with or for modifications to existing facilities that are inconsistent with the first-filed application. If an application for modification is the first-filed after the window closes, applicants for the new channel and applicants for inconsistent modifications would be limited thereby in their site selections. We believe that any subsequent applicants were on notice of the availability of the channel from its inclusion in the Table, and they had ample opportunity to file during the window or to be first-filed after the window period. Therefore, cutting off such applications is not unreasonable and will expedite new service to the public on a fallow channel. All "first come" applications will be considered as simultaneously filed if filed on the same day. As with window applications, we will process the application(s), entertain petitions to deny and, where appropriate, designate applications for hearings.

34. Applications received after the lead application will be grouped behind the lead application in a queue according to the date of filing. Priority rights for the lead applicant as against other applicants for the same channel, applicants for other channels or in other communities whose applications conflict with the lead application and applicants for modifications to existing facilities that are inconsistent with the lead application are determined by the filing date of the lead application. The filing dates of subsequent applicants for that channel and community, however, only determine their place in the queue. The rights of an applicant in the queue would ripen as to applicants outside the

[31] It is proper for us to make these revisions to the amendment process on our own motion. Both the Administrative Procedure Act and our own regulations exempt rules of practice and procedure from notice and comment rule making requirements. 5 U.S.C. 553(b)(A); 47 CFR 1.412(a)(5).

[32] There are two classes of amendments that are acceptable at any time: (1) amendments required by 47 CFR 1.65 and (2) amendments which extricate an application from conflict with other applications and which trigger no new conflicts, including amendments filed pursuant to an agreement between applicants under 47 CFR 73.3525.

queue only upon a finding that the lead application is unacceptable and then only if the queued application is reached and found acceptable. We will process within the queue until we find an acceptable application. If a queued applicant is determined to be acceptable, his rights, vis a vis applicants outside the queue, vest on the date of his acceptance. The queue will remain behind the lead applicant until a constuction permit is granted.[33] If there is no queue or no queue member is found to be acceptable, that channel remains subject to "first come/first serve" treatment. At the grant of a construction permit the queue dissolves.

35. With respect to amendments in the "first come/first serve" processing system, applicants may amend their applications for a period of thirty days following the issuance of the *Notice of Tenderability*. For reasons directly analogous to those underlying our restriction on certain amendments of applications filed during a window, we will not permit a "first come" applicant to amend its application and to retain its initial filing priority date as to applicants for other channels or in other communities or for modifications to existing facilities and with whom the amendment creates a conflict.[34] As with window applications, we believe this approach is necessary to preserve the certainty and expedition that our new processing system is intended to achieve and that it is entirely consistent with the court's decision in *James River Broadcasting v. FCC, supra.*

36. If a channel allotment is vacated after issuance of the construction permit, regardless of whether the construction permit was granted as a result of window or "first come/first serve" processing, we will, by public notice, announce a subsequent filing window for the acceptance of new applications for that channel.

Other Matters

37. In a small number of cases where the commercial and non-commercial FM bands are adjacent, our decision to apply the window processing system to commercial channel applicants but not to applicants for reserved channels may create some problems.[35] It is appropriate, therefore, that we clarify our procedures for these exceptional cases. If an applicant for a reserved channel has generated a cut-off list that overlaps a commercial window, the commercial applicant must file within the cut-off period—it may not rely on its window deadline—if it seeks mutually exclusive status with the educator. After the relevant commercial window closes, and educator and a commercial applicant would both be subject to "first in time, first in right" status as to each other.[36] Of course, any conflict between educational applicants will continue to be resolved through the traditional cut-off procedures. We anticipate minimal effect on educators, but alert them that in those areas of the FM band where spacing as against commercial licensees is problematical they may be affected by the "first come/first serve" rules applicable to the commercial FM band.

38. To ensure a smooth transition to the new processing guidelines, we are hereby instituting a freeze on applications for new commercial FM stations and modifications to existing facilities in these services for a period of 30 days following publication of this document in the **Federal Register.** This step is essential to permit the Commission to reduce the number of currently pending applications, to which existing processing criteria apply, in preparation for shifting over to the new processing system and standards.

39. Procedural fairness requires us to complete processing of those applications for new channels or major modification of existing facilities that are currently on file. Therefore, applications and petitions to deny tendered after today will be accepted only if they are in response to "A" and "B" cut-off lists of pre-freeze applications.

40. The only minor modification applications that will be acceptable during the freeze are those filed in response to applications already on file as of the adoption date of this decision. Moreover, the applicant must identify the application that he is filing against.[37] However, in keeping with current minor modification processing practices, any application now on file may be granted at any time and such grant will cut-off the filing rights of all subsequent applicants.

41. Pursuant to the requirements of Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, a final regulatory flexibility analysis has been prepared and is attached hereto as Appendix C.

42. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified reqirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

43. Accordingly, it is ordered, that Part 73 of the Commission's Rules is amended, effective June 12, 1985, as set forth in the attached Appendix A.

44. It is further ordered, that effective as of the close of Commission business on the day of adoption of this *Order* and until 30 days after its publication in the **Federal Register,** applications *may not be filed* either for new commercial FM channels or for modification of existing facilities in this service, except to the extent such applications are filed in response to Commission cut-off lists resulting from applications filed prior to the adoption date of this *Order* or are filed against and in conflict with modification applications already on file as of the adoption date of this *Order.*[38]

45. It is further ordered, That the Secretary shall cause a copy of the *Report and Order* to be printed in the FCC Reports.

46. It is further ordered, that the Secretary shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy, Small Business Administration.

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

48. This action is taken pursuant to the authority contained in Sections 1, 4 (i) and (j), 5(d)(1), 303 and 309(b) of the Communications Act of 1934, as amended.

49. For further information concerning this proceeding, contact Lane Howard Moten, Mass Media Bureau (202) 632-7792.

---

[33] Any applicant determined by the Commission to be unacceptable would be deleted from the queue.

[34] *See* para. 31 *supra.*

[35] Noncommercial, educational entities applying for a channel on the commercial band will be subject to the filing window and "first come/first serve" processing system.

[36] Commercial applicants whose filing window has not yet opened at the time a potentially conflicting noncommercial application is filed may not file a competing application for the commercial channel in response to the noncommercial applicant's "A" cut-off list. To permit such a filing would undermine the control over applications processing that the window mechanism is intended to provide. The prospective commercial applicant may, of course, file a petition to deny against the noncommercial application within the prescribed filing period for such petitions.

[37] This requirement is necessary in order to simplify and expedite the processing of modifications during the freeze. Any modification application not so identifying a pre-freeze applications as a basis for filing will be judged unacceptable for filing during the freeze period.

[38] Immediate implementation of this *Order* is required because a 30-day delay would frustrate the purpose of the freeze.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303.

§ 73.3564 [Amended]

1a. § 73.3564 is amended by revising paragraphs (a), (c) and (d) to read as follows:

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator applications and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of non-reserved band FM applications, those found to be substantially complete at tender are accepted for tender and are given file numbers. Non-reserved band FM applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete will be returned to the applicant.

(b) * * *

(c) At regular intervals, the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing, except for non-reserved band FM stations and low power TV and TV translator stations. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d) such notice shall establish a cut-off date (not less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

(d) New and major change applications for non-reserved band FM stations (except for Class D stations) and for low power television and television translator stations will be accepted only on date(s) specified by the Commission. Low power TV and TV translator station filing period(s) will be designated by the Commission in a Public Notice. Non-reserved band FM facilities and major change applications will have filing dates designated by the Commission in the following manner:

(1) For all vacant non-reserved band FM allocations listed on the FM Table of Allotments, § 73.202, as of March 14, 1985, a one-time filing period or "window" will open for 30 days, beginning on the 31st day after the date of publication of the *Report and Order* in MM Docket No. 84–750 in the **Federal Register** and will close on the 60th day after such publication. (This filing window does not apply to the 689 FM channels added to the FM Table of Allotments by the Commission's decision in MM Docket No. 84–231).

(2) The 689 FM allocations added to the FM Table of Allotments by MM Docket 84–231 will be subject to a series of windows. The Audio Services Division of the Mass Media Bureau will establish, by Public Notice, the window filing dates for this group of allotments.

(3) Each *Report and Order* specifying a new non-reserved FM band allocation will identify the window filing period which will begin upon the effective date of that *Order* and continue for at least 30 days.

(4) Where no applications are tendered during a window filing period, applications may be tendered any time after the window closes. These applications will be processed on a "first come/first serve" basis and will be treated as simultaneously filed if filed on the same day. Any applications received after the filing of a lead applicant will be placed in a queue, according to filing date, behind the lead applicant.

(5) If a non-reserved band FM channel allotment is vacant after the grant of a construction permit becomes final, because of a lapsed construction permit or for any other reason, the FCC will, by Public Notice, announce a subsequent filing window for the acceptance of new applications for such channels.

(6) However, no application will be accepted for tender unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

2. § 73.3573 is amended by revising paragraphs (d) and (e) and adding paragraphs (f) and (g) to read as follows:

§ 73.3573 Processing FM broadcast and FM translator station applications.

* * * * *

(d) Applications for reserved band and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(e) Where reserved band plus Class D applications are mutually exclusive because the distance between their respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.507, such applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the FCC.

(f) Processing non-reserved FM broadcast station applications.

(1) Applications for non-reserved FM broadcast stations will be processed as nearly as possible in the order in which they are tendered. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. The FCC will specify, pursuant to § 73.3564(d), the filing periods for non-reserved band FM applications.

(2) All applications received during the appropriate filing period or "window" which are found to be mutually exclusive will be designated for hearing. All other applications will, if the applicants are duly qualified, receive grants. The FCC will periodically release a Public Notice listing applications pending hearings or grant and announcing a date (not less than 30 days after issuance) by which petitions to deny must be filed.

(3) If, after the close of the appropriate window filing period, a non-reserved FM

allotment remains vacant, processing for that channel will be on a "first come/first serve" basis with the first acceptable application cutting off the filing rights of subsequent applicants. All applications received on the same day will be treated as simultaneously tendered and, if they are found to be mutually exclusive, will be designated for hearing. Applications received after the tender of a lead application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, as against all other applicants, are determined by the date of filing but the filing date for subsequent applicants for that channel and community only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves. If there is no queue or if no queue member is found acceptable, that allotment remains subject to "first come/first serve" processing. The FCC will periodically release a Public Notice listing those pending hearings or grant and announcing a date (not less than 30 days after issuance) by which petitions to deny must be filed.

(g) Resolving processing conflicts between the reserved and non-reserved bands. The reserved bands include Class D stations.

(1) Reserved band applicants, applying for a channel on the non-reserved band are subject to the processing procedures in Section (f).

(2) If a reserved band applicant has generated a cut-off list that overlaps a non-reserved band window filing period, the non-reserved band applicant must file within the cut-off if he seeks mutually exclusive status with the reserved band applicant.

(3) Following the close of a non-reserved band application filing window, the non-reserved band applicant is subject to the "first come/first serve" rules and would lose to a pre-filed reserved band applicant.

3. § 73.3522 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) Predesignation amendment. (1) Subject to the provisions of §§ 73.3525, 73.3571, 73–3572, 73.3573, and 73–3580, and except as provided in paragraph (a)(2) of this section, any application, other than an application for a low power TV, TV translator station, or a non-reserved bank FM station may be amended as a matter of right prior to the adoption date of an order designating such applications for hearings, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 73.3513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573 and 73.3580, and except for applications for low power TV, TV translator stations, or a non-reserved band FM station, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 30 days after issuance) in the FCC's Public Notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

* * * * *

(6) Subject to the provisions of §§ 73.3525, 73.3573 and 73.3580, applications for non-reserved bank FM stations (minus Class D) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3564(d). For a period of 30 days following the FCC's issuance of a Notice of Tenderability announcing the acceptance of the applications, amendments that go to the acceptability or grantability of an application may be filed as a matter of right. Subsequent amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. However, an amendment to a non-reserved band application will not be accepted after the close of the appropriate filing window if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment.

* * * * *

4. § 73.203 is revised to read as follows:

§ 73.203 Availability of channels.

Applications may be filed to construct FM broadcast stations only at the communities and on the channels contained in the Table of Allotments (§ 73.202(b)). Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the Table, will not be accepted for tender.

Appendix B

To be included with FCC Form 301, Application to Construct or Make Changes in an Existing Commercial Broadcast Station.

Certification of Site Availability

1. The applicant certifies that it has reasonable assurance in good faith that the site or structure proposed in Items 1 and/or 2, Section V–G, FCC Form 301, as the location of its transmitting antenna, will be available to the applicant for applicant's intended purpose.

Yes ——— No ———

If no, explain fully:

_____

2. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

Name of Person Contacted _____

Telephone Number _____

Person contacted (check one):

Owner _____

Owner's Agent _____

Other (specify) _____

Applicant's Signature _____

Date _____

Appendix C

Final Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

Our experience indicates that the current cut-off procedures for the acceptance of competing applications for commercial full service FM and TV stations delay service to the public and disrupt the processing of the initial application. The filing of speculative and anticompetitive, delaying applications often precipitate costly and unnecessary comparative hearings. Also, current modification procedures lack sufficient certainty and, as a result, may be wasteful of the Commission's and applicants' resources.

The purposes of the rule changes adopted herein are to limit applications to those seriously interested in providing better service and to provide more certainty within the processing system.

II. Flexibility Issues Raised in the Comments

The most significant regulatory flexibility issue raised in the comments concerns the

duration of the window filing period. Several commenters maintained that only well-financed, established entities would be able to respond within the proposed 45 day window and therefore the system would particularly disadvantage minority groups and small businesses. However, under the new rules, a slightly longer filing period will be provided than under the current procedures. (*See* para. 29.) In addition to a slightly longer filing period, small business groups and minorities should benefit from the expected reduction of speculative and dilatory applications. These filings entail processing delays and often result in costly and unnecessary comparative hearings that disadvantage groups with funding limitations.

III. Significant Alternatives Considered But Not Adopted

The only significant alternative considered but not adopted was the implementation of an extended window filing period. Since the new processing procedures will allow for a longer period to prepare filings than does the current system, further lengthening the filing window period appeared unwarranted, particularly since such action would contravene the important Commission goal of expediting service to the public.

Appendix D

Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Are Otherwise Defective

As part of our effort to expedite applications in conjunction with the implementation of the new "window" and "first come, first serve" processing procedures (*Report and Order* in MM Docket 84–750, Adopted March 14, 1985), we are adopting a new policy with respect to the definition and treatment of applications that are defective or not substantially complete when filed. [1]

Expedition of processing in the face of the possibility of a large increase in commercial FM applications compels us to shift to the beginning of the process some of the application checks previously made later in the process. This shift may well result in a loss of filing status for a returned application that it otherwise would have retained under the previous processing procedures. Such an outcome cannot be avoided if we are to achieve the benefits of the new window and first come, first serve processing procedures.

At the time an application for a commercial FM station or for a modification to an existing commercial FM station is tendered and before an application reference number is assigned, the application will be given a thorough initial review to determine if it is substantially complete. Although all applicable elements of Form 301 are examined by the Commission staff in the course of processing a construction-permit application, certain items are much more critical than others. Without them, processing simply cannot commence. A substantially complete application, one that the Commission deems in condition or sufficient for tender, must meet all of the following requirements.

1. The applicant's name and address must be provided. Failure of an applicant to do so renders it impossible for the processing staff:

a. to communicate with the applicant concerning the contents of the application; and

b. to discern and resolve issues relating to the applicant's identity, e.g., multiple-ownership and alien-interest questions.

2. In recent years, the Commission has reduced the amount of information required to be provided in applying for a construction permit and has accordingly simplified Form 301. Applicants are now permitted to make certifications of various types instead of having to provide evidentiary showings. Having relieved applicants of the need to make such showings, the Commission attaches considerable importance to the certifications that take their place. Accordingly, certifications in the following areas are crucial in the absence of full showings.

a. Compliance with 47 U.S.C. 310(b). An application which violates the alien-interest provisions of the Communications Act is statutorily ungrantable. Failure to respond to the question by which certification of compliance is invited renders the application so fundamentally defective that further processing is unwarranted.

b. Financial ability to construct. The Commission authorizes new or changed facilities with the expectation that such will be built quickly and that service will be expeditiously provided via those facilities to the public. It is pointless to grant an authorization of facilities that cannot be built. It is likewise pointless to process an application where a response to certification of financial ability to construct is not provided.

c. Compliance with the local public notice provisions of 47 CFR 73.3580. It is important that local public notice occur. An informed local populace can bring to the Commission's attention information about the applicant or the facility proposal that might otherwise remain undetected. Thus, where local public notice is required, an applicant who fails to respond to the appropriate item of Form 301 will have its application returned as not sufficient for tender.

d. Site availability. The Commission does not require of applicants absolute certainty of site availability, but rather reasonable assurance. An application specifying an unavailable site *per se* frustrates the Commission's stated goal of expeditious introduction of service. Such a filing requires an amendment specifying a site change before grant or a further application for construction-permit modification after grant. To avoid vacuous and sequential filings, the Commission has imposed a requirement of site-availability certification which includes the name and address of the site owner or his agent. Failure of an applicant to provide the requisite certification in the form set forth in Appendix B of the *Report and Order* in Docket 84–750, *supra*, will result in the application being deemed not substantially complete.

3. Questions 6 and 8 of Section II, Form 301 deal with matters crucial to multiple-ownership determinations. In response to these questions, applicants are to indicate whether or not they or their relatives (immediate family) have any other pending applications or broadcast interests. If the answer to either question is positive, explanatory exhibits must be provided. Leaving these questions unanswered, as a practical matter, makes it impossible for the processing staff to begin a multiple-ownership analysis. In light of our expressed policy dealing with the filing of multiple applications (*see Second Report and Order* in Docket 84–231, FCC 85–124, Adopted March 14, 1985 and Released April 12, 1985), failure to respond prevents the staff from beginning its ownership analysis and thus renders the applicant's filing not substantially complete.

4. Compliance with the Commission's technical rules is evaluated in the course of an acceptability study. Certain engineering data must be present for such a technical acceptability study to be made. The absence of one or more elements of those data, listed below, prevents a determination of acceptability and thus renders the application not substantially complete.

a. The geographic coordinates, to the nearest second, of the proposed transmitter site must be provided. Absence of these data makes it impossible to determine the distances from the proposed site to other proposed or existing broadcast facilities and to the community of license. In the commercial FM service, spacing determines acceptability of an application where mutual exclusivity exists with respect to a given allocation, *see Trend Broadcasting, Inc.*, 18 FCC 2d 749 (1969), and determines when mutual exclusivity exists between applicants for or permittees of different allocations. The geographic location also determines whether protection must be afforded to Commission monitoring facilities and to radio quiet zones (*see* 47 CFR 73.1030), mark the center of the "blanketing" area (*see* 47 CFR 73.315), and is fundamental to analysis of a proposal's environmental effects and electromagnetic effects on other, nearby communications facilities.

b. A transmitter site map as described in Form 301, Section V–B, Item 13, and in our *Public Notice*, Mimeo 3693, released April 5, 1985. Such a map allows the staff to verify the coordinates of the proposed site, the presence of other, nearby communications facilities and of obstructing terrain features (*see* 47 CFR 73.315), and the ground elevation of the transmitter site. The last parameter has a key influence on important features of the antenna installation—radiation-center heights above ground and mean sea level, from which, with other data, antenna height above average terrain (HAAT) is derived.

c. The channel number and community of the allocation must be supplied. Since the commercial FM allocation system is organized on the basis of a Table comprising numbered channels and targeted communities, any evaluation of an

[1] This policy applies only to commercial FM applicants. AM applicants and non-commercial FM applicants are still subject to the policy set out in our *Public Notice* of August 2, 1984. TV applicants remain subject to applicable case law.

application must consider these fundamental items.

d. Effective Radiated Power must be specified. Our technical rules prescribe minimum and maximum permissible power levels. Application processing includes a determination that proposed operating power falls within the range defined for the particular class of station occupying or intended to occupy the allocation. Certain allocations have limitations imposed on ERP, as do some stations authorized prior to implementation of the Table Method of Allocations. International agreements also influence permissible ERP levels in border areas. The operating power is so basic a parameter of a broadcast facility that is simply must be specified. Accordingly, its absence will render an application not substantially complete.

e. Also necessary are the antenna heights above average terrain, above ground level, and above mean sea level. These three are interrelated and must be specified consistently, as is the case with all other crucial engineering parameters. Antenna height is as elemental a facility parameter as is ERP. It also is subject to permissible-range values as a function of station class and, with ERP, determines the coverage area of a facility for a given signal strength. Antenna height is also limited in certain cases by international treaty or by allocation constraints. Antenna height and ERP are also used to determine adverse potential to radio quiet zones, adjacent and co-channel "grandfathered" stations, and to FCC monitoring facilities. Antenna height above ground affects the environmental and aerial-navigation aspects of a facility proposal. Clearly, the various antenna heights are employed in a number of processing evaluations by the staff. Their absence, or the absence of any one of them, renders the application not substantially complete.

f. An answer to Item 7, Section V–B must be provided, as whether or not a directional antenna is proposed is a fundamental issue. If a positive response is given, *all* data specified in 47 CFR 73.316(d) must be included in an accompanying engineering exhibit. Without this information, the processing staff cannot determine the proper location of signal-strength contours, whether city-grade coverage is provided as required, whether adequate protection to short-spaced stations is to be given, and whether or not the proposed directional response complies with our technical rules and appears to be stable.

g. A map or maps satifying the requirements of Item 10, Section V–B and *clearly* and *legibly* showing the proposed 60 and 70 dBu contours and the legal boundaries of the community of license must be provided. Such maps permit ascertainment of compliance with city-grade requirements and permit verification of signal-strength contour predictions. They are also employed in determining comparative levels of proposed service.

h. Section V–G must be provided as part of any Form 301 application proposing construction of a new facility or *any* change in transmitter site or antenna-structure height to existing facilities. In accord with our existing procedure, for side-mounting proposals involving an existing support structure, Section V–G shall show the application's purpose as, "Alteration of existing antenna structure." The "Facilities Requested" portion shall contain a description of the side-mounting proposal. Section V–G will be accompanied by a tower-sketch exhibit as required by Item 6.

Further, because of the critical importance of the applicant's certification of the correctness of the data contained in the application as of the date of filing, unsigned applications will not be accepted for tender.

If any of the above information is missing, the application will be returned as not sufficient for tender. If any of the above information is present but, on the face of the application, visibly incorrect or inconsistent, the application will be treated in accordance with the following guidelines. If the needed information can be derived or the discrepancy resolved, confidently and reliably, drawing on the application as a whole, such defect will not render the application not sufficient for tender. However, if the critical data cannot be derived or the inconsistency resolved within the confines of the application and with a high degree of confidence, the presence of the clearly void data will be treated as functionally equivalent to the absence of such data. In such instances, the defective application will be deemed not sufficient for tender. If the application is returned during the initial check as not sufficient for tender, we will not permit the applicant to remedy the defect and have its resubmitted application accepted *nunc pro tunc* in order to be grouped with other applications filed by a window closing date or in order to be considered first filed when a window does not apply.

Where an application is timely filed within and in response to a filing window, at the initial screening we will consider the application as originally filed, together with any amendments filed within the window period. Where "first come, first serve" processing rules apply, the application *only* as originally filed will be considered. If an applicant discovers that its "first come" application is not sufficient for tender, it must file a new, corrected application (and request return of its earlier application) to cure the tenderability defect. *Nunc pro tunc* treatment will not be afforded in such cases.

If any of the defects listed above are overlooked during the initial review and are found later in the process, the application will be returned as inadvertently accepted for tender and, if resubmitted, will not be accepted *nunc pro tunc*. Return of the application will void the application reference number inadvertently assigned and whatever rights of tender might have been associated with it.

An application found to be sufficient for tender will be studied to determine its acceptability for filing, that is, to determine whether it is in compliance with applicable Commission rules. If it is found acceptable for filing, it will be included in a Public Notice of Acceptance. If found to be unacceptable for filing, it will be returned and will not be accepted later on a *nunc pro tunc* basis.

If an application is accepted for filing but is subsequently found not to be grantable, the applicant, if not mutually exclusive with other applicants, will be given one opportunity to correct the application. If the acceptable but not grantable application is mutually exclusive, an appropriate issue will be specified in the Hearing Designation Order, or a post-designation amendment, if appropriate, will be required.

[FR Doc. 85–11370 Filed 5–10–85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 41046–4171]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing those FMPs. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; optimum yields (OYs) are established by the FMP for Groundfish of the Gulf of Alaska. These FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at 50 CFR 611.92 and 611.93 and Parts 672 and 675. The TACs and

OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1985 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director), to fishermen and processors in September 1984. The Regional Director initiated another survey in March 1985, for which the analysis is not yet available.

Because most U.S. fisheries have just begun, there has been insufficient fishing time to determine what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen and reapportioning any DAH to TALFF at this time is therefore not possible. Reapportionment of DAH along with any reserves not released by this action will be considered at a later date.

1. Bering Sea and Aleutian Islands Area (BSA)

As soon as practicable after April 1, June 1, and August 1, or on other dates as are deemed necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportions to TALFF the remainder of the reserve that will not be apportioned to DAH. When the initial DAH and TALFF for 1985 were established (50 FR 11369, March 21, 1985), DAH and TALFF were supplemented with 31,890 mt from the initial 300,000-mt reserve, thereby reducing it to 268,110 mt. This action supplements DAH and TALFF by an additional 134,055 mt from the reserve, reducing it to 134,055 mt. The changes are summarized in Table 1.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Current	This action	Revised
Pollock (Bering Sea Area only)	DAP	17,680		17,680
TAC=1,200,000; EY=1,100,000	JVP	393,584		393,584
	TALFF	608,736	+104,438	713,174
Pollock (Aleutians Area only)	DAP	10,540		10,540
TAC=100,000; EY=100,000	JVP	13,966		13,966
	TALFF	60,494	+7,500	67,994
Pacific cod	DAP	100,000		100,000
TAC=220,000; EY=347,400	JVP	63,190		63,190
	TALFF	37,000	+2,600	39,600
Yellowfin sole	DAP	1,770		1,770
TAC=226,900; EY=310,000	JVP	82,200		82,200
	TALFF	108,895	+17,017	125,912
Other Species	DAP	0	+2,500	2,500
TAC=37,580; EY=51,200	JVP	3,000		3,000
	TALFF	28,943		28,943
Total	DAP	139,360	+2,500	141,860
TAC=2,000,000	JVP	663,072		663,072
	RES	268,110	−134,055	134,055
	TALFF	929,458	+131,555	1,061,013

Apportionments to DAH: To provide bycatch of "other species" to DAP Bering Sea operations, 2,500 mt of the non-specific reserve is transferred to the "other species" DAP, increasing it from 0 mt to 2,500 mt.

Apportionments to TALFF: Amounts from the reserve are transferred to TALFF as follows: Bering Sea area pollock, 104,438 mt; Aleutian Islands area pollock, 7,500 mt; Pacific cod, 2,600 mt; and yellowfin sole, 17,017 mt. Based on the industry surveys discussed above and reports of catch to date, it is found that these fish will not be taken by U.S. fishermen during 1985.

2. Gulf of Alaska

Apportionments to DAH and TALFF will be considered at a later date pending reevaluation of DAP and JVP needs for 1985. The current specifications were established by a notice published in the **Federal Register** (50 FR 467, January 4, 1985).

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: All Pacific cod reserves in the Gulf of Alaska, Bering Sea and Aleutian Islands should be released to DAP at this time. All reserves of pollock in the Gulf of Alaska, Bering Sea and Aleutian Islands should be withheld from TALFF pending reevaluation of the intended domestic fisheries.

Repsonse: In the Gulf of Alaska, no reserves of any species are reapportioned, pending reevaluation of DAH needs.

In the Bering Sea and Aleutian Islands Area: Last year's DAP performance (actual compared to projected catches), this year's catch to date, and the results of the recent NMFS DAP industry survey (the BSA portion of which is essentially complete), do not indicate a need to supplement the current 100,000-mt Pacific cod DAP at this time. Of the initially unapportioned Pacific cod TAC amount (19,810 mt), 2,600 mt is apportioned to TALFF to provide a minimal bycatch of Pacific cod to support the 128,955 mt of target species (pollock and yellowfin sole) apportioned to TALFF by this action.

The Bering Sea area and the Aleutian Islands area pollock TALFFs are supplemented by 104,438 mt and 7,500 mt, respectively, from the reserve. Remaining unapportioned pollock TACs are 75,562 mt (Bering Sea) and 7,500 mt (Aleutians). If these remainders are added to the current pollock DAPs, the sum is twice the amount currently estimated as needed for all 1985 pollock operations by the commenter and other BSA DAP operators.

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulations regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that providing an opportunity for further public comment and delaying the effective date of this notice would be impracticable, unnecessary, and the contrary to the public interest.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: May 8, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-11513 Filed 5-8-85; 4:58 p.m.]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 41154-4151]

Tanner Crab off Alaska; Season Closure

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

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that a fishery closure is necessary to protect Tanner crab stocks in part of the Pribilof Subdistrict of the Bering Sea District of Registration Area J. The Secretary of Commerce (Secretary) therefore issues this notice closing fishing for all Tanner crab in the Pribilof Subdistrict south of 58°00′ N. latitude by vessels of the United States. This action is intended as a management measure to conserve *C. opilio* stocks.

DATE: This notice is effective from noon Alaska Daylight Time (ADT), May 8, 1985. Public comments on this notice of closure are invited until May 23, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at the (1) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska, and (2) the NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, Kodiak Field Office, NMFS) 907-486-3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that these adjustments will be issued by the Secretary under criteria set out in that section

Section 671.26(c) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Bering Sea District, for which the FMP specifies the optimum yields for Tanner crab (*Chionoecetes opilio*) to be 20.0 to 130.0 million pounds and Tanner crab (*C. bairdi*) to be 5.0 to 28.5 million pounds. This district is further divided into three subdistricts. One of these is the Pribilof Subdistrict, in which desired harvest levels are established on the basis of NMFS preseason trawl surveys. The surveys are designed to determine harvestable *C. opilio* biomass north and south of 58°00′ N. latitude. The survey estimate of *C. opilio* in the Pribilof Subdistrict south of 58°00′ N. latitude was 25 million pounds. Reasons for the closure of the southern part of the Pribilof Subdistrict follows:

The 1985 fishing season in the Pribilof Subdistrict began on January 15. Forty-two vessels delivered approximately 21.9 million pounds of *C. opilio* through April 21. The catch has declined from an average of about 224 to 149 crabs per pot during the past seven weeks. Inseason fishery performance indicates that no more than 25 million pounds of *C. opilio* should be harvested in the Pribilof Subdistrict south of 58°00′ N. latitude. This amount will be achieved by noon ADT, May 8, 1985. Fishing for all Tanner crab (*C. opilio* and *C. bairdi*) will be prohibited in this portion of the Pribilof Subdistrict south of 58°00′ N latitude to make the closure enforceable. The other Tanner crab species, *C. bairdi*, is caught only incidentally in the *C. opilio* fishery.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that—

1. The actual condition of *C. opilio* Tanner crab stocks in the Pribilof Subdistrict south of 58°00′ N. latitude is substantially different from the condition anticipated at the beginning of the fishing year; and

2. This difference reasonably supports the need to protect those *C. opilio* stocks by closing that part of the Pribilof Subdistrict defined in § 671.26(f)(1)(vi)(B) south of 58°00′ N. latitude to all Tanner crab fishing, from noon ADT, May 8, 1985, until noon ADT, August 1, 1985, at which time the closure of this subdistrict for this species prescribed § 671.26(f)(2)(vi) will begin.

This closure will become effective under § 671.27(a)(2) after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director, at the address above, for 15 days following the effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifyng it, or rescinding it.

Other Matters

Tanner crab stocks of the species *C. opilio* in the Pribilof Subdistrict south of 58°00′ N. latitude will be subject to damage by overfishing unless this closure takes effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under § 671.27 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain a request for the collection of information, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-11512 Filed 5-8-85; 4:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ACE-05]

Proposed Revocation of Transition Area Humboldt, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revoke the Humboldt, Nebraska, transition area. It was anticipated that instrument approaches would be made to the Humboldt, Nebraska, Airport utilizing the Pawnee City VORTAC as a navigational aid. The transition area was established, based on this VORTAC, to ensure the segregation of aircraft utilizing the instrument approach procedures under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). However, traffic data indicates that no instrument approaches have been made into Humboldt for the past two years. Therefore, the transition area is unnecessary.

DATES: Comments must be received on or before June 18, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by revoking the 700-foot transition area at Humboldt, Nebraska. The City of Humboldt has taken action to abandon one of their two runways and to eliminate all runway lights. Also, traffic data indicates that no instrument approaches were made into Humboldt during 1983 and 1984. Therefore, the transition area is no longer necessary. Accordingly, the FAA proposes to release that airspace below 700 feet above the ground level for other than instrument flight operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

Humboldt, Nebraska [Revoked]

Revoke transition area.

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

Issued in Kansas City, Missouri, on May 2, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-11455 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ANM-9]

Proposed Establishment of Transition Area; Cowley, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to provide controlled airspace 700 feet above the surface for aircraft executing a new instrument approach procedure to North Big Horn County Airport. The purpose of the transition area is to segregate aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be shown on aeronautical charts enabling pilots in visual weather conditions to circumnavigate the area of otherwise comply with instrument flight rules.

DATE: Comments must be received on or before July 11, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, FAA/ Northwest Mountain Region—Docket No. 84-ANM-9, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

An informal docket may also be examined during normal business hours at the Airspace & Procedures Branch at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-9." 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. This proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures office at the address previously listed, both before and after the closing date for comments. A report summarizing each substantive public contact will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, ANM-530, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application process.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft conducting instrument flight rules (IFR) operations.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety.

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

Cowley, Wyoming (New)

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the North Big Horn County Airport (lat. 44° 54' 45" N long./108° 26' 39" W) from the 324° true bearing from the airport clockwise to the 134° true bearing from the airport; and within a 12 mile radius of the airport from the 134° true bearing from the airport clockwise to the 324° true bearing from the airport, excluding the Powell, Wyoming, 700 foot transition area.

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

Issued in Seattle, Washington, on May 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region

[FR Doc. 85-11454 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ANM-8]

Proposed Establishment of Transition Area; Greybull, WY

ACTION: Notice of proposed rulemaking.

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice proposes to provide controlled airspace from 700 feet and 1200 feet above the surface for aircraft executing a new instrument approach procedure to South Big Horn County Airport. The purpose of the transition area is to segregate aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The areas will be shown on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

DATE: Comments must be received on or before July 11, 1985.

ADDRESS: Send comments on the proposal to: Manager, Airspace & Procedures Branch—Docket No. 84-ANM-8, FAA/Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the above address.

An informal docket may also be examined during normal business hours at the Airspace & Procedures office at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-553, 17900 Pacific Highway South C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-8." 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 Airspace & Procedures Branch, at the address previously listed, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft conducting instrument flight rules (IFR) operations.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "signifcant 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 area, Aviation safety.

The Proposed Amendment

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

Greybull, Wyoming [New]

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the South Big Horn County Airport (Lat. 44°31'06" N/long. 108°05'09" W) from the 344°T bearing from the airport clockwise to the 144°T bearing from the airport; and within a 13 mile radius from the 144°T bearing from the airport to the 334°T bearing from the airport; and that airspace extending upward from 1,200 feet above the surface beginning at (lat. 44°45'00" N/long. 108°11'00" W; to lat. 44°45'00" N/long. 108°00'00" W; to lat. 44°30'00" N/long. 107°48'00" W; to lat. 44°15'00" N/long. 107°48'00" W; to lat. 44°15'00" N/long. 108°11'00" W; thence northward to point of beginning, excluding the Worland, Wyoming, 1,200 foot transition area.

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

Issued in Seattle, Washington, on May 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountaing Region.

[FR Doc. 85-11456 Filed 5-10-85; 8:45 am]

BILING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On this date, the Commission adopted an amendment to § 12.407(d) of its reparation rules which recognizes a prior Commission adjudicatory decision changing the way interest on reparation awards is calculated. The Commission also today is proposing a further amendment to § 12.407(d) to authorize the compounding of interest on an annual basis whenever the period for which interest has accrued exceeds one year.

DATE: Comments must be received by July 12, 1985.

ADDRESS: Comments on the proposal should be sent to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On this date, the Commission amended § 12.407(d) to reflect a change in the method for calculating the amount of interest that has accrued on reparation awards. This amendment, which codifies the Commission's decision in *Newman* v. *Bache Halsey Stuart Shields, Inc.*,[1] makes clear that for all initial decisions rendered on and after November 19, 1984, interest shall be computed in accordance with 28 U.S.C. 1961(a). As a result, interest on reparation awards will be computed with reference to the appropriate rate for 52-week U.S. Treasury bills as is done in the case of money judgments obtained in federal district courts.[2]

[1] Comm. Fut. L. Rep. (CCH) ¶ 22,432 (November 19, 1984).

[2] Consistent with 28 U.S.C. 1961(a) (1982), the interest rate to be applied to any particular reparation award is the "coupon issue yield equivalent * * * of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date" of the initial decision (or final decision in

Continued

Another provision in the same statute (28 U.S.C. 1961(b) (1982)) requires interest to be compounded on an annual basis. No Commission decision has previously required the parties to pay compounded interest on a reparation award; the *Newman* decision did not specifically address the issue of compounding interest. Under these circumstances, the Commission believes that the question should now be decided and is proposing to amend § 12.407(d) expressly to allow interest on reparation awards to be compounded annually whenever the period for which interest has accrued exceeds one year.

From the time it first recognized its authority to assess interest as a component of damages in reparation proceedings, the Commission has considered interest to be "an adjunct to the award of damages, a differential paid to compensate for the loss of the use of a sum of money for a period of time." [3] By adopting the methodology of 28 U.S.C. 1961 (1982), the Commission has determined that this differential should be calculated with reference to the 52-week U.S. Treasury bill rate. Under this approach, a party who has received an award should be entitled to receive as interest an amount that he or she would have earned had the amount of the award been invested in 52-week United States Treasury bills from the date upon which interest first accrued.[4] In the event that this period exceeds one year (for example, because prejudgement interest was awarded or the losing party appealed the initial decision without success), a prevailing party who had had the funds to invest in a 52-week Treasury bill would also have had the opportunity to invest in a second bill because the first 52-week Treasury bill would have reached its maturity. Thus, the prevailing party would have been in a position to reinvest in a new 52-week Treasury bill both the original amount of the reparation award and the amount representing the accrued interest on the award (arising from the first 52-week T-bill). Such a person would therefore enjoy the effect of compounded interest. The Commission believes that compounding on an annual basis in the manner just described is appropriate to ensure that a party deprived of the use of funds is restored as nearly as possible to the financial status he or she would otherwise have enjoyed.

Our proposal to allow the annual compounding of interest on a reparation award is consistent with Congress' intention in enacting the compunding provisions of 28 U.S.C. 1961(b) (1982). Those provisions were enacted to provide an economic disincentive to losing parties who might file frivolous appeals "simply to gain the advantage of artificially low interest rates on judgments while judgments were tied up in the courts for months or even years.[5] Requiring that interest on reparation awards be compounded annually prevents the equivalent of a compulsory below-market interest rate loan from the winning party to the losing party. A losing party may otherwise be encouraged to delay paying a reparation award for as long as possible because, by depriving the prevailing party of funds upon which interest would not accrue ona compounded basis, the losing party would be in a position to invest the same funds in a transaction which earns compounded interest, and thereby profit at the prevailing party's expense. This, of course, would invite the filing of unjustified appeals and frustrate the Commission's recent efforts to make reparations a more expeditious and efficient remedy.[6]

Finally, the fact that annual compounding is expressly authorized by 28 U.S.C. 1961(b) is in itself reason to permit annual compounding of interest on reparation awards. The Commission, in adjudicating private claims for money damages based on violations of the Act, Commission rule or order, is performing a role analogous to a federal district court in cases brought pursuant to section 22 of the Act. The Commission does not see why there should be any distinction between awards in reparation cases and judgments in section 22 actions in federal district court, insofar as compounding of interest is concerned.

For all of the foregoing reasons, the Commission is proposing to amend § 12.407(d) of its reparation rules to authorize interest on reparation awards to be compounded on an annual basis. The Commission is proposing to make this rule applicable to all initial decisions (or final decisions in voluntary decisional proceedings) rendered on and after the rule's effective date. The Commission invites comments from interested persons on this proposal, in particular, whether it should adopt a rule requiring the annual compounding of interest on reparation awards and, if so, when the rule should take effect.

II. Regulatory Flexibility Act and Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies when proposing rules to consider the impact of those rules on small businesses. While the proposed rule could augment a litigation-related cost to one of the parties to a reparation proceeding, it would be speculative to quantify the likelihood that a particular small business entity will become a party in a reparations proceeding, and thus subject to this increased cost. Since the proposed rule will not impact on any small business entities unless and until they become losing litigants in a reparations case, and since it is consistent with what federal courts now require, the proposed rule is not likely to have any economic impact on small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as proposed to be amended herein, would not have a significant economic impact on a substantial number of small business entities.

The Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. Because the rule proposed herein—one permitting the annual compounding of interest in connection with a reparation award—does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchange, commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

a voluntary decisional proceeding). The amount of interest due in connection with a reparation award is computed by multiplying the number of days that interest has accrued by a fraction, the numerator of which is the equivalent coupon issue yield multiplied by the amount of the reparation award, and the denominator of which is the number 365.

[3] *Sherwood* v. *Madda Trading Company*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,728, at 23,026 (January 5, 1979).

[4] As the Commission's *Newman* decision makes clear, the relevant date for ascertaining the rate of interest is the date of the initial decision; the period for which interest is to be computed may often be the amount of time from the date of the loss caused by the violation to the initial decision (prejudgment interest) as well as postjudgment interest. *See Newman, supra*, at p. 29919.

[5] 127 Cong. Rec. S 14099 (Dec. 6, 1981, daily ed.).

[6] *See* 49 FR 6602 (1984).

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

§ 12.407 [Amended]*

2. In part 12 § 12.407 is proposed to be amended by revising paragraph (d) to read as follows:

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961 (a) and (b) from the date directed in the final order to the date of payment, compounded annually.

* * * * *

Issued in Washington, DC., on May 3, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-11116 Filed 5-10-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modification to the Kansas Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Kansas as amendments to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed changes to the Kansas regulations concerning the creation of a per ton assessment mechanism; a general reporting regulation; the definition of "moist bulk density"; clarifying permit application requirements including when an operator must publish a public notice; revisions to civil penalty regulations; bonding; performance standards on incidental boundary markers, blasting, water monitoring, revegetation, and alternate engineering designs; training and certification of blasters; conducting aerial inspections and inspections of non-active sites, and the Memorandums of Understanding (MOU) with other State agencies to assist in permit review. This notice sets forth the times and locations that the Kansas program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. June 12, 1985 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Kansas regulatory program. A public hearing on the proposed amendments has been scheduled for June 7, 1985. Any person interested in speaking at the hearing should contact Mr. Richard D. Rieke at the address or telephone number listed below by May 28, 1985. If no person has contacted Mr. Rieke by the date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in Room 502, Kansas City Field Office, 1103 Grand Avenue, Kansas City, Missouri 64106. Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. Richard D. Rieke, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-5527.

Copies of the Kansas program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Office of Surface Mining, Room 5124, 1100 "L" Street NW., Washington D.C. 20240.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, Pittsburgh, Kansas 66762.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FDR 5892). Information pertinent to the general background, revisions, modifications, and amendments to the Kansas Program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 **Federal Register.**

II. Submission of Revisions

By letter dated April 4, 1985, Kansas submitted program amendments consisting of the following:

1. A revision to K.S.A. 1984 Supp. 49-406(g) which creates a per ton assessment mechanism.
2. K.A.R. 47-1-11 proposes a general reporting regulation giving the Kansas regulatory authority the authority to require specific reports needed to properly implement its program.
3. The term "moist bulk density" has been added to the definitions in K.A.R. 47-2-75.
4. K.A.R. 47-3-42 has been amended to clarify and update requirements for applications for mining permits.
5. Article 5—Civil Penalties—has been amended to incorporate changes made to the Federal regulations.
6. K.A.R. 47-8-9 has been amended to delete langauge requiring forfeited bonds be placed in an interest bearing escrow account and allows the surety, after demonstrating its ability to do reclamation, to reclaim forfeited sites.
7. Article 9—Performance Standards-proposes amendments that clarify and update performance standards in compliance with revised Federal regulation changes.
8. Article 13 has been added to fulfill Federal requirements for a program to train and certify blasters.
9. Article 15—Inspection and Enforcement—has been revised to reflect changes made to Federal regulations.

10. Eight memorandums of understanding (MOU) with State agencies to assist Kansas in reviewing mining permits for technical adequacy.

The full text of the proposed program amendments submitted by Kansas is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are consistent with the Federal regulations. If approved, the amendments will become part of the Kansas program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, The Office of Management and Budget (OMB) granted OSM an exemption from sections 3,4,7, and 8 of Executive Order 12291 for actions directly related to approved or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 3, 1985.

Ted D. Christensen,

Director, Office of Surface Mining.

The authority citation for Part 916 of 30 CFR continues to read as follows:

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

[FR Doc. 85–11501 Filed 5–10–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-07]

Marine Event: Coronado 4th of July Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the Annual Coronado 4th of July Demonstration and Fireworks Display, including the rehearsals prior to the event. This event takes place each year on the 4th of July, in Glorietta Bay, Coronado, California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the rehearsals and the event itself.

DATE: Comments must be received on or before 7 June 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LtJg Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Citizens Committee for the Coronado 4th of July Celebration annually conduct the 4th of July Demonstration and Fireworks Display in Glorietta Bay, Coronado, California. The U.S. Navy Underwater Demolition Seal Team usually demonstrate water, parachute, and helicopter operations during the event which could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat. Rehearsals prior to the event will also be regulated.

Economic Assessment and Certification

These regulations are considered to be non-major Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11–85–07–4th of July Fireworks Display, Coronado, California.

The Annual Coronado 4th of July Demonstration and Fireworks Display is conducted annually, in Glorietta Bay, California. The U.S. Navy Seal Team demonstration usually takes place between 2:00 PM and 4:00 PM, with the fireworks following at 9:00 PM. The special local regulations are effective during the rehearsals prior to the event and on the 4th of July. Further

information on exact time, date and location are published by the Eleventh Coast Guard District in the Local Notice to Mariners and/or Special Local Regulations promulgated usually 30 days prior to the event. Special local regulations for this year's event read as follows:

(a) *Regulated Area:* The following portions of Glorietta Bay, Coronado, California will be closed intermittently to all vessel traffic:

(1) Demonstration Area—from the tip of the marina, Latitude 32 degrees 40'43.5"N, Longitude 117 degrees 10'20.5"W; northeast to Latitude 32 degrees 40'48.5"N, Longitude 117 degrees 10'10.5"W; east along the shoreline to Latitude 32 degrees 40'43.5"N, Longitude 117 degrees 10'00"W; east to Latitude 32 degrees 40'46"N, Longitude 117 degrees 09'58"W; south to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'56.5"W; east to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'49"W; northeast to Latitude 32 degrees 40'54"N, Longitude 117 degrees 09'30"W (Navy Restricted Area); thence southwest along shoreline to the initial point.

(2) Fireworks Display Area—from Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'56.5"W; south to Latitude 32 degrees 40'33"N, Longitude 117 degrees 09'56.5"W; northeast to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'49"W; thence west to the initial point.

(b) *Effective Dates:* These regulations will be effective from 1:00 PM to 4:30 PM on 27 June, 2 July (3 July inclement weather backup date) and from 2:00 PM to 4:00 PM and 9:00 PM to 10:00 PM (Fireworks area only) on 4 July 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state of local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 85-11496 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD7-85-15]

Drawbridge Operation Regulations: Oklawaha River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Marion County Commission the Coast Guard is considering changing the regulations governing the State Road 46 drawbridge at Moss Bluff to provide that the draw need not open for the passage of vessels. This proposal is being made because no requests have been made to open the bridge in the past 6 years. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw and yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 27, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida 33130. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Existing regulations provide that the draw shall open on signal if at least 3 hours advance is given. The proposed regulation would provide that the draw need to be opened for passage of vessels. Over the past 6 years the draw was only opened for testing. A replacement fixed bridge with a vertical clearance of about 20 feet above normal high water is in the design phase with constuction anticipated in the spring of 1988. The Oklawaha is a completed federal project with a cleared channel depth of 4 feet to Leesburg. No additional improvements are planned for the waterway and the adjacent cross Florida Barge Canal is in an inactive status. It is reasonable to assume that navigation upon the waterway will not change in the foreseeable future.

Economic Assessment and Certification:

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory polices and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge has not been opened for vessels in the past six years. since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.319 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.319 Oklawaha River.

(a) The draws of the Sharpes Ferry (SR 40) Bridge, mile 55.1, Muclan Farms bridge, mile 63.9, and the Starkes Ferry (SR 42) bridge, mile 73.0 shall open on signal if at least three hours notice is given.

(b) The Draw of the Moss Bluff (SR46) bridge, mile 66.0 need not be opened for the passage of vessels.

(33 U.S.C. 449; 49 CFR 1.46(a)(5); 33 CFR 1.05-1(g)(3))

Dated: April 26, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 85-11499 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[SWH-FRL 2834-2]

Hazardous Waste Management System: Definition of Solid Waste and Standards for the Management of Specific Wastes and Specific Types of Facilties

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On January 11, 1985 (50 FR 1684), EPA proposed regulations regarding hazardous waste and used oil burned for energy recovery in boilers and industrial furnaces. A number of questions have been raised in this rulemaking regarding the jurisdictional and regulatory status of certain reclaimed oils. We, therefore, are reopening the comment period on a limited set of issues regarding reclaimed oils.

DATE: Comments on this notice are due June 12, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information contact, Matthew A. Straus, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. See 50 *FR* 614. Among other things, this rulemaking defined which secondary materials are wastes when burned for energy recovery. In a related rulemaking proposed on January 11, 1985, EPA proposed to amend its existing regulations to begin to regulate those hazardous wastes and contaminated used oils burned for energy recovery. The proposal contains both substantive standards on actual burning, and administrative controls on persons who market and burn hazardous waste and contaminated used oil for energy recovery. Thus, these two rulemakings begin to lay out EPA's strategy for controlling hazardous wastes and used oils burned for energy recovery.

Since these publications appeared in the **Federal Register**, EPA has received a number of questions concerning the regulatory status of oils that are recovered from hazardous wastes that are generated at a petroleum refinery and which recovered oils are fed back to the petroleum refinery for processing. The issue of whether such oils should be classified as wastes or products is a difficult one, and one on which the Agency would like further public comment. Under amended § 261.3(c)(2) (50 *FR* 664), reclaimed materials that are recovered from a hazardous waste are generally not considered to be a waste. However, this general principle does not apply if the recovered material is used as a fuel or is incorporated into a fuel; in addition, any fuels that contain these wastes likewise are solid wastes. *Id.* One possible reading of this provision is that oils that are recovered at a petroleum refinery from treatment of hazardous waste indigenous to petroleum refining (*i.e.*,) oil recovered from the slop oil system that contained hazardous wastes), and that are put back into the refining process are still hazardous wastes, as are the fuels derived from processing these materials. (As explained in the January 11 proposed rule, and in a Technical Correction Notice to the definition of solid waste, all of these fuels are presently exempt from regulation to the extent they are hazardous waste fuels. See 50 FR at 1689-90 and 50 FR 14216, April 11, 1985.) EPA would like to receive further comment on this reading of the rules. In particular, commenters should address the relationship of the rules of RCRA amended sections 3004(r)(2) and (3), which deal explicitly with the question of indigenous petroleum refining wastes that are reintroduced into the refining process.

Since the recovered oil may be similar in composition to the raw crude oil used in the refining process, and the practice of reintroducing the reclaimed oil to the refining process is widespread, the Agency would also like comment as to the product-like nature of these recovered oils. In particular, the Agency would like comment on whether this practice is potentially eligible for the closed-loop variance in § 260.31(b) based on the factors cited in that section (§ 260.30(b)(1)-(8)) of the January 4 regulations. See 50 FR 662. Commenters also should indicate how the levels of toxic metals in the recovered oils compare to the levels found in crude oil.

EPA will deal with these comments as part of its rulemaking on hazardous waste fuels and used oil fuels as part of its consideration of the effects of reintroduction of wastes to the petroleum refining process (see 50 FR 1689-1690.)

Dated: May 2, 1985.

Jack W. McGraw,

Assistant Administrator.

[FR Doc. 85-11399 Filed 5-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84-902; RM-3975, FCC 85-236]

Allocation of Additional Channels in the 470-512 MHz Band for Public Safety and Other Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has issued a Further Notice of Proposed Rule Making which proposes three alternatives in addition to the one proposed in its October 1984 Notice. These alternatives are proposed to permit the Los Angeles County Sheriff to construct a communications system suitable for his Department while minimizing the effect on television reception in the Los Angeles area. The Sheriff maintains his existing system is inadequate to satisfy his present and future requirements. In addition to its outstanding proposal that the Sheriff use UHF-TV Channel 19 spectrum, the Commission's Further Notice of Proposed Rule Making proposes

alternatively to permit the Sheriff to use either portions of Channel 16, Channels 19 and 15, or Channels 19 and 14.

DATES: Comments are due June 13, 1985. Reply comments are due June 28, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Don Precure, Office of Science and Technology, Room 7314, 2025 "M" Street NW, Washington, DC 20554, (202) 653-8170.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 2, 73, and 90

Frequency allocations, Radio.

Further Notice of Proposed Rule Making

In the matter of Amendment of Part 90 and Part 73 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470—512 MHz for Public Safety and other Land Mobile Services; Gen. Docket 84-902, RM-3975, FCC 85-236.

Adopted: May 1, 1985.
Released: May 7, 1985.

By the Commission.

I. Introduction

1. On September 26, 1984, the Commission adopted a Notice of Proposed Rulemaking ("*Notice*") [1] to allow the use of Channel 19 frequencies for public safety services in Los Angeles. This *Notice* was in response to a petition (RM-3975) filed by the Los Angeles County Sheriff's Department ("Sheriff"). On December 7, 1984, the Sheriff filed a Motion to Modify the *Notice* ("Motion") to consider use of Channel 16 as an alternative to the use of Channel 19. Comments were filed both supporting and opposing this motion.[2] This Further Notice discusses the alternative requested by the Sheriff and proposes to considere it and other alternatives that offer the possibility of relief.

2. Channel 19 was initially proposed because it appeared to offer a solution for the Sheriff's public safety spectrum needs without any loss of full-powered television service. The Sheriff had asserted that a system could be engineered to meet his needs without causing interference to TV reception. A test plan, to include both laboratory work and field tests, was devised to demonstrate the feasibility of his use of Channel 19 frequencies. In his Motion, the Sheriff includes his analysis of preliminary results of laboratory tests performed for him by an independent consulting firm. The Sheriff concludes that the interference to Channel 18 may, in some areas and on some television receivers, be greater than originally anticipated. Consequently, sufficient flexibility in locating land mobile facilities operating on Channel 19 may not be obtainable. The Sheriff has requested that this proceeding be broadened to include an alternative, use of Channel 16 frequencies, that would not cause interference to the reception of the signal and operating television station.[3] On January 11, 1985, the Sheriff submitted the consultant's report on which his recommendation is based.[4]

II. Discussion

3. After careful review of the Sheriff's findings as well as the comments of various parties to both the Motion and the *Notice*,[5] the Commission agrees that alternatives to the proposed use of Channel 19 should be considered before a final decision in this matter is made. We will expand this proceeding to include those alternatives for several reasons. First, laboratory test results on the use of Channel 19, particularly on the lower portion, cause enough concern about potential interference to Channel 18 that other means of meeting the Sheriff's communications requirements need to be explored so that we can properly balance the competng concerns and alternatives. Second, we believe that there are other alternatives in addition to Channel 19 that may serve the Sheriff's needs. With a variety of viable alternatives presented for consideration and public comment, the Commission can analyze and compare each alternative from the standpoint of impact on television service as well as the ability to satisfy the Sheriff's requirements. This will provide the Commission with a complete record on which to base its decision. Those alternatives proposed are described below in paragraph 13 through 25.

4. With regard to the outstanding proposal to use Channel 19, the Sheriff has based his current position on laboratory tests conducted by his consultant. The Sheriff had planned to perform field tests showing the extent to which system engineering could minimize interference to TV reception. In his Test Report, the Sheriff states:

> (I)t was determined that filed tests would contain variable such as EMI from other sources and degradation of reception due to propagation anomalies which would produce inaccurate results. Therefore field tests were not deemed to be sufficiently reliable to produce a valid base of information. The anomalies were eliminated in the laboratory tests.[6]

The purpose of filed tests, however, would be to demonstrate performance despite the variances which, at times, are found in every locale. While it is possible to eliminate most of these variances in the laboratory, it is, unfortunately, not possible to do so in the filed. The need for a field test to support use of Channel 19 is not obviated by the Test Report or the mathmatical propagation model filed by the Sheriff. Should the Channel 19 alternative become the favored solution to the Sheriff's needs, we believe a field demonstration may still be necessary before routine use by the Sheriff can be authorized.

5. With regard to the alternatives set forth below, considerable information and studies have been filed from which these alternatives were developed. Many commenters made specific recommendations, while others provided data which supported certain aspects of the alternatives to be considered. The Sheriff, for example, submitted studies questioning the use of Channel 19 and recommended that Channel 16 be considered as an alternative. The results of these Channel 19 studies also suggest that land mobile could make use of a portion of the first adjacent channel to an existing television station. The Sheriff's study indicates that the interference potential to television Channel 18 reception from land mobile operation on the upper portion of Channel 19 would be no greater than from land mobile operation on Channel 20. Since Channel 20 has been used successfully for land mobile operations in the Los Angeles area for the last decade, it appears that utilization of the upper portion of Channel 19 by the Sheriff is feasible. Similarly, the lower portion of Channel

---

[1] *Notice of Proposed Rulemaking* in Gen. Docket 84-209, FCC 84-444, 49 FR 45875, (adopted November 21, 1984) (hereafter cited as *Notice*).

[2] Comments were filed by Channel Islands Television Corp., California Broadcasting Corp., the Association of Maximum Service Telecasters, and Global Television, Inc. Global was licensed to operate station KSCI-TV Channel 18 in San Bernardino. The license was assigned to KSCI, Inc., effective January 1, 1985.

[3] See Motion to Modify, at 8.

[4] "Report of Tests Conducted to Determine Impact of Public Safety Land Mobile Operation Operating in Adjacent Channel 19 Spectrum Upon Reception of Station KSCI, Channel 18 San Bernardino, California" ("Test Report"). At the Sheriff's request, comment and replies on the *Notice* were extended to February 11 and 26, 1985, respectively, to allow the public 30 days to review this Test Report. Subsequently, on Feb. 5, 1985, the Sheriff submitted additional material "Report of Terrain Modeled Service Area, KSCI, San Bernardino, California".

[5] For a listing of those who filed comments, see Appendix 1.

[6] Test Report at 2.

15 could be used by land mobile without any greater potential for interference to the proposed Channel 16 station than that from the existing land mobile use of Channel 14 (a second adjacent channel to Channel 16). Therefore, in addition to the use of Channel 16 we propose for consideration two other alternatives incorporating the concept of land mobile use of portions of first adjacent channels to television stations.

6. In the comments, several alternatives other than those described herein were suggested. The Association of Maximum Service Telecasters ("MST"), for example, indicates that UHF–TV channels, other than Channels 16 and 19 could be used by the sheriff in Los Angeles. UHF–TV channels 26, 32, 48, 54 and 66 are indicated as possible candidates. MST also suggests that consideration be given to other frequency bands such as the 900 MHz "reserve" and the 216–225 MHz bands. While these alternatives suggested by MST are noteworthy, the Commission does not consider them to be promising in the near term. As MST points out, land mobile equipment for use above Channel 20 and below Channel 70 may not be readily available to the Sheriff. Similarly, use of the 900 MHz reserve spectrum does not offer a near-term solution for the Sheriff's problem since the Commission only recently adopted a proposal to make spectrum at 900 MHz available to public safety.[7] With regard to the 216–225 MHz band, MST notes that operational restrictions would be required to protect the adjacent Channel 13 (210–216 MHz). Such restrictions make this alternative unfavorable. These alternatives, although not part of our proposal, are in any case open for comment.

The Sheriff's Requirements

7. The Sheriff currently operates two basic systems: a "patrol" system operating in the 39 MHz band and an "invetigative" system in the 470 MHz band. His petition and supplement describe two problems: excessive time delays on both his systems due to channel congestion and his inability to equip his patrol officers with suitable portable hand-held radios because 39 MHz frequencies are incompatible with such units. We issued our *Notice* proposing Channel 19 frequencies because we were convinced that the Sheriff's patrol officers, like officers in other cities, need to be equipped with portable radios.[8] We did not reach the issue of spectrum congestion in the *Notice* and do not need to reach it here.

8. In his comments and reply comments to our *Notice*, the Sheriff has described requirements in addition to the portable hand-held unit requirement that caused us to initiate this proceeding. He describes his proposed system as consisting of 50 channels for voice and 5 channels for digital data. The integrated portable radio voice system would use 48-channel portables with long-range repeaters on each channel to extend each unit's range. Each portable unit would have automatic digital unit number identification, emergency "trigger", and digital voice encryption capability. Each mobile unit would have a high speed digital mobile terminal.[9] Both portable and mobile units should be capable of operating in the "talkaround" or simplex mode. To accommodiate this system, the Sheriff states that he needs 4.4 MHz of contiguous spectrum which will permit the location of base stations "at virtually any point in the County" with power up to 1000 watts and the operation of 50-watt mobiles and 5-watt portables "anywhere in the County".[10] Thus he argues in his reply comments that split-channel operation, using frequencies from more than one television channel, is not appropriate because suitable equipment is not available to meet his needs.[11]

9. We do not agree that split-channel operation should not be considered in this proceeding. Indeed, in light of both the data regarding Channel 19 frequencies submitted in the Test Report and the pending applications to construct a full service television station on Channel 16 in Ventura, California, we believe that public safety land mobile use of frequencies from both the upper portion of Channel 19 and the lower portion of Channel 15 may offer the most satisfactory solution to the Sheriff's spectrum problem, without depriving any community of full service television.

10. Split-channel operation using Channels 19 and 15 dismissed by the Sheriff by noting "bandwidth" covered by available equipments and stating that the 27 MHz separation between these channels is greater than that available in existing equipment. The Sheriff, however, is treating as synonymous two terms that are unrelated. Split-channel operation does not require that equipment have a bandwidth covering the enter frequency range included by the separated channels. Split-channel mobile equipment is in use today in Boston, Chicago, Cleveland, Detroit, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Washington. split-channel mobile equipment used in Los Angeles by common carriers on channels 20 and 14 have a separation of 36 MHz. Portables capable of "talkaround" on both Channels 19 and 15 are similarly available.[12]

11. Finally, the Sheriff states that only one company makes the digital scrambling equipment he requires and that equipment "can only accommodate a 12 MHz spacing between transmit and receive channels" and therefore cannot be used on Channels 19/15. This is a repeat of the "bandwidth" vs. "separation" argument already discussed. However, manufacturers other than the one whose radio is described by the Sheriff report no problems with split-channel operation. Also, we are aware that most police departments desiring digital voice encryption achieve it by using an external encryption device. These devices are available from a number of sources, are compatible with most land mobile equipment, and can be limited in use to only those officers needing encryption without otherwise affecting the compatability of their radios with other radios in the system.[13]

12. Split-channel operation appears viable and we therefore propose alternatives employing such operation in addition to our outstanding proposal regarding the reallocation of Channel 19 for use by the Sheriff. We recognize the Sheriff's assertion that such alternatives are less desirable than having a single full television channel alloted for his use. However, as is evident from both the Test Report and the Discussion herein, no solution is without problems from some perspective. We are seeking here a solution which minimizes the problems to all who might be affected, including the public, while satisfactorily meeting the Sheriff's need for spectrum suitable for portable hand-held units. We believe that the additional requirements can be met, at least to some extent, from the alternatives being considered here, but we caution the

[7] *See Notice of Proposed Rulemaking* in Gen. Docket 84–1233, FCC 84–575, 50 FR 1582 (Adopted November 21, 1984).

[8] See *Notice, supra*, at 5.

[9] Comments of the Los Angeles County Sheriff's Department, at 16–19.

[10] Comments of the Los Angeles County Sheriff's Department, at 21.

[11] Reply Comments of the Los Angeles County Sheriff's Department, at 15.

[12] Mobile equipment for 19/15 operation is available from the catalog of at least one manufacturer with no price premium. Portables are available from another, and base equipment is the same as for conventional operation.

[13] While the Sheriff has stated an encryption requirement, he has not provided information about this need or its scope.

Sheriff that he may have to make some tradeoffs in his system design or equipment selection to take best advantage of any spectrum we may make available at the conclusion of this proceeding.

III. Proposal

13. The Commission proposes three alternatives for consideration in this proceeding in addition to the use of Channel 19 previously proposed. These are:

1. Permit Channel 16 to be used by the Sheriff within Los Angeles County.

2. Permit portions of Channel 19 and portions of Channel 15 to be used by the Sheriff within Los Angeles County.

3. Permit protions of Channel 19, matched with portions of Channel 14, to be used by the Sheriff within Los Angeles County.

Alternative 1: Channel 16

14. The Sheriff has requested that Channel 16 be made available for his use should it be decided excessive interference would accompany his use of Channel 19 as proposed in our original *Notice*. While we agree with the Sheriff that land mobile use of Channel 16 in Los Angeles is practical in that there should be no interference to any existing television station,[14] we also note such use would preclude the granting of a TV assignment on the Channel 16 allotment for Ventura. Competing applications had been filed for the allotment and an Initial Hearing Decision was released. This decision was appealed and the case was remanded to the Adminstrative Law Judge for a further hearing. The Sheriff points out that since Channel 41 was recently allotted to Ventura it can be considered as a substitute channel for the parties to the Channel 16 hearing proceeding. However, this would result in a net loss of one of two TV channels currently allotted in Ventura. Furthermore, we note that Channel 41 cannot be sued by the present applicants in the Channel 16 compearative hearing without substantial modifications to their applications, including selection of a new site meeting the Commission's technical requirements.[15] In light of the time and expense spent by the parties in prosecuting the Channel 16 applications to date, we have serious reservations about imposing this burden on the applicants, the community of Ventura, and the Commission at this late stage in the Channel 16 proceeding, particularly since we believe the Sheriff's requirements can be met from other spectrum.

15. The other alternatives proposed herein, added to our outstanding proposal regarding the reallocation of Channel 19, provide flexibility in selecting an acceptable solution to the Sheriff's near-term needs. Therefore, we tentatively conclude that Channel 16 is not a desirable alternative, although we welcome comments on this proposal.[16]

Alternative 2: Channel 19/15

16. As mentioned in paragraph 5 above, studies indicate that the Sheriff could operate in portions of first adjacent channels to television stations and could obtain from 50 to 80 land mobile channels. Specifically, upper portions of Channel 19 (503–506 MHz) and lower portions of Channel 15 (476–479 MHz) can be used with protection to television reception on Channels 16 or 18 comparable to that adopted in Docket 18261. This alternative is supported in the record.

17. The Sheriff asserts that use of the upper portion of the first adjacent channel to Channel 18 (*i.e.*, Channel 19) has no greater potential for interference to television reception than does use of the second adjacent channel (Channel 20). He states:

> Moreover, when land mobile operation on the upper half of the first adjacent channel (*i.e.*, that part of the channel which is 3 MHz distant from the operating TV channel) is considered, there is no perceptible interference caused to the reception of the television station until the undesired-to-desired ratio reaches approximately 40 dB. This latter level of performance is similar to second channel performance and means that, for practical purposes, the upper half of the first adjacent channel is no different than the second adjacent channel on which sharing is now allowed under the conservative standards adopted in Docket 18261.[17]

18. Comments from broadcast parties support the Sheriff's contention. KSCI–TV, Channel 18 in San Bernardino, expresses its concern about interference from land mobile use of Channel 19. However, this concern centers on the use of the lower portion of Channel 19 by mobile units, which is not proposed in this alternative. No use of lower Channel 19 frequencies of any kind is proposed in this alternative. The Association of Maximum Service Telecasters ("MST") states:

> Although even on the upper 1.5 MHz of channel 19 (504.5–506 MHz) the interfering range of a base station is large, it may be possible, through very careful siting, to use those frequencies for base stations without objectionable interference to channel 18 service. (comments, pg. 3)

MST further states:

> As many as sixty 25–kHz land mobile channels could be derived from the upper 1.5 MHz of channel 19 frequencies tested by the (Sheriff's) Department. (comments, pg. 4)

19. For similar reasons, land mobile use of "low 15" should not interfere with the proposed Channel 16 station near Ventura. Channel 15 is a first adjacent channel and the test data shows such usage is no more troublesome than use of the second adjacent channel, Channel 14, which has been successfully used by land mobile for the past decade under rules adopted in Docket 18261. The use of any portion of Channel 15 by land mobile would be co-channel to the existing TV station KPBS–TV, Channel 15 in San Diego. With apropriate precautions, we believe that a public safety system could be engineered to provide adequate protection to TV reception of KPBS.[18]

20. The Sheriff, in his Motion, encourages innovation in finding the best solution for his needs. He cites an earlier example where the Commission allowed land mobile operation with mobiles on one TV channel and base stations on another.

---

[14] In order to protect Channel 17 in Bakersfield in accordance with Docket 18261 protection criteria, certain site restrictions might be required. In his filing, the Sheriff recognizes this limitation and points out that because of the mountainous region between the city of Bakersfield and Los Angeles County, terrain shielding could be an effective means of protecting Channel 17 viewers from potential interference from land mobile signals in Los Angeles County. *See* pp. 4–5 of Appendix B to Sheriff's comments filed Feb. 11, 1985.

[15] Other possible substitutes suffer from the same problems.

[16] On October 3, 1984, a lottery was held among eight applicants proposing low power television and television translator service on Channel 16 in the Los Angeles metropolitan area (L84–240). The translator application of Neighborhood TV Company, Inc. ("Neighborhood") was chosen as the tentative selectee of this lottery. Subsequently, the Los Angeles County Sheriff's Department filed a petition to deny this application or, alternatively, to defer a grant to Neighborhood pending the outcome of this proceeding. Since we acknowledge that the proposed low power station would conflict with the Sheriff's proposal on Channel 16 and possibly with other proposals made herein, a low power grant on this channel will await the outcome of this proceeding.

[17] The 40 dB figure referred to here is based on the Test Report (*supra* footnote 4) which reported the 40 dB figure at frequencies 4.5 megahertz from the edge of Channel 18 (504.6375 MHz). While this reported result directly supports land mobile use of 1.5 megahertz of "upper 19", it only implies support of the 3 megahertz the Sheriff speaks of here.

[18] With regard to KPBS, current technical rules adopted in Docket 18261 would permit use of Channel 15 by mobile or portable units with 50 watts of effective radiated power anywhere in Los Angeles County but would require power and height reductions if base stations were sited in the southernmost portions of the County.

There is ample precedent for the Commission to seek alternative methods of meeting a public need for additional frequencies. In 1970, the Commission determined that a public need existed for additional DPLMRS in the Pittsburgh area. Channel 18 therefore was allocated for this purpose. However, the Commission later became aware that the Channel 18 frequencies which were to be used in the DPLMRS would be unusable because operation on them could cause destructive interference to nearby UHF television stations on Channels 17 and 19. Therefore, the Commission, in order to meet the need, used the next best alternative, which was to reassign half of the Channel 14 frequencies for mobile unit use. The need by the Sheriff for additional frequency space requires similar creative efforts by the Commission.[19]

In the case cited by the Sheriff, mobile operation on Channel 18 frequencies could have caused interference to adjacent channel TV operations for some distance from the mobiles whenever the mobiles transmitted. However, the DPLMRS service also had available frequencies in Channel 14 where land mobile operations did not cause interference. Interference from mobile units, whose locations are not readily controlled, was avoided by allowing mobile units to use the "base" Channel 14 frequencies, and using both the "base" and the "mobile" Channel 18 frequencies for base stations only. No television interference resulted from Channel 18 base stations since their location and operation could be carefully controlled. The alternative we propose here is similar.

21. Base station equipment capable of transmitting in one TV channel (such as "high 19") and receiving in another (such as "low 15") is routinely available without any price penalty. Base receivers and transmitters are normally packaged separately rather than combined on a single chassis. Mobile equipment does not operate across the entire 470–512 MHz band may require module substitution or shifting of existing components to support this alternative. This is not a significant effort and should allow for the availability of equipment of an off-the-shelf, cost effective basis. Administering a new line of equipment for this particular operation may place a slight premium on the cost of this equipment.

22. Unlike the Channel 19 alternative proposed in the *Notice*, this alternative would provide protection to Channel 18 reception comparable to that afforded broadcast services by land mobile operation under the criteria established in Docket 18261. Further, unlike use of Channel 16, no full service television operation is precluded by this alternative.

Alternative 3: Channel 19/14

23. In making the proposal above to pair frequencies from the upper portion of Channel 19 with frequencies from the lower portion of Channel 15, we have assumed that land mobile use of the Channel 15 frequencies will cause no greater interference to proposed Channel 16 use in Ventura than land mobile use of Channel 14 frequencies would. We have also assumed that the Sheriff can avoid causing harmful interference to the reception of station KPBS, Channel 15 in San Diego, California, within that station's Grade B service contour. However, in the event there are unanticipated problems with land mobile use of Channel 15 frequencies, we are also proposing to allow pairing of frequencies from the upper portion of Channel 19 with those frequencies from Channel 14 now licensed to the Sheriff.

24. The Sheriff currently holds licenses for 10 channel-pairs (10 mobile frequencies and 10 base frequencies) in the 470–476 MHz band (UHF–TV Channel 14). His 10 channels could be doubled if all 20 of his Channel 14 frequencies were paired with 20 matching frequencies in "high 19", while the remaining portion of "high 19" could be used to accommodate other requirements described by the Sheriff.[20] The use of "high 19" here is similar to its use in Alternative 2.[21]

25. This alternative would provide only 20 channel-pairs for the Sheriff where he has requested 55. However, it would provide at least some interim relief to the Sheriff pending the outcome of the Commission's rulemaking in Gen Docket 84–1233 and the Commission's study of long-term public safety needs in PR Docket 84–232.[22] The Sheriff would have the option of increasing the capacity of this spectrum somewhat through adaptation to his needs of the trunked mobile technology now used for the common carrier Domestic Public Land Mobile Radio Service in the lower UHF television band. However, since the portable units available in this band are not trunked, accommodation of portable units using conventional channel assignment techniques would limit the benefitrs possible from adapting a common carrier trunked system to public safety use. As we said at paragraph 17 of our *Notice*, we do not believe that trunking or the emergent narrowband technology can provide a current solution in this case. Thus, while we are proposing a means to increase somewhat the capacity of the Sheriff's present UHF spectrum, we view this as a less desirable alterntive to be pursued only if our other proposals concerning use of Channel 19 frequencies prove infeasible.

IV. Conclusions

26. We are proposing three alternatives as possible options for the Sheriff to construct a modern communications system, compatible with operation of portable units, as well as to adequately serve his traffic today and for the next several years. We have, however, tentatively concluded that the Channel 16 proposal is not desirable. The other two alternatives, if adopted, would not significantly disrupt receiption of the signal from any existing TV station nor affect any existing TV allotment. All three alternatives are specific in that they only address the problem of the Sheriff's stated present inability to update his communications system in order to meet sufficiently the public safety needs of the Los Angeles County residents. As we recognized in our *Notice*, the Sheriff needs to equip his patrol officers with portable radios. The alternatives proposed herein do not address the more general issue of nationwide public safety requirements contained in PR Docket 84–232.

27. We will consider the tests underway in Los Angeles, the resulting reports, comments supporting and opposing the tests, and comments associated with this Further Notice as well as our previously-issued *Notice* regarding the use of Channel 19 in determining whether any of the proposed alternative solutions is feasible and in deciding whether a rulemaking or waiver is more appropriate.

[19] Motion to Modify, at 11, 12.

[20] For example, the Sheriff could use the remaining portions of "high 19" to construct and operate a "portable-only" system. Such a system is practical if technical problems are avoided by locating base receivers some distance from base transmitters. The Sheriff has stated his intention to use separate receive sites for channels supporting portable units.

[21] We are aware "low 15" frequencies could be used instead of "high 19" as proposed here. Either could be paired with the Sheriff's current Channel 14 frequencies. We propose the latter because it appears to provide more flexibility in designing a land mobile system. However, if our proposal to make spectrum available from both Channel 19 and Channel 15 is adopted, there is no reason why the Sheriff could not integrate his Channel 14 spectrum into a new system to meet special needs such as digital voice encryption.

[22] *See Notice of Inquiry* in PR Docket 84–232, 49 FR 9754 (adopted March 1, 1984).

V. Procedural Matters

28. Authority for issuance of this Further Notice of Proposed Rulemaking is contained in sections 4(i), 302, 303 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 302, 303 and 316. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before June 13, 1985, and reply comments on or before June 28, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. The Sheriff's Motion to Modify is GRANTED as set forth above.

29. The Secretary is directed to serve a copy of this Further Notice by First Class Mail to those applicants for low power television stations listed in the attached Appendix 2.

30. The Secretary is further directed to serve a copy of this Further Notice by Certified Mail on KSCI, Inc., ("KSCI"), the licensee of KSCI-TV, Channel 18 San Bernardino, California; on the Board of Trustees the California State University for San Diego State University, the licensee of KPBS-TV, Channel 15 San Diego, California; on California Broadcasting Corporation and on Channel Islands Television Corporation, applicants for the Channel 16 allotment in San Bernardino, California, and on Neighborhood TV Company, Inc., tentative selectee of the Channel 16 low-power TV lottery in Los Angeles.

31. All parties in this proceeding are afforded an opportunity to submit comments on the relevant proposals contained herein within the comment and reply period specified above and specifically to state reasons why such actions should not be taken, if they have any objection.

32. This is restricted rule making subject to §§ 1.1207, 1.1209 and 1.1229 of the Commission's Rules. For further information concerning this proceeding, contact Don Precure, Office of Science and Technology, (202) 653-8170. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments and potential modifications to outstanding broadcast licenses. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the parties constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

33. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96-354, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. It does not propose to display anyone assigned to any of the bands being considered in this proposal. Any allocation alternative being considered herein would only provide spectrum, which is presently unused by its assigned service, for shared use by public safety users.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX 1

Commenters on the Notice of Proposed Rulemaking in Gen. Docket 84-902

American Petroleum Institute, Central Committee on Telecommunications
Associated Public-Safety Communications Officers, Inc.
Association of Maximum Service Telecasters [1]
California Broadcasting Corporation [2]
California Public-Safety Radio Association, Inc.
California Peace Officer's Association
California Public-Safety Radio Association, Inc.
City of Glendora
City of Pasadena
City of San Buenaventura
County of Los Angeles, Board of Supervisors [1]
County of Orange, California, Letters of endorsement attached from:
  City of Santa Ana
  City of Garden Grove
  City of Irvine
  City of Orange
  City of Anaheim
County of Riverside
County of San Bernardino
County of Ventura, Board of Supervisors
Electronic Industries Association, Consumer Electronics Group
International Association of Chiefs of Police
International Association of Fire Chiefs, Inc.
International Municipal Signal Association
KGET TV, Inc. (Channel 17 Bakersfield) [2]
KSCI, Inc. (Channel 18, San Bernardino) [1]
Los Angeles County Police Chief's Association
Los Angeles County Sheriff's Department [1]
Los Angeles Police Department
National Association of Broadcasters [1]
National Translator Association
Pasadena Police Department
Pomona Police Department
Special Industrial Radio Service Association, Inc.

[1] Filed comments and reply comments.
[2] Filed reply comments only.

APPENDIX 2

LPTV Applicants Possibly Affected by LM Use of Channels Proposed for Use by the Los Angeles County Sheriff

Blacks Desiring Media, Inc., Austin B. Petersen
Howard LP Television, Inc., Bernard B. Petersen
Carter Broadcasting Corp. (Ch. 19), Debra M. Kamp
Connecticut Home Theatre, Gregory A. Petersen
Echonet Corp., Kurt J. Petersen
Figgie Communications, Quentin L. Breen
George Fritzinger, Theresa P. Miller
Minority Communications, Cassidyne Productions Inc.
N & K LPTV Inc., Charles Billings
Wade Comm. Group Inc., Metro TV
Baby Boom Broadcasting, Media Properties
American Television Network, Millard V. Oakley
Catholic Views Broadcasting, Northcoast Broadcast Corp.
Tel-Radio Communications Properties, Vistacom
High Desert Broadcasting, Hi-Desert Publishing Co.
Arnold M. Applebaum (Ridgecrest), Arnold N. Applebaum (Paso Robles)
Evangelina Garcia Garza, Marie G. Bernier
Evarista Romero, Response Broadcsting Corp. (Ch. 19)
Jo Ann's Balloon Boutique, Eddie Robinson
Juan Ramon Ortiz, Ventures in Communications, Inc.
Juan Villareal, Citizen Television Corp.
Lidia Rodriguez, Star Seven Broadcasting
Mike A. Mendoza, Canal Cine Hispanic, Inc.
Minerva Rodriquez Frias, Carter Broadcasting Corp. (Ch. 16)
Latin America TV Ltd., Natl. Comm. Affiliates of Cal.
Response Broadcasting Corp. (Ch. 16)

[FR Doc. 85-11494 Filed 5-10-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 12]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes three new types of standardized replaceable light sources to be used in replaceable bulb headlamp system on motor vehicles. In the two light source system designed by General Motors Corporation "(GM)" one source would provide the upper beam, and the other the lower beam. The thrid proposed light source, a variation of the European H4 bulb would incorporate both upper and lower beam filaments. To differentiate replaceable light sources, it is further proposed that the present dual filament light source be designated "HB1" (Headlamp Bulb 1), the new GM bulbs "HB3", and "HB4" and the H4 variant "HB2".

The notice reiterates many aspects of the proposal published on December 7, 1984 (49 FR 47880) to allow use of four HB1 light sources in replaceable bulb headlamp systems.

This rulemaking action implements the agency's grants of petitions for rulemaking by GM and Volkswagen of America Corp. "(VW)".

DATE: Comment closing date for the proposal is June 27, 1985. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). Effective date of the amendment would be 30 days after publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket number and notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine (HB3 and HB4) and Jere Medlin (HB2), Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590. (202–426–2720).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, to allow the use of a replaceable bulb headlamp system, (48 FR 24690). This system is comprised of two headlamps, each with a standardized replaceable light source containing both an upper and lower beam filament.

Subsequently, General Motors Corporation ("GM") petitioned the agency for rulemaking to allow a two-lamp system with two standard dual-filament replaceable light sources in a single cavity. Volkswagen of America ("VW") petitioned that a four-lamp system be permitted, each with its own standard dual filament replaceable light source. The agency granted those petitions and in implementation published a notice of proposed rulemaking on December 7, 1984 (49 FR 47880).

Subsequent to its initial petition, on January 19, 1984, GM asked for further rulemaking to allow "the use of a pair of new standardized replaceable light sources for headlamps", one to provide the upper beam, and the other the lower. Various benefits were ascribed to them. Each incorporates an axial filament rather than a transverse one, thus allowing headlamps with a lower profile and concomitant lowering of the front end to improve the aerodynamic qualities of motor vehicles. The tolerance of the filament locations with respect to the mounting plane base of the bulb would be reduced by over one-half of that presently allowed to improve mechanical aiming accuracy. GM recommended that minimum performance levels at various beam test points be increased. After review, the agency granted GM's petition.

Specifically, in its petition, GM presented its views that the dual filament standardized replaceable light source presently allowed had certain design characteristics that limited its potential application in future, low profile headlamp systems. These were a transverse filament configuration which requires a relatively large lamp reflector height, an O-ring seal which adds unnecessary cost to a vented headlamp assembly an also makes bulb removal difficult, a large filament positioning tolerance which makes it difficult to provide the mechanical aim consistency and photometric tolerance that it deems desirable, and the long length of the light source base which requires more space to be left behind the headlamp to allow the light source to be easily changed. GM has designed two new single filament halogen bulbs which it believes will overcome these shortcomings of the present dual filament bulb. The bulbs incorporate axial filaments whose positioning will allow smaller bulbs and improved optical characteristics and hence a headlamp of lesser height, and so contribute even further to the aerodynamic efficiency that is being designed into the front ends of motor vehicles. GM has reduced the tolerance of the filament locations with respect to the mounting plane of the bulb base to less than half that allowed on the current bulb, ±0.20 mm in the left-right, up-down, and ahead-behind directions. This will improve accuracy of mechanical aim and also improve the headlamp's photometric performance. To provide more light down the road, GM has designed the bulbs to permit headlamps to meet photometrics similar to that recently adopted for the Type F sealed beam headlamp systems.

In addition, GM has designed headlamps with the new bulbs to be vented, so that an O-ring seal would serve no useful purpose. It recommends, however, that these light sources intended for use in non-vented systems retain the O-ring seal feature of the current standardized replaceable light source, and has so provided in its design of these bulbs for those manufacturers desiring to build semi-sealed headlamps.

This notice also implements the partial grant of a petition for rulemaking submitted by VW to amend Standard No. 108 to allow use of the European H4 type bulb in passenger car replaceable bulb headlamp systems.

The agency has reviewed the GM and VW petitions, and its own past and present rulemaking actions on headlamps. The first issue to be addressed is proliferation. Over the years, the agency sparingly adopted new sealed beam headlighting systems, concerned that the distribution system might not be able to accommodate a variety of lamps for replacement purposes. No discernible problems have occurred. When the replaceable bulb headlamp was adopted in 1983, the agency realized that an infinite number of lens/reflector combinations was possible, but believed that the concerns of proliferation could be met by standardization of the replaceable light source. Since replaceable light sources are more compact than headlamps, it seems logical that retail outlets will have space available to stock not only the existing light source but the additional proposed light sources as well. Because of the design advantage they offer, NHTSA believes it likely, should approval be given, that a large percentage of domestic motor vehicles manufactured from 1987 onward could be equipped with headlamps with the GM-designed smaller light sources, that many European manufacturers may instead prefer an H4 type bulb, and that because of the apparent widespread intended use of these three proposed light sources, there should be no problem with finding replacement sources when needed.

The second issue is the relatively simple one of nomenclature. None was needed for a single standardized light source. But with the advent of three more light sources, designation of each will be necessary to identify and distinguish between the sources and their performance capabilities. Thus NHTSA proposes that the currently allowed dual filament source be known

as HB1 ("Headlamp Bulb 1"), that the modified H4 be known as "HB2" and that the proposed GM upper and lower beam sources be known respectively as "HB3" and "HB4". To help insure correct replacement of light sources by consumers, it is further proposed that each lens of a replaceable bulb system be marked with the three character designation of the light source type used immediately behind it, similar in method to that used in Europe. Figure 3 gives the physical dimensions of the current HB1 source, proposed Figures 19 and 20 contain the dimensions of the HB3 and HB4 sources, and Figures 21 and 22 contain the modifications to the H4 light source and socket resulting in Type HB2.

The next issue is the photometric performance of the lamps. Recently, the agency adopted modified photometrics for the new Type F sealed beam headlighting system (49 FR 50176) developed by GM, and it is proposing similar photometrics in Figures 17 and 18 modified for the HB3 and HB4 light sources. Today, in a separate **Federal Register** notice, the agency is also proposing for the Type F sealed beam headlighting system that the lower beam could be used simultaneously with the upper beam in a four-lamp system. Similarly it is proposed for the HB3 and HB4 light sources that simultaneous use of lower beam and upper beam be permitted because Figure 18 contains limits at the H–V and 4D–V test points restricting maximum output on the upper beam on four lamp systems.

The primary regulatory description of the H4 replaceable light source is contained in Annexes 5 and 6 to ECE Regulation No. 20 (Rev. 1), 1 September 1976. To allow greater flexibility in promulgating a final rule on the H4, should it be adopted, the agency is proposing that the lamp provide, alternatively, the same photometrics as the original standardized replaceable light source, the HB1, or those proposed in Notice 10 to Docket No. 81–11 which are similar to the Type F photometrics recently adopted. The agency therefore seeks comments on the safety implications of a final rule which adopts one of two different photometric requirements proposed for headlamps using Type HB2 light sources. As ECE Regulation No. 20 does not prescribe a durability standard, the agency also proposes that the HB2 should meet the same average life requirements as the HB1, 320 hours for the lower beam, and 150 hours for the upper beam, at 14 volts.

NHTSA believes that some modification to the interface between the bulb and socket is needed to distinguish between existing lamp systems that use the existing H4 bulb and those that would use the proposed HB2 bulb. This modification will help prevent inadvertent misuse of light source and lamp assemblies which may be available and legal for single headlamp motorcycle use under Standard No. 108, but which do not meet all of the specifications set forth for multiple headlamp passenger cars. This proposed action will eliminate any potential safety problem of excessive glare on upper beam which might result from such misuse. Therefore, it is proposed to change the location of one mounting lug and to add a slot in the mounting ring of the bulb and a matching slot and new lug to be located in the socket of the reflector assembly. To assure the capability of mechanical aim, the agency is also proposing specifications and tolerances for fit between the HB2 light source and the headlamp socket which are comparable to those now required for the current HB1 light source. This will help reduce the errors associated with mechanical aiming that would exist if the ECE specifications, which have no socket dimension specifications and are not designed for mechanical aim, were adopted. NHTSA requests that specific attention be directed to these and all the proposed bulb and reflector socket dimensions, and seeks comments on whether these exceed reasonable production tolerance limits. NHTSA also requests revised drawings with any suggestions for other solutions to assure non-interchangeability.

Regarding replaceable bulb headlamps in general, comments by Hella and ETL to Notice 10, Docket No. 81–11 (the proposal, 49 FR 47880, December 7, 1984, to allow systems which use four HB1 light sources) noted that in the temperature and internal heat tests of S6.7, no flash rate is specified for a turn signal that is incorporated in a headlamp housing. The essence of their concerns is that the test for heat build-up from a steady-burning turn signal lamp (which was in the proposal) would be unrealistically stringent because in normal use turn signals flash and are not on continuously. This concern would also apply to tests for lamps which use HB2, HB3, and HB4 light sources. For this reason, NHTSA is proposing to include a flashing rather than a continuously burning turn signal, at the test condition of 90 flashes per minute with a 75 ±2% current "on-time" performance. This represents a more realistic condition than the current requirement for a steady-burning turn signal lamp. It is based upon the permissible area of the polygon shown in Figure 1 of SAE J590b *Turn Signal Flashers*. This would apply to all replaceable bulb headlamps incorporating a turn signal unit.

Because the proposed replaceable light sources have filament locations different than that of the current standardized replaceable light source, the bulb deflection test would be changed to accommodate these differences. The point of deflection would be a specific measured distance from a reference plane instead of being located in reference to the filament. This change is also proposed for the existing standarized replaceable light source but the actual point of deflection would remain the same. Additionally, for only the new light sources, the direction of force application is specified to be radially inward anywhere in the perpendicular plane located at the application point. This is in contrast to the test for the existing light source which implies testing deflection in only one specific radial direction.

This proposal deals with only those headlamp system configurations requested by petitioners, i.e., the use of only HB2 light sources in a headlamp system, or the use of only HB3 and HB4 light sources in a system. NHTSA realizes that other configurations (such as an intermix of HB2 with HB3/HB4 on a single vehicle) are possible, resulting in mixes of light source types within a headlamp system. NHTSA seeks comments on whether there are any safety reasons, such as excessive glare, excessive candela, or insufficient illumination, to prohibit such intermixes; and, conversely, also seeks appropriate photometric and other specifications which would be required to permit such intermix, should commenters deem that course of action desirable.

Paragraph S4.3.1.1.36(a)(2) and Figure 4–1 would be revised to permit greater freedom in the size of the mechanical aiming device locating plate setting markings located on the lenses of replaceable bulb headlamps. A new minimum height of 4 mm. for the setting markings would replace the current 0.25 inch minimum. This proposal is in response to part of a Motor Vehicle Manufacturers Association petition for rulemaking. Legibility of the setting markings is not affected. Additionally, since all three legs of the mechanical aiming device locating plate available in the field are adjustable, it is proposed that the wording pertaining to "horizontal" and "vertical" be modified.

NHTS has considered this proposal and has determined that it is not major within the meaning of Executive Order

12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and placed in the public docket. Since use of the proposed replaceable light source is optional, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the use of headlighting systems.

NHTS has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps and aimer adjusters will be ninimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity for vehicle, headlamp, and replaceable light source manufacturers to plan production and distribution on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

The engineers and lawyer primarily responsible for this proposal are Richard Van Iderstine (HB3 and HB4) and Jere Medlin (HB2) and Taylor Vinson, respectively.

List of Subjects in 40 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 and 571.108, Motor Vehicle Safety Standard No. 108, *Lambs, Reflective Devices, and Associated Equipment*, be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. A new definition "Aiming Reference Plane" would be added to S3 *Definitions to read:*

* * * * *

"Aiming Reference Plane" is the plane which is perpendicular to the longitudinal axis of the vehicle and tangent to the forwardmost aiming pad on the headlamp.

* * * * *

3. The definition of "Replaceable Bulb Headlamp" in S3 *Difinitions* would be revised to read:

* * * * *

"Replaceable bulb headlamp" means a headlamp comprising a bonded lens and reflector assembly and one or two standardized replaceable light sources.

* * * * *

4. The definition of "Standardized replaceable light source" in S3 *Definitions* would be revised to read:

* * * * *

"Standardized replaceable light source" means an assembly of a capsule, base, and terminals as described in Figures 3, 19, 20, or as in Annex 5 (excluding lumen tolerance values) for 12 volt bulbs and Annex 6, ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev. 1/Add. 19/Rev. 1)), 1 September 1976, *Uniform Provisions Concerning the Approval of Motor Vehicle Headlights Emitting an Asymmetrical Passing Beam or a Driving Beam or Both and Equipped with Halogen Lamps (H4 Lamps) and of the Lamps Themselves*, as modified by Figures 21 and 22.

* * * * *

5. In paragraph S4.1.1.36 the word "two" would be removed between the word "with" and the phrase "replaceable bulb headlamps".

6. In paragraph S4.1.1.36, paragraph (a)(1) would be revised to read:

* * * * *

(a) (1) Each replaceable bulb headlamp shall include components which are designed to conform to the applicable specifications of paragraph S4.1.1.38 and paragraph S4.1.1.39, and, as applicable, Figure 3 *Specifications for the Type HB1 Standardized Replaceable Light Source;* Annex 5 (exluding lumen tolerance values) for 12 v. bulbs and Annex 6 of ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev. 1/Add. 19/Rev. 1)), 1 September 1976, *Uniform Provisions Concerning the Approval of Motor Vehicle Headlights Emitting an Asymmetrical Passing Beam or a Driving Beam or Both and Equipped with Halogen Lamps (H4 Lamps) and of the Lamps Themselves*, as modified by Figures 21 and 22 *Specifications for the Type HB2 Standardized Replaceable Light Source:* Figure 19 *Specifications for the Type HB3 Standardized Replaceable Light Source;* or Figure 20 *Specifications for the Type HB4 Standardized Replaceable Light Source*, including filament location, base and socket

dimensions, electrical connector dimensions, and maximum design wattage.

* * * * *

7. In paragraph S4.1.1.36, the last sentence of paragraph (a)(2) would be removed and the following three sentences added:

* * * * *

(a) * * *

(2) * * * Except as provided in paragraph (a)(3), a whole number which represents the distance in tenths of an inch (i.e., 0.3=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens. The height of any number shall be not less than .157 inch (4mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number shall represent the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close to the lens as possible without causing interference.

* * * * *

8. A new paragraph (a)(3) would be added to paragraph S4.1.1.36 to read:

* * * * *

(a) * * *

(3) If the forwardmost aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the lens. The dimension for the outboard aiming pad (Dimension F in Figure 4) shall be followed by the letter "H" and the dimension for the center aiming pad shall be followed by the letter "V". The dimensions shall be expressed in tenths of an inch.

* * * * *

9. A new paragraph (a)(4) would be added to paragraph S4.1.1.36 to read:

* * * * *

(a) * * *

(4) A motor vehicle, other than a motorcycle, may be equipped with any one of the following replaceable bulb headlamp systems:

(i) 2 lamps, each using one HB1 light source,

(ii) 2 lamps, each using two HB1 light sources,

(iii) 2 lamps, each using one HB2 light source,

(iv) 2 lamps, each using two HB2 light sources,

(v) 2 lamps, each using one HB3 an one HB4 light source,

(vi) 4 lamps, each using one HB1 light source,

(vii) 4 lamps, each using one HB2 light source,

(viii) 4 lamps, 2 using one HB3 light source each, and

(ix) 2 using one HB4 light source each.

* * * * *

10. The introductory text of paragraph (b) of paragraph S4.1.1.36 would be revised to read:

* * * * *

(b) Each replaceable bulb headlamp shall be designed to conform to the following sections of the specified SAE Standards and Recommended Practices with any standardized replaceable light source intended for use in such headlamp.

* * * * *

11. Paragraph (b)(2) of S4.1.1.36 would be revised to read:

* * * * *

(b) * * *

(2) Section 3.1—Test Voltage, and Section 3.5—Photometric Design Requirements and Figure 3 of SAE J579c "Sealed Beam Headlamp Units for Motor Vehicles", December 1978,

(A) Including, for a headlamp equipped with a Type HB1 light source, Table 1 of SAE J579c, or

(B) Including, for a headlamp equipped with a Type HB2, HB3, or HB4 light source, the specifications of subparagraph (e) of this paragraph.

(C) The term "aiming plane" in paragraph 3.5 of SAE J579c shall mean "aiming reference plane."

* * * * *

12. In paragraphs (d)(1), (d)(3), (d)(5), (d)(6)(A), (d)(6)(B), and (d)(7) of paragraph S4.1.1.36, the words "of SAE J579c 'Sealed Beam Headlamp Units for Motor Vehicles', December 1978" would be removed and the words "applicable to the headlamp system under test" substituted.

13. Paragraphs (A) and (B) of paragraph S.4.1.1.36(d)(6) would be amended by adding the words "of each standardized replaceable light source" between the phrases "mechanical axis" and "with the exterior surface of the lens".

14a. The following amendments would be made to achieve headlighting systems utilizing Type HB2 light sources, or Type HB3 and HB4 light sources.

A new paragraph (e) would be added to S4.1.1.36 to read:

* * * * *

(e) (1) There shall be no mechanism that allows adjustment of an individual standardized replaceable light source, or adjustment of reflector aim on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by filaments designed for an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing one or two type HB2 standardized replaceable light source(s), shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the upper one if arranged vertically) or single light source, designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978; or

(B) By both light sources, designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles, Dec. 1978.*

(ii) The upper beam shall be provided in one of the following ways;

(A) By the inboard light source (or the lower one if arranged vertically) or single light source, designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles, Dec. 1978; or*

(B) By both light sources, designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single Type HB2 light source, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "U".

(5) The lower and upper beams of a headlamp system consisting of two lamps each containing one Type HB3 and one HB4 light source, shall be provided as follows:

(i) The lower beam shall be produced by the outboard light source (or the uppermost if arranged vertically), designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(6) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single standardized replaceable light source, either Type HB3 or HB4, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "U".

14b. As an alternative to the provisions of paragraph 13a, the following amendments would be made to achieve a headlighting system utilizing only Type HB2 light sources. The proposed amendments for headlighting systems utilizing Type HB3 and HB4 light sources would be only those of amendatory instruction 14a above.

A new paragraph (e) would be added to S4.1.1.36 to read:

* * * * *

(e) (1) There shall be no mechanism that allows adjustment of an individual standardized replaceable light source, or adjustment of reflector aim on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by filaments designed for an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing one Type HB2 light source, or two standardized replaceable light sources (two Type HB2, or one each Type HB3 and HB4) shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) or single light source, designed to conform to the lower beam requirements of Figure 17; or, in the case of lamps with two HB2 light sources,

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) or single light source, designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single light source, either type HB2, HB3 or HB4, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "U".

15. Paragraph S4.1.1.37 would be revised to read:

* * * * *

S4.1.1.37 Each lens-reflector unit manufactured as replacement equipment for a replacement bulb headlamp system shall be designed to conform to the requirements of S4.1.1.36 when any standardized replaceable light source appropriate for such unit is inserted in it.

* * * * *

16. Section 4.1.1.39 would be removed. S4.1.1.40 would be redesignated S4.1.1.38 and revised as follows:

* * * * *

S4.1.1.38 The lens of each replaceable bulb headlamp and the base of each standardized replaceable light source shall be marked as follows:

(a) With the symbol "DOT" horizontally or vertically which shall constitute certification that the headlamp or light source conforms to all applicable Federal motor vehicle safety standards.

(b) The base of each HB2, HB3, and HB4 standardized replaceable light source shall also be marked with the name of the manufacturer or importer, and its HB Type Designation.

(c) The lens of each HB2, HB3, and HB4 replaceable bulb headlamp shall permanently display the standardized replaceable light source Type Designation(s) at the center of the lens in front of each light source.

* * * * *

17. Paragraph S4.1.1.38 would be redesignated S4.1.1.39 and revised as follows:

* * * * *

S4.1.1.39 Each standardized replaceable light source shall conform to the following requirements:

(a) A type HB1 light source shall conform to the dimensions specified in Figure 3 and shall incorporate a silicone O-ring. A Type HB2 light source shall conform to the dimensions specified in Annex 5 for 12 volt bulbs, and Annex 6 of ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev.1/Add.19/Rev.1)), 1 September 1976, as modified by Figures 21 and 22. A Type HB3 light source shall conform to the dimensions specified in Figure 19. A Type HB4 light source shall conform to the dimensions specified in Figure 20.

(b) Each standardized replaceable light source conform to the following general specifications:

Specification	Lower beam	Upper beam
Maximum power, watts:		
HB1	50	70
HB2	66	75
HB3		70
HB4	60	
Luminous flux, lumens:		
HB1	1,067 ± 10%	1,738 ± 10%
HB2	1,000 ± 10%	1,650 ± 10%
HB3		1,700 ± 12%
HB4	1,000 ± 15%	
Minimum average design life, hours: all	320	150

(c) The standardized replaceable light source filament(s) shall be subject to seasoning before measurement of maximum power and luminous flux.

(d) Measurement of maximum power and luminous flux shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage (13.2v for a Type HB2 light source, 12.8v for other light sources). The meaurement of luminous flux is made with the black cap installed on Type HB2 and Type HB4, without the black cap on Type HB1, without the base on Type HB1, and with the base covered with a white cover shown in Figures 19–1 and 20–1 for the HB3 and HB4.

(e) Measurement of average life shall be made at 14.0v for all light sources. Testing is conducted in a completed headlamp assembly, or equivalent, placed in the attitude in which the assembly is to be installed on a motor vehicle.

(f) The capsule, lead wires and/or terminals on each Type HB1 light source, and on each Type HB3 and Type HB4 light source that is manufactured as replacement equipment, shall be installed in the base so as to provide an airtight seal. Such a seal exists on Type HB3 and Type HB4 if no air bubbles appear on the low pressure side after a

light source has been immersed in water for one minute while being subjected to a minimum air pressure of 69 kPa (10 P.S.I.G.) on the glass capsule side.

(g) After the force deflection test conducted in accordance with S7, the permanent deflection of the glass envelope shall not exceed 0.005 in. (0.13mm) in the direction of the applied force.

(h) Each Type HB3 and Type HB4 light source intended as original equipment on a motor vehicle need not be provided with a seal groove, seal, and keyway as shown in Figure 19 and Figure 20. When a seal is provided for replacement equipment, or if used as original equipment, no air bubbles shall appear on the low pressure side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture of 0.678±0.004 in. (17.22±0.10mm) (Type HB3) or 0.875±0.004 in. (22.22±0.1.mm) (Type HB4) and subjected to a minimum air pressure of 69 kPa (10 P.S.I.G.) on the glass capsule side.

* * * * *

18. New paragraphs S4.5.8, S4.5.9 and S4.5.10 would be added to read:

* * * * *

S4.5.8 On a motor vehicle equipped with a headlighting system comprising four replaceable bulb headlamps designed to conform to the photometry of Figure 18, the filaments of the lamps marked "L" may be permanently wired to remain activated when the filaments of the lamps marked "U" are activated.

S4.5.9 The wiring harness or connector assembly of a replaceable bulb headlamp with two identical standardized replaceable light sources or a four-lamp replaceable bulb headlamp system which uses identical light sources in all four lamps shall be designed so that the filaments not intended to be used with the lens prescription in front of such filament shall not be illuminated.

S4.5.10 The filaments in a dual filament standardized replaceable light source shall not be activated simultaneously except either momentarily when switching between beams, or for signalling purposes.

* * * * *

19. Paragraph S6.1 would be revised to read:

* * * * *

S6.1 *Photometry.* A headlamp shall be tested according to paragraph S3.5, Photometric Design Requirements, and Table 1 of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978, or by Figure 17 or 18 of Standard 108, as applicable, after the test specified in S6.2, S6.4, S6.6, S6.7.1, S6.7.2, and S6.8.

* * * * *

20. Paragraphs S6.7 and S6.8 would be revised to read:

* * * * *

S6.7 *Temperature and internal heat tests*—A headlamp with one replaceable standardized light source shall be tested according to S6.7.1(a) and S6.7.2(a). A headlamp with two standardized replaceable light sources shall be tested according to S6.7.1(b), S6.7.1(c), S6.7.2(b) and S6.7.2(c).

S6.7.1 *Temperature cycle.*

S6.7.1(a) *Test for a headlamp with one standardized replaceable light source.* A headlamp, mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the highest combination of filaments wattages, including the headlamp beam plus such other filaments as turn signal, fog lamp, or parking lamp, that are intended to be used simultaneously in the headlamp, shall be energized at design voltage commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute with a 75±2% current "on time". Separate or single test chambers may be used to separate the temperature environment described by the thermal profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.1(b) *Test for the lower beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages, such as turn signal, upper beam, fog lamp, or parking lamp, that are intended to be used simultaneously in the headlamp when operating on lower beam, shall be energized at design voltage simultaneously commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute a 75±2% current "on time". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed opening of the headlamp shall be in their normal operating positions.

S6.7.1(c) *Test for the upper beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on aheadlamp test fixture shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages, such as turn signal, lower beam, fog lamp, or parking lamp, that are intended to be used simultaneously when the headlamp is operating on upper beam, shall be energized at design voltage simultaneously commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute with a 75±2% current "on time". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.2 *Internal Heat Test.*

S6.7.2(a) *Test for a headlamp with one standardized replaceable light source.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point H–V of the upper beam to 25±2% (or the test point ½ °–1½ D °R for the lower beam) of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(a)(1), the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to the indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0 °F (35+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized for one hour in a still air conditon, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature of 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. Photometric output of the upper beam shall be determined according to S6.1.

S6.7.2(b) *Test of the lower beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point ½ °D−1½ °R of the lamp to 25±2% of the output originally measured in the lower beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(b)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0°F (35+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on lower beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. The photometric output of the lamp on lower beam shall be determined according to S6.1.

S6.7.2(c) *Test of the upper beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point H–V of the lamp to 25±2% of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometic output of the lamp has been reduced as specified in S6.7.2(c)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0 °F (33+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. The photometric output of the lamp on the upper beam shall be determined according to S6.1.

S6.8 *Humidity.* The headlamp mounted on a test fixture shall be placed in a controlled environment consisting of a temperature of 100+7−0 °F (38+4−0 °C) with a relative humidity of not less than 90%. All drain holes, breathing devices, and other designed openings shall be in their normal operating positions. The headlamp shall be subjected to 20 consecutive 6-hour test cycles. In each cycle, it shall be energized at design voltage with the highest combination of filament wattages that are intended to be used, including a turn signal flashing at 90 flashes a minute with a 75±2% current "on-time", if so equipped, and then de-energized for 5 hours. After completion of the last cycle, the lamp shall be soaked for 1 hour at 73+7−0 °F (20+4−0 °C) and relative humidity of 40±10% before it is removed for photometric testing. The headlamp shall be tested for photometrics at 10±1 minutes following completion of the humidity test.

* * * * *

21. Section S7 would be revised to read:

S7 *Deflection test for standardized replaceable light sources.* Each Type HB1 standardized replaceable light source shall meet the requirements of S4.1.1.38(b)(6) when tested in the following manner. With the standardized replaceable light source rigidly mounted in a fixture in a manner indicated in Figure 8, apply a force of 4.0∓0.1 pound (17.8∓0.4N) perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force application shall be applied using a rod with a hard rubber tip with a minimum spherical radius of 0.039 in. (1 mm). The bulb deflection shall be measured at the glass capsule surface at 180 degrees opposite to the force application. Each Type HB2, HB3 and HB4 light source shall meet this same requirement except that the force shall be applied radially to the surface of the glass capsule in any and all locations in a plane parallel to the reference plane and spaced distance "A" from that plane.

22. In Tables II and IV, Column 2 for the Headlamps would be revised to read:

Headlamps	On the front, each headlamp providing the upper beam, at the same height, 1 on each side of the vertical centerline; each headlamp providing the lower beam, at the same height, 1 on each side of the vertical centerline, as far apart as practicable. If a single standardized replaceable light source is used to provide the lower beam in a headlamp with two standardized replaceable light sources, it shall be the farthest one from the vertical centerline.

23. The title of Figure 3 would be revised to read, "Specifications for the Type HB1 Standardized Replaceable Light Source."

BILLING CODE 4910-59-M

24. Figure 4–1 would be revised as follows:

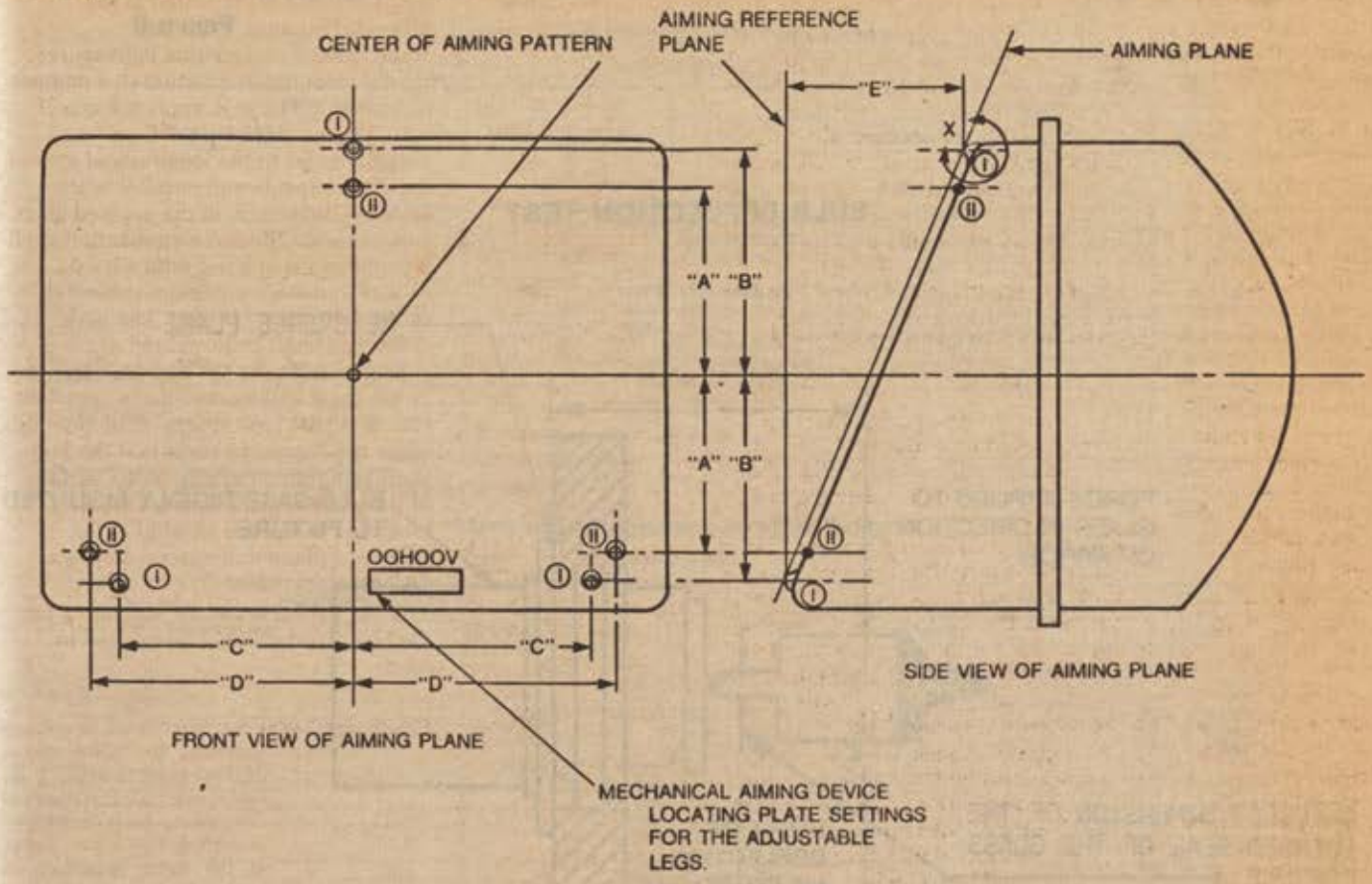


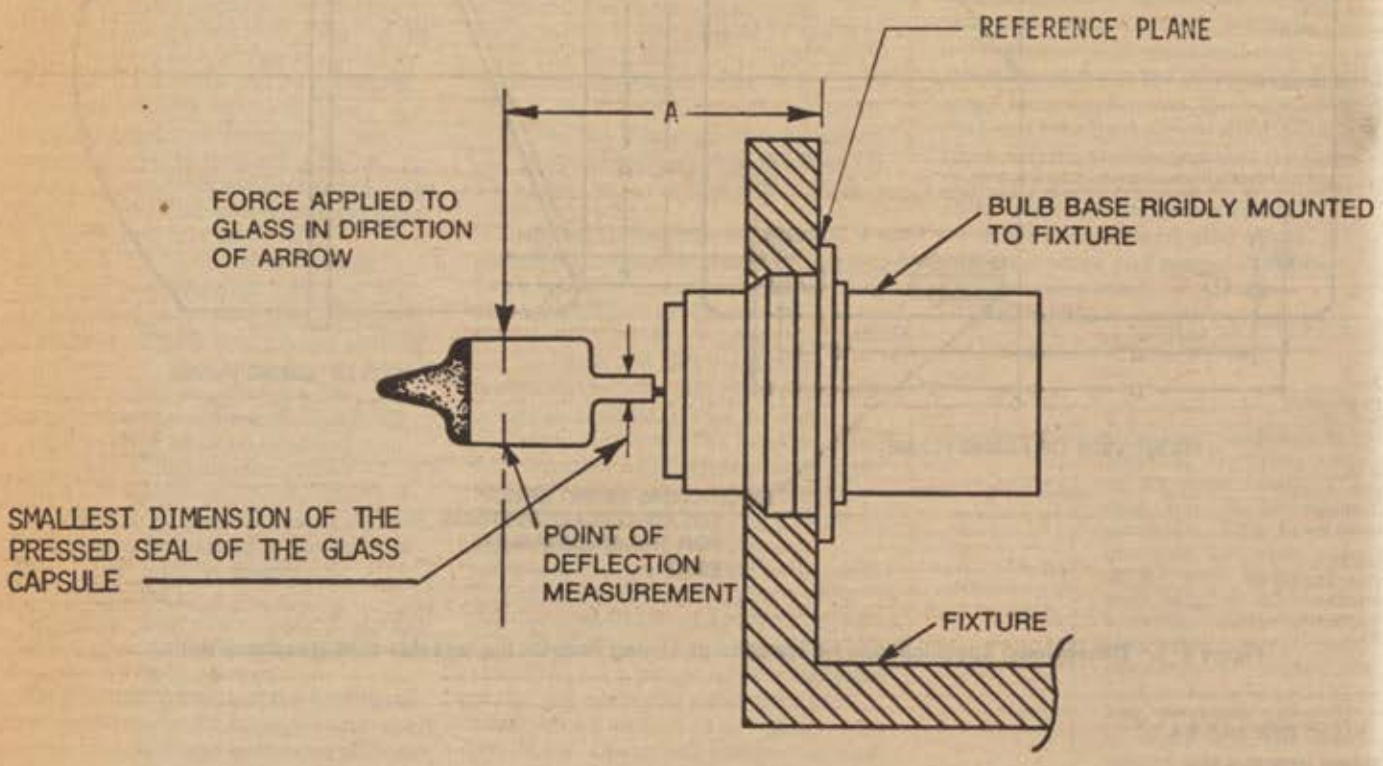
Figure 4–1. Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units

BILLING CODE 4910-59-C

25. Figure 8 would be revised as follows:

Figure 8

BULB DEFLECTION TEST



STANDARDIZED REPLACEABLE LIGHT SOURCE TYPE	DIMENSION "A"
HB1	44.50 ± 0.38MM (1.75 ± 0.015IN)
HB2	31.25 ± 0.40MM (1.23 ± 0.012IN)
HB3	31.50 ± 0.20MM (1.24 ± 0.008IN)
HB4	31.50 ± 0.20MM (1.24 ± 0.008IN)

BILLING CODE 4910-59-C

26. New Figures 17, 18, 19, 20, 21, and 22 would be added as follows:

FIGURE 17.—PHOTOMETRIC TEST POINT VALUES

[2-lamp systems]

Upper beam			Lower beam		
Test points deg[a]	cd max.	cd min.	Test points deg[a]	cd max.	cd min.
2U-V		1,500	10U-90U[b]	125	
1U-3R and 3L		5,000	1U-1-1/2L to L	700	
H-V	75,000	40,000	1/2U-1-1/2L to L	1,000	
			1/2D-1-1/2L to L	3,000	
			1-1/2U-1R to R	1,400	
H-3R and 3L		15,000			
H-6R and 6L		5,000	1/2U-1R to 3R	2,700	
H-9R and 9L		3,000	1/2D-1-1/2R	20,000	10,000
H-12R and 12L		1,500	1D-6L		1,000
			1-1/2D-2R		15,000
1-1/2D-V		5,000	1-1/2D-9L and 9R		1,000
1-1/2D-9R and 9L		2,000	2D-15L and 15R		850
2-1/2D-V		2,500	4D-4R	12,500	
2-1/2D-12R and 12L		1,000			
4D-V	12,000				

[a] From the normally exposed surface of the lens face.
[b] A tolerance of ± ¼ deg in location may be allowed for at any test point.

FIGURE 18.—PHOTOMETRIC TEST POINT VALUES

[For 4-lamp systems]

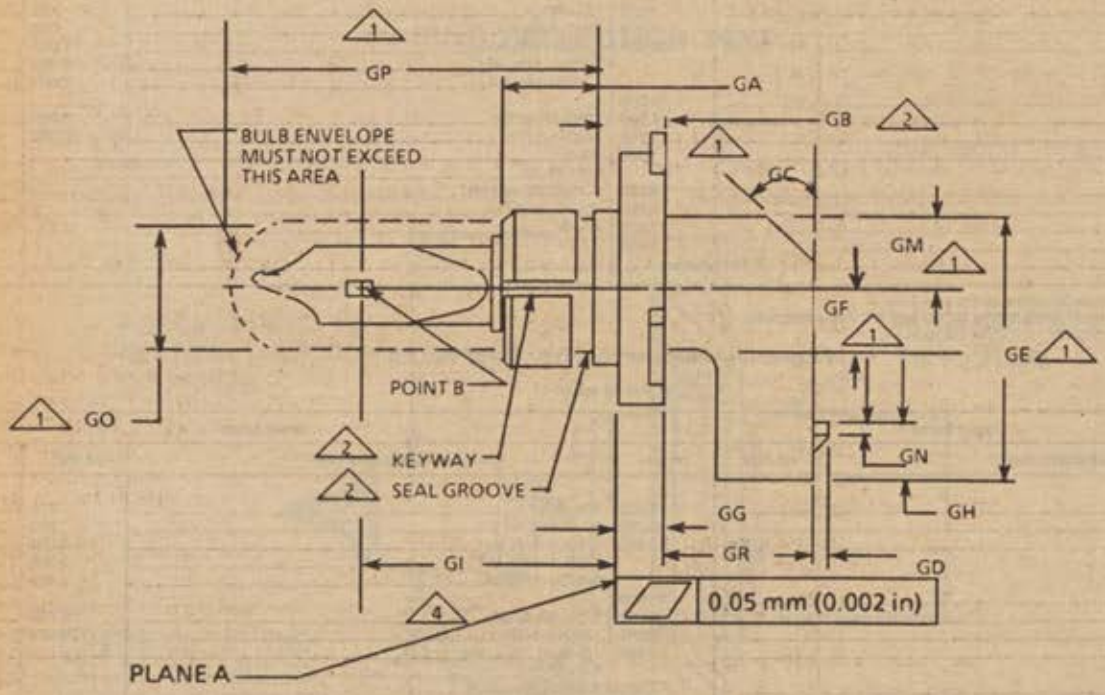
Upper beam			Lower beam		
Test points deg[a]	cd max.	cd min.	Test points deg[a]	cd max.	cd min.
2U-V		1,500	10U-90U[b]	125	
1U-3R and 3L		5,000	1U-1-1/2L to L	700	
H-V	70,000	40,000	1/2U-1-1/2L to L	1,000	
			1/2D-1-1/2L to L	3,000	
			1-1/2U-1R to R	1,400	
H-3R and 3L		15,000			
H-6R and 6L		5,000	1/2U-1R to 3R	2,700	
H-9R and 9L		3,000	1/2D-1-1/2R	20,000	10,000
H-12R and 12L		1,500	1D-6L		1,000
			1-1/2D-2R		15,000
1-1/2D-V		5,000	1-1/2D-9L and 9R		1,000
1-1/2D-9R and 9L		2,000	2D-15L and 15R		850
2-1/2D-V		2,500	4D-4R	12,500	
2-1/2D-12R and 12L		1,000			
4D-V	5,000				
			4D-V	7,000	
			H-V	5,000	

[a] From the normally exposed surface of the lens face.
[b] A tolerance of ± ¼ deg. in location may be allowed for any test point.

BILLING CODE 4910-59-M

FIGURE 19

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



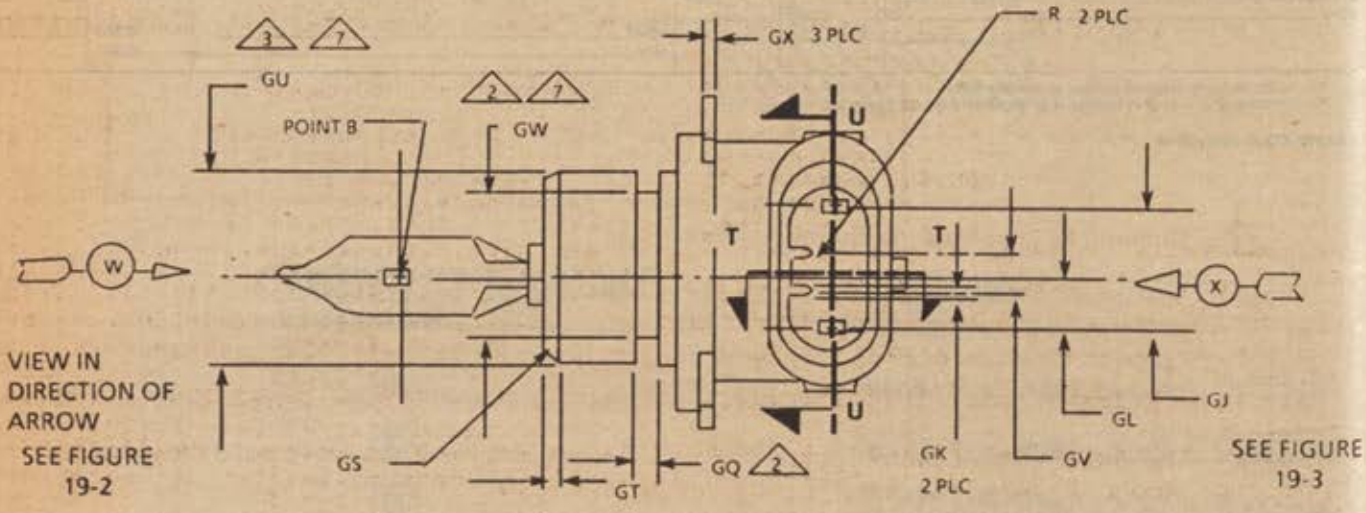


FIGURE 19 (cont.)

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

DIMENSION	INCHES	MILLIMETRES
GA	0.591MAX /0.217 MIN	15.00 MAX/5.50 MIN
GB	0.236	6.00
GC	45°	45°
GD	0.079	2.00
GE	1.45	36.85
GF	0.27	6.9
GG	0.157 MIN	4.00 MIN
GH	0.346	8.80
GI	1.240 ± 0.008	31.50 ± 0.20
GJ	0.433	11.00
GK	0.055	1.40
GL	0.217 ± 0.006	5.50 ± 0.15
GM	0.36	9.1
GN	0.06	1.5
GO	0.630 DIA	16.00 DIA
GP	2.165	55.00
GQ	0.093	2.36
GR	0.748	19.00
GS	45° CHAMFER	45° CHAMFER
GT	0.039	1.00
GU	0.787 ±0.002	20.00 ±0.05
GV	0.138 +0.004	3.50 +0.10
GW	0.687 -0.000	17.46 -0.00
GX	0.079	2.00

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ±0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

1. Dimensions shown are maximum-may be smaller.

2. Seal groove & keyway required for afterkmarket only. Bulbs equipped with seal must withstand a minimum of 69kPa. (10 P.S.I.G.) when bulb-seal assembly is inserted into a cylindrical aperture of 20.22 ± 0.10mmk (0.875 ± 0.004 in) (optional for bulb assemblies produced for original equipment headlamps).

3. The entire filament coil at operating temperature must be contained within a 1.90mm (0.075 in) DIA cylinder whose center is at the design position of the filament. The axis of the cylinder is perpendicular to Plane "A" and concentric with noted diameter GU (HA).

4. Measured at filament operating temperature.

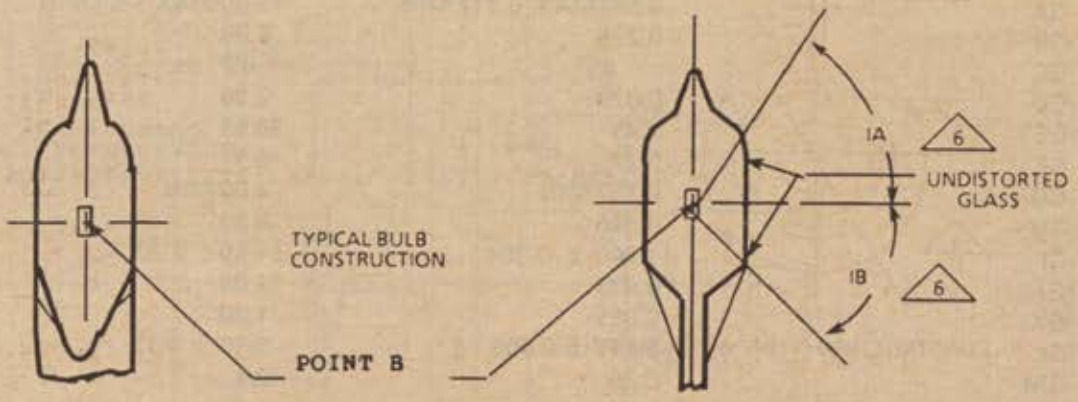
5. Diameters must be concentric within 0.20mm (0.008 in).

6. Glass bulb periphery must be optically distortion free axially within the included angles about point B.

7. Diameters must be concentric within 0.20mm DIA (0.008 in)

FIGURE 19-1

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



DIMENSION	INCHES	MILLIMETRES
IA	45° MIN	45° MIN
IB	52° MIN	52° MIN

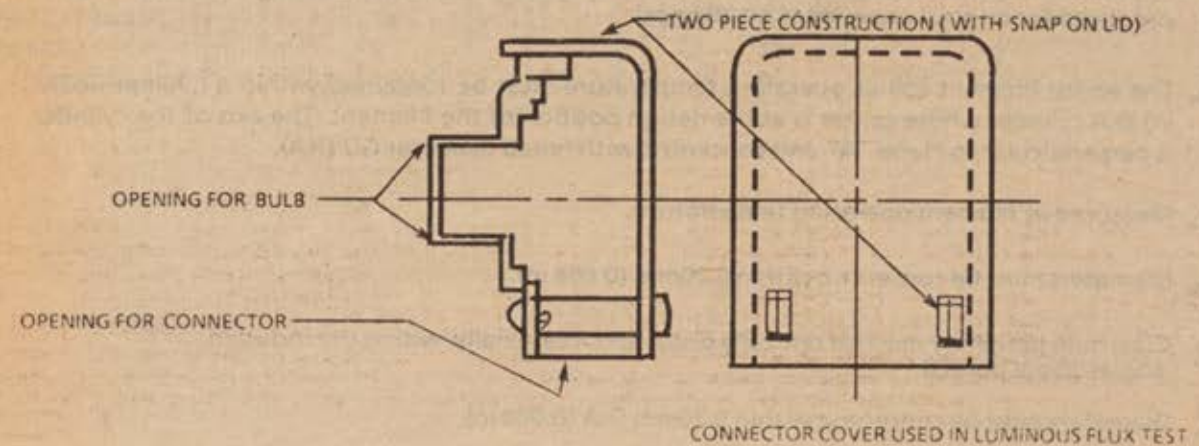
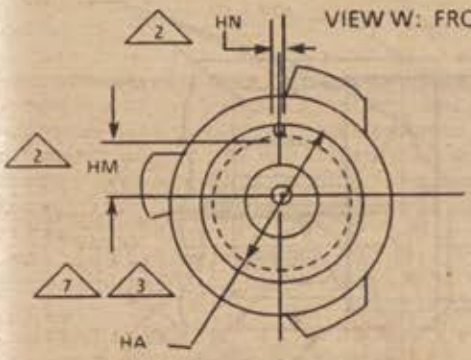
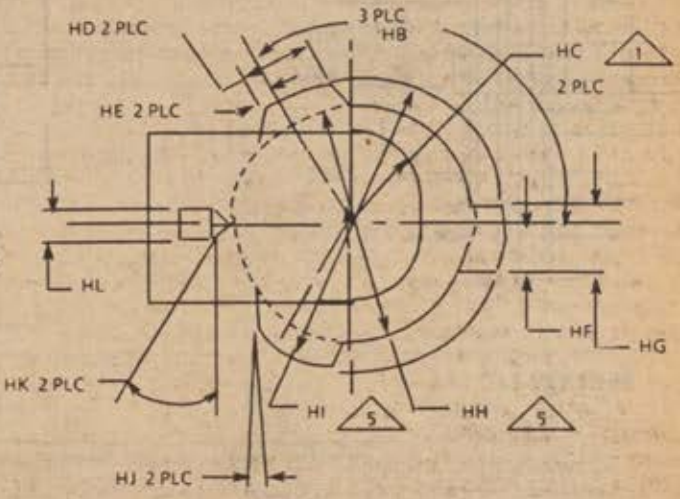


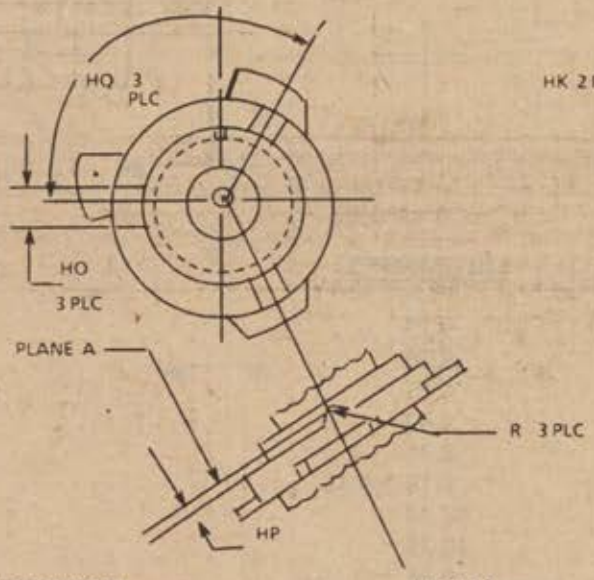
FIGURE 19-2

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE





OPTIONAL CONSTRUCTION (VIEW W: FROM BULB END)

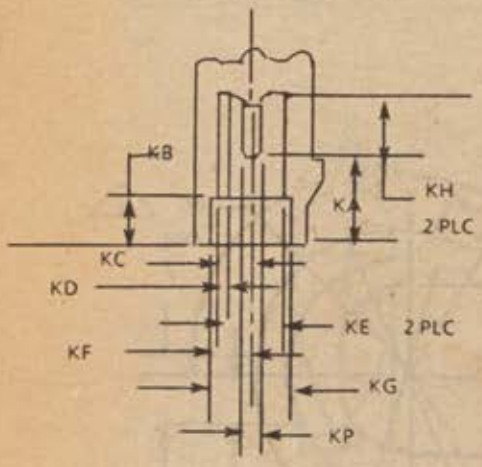


TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

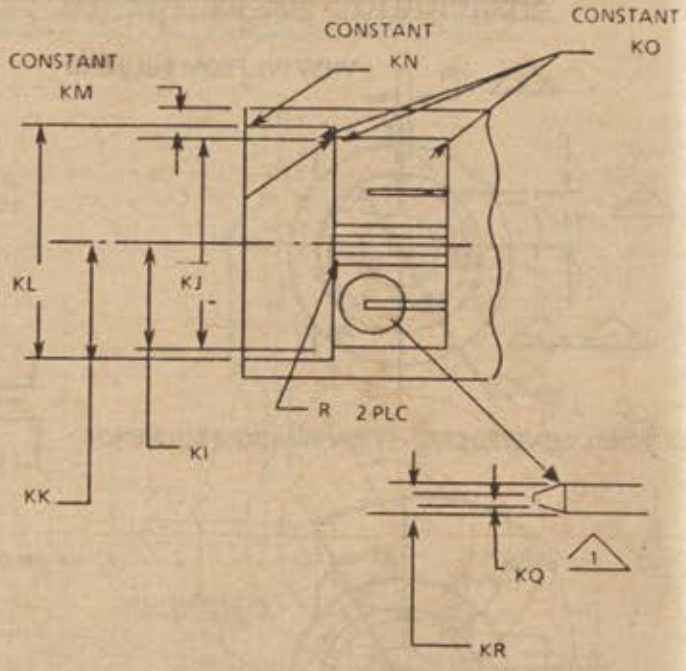
DMENSION	INCHES	MILLIMETRES
HA	0.787 ± 0.002 DIA	20.00 ± 0.05 DIA
HB	120 ± 0°30	120° ± 0°30'
HC	0.36 R	9.1 R
HD	0.394	10.00
HE	0.118	3.00
HF	0.079	2.00
HG	0.315	8.00
HH	1.181 DIA	30.00 DIA
HI	1.417 DIA	36.00 DIA
HJ	3°	3°
HK	30°	30°
HL	0.157 +0.004	4.00 +0.10
HM	0.346 -0.000	8.80 -0.00
HN	0.079 ± 0.004	2.00 ± 0.10
HO	0.197	5.00
HP	0.030	0.75
HQ	120°TYP	120°TYP

FIGURE 19-3

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION T-T



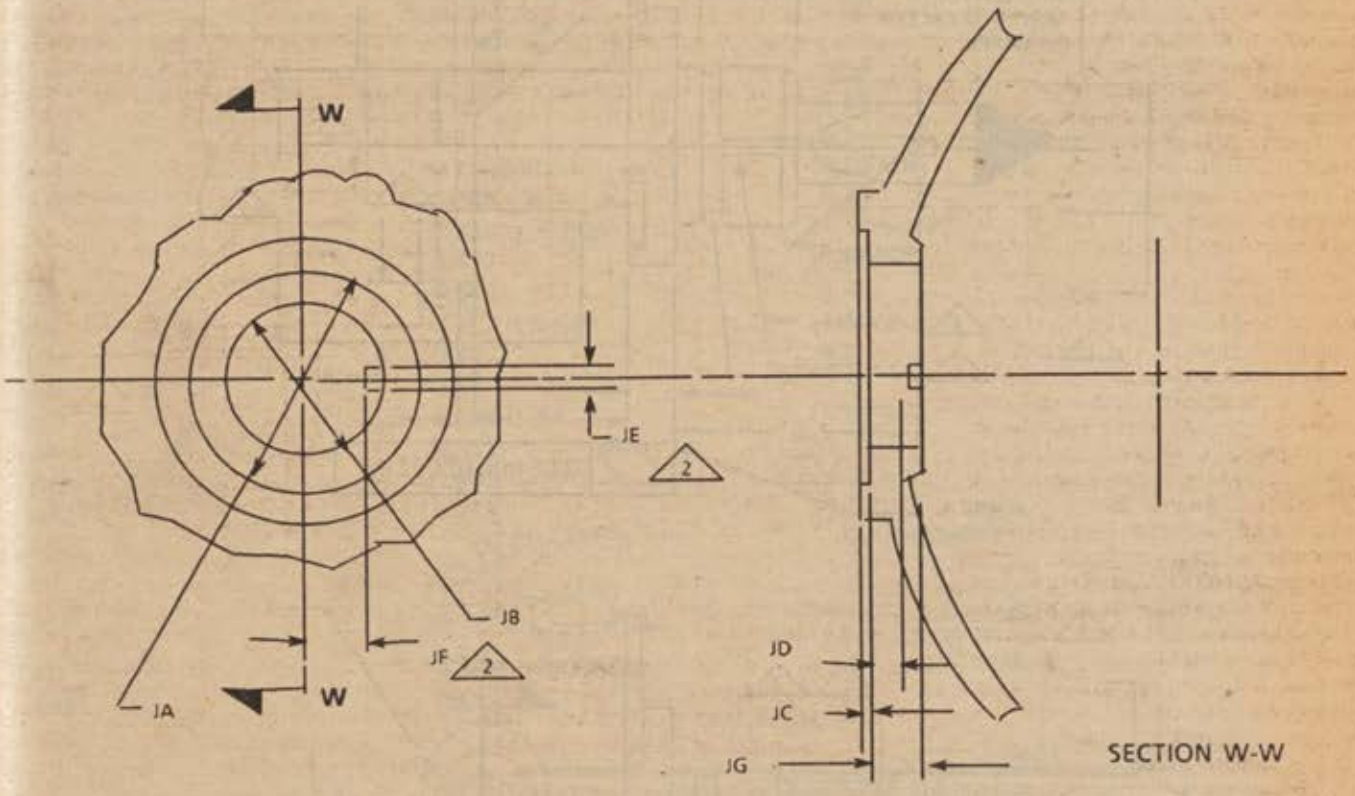
SECTION U-U

DIMENSION	INCHES	MILLIMETRES
KA	0.384	9.75
KB	0.315	8.00
KC	0.171	4.35
KD	0.055	1.40
KE	0.343	8.70
KF	0.242 ± 0.006	6.15 ± 0.15
KG	0.484	12.30
KH	0.404	10.25
KI	0.368 ± 0.006	9.35 ± 0.15
KJ	0.736	18.70
KK	0.439 ± 0.006	11.15 ± 0.15
KL	0.878	22.30
KM	0.059	1.50
KN	0.03 R	0.8 R
KO	0.016 R	0.40 R
KP	0.110 ± 0.004	2.8 ± 0.10
KQ	0.024	0.60
KR	0.033 ± 0.001	0.83 ± 0.03

TOLERANCES UNLESS OTHERWISE SPECIFIED:	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

FIGURE 19-4

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE SOCKET (IN REFLECTOR)



DIMENSIONS	INCHES	MILLIMETRES
JA	1.240 DIA REF	31.50 DIA REF
JB	0 ± 0.004 DIA REF	20.22 ± 0.10 DIA REF
JC	0.039 REF	1.00 REF
JD	0.172 +0.010 -0.000 REF	4.36 +0.30 -0.00 REF
JE	0.067 ± 0.004 REF	1.70 ± 0.10 REF
JF	0.298 +0.010 -0.000 REF	7.35 +0.30 -0.00 REF
JG	0.236 REF	6.00 REF

FIGURE 20

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

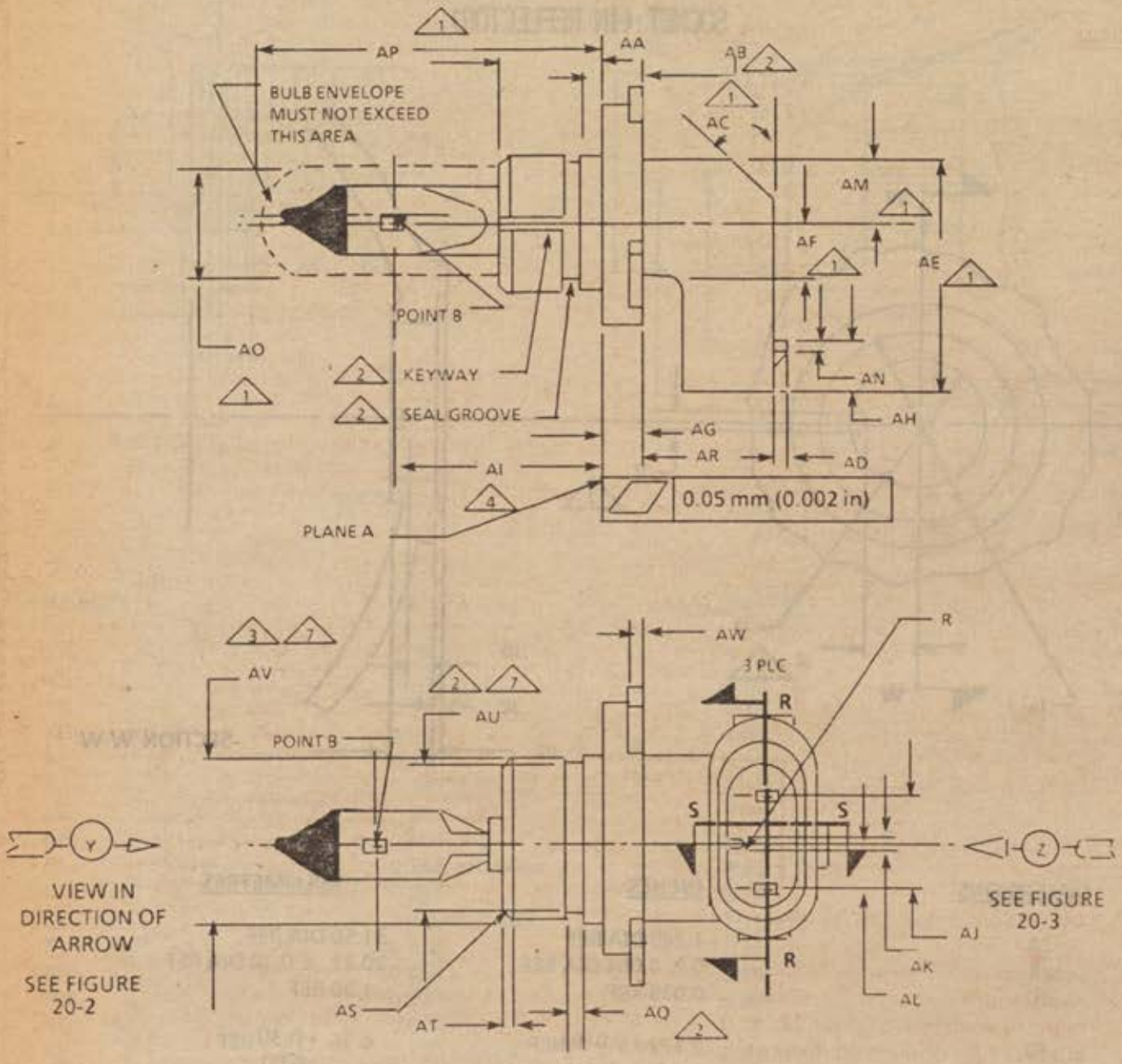


FIGURE 20 (CONT.)

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

DIMENSION	INCHES	MILLIMETRES
AA	0.591 MAX/0.2 17 MIN	15.00 MAX/5.50 MIN
AB	0.236	6.00
AC	45°	45°
AD	0.079	2.00
AE	1.45	36.85
AF	0.27	6.9
AG	0.157 MIN	4.00 MIN
AH	0.346	8.80
AI	1.240 ± 0.008	31.50 ± 0.20
AJ	0.433	11.00
AK	0.055	1.40
AL	0 217 ± 0.006	5.50 ± 0.15
AM	0.36	9.1
AN	0.06	1.5
AO	0.630 DIA	16.00 DIA
AP	2.165	55.00
AQ	0.093	2.36
AR	0.748	19.00
AS	45° CHAMFER	45° CHAMFER
AT	0.039	1.00
AU	0.766 $^{+0.004}_{-0.000}$ DIA	19.46 $^{+0.10}_{-0.00}$ DIA
AV	0.866 ± 0.002 DIA	22.00 ± 0.05 DIA
AW	0.079	2.00

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

1. Dimensions shown are maximum-may be smaller.

2. Seal groove & keyway required for aftermarket only. Bulbs equipped with seal must withstand a minimum of 69kPa . (10 P.S.I.G.) when bulb-seal assembly is inserted into a cylindrical aperture of 22.22 ± 0.10mm (0.875 ± 0.004 in) (optional for bulb assemblies produced for original equipment headlamps).

3. The entire filament coil at operating temperature must be contained within a 1.90mm (0.075 in) DIA cylinder whose center is at the design position of the filament. The axis of the cylinder is perpendicular to Plane "A" and concentric with noted diameter AV(8A).

4. Measured at filament operating temperature.

5. Diameters must be concentric within 0.20mm (0.008 in)

6. Glass bulb periphery must be optically distortion free axially within the included angles about Point B

7. Diameters must be concentric within 0 20 mm (0.008).

FIGURE 20-1

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

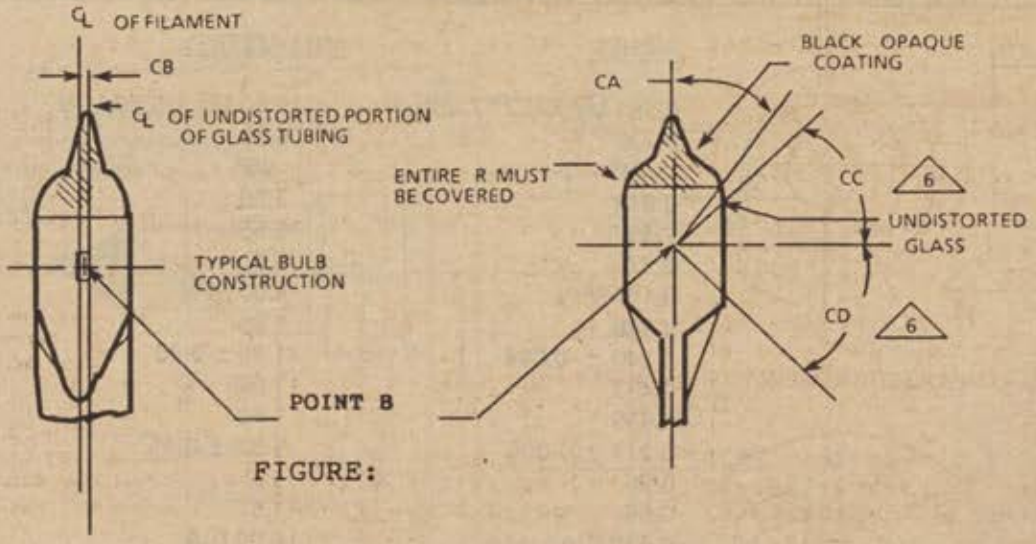


FIGURE:

DIMENSION	INCHES	MILLIMETRES
CA	43° + 2° -5°	43° + 2° -5°
CB	0.030 ± 0.020	0.75 ± 0.50
CC	45° MIN	45° MIN
CD	52° MIN	52° MIN

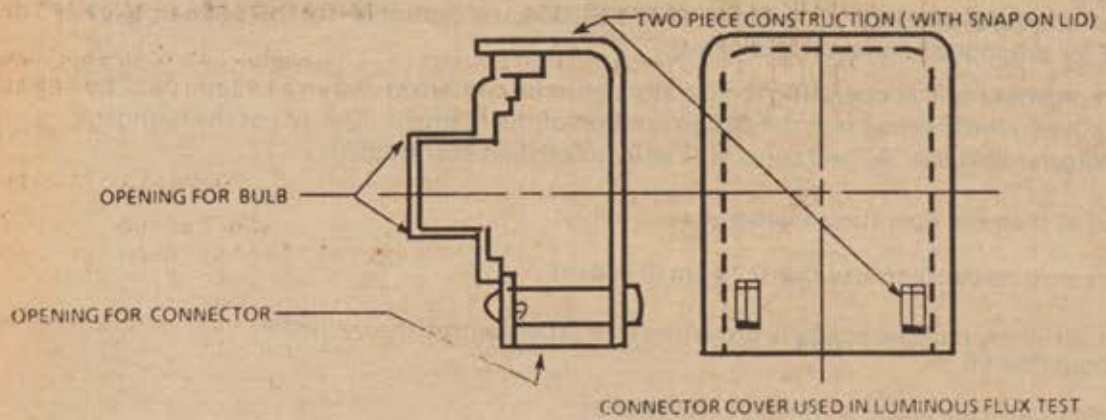
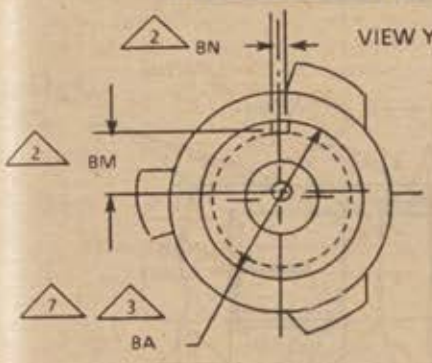
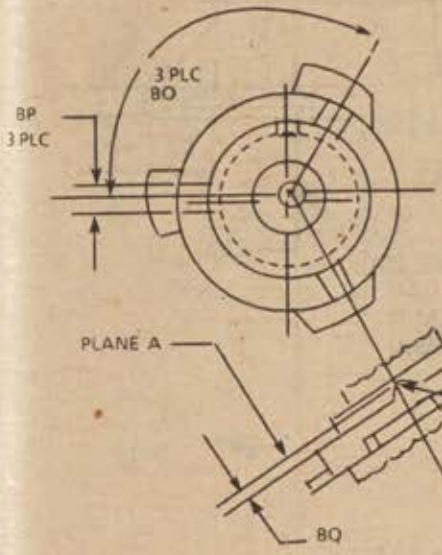


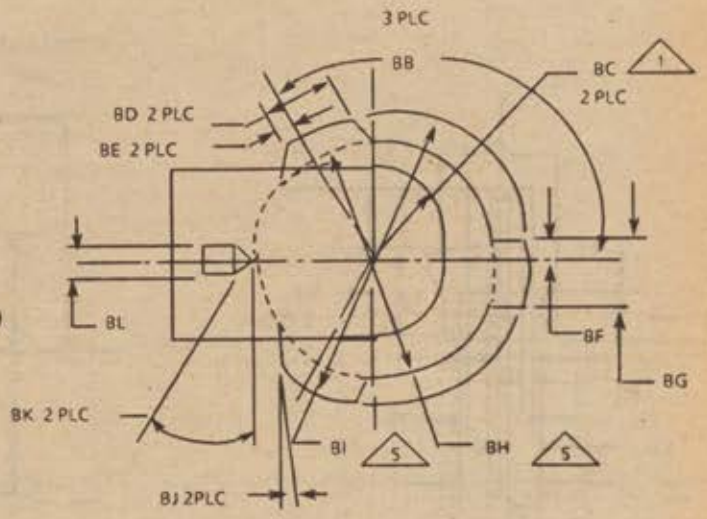
FIGURE 20-2

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



OPTIONAL CONSTRUCTION (VIEW Y: FROM BULB END)





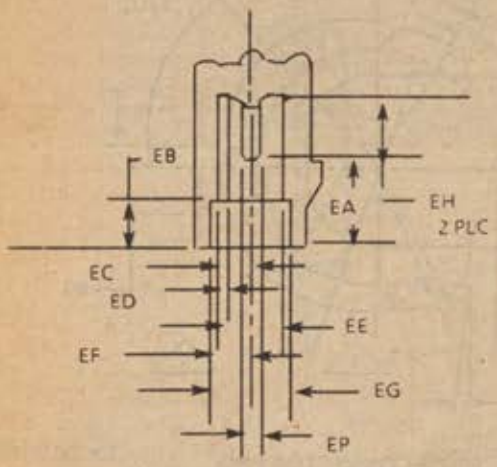
VIEW Z: FROM CONNECTOR END

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

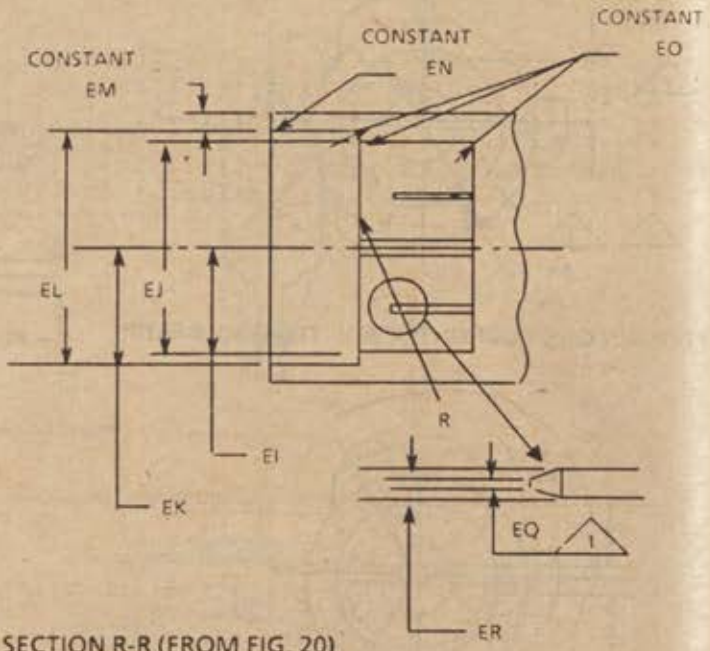
DIMENSION	INCHES	MILLIMETRES
BA	0.866 ± 0.002 DIA	22.00 ± 0.05 DIA
BB	120 ± 0°30'	120° ± 0°30'
BC	0.36 R	9.1 R
BD	0.394	10.00
BE	0.118	3.00
BF	0.079	2.00
BG	0.315	8.00
BH	1.181 DIA	30.00 DIA
BI	1.417 DIA	36.00 DIA
BJ	3°	3°
BK	30°	30°
BL	0.157	4.00
BM	0.384 +0.000 -0.010	9.75 +0.00 -0.30
BN	0.079 ± 0.004	2.00 ± 0.10
BO	120°TYP	120°TYP
BP	0.197	5.00
BQ	0.030	0.75

FIGURE 20-3

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION S-S (FROM FIG. 20)



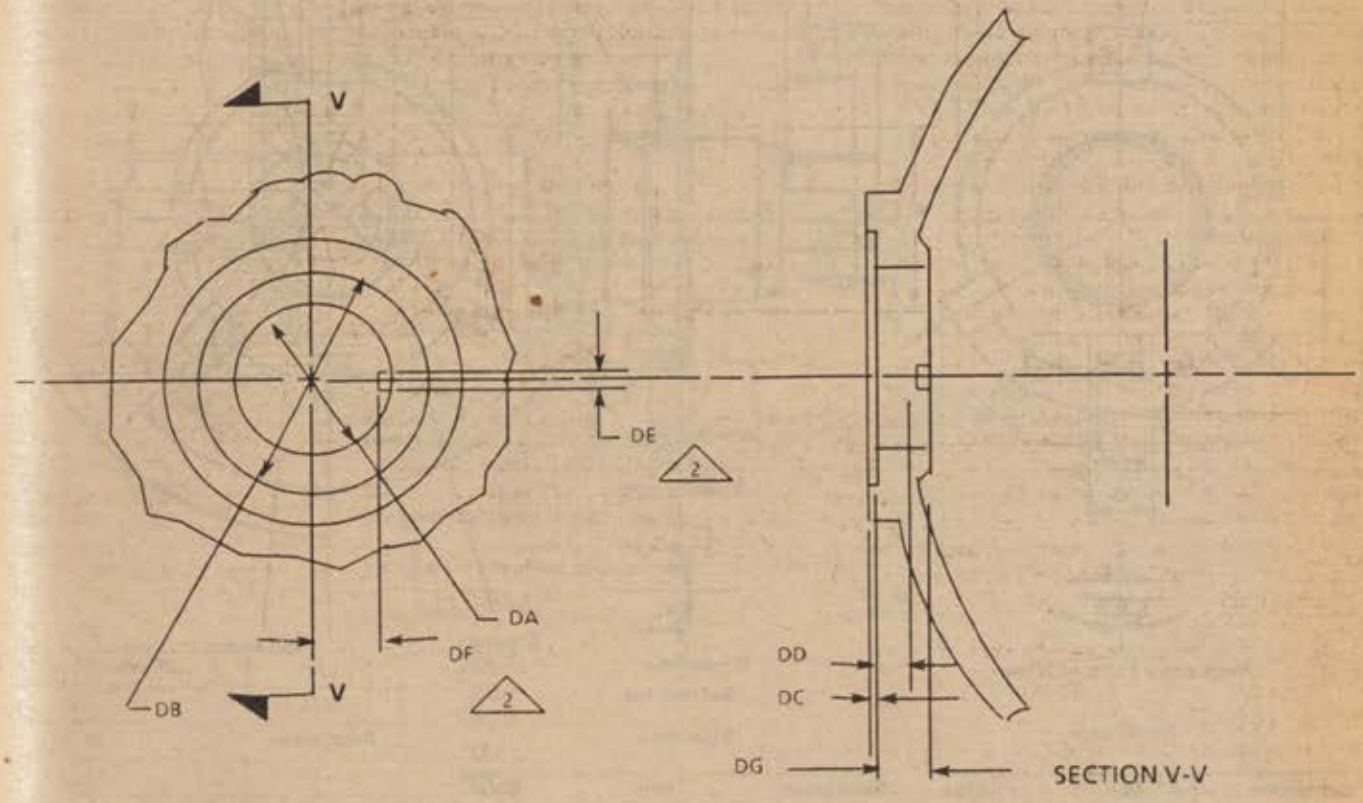
SECTION R-R (FROM FIG. 20)

DIMENSION	INCHES	MILLIMETRES
EA	0.384	9.75
EB	0.315	8.00
EC	0.171	4.35
ED	0.079	2.00
EE	0.343	8.70
EF	0.242 ± 0.006	6.15 ± 0.15
EG	0.484	12.30
EH	0.404	10.25
EI	0.368 ± 0.006	9.35 ± 0.15
EJ	0.736	18.70
EK	0.439 ± 0.006	11.15 ± 0.15
EL	0.878	22.30
EM	0.059	1.50
EN	0.03 R	0.8 R
EO	0.016 R	0.40 R
EP	0.110 ± 0.004	2.80 ± 0.10
EQ	0.024	0.60
ER	0.033 ± 0.001	0.83 ± 0.03

TOLERANCES UNLESS OTHERWISE SPECIFIED:	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

FIGURE 20-4

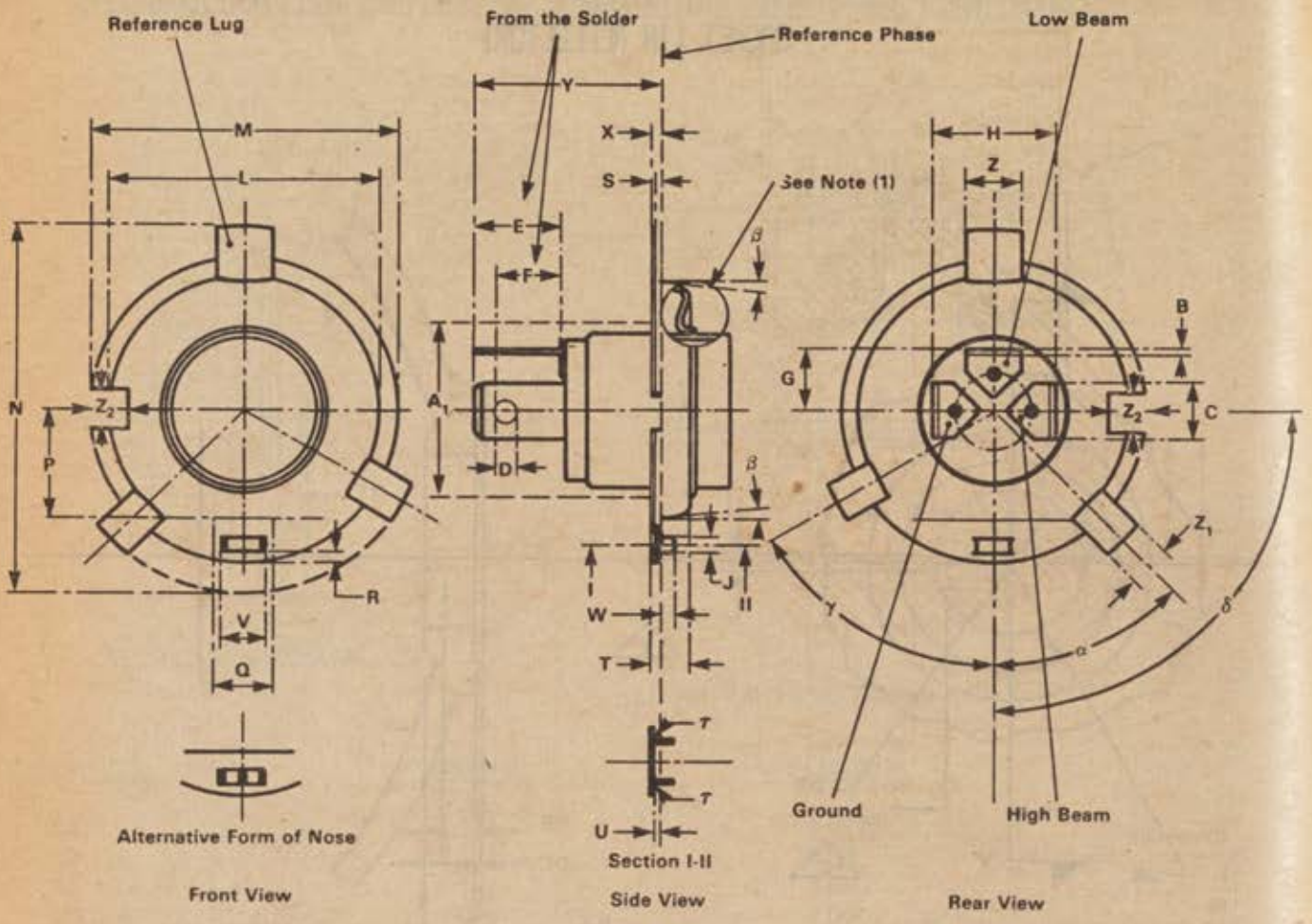
SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE SOCKET (IN REFLECTOR)



DIMENSION	INCHES	MILLIMETRES
DA	0.875 ± 0.004 DIA REF	22.22 ± 0.10 DIA REF
DB	1.240 DIA REF	31.50 DIA REF
DC	0.039 REF	1.00 REF
DD	0.172 +0.010 -0.000 REF	4.36 +0.30 -0.00 REF
DE	0.067 ± 0.004 REF	1.70 ± 0.10 REF
DF	0.388 +0.010 -0.000 REF	9.85 +0.30 -0.00 REF
DG	0.236 MIN REF	6.00 MIN REF

Assembly of Ring and Cap on Finished Lamps

Dimensions in Millimeters—
The Drawing is Intended Only to Indicate the Dimensions to Be Controlled.



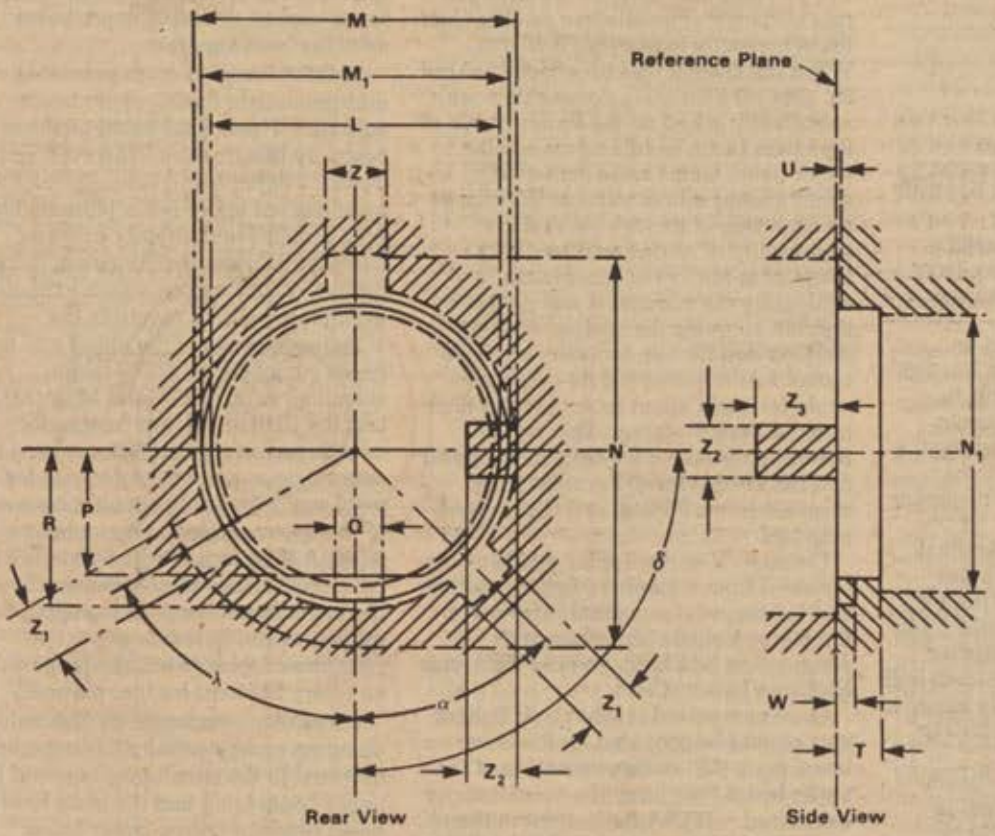
Dimension	Min.	Max.
A_1 (8)	25.0	–
B	0.7	0.8
C (9)	7.7	8.1
D	3.0	3.3
E(9)	11.8	13.6
F	8.8	10.3
G(6)(9)	8.5	9.0
H(6)(9)	17.0	17.9
J	1.9	2.1
L(2)(4)	37.8	38.0
M(3)	42.8	43.0
N	51.6	52.0
P(2)(7)	15.3	15.5
Q(2)(7)	8.5	–

Dimension	Min.	Max.
R	1.3	1.7
S	0.5	–
T	5.0	6.0
U	(10)	
V(2)(5)	6.3	6.5
W	1.8	2.2
X	1.1	1.3
Y	–	32.0
Z(6)	7.9	8.0
Z_1	5.8	5.9
τ	(10)	
α	– 45°	–
β	–	5°
Z_2	6.2	6.3
γ	– 60°	–
δ	90°	

Figure 21 – Specifications for the Type HB2 Standardized Replaceable Light Source

Reflector Bulb Cavity

Dimensions in Millimeters—
The Drawing is Intended Only to Indicate the Dimensions to Be Controlled.



Dimension	Min.	Max.
L	38.05	38.2
M	43.2	–
M_1	–	42.0
N	52.2	–
N_1	38.0	–
P	15.7	19.1
Q	6.55	6.65
R	20.5	–
T	5.5	–
U	0.5	–
W	2.5	–
Z	8.2	–
Z_1	5.8	6.0
α	45°	
λ	60°	
Z_3	10	–
Z_2	6.0	6.1
δ	90°	

Figure 22 – Specifications for the Type HB2 Standardized Replaceable Light Source

BILLING CODE 4910-59-C

Issued on May 2, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11098 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 84-04; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Safety Standard No. 108 that would allow a manufacturer to provide an enhanced upper beam in Type F headlamp systems by wiring the Type F lower beam headlamp to be activated simultaneously with the upper beam.

Type F headlamps feature identical aiming and seating planes, with the intention that re-aiming would not be necessary when a correctly aimed Type F headlamp is replaced with another Type F. It is also proposed that each half of the system be simultaneously aimed if the manufacturer chooses (aiming the lower beam headlamp would automatically re-aim the upper beam lamp). The upper beam headlamp in such a "co-aimed" system would be prohibited from being adjusted independent of the lower beam headlamp.

It is further proposed that the Type F system be permitted to have an auxiliary filament in the lower beam lamp to be used for purposes other than lower or upper beam performance. This rulemaking action results from comments to Notice 1, Docket 84-04, which originally proposed these features to the Type F system.

DATES: Comment closing date for the proposal is June 12, 1985. Effective date of the amendment would be July 1, 1985. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period (49 CFR 553.19).

ADDRESS: Comments should refer to the docket number and notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Standard No. 108 has been amended to allow the Type F headlamp system, consisting of four rectangular headlamps smaller than those currently in use (49 FR 50176). When the system was proposed on April 30, 1984 (49 FR 18321), comments were specifically asked on the issues of use of the lower beam headlamps when the upper beam lamps were activated, simultaneous aim of pairs of headlamps on each side of the vehicle and the desirability of an optional auxiliary filament in the lower beam lamp. In evaluating the comments and preparing the rule adopting the system, NHTSA decided that further comment on these issues was required before a decision could be made about incorporating them into the Type F system. This notice therefore discusses the original proposal and NHTSA's views, the comments received to the NPRM, and the present proposal.

Comments on the Type F system were received from a number of motor vehicle and lighting equipment manufacturers, the Motor Vehicle Manufacturer's Association (MVMA), and the California Highway Patrol (CHP).

One issue raised is what type light, if any, should be provided by the lower beam lamp (LF) during operation of the upper beam (UF) lamp if a manufacturer so desired. NHTSA finds merit in the concept of having additional light during upper beam operation to increase roadway illumination. Such light is readily available from the lower beam filament in the LF lamp. There is an energy penalty, but of little consequence over the life of the vehicle.

Sylvania was the only commenter to Notice 1 which thought that the lower beam headlamp should emit light during upper beam selection, and that the best option for that purpose seemed to be the auxiliary filament. General Electric (GE) was not opposed to either independent use of the upper beam lamp or simultaneous use of the upper and lower beam lamps during upper beam selection, but it favored simultaneous use because heating and edge delineation benefits would be provided while both beam patterns could be optimized for the seeing task. GE recommended language to insure that the lower beam lamps remain activated when the upper beam lamps were activated and suggested use of the main lower filament for that purpose. It recommended deletion of the auxiliary filament.

The MVMA and Volkswagen (VW) commented on their belief that optional use of either the upper beam lamp alone or both lamps was already permitted by the standard. American Motors (AMC) concluded that it was premature for anyone to conclude that two or four beam operation during upper beam selection was superior.

NHTSA found merit in providing additional light during upper beam selection if such light could increase roadway illumination. However, since Type F's upper beam lamp alone can meet current upper beam photometeric requirements and already exceeds current minimum requirements, there is little or no basis upon which to mandate even more light by requiring the simultaneous use of the upper and lower beam lamps during upper beam selection. And, as General Motors (GM) and the CHP noted, any heating or vehicle position benefits seem hard to appreciate and are not adequate for justifying mandatory simultaneous use of the upper and lower beam lamps. NHTSA therefore rejects Sylvania's and GE's recommendation to require use of the lower beam lamp during upper beam operation and Sylvania's recommendation to use the proposed auxiliary filament for that purpose.

Except for a comment by Sylvania about an energy penalty, no commenter objected to the simultaneous use of the upper beam lamp and the main lower beam filament during upper beam selection. However, GM submitted additional, more detailed photometric data from pre-production lamps after Notice 1 was published, and that new data indicated that at least one of the two current maximum values for upper beam photometrics could be exceeded if this option were permitted. In its comments to Notice 1, the CHP also believed that this current maximum value—7,500 cd. at 4D-V—would likely be exceeded during simultaneous use since current standards permitted a nearby test point (4D-4R) for the lower beam lamp to have a maximum value of 12,500 cd. The more detailed GM data indicated the following key candela (cd.) photometric values for three lower and two upper beam lamps that were tested by GM:

Lower Beam Lamp Photometric Intensities (main lower beam filament)

H-V (cd)	4D-V (cd)	½D-1½R (cd)	4D-4R (cd)
2,025	5,160	12,300	6,360
1,755	5,815	14,600	6,860
3,220	4,180	19,100	5,800

Upper Beam Lamp Photometric Intensities

H-V (cd)	4D-V (cd)
64,500	3,145
70,000	2,000

As these test data demonstrate, there is a small likelihood of exceeding the current H–V maximum value of 75,000 cd. when both lamps are illuminated (a summation of the lower beam H–V intensity and the upper beam H–V intensity). The highest intensity upper beam lamp (70,000 cd. at H–V), in combination with the highest intensity lower beam lamp (19,100 cd. at ½D–1½R) produces a total H–V value of 73,220 cd. (70,000 cd. + 3,220 cd.). This is just below the maximum intensity of 75,000 cd. permitted for other upper beam systems. However, there is a high likelihood of exceeding the current upper beam 4D–V point maximum value in Standard 108 of 7,500 cd. when both lamps are illuminated. At the 4D–V test point, the upper beam lamps provide a range of 2,000 to 3,145 cd. and the lower beam lamps provide a range of 4,180 to 5,815 cd. With both lamps illuminated, a range of 6,180 to 8,960 cd. would be produced at the 4D–V point by the test lamps, at times exceeding the 7500 cd. limit. Since simultaneous use of the main lower beam filament and the upper beam lamp can produce light that exceeds the current maximum value permitted for the 4D–V test point, such use is not now permitted by Standard No. 108.

However, NHTSA's evaluation of the GM data and the CHP claim, suggested that for headlamp systems with Type F photometry there may no longer be a reason to retain a 7,500 cd. maximum limit at the 4D–V test point. The 7,500 cd. value at 4D–V was originally adopted by NHTSA when it adopted the upper beam H–V maximum value of 37,500 cd. in SAE J579a. Subsequently in 1974, SAE decided to increase the H–V maximum value from 37,500 cd. to 75,000 cd., but it did not change the other maximum value in the standard, the 4D–V value. There was good reason for this—SAE had increased only the H–V maximum value but did not increase the H–V minimum value. The H–V minimum value remained at 25,000 cd. Without an increase in the H–V minimum value, an increase to the 4D–V value is not desirable for upper beam photometrics because such a change could permit lamp performance that might focus the driver's attention on a brighter foreground point instead of the H–V point, which is the farthest point down the road. This situation would not exist with the Type F system because NHTSA has adopted a higher H–V minimum value of 40,000 cd.—1.6 times the minimum required for current lamp systems. Because the upper beam must now be brighter at H–V, NHTSA believes that the upper beam intesity at 4D–V can be higher than that of current lamp systems without the adverse safety effect mentioned above. If the H–V minimum and the 4D–V maximum are both increased proportionately by a factor of 1.6, the relative amount of light between the 4D–V and H–V points will be similar to that permitted for existing lamp systems. As a result, a driver's attention would not necessarily be drawn to a brighter foreground point.

The new 4D–V combined maximum for Type F upper and lower beam lamps would be 12,000 cd. (1.6×7,500 cd. = 12,000 cd.). Since the upper beam lamp alone now has a maximum value of 5,000 cd. at the 4D–V point, 7,000 cd. would be available as a maximum value for the lower beam lamp at the 4D–V test point.

The light intensity of the lower beam lamp, according to the new GM data, is between 4, 180 cd. and 5,815 cd. at the 4D–V test point. Therefore, NHTSA believes that manufacturers of Type F systems will not exceed a new 4D–V test point maximum value of 7,000 cd. for the lower beam lamp.

A maximum value should also be established at the H–V pint for the lower beam lamp so that the current Standard 108 maximum value of 75,000 cd. is not exceeded during simultaneous use. The H–V maximum value for the Type F upper beam lamp is 70,000 cd., leaving 5,000 cd. for the lower beam lamp at H–V. The GM data show that none of the test lamps exceed this value; the highest intensity achieved on the highest performance lamp (19,100 cd at ½D–1½R) was 3220 cd. at H–V. Thus, NHTSA believes that manufacturers should be able to design and build lamps that meet a new H–V test point maximum value of 5,000 cd. for the lower beam lamp. Accordingly, adopting these new maximum test point values at H–V and 4D–V for the lower beam lamp should allow safe, simultaneous use of the lower and upper beam lamps during upper beam selection.

GM also recommended a method to aim simultaneously both the lower beam and the upper beam lamps. Both lamps would be mounted in a common housing and would have a common aim adjustment. It would be possible to have simultaneous aim adjustment for both lamps as long as the combination of the two lamps could meet the overall photometric requirements. Therefore, NHTSA was willing to consider this "co-aim" of both lamps. However, the agency believed that the lower beam lamp should be used for aiming purposes and the upper beam lamp should be incapable of independent aim to avoid errors in mis-aiming the more critical lower beam lamp. Therefore, NHTSA had proposed that the upper beam lamp in a co-aiming assembly should not be mechanically aimable. NHTSA had also proposed that the vehicle manufacturers certify that the entire lower beam/upper beam headlamp assembly should meet the photometric requirements of both the lower and upper beam when tested sequentially, without reaim greater than ± ¼ degree as currently required for independently aimed lamps, and with any replacement lamp of the same type. NHTSA requested comment on this issue in order to assess how closely production lamps could meet the requirements.

Seven commenters (Lucas, Sylvania, Chrysler, VW, Ford, AMC, and MVMA) did not directly address the co-aiming concepts. GM endorsed its own recommendation, but felt that the proposed requirement to prevent mechanical aiming of the upper beam lamp in a co-aimed system was redundant with the requirement that the entire headlamp assembly be designed to meet photometric requirements. NHTSA does not believe that such a requirement to prevent mechanical aiming of the upper beam is necessarily redundant. However, since the entire headlamp assembly is required to be designed to meet the photometric requirements, when either lamp is correctly aimed, the other lamp should also be correctly aimed. This should occur regardless of whether optical or mechanical aiming methods are used, and in spite of any skew error, between the lamps' aiming planes. Therefore, NHTSA will not require this additional safeguard of preventing mechanical aim of the upper beam in a co-aimed system.

The CHP and GE reported that the requirement for the entire headlamp assembly to meet photometric requirements was not normal industry practice, noting the potential for manufacturing tolerances in the mounting assembly to induce photometric errors. GE recommended deleting any reference to the mounting assembly in this requirement while the CHP indicated that it was necessary to specify what portion of the photometric re-aim tolerance of ± ¼° would be assigned to the headlamp mounting assembly and what portion for the headlamps, especially for the separate aftermarket production of the assembly and headlamps.

This CHP suggestion about the need to specify such tolerances may have merit. There may be a need to limit both lamp and mounting assembly tolerances for co-aimed headlamps because significant nonparallelism could occur between the upper and lower beam lamps in the common mounting assembly. NHTSA notes that any proposal of the type recommended by the CHP would also require a reduction in the ±¼° re-aim tolerance that is currently permitted for upper and lower beam lamps when they are photometrically tested. Otherwise, the lamps could use all of the available tolerance when they are mounted in a co-aiming assembly. In an August 21, 1984, letter, GM suggested removing the ±¼° re-aim tolerance for the upper beam lamp only and permitting that tolerance to be allowed for the co-aiming mounting assesmbly. GM noted that photometric tests of Type F lamps indicated there was sufficient intensity at the upper beam test points to move the lamp up to ¾° in any direction and still meet all the upper beam test point requirements. Therefore, removing the re-aim tolerance from the upper beam lamp was feasible.

The GM modification seems more appropriate and feasible than other schemes for assigning tolerances, and is therefore being proposed for public comment. In the recent final rule (49 FR 50176), NHTSA has retained the ±¼° re-aim tolerance for the upper beam lamp because the Type F system has been adopted without the co-aiming provision. Its removal is now proposed.

Incorporation of an optional auxiliary filament in the Type F system is the last item originally proposed, but the agency has found that further discussion is required. In the preamble to the final rule (49 FR 50176), NHTSA determined that there were no safety reasons to mandate the use of either the auxiliary filament or the lower beam, during upper beam use, nor to permit the use of the auxiliary filament during upper or lower beam use. And, since the auxiliary filament in the original Type F design did not serve a headlighting function, NHTSA has already accepted GM's recommendation, and deleted that filament for road illumination purposes (49 FR 50176). However, because Chrysler Corporation strongly recommended the incorporation of the auxiliary filament for purposes other than upper or lower beam use, the agency is continuing to seek comments.

The other use of the auxiliary filament as desired by Chrysler would be for increased conspicuity during daytime operation of the vehicle. This is known as daytime running light (DRL). The reason for interest in DRL is that Canda has been considering the issuance of a notice that would propose DRL for its country's vehicles. Chrysler, as did GM, the originator of the Type F system, anticipated that the auxiliary filament could be used for such purpose. GM's recommended performance for an auxiliary filament was 1500 to 5000 candela at the H–V test point.

In responding to the NHSTA proposal that the manufacturer be permitted to place an optional auxiliary filament in the Type LF lamp, GM suggested that it be eliminated altogether. GM also stated that if the option were permitted, an additional headlamp would have to be supplied to the aftermarket. Ford also made such a statement and added that it would create unnecessary proliferation of the headlamp types.

GM provided reasons for eliminating the filament if it would not be used for roadway ilumination. These included: Elimination of the filament shadow on the reflector, a higher degree of reliability and its associated savings due to fewer electrical connections and potential leakage paths in both the halogen capsule and the sealed lamp unit, a smaller glass tube for the capsule that may allow longer life, lower piece cost, and less capital investment. With reference to DRL, GM stated that 70 watts would be required for its recommended design, and that as noted in the NPRM, the beam would be only "extraneous" and not light specifically designed to a test point. GM then suggested that if the UF headlamp were energized at a reduce voltage, it would be possible to produce similar H–V performance with only 32 watts of power, and achieve a beam pattern evenly distributed about the H–V point, implying that this is more appropriate for DRL purposes. GM concluded that for these reasons it would choose to eliminate the auxiliary filament in the headlamps it intends to manufacture. It pointed out that as the initial user of the Type F system, it planned to use over 3.25 million "LF" lamps within the first two years after approval and suggested since these would be without the auxiliary filament, that the action should influence the design of the headlamp that is first stocked in the aftermarket. Because GM felt so strongly, it sent letters explaining its position to 41 members of the vehicle and lighting industries.

Only Chrysler of the ten commenters to the NPRM requested that the filament be included for DRL purposes. Therefore, the issue to be addressed is, should Standard No. 108 permit the use of an auxiliary filament in Type F headlamp systems and, if so, how should that be done?

While GM's arguments appear sound, the fact remains that the LF lamp was originally designed to perform within the standard while incorporating the auxiliary filament. Consequently, there appears no reason to either prohibit or mandate the auxiliary filament, as long as it does not interfere with the required safety performance of the lamp.

While the type LF lamp is regulated by the standard as a headlamp, the auxiliary filament is proposed for an unregulated use such as DRL. Therefore, also at issue is whether the auxiliary filament and its performance should be regulated. NHTSA proposes to regulate only the interchangability aspects to assure that the incorporation of any such auxiliary filament does not jeopardize the proper replacement and functioning of the regulated portion of the LF headlamp. Additionally, since deletion of this filament necessitated alteration of the type LF's terminals to prevent inadvertent electrical connection to the UF's electrical connector (49 FR 50176), the subsequent incorporation of an auxiliary filament would now necessitate a further alteration from that proposed in the original notice. Additionally, because the inclusion of the auxiliary filament would render that type of LF unique and non-interchangeable with a type LF without the auxiliary filament, a new identifier is proposed: LFA, meaning type LF with auxiliary filament. Thus, a new Figure is proposed to be added to the standard which incorporates these proposed changes. The type LFA would be required to meet all the same performance requirements as the type LF, but it would have an unregulated auxiliary filament to be used in whatever manner as defined by the manufacturers. Because Type LFA is a category of the Type LF headlamp, all references to Type LF in the standard should read as applicable to Type LFA as well, except where the text specifically refers to Type LFA.

In view of the foregoing, NHTSA would like comment on the following proposals: Whether it should prohibit the use of an auxiliary filament in the Type F system, or permit the use of a type LFA lamp as an option to the LF lamp in the Type F system.

In reviewing Standard No. 108, it has been observed that Type F headlamps and those incorporating standardized replaceable light sources are designed to meet requirements of SAE J579c December 1978, while all sealed beam headlamps intended for original

equipment use must be designed to conform to SAE J579c December 1974. For regulatory clarity, NHTSA believes that the requirements should be standardized and that J579c December 1978 be the sole version incorporated by reference. It is therefore proposing its adoption.

The differences between the two versions may be simply stated. With reference to upper beam photometrics on headlamps of 7-inch diameter, Table 1 of the 1974 version contains Footnote a, "Maximum candela at any test point shall not exceed 75,000." This does not appear in the 1978 version but the maximum of 75,000 candela still applies for only test point H–V in Table 1. In essence, this general limitation has been removed from all test points except H–V. The agency believes that there is no substantive effect in practice. As for Table 2, with reference to upper beam photometrics for Type 1 and Type 2 headlamps, 5¾-inch diameter, a footnote has been removed which read: "The combined maximum candela at any test point shall not exceed 75,000." But the test point values given in the 1974 version are identical to those in the 1978 version. The earlier version with the "combined maximum" wording required the upper beam headlamp and the auxiliary filament in the lower beam headlamp to meet photometry both as an individual lamp, and as part of the any two-lamp set providing the upper beam. Removal of this footnote means that a general limitation has been removed from all applicable lamps and all their test points, except H–V. There should be no substantive effect occurring from this removal since the 75,000 cd. maximum still applies at H–V.

In reviewing Standard No. 108, it has also been observed that Type F headlamps and those incorporating standardized replaceable light sources are designed to meet requirements of SAE J580 AUG 79, "Sealed Beam Headlamp Assembly" while all other sealed beam headlamps intended for original equipment manufacture must be designed to conform to SAE J580b of December 1974. For regulatory clarity, NHTSA believes that in this instance also, the requirements should be standardized and that J580 AUG 79 be the version incorporated by reference. It is therefore proposing its adoption.

The differences between the two versions may be simply stated as editorial changes and clarifications, and are discussed below by citing the applicable paragraph from SAE J580 AUG 79.

1. Scope—This paragraph adds the newer headlamp assemblies not originally covered; however, Standard No. 108 supersedes this paragraph.

3. Reference Standards—The specific version of SAE J575 is given, however, since S5.1 of Standard No. 108 specifically states the version of J575 applicable, this paragraph is moot.

4. Dimensional Specifications—This cites specific references for all headlamp systems except Type F; however, Standard No. 108 supersedes this paragraph.

5.1 The specific reference for mechanical aimer compatibility is now specified; in the past it was not.

6.1.2 A value of "4 in. (100 mm.)" specified instead of the exact metric conversion "4 in. (102 mm.)".

6.1.3 A value of "± ⅛ in. (3 mm.)" is specified instead of the exact metric conversion "± ⅛ in. (3.2 mm.)".

6.3.2 Additional flange thicknesses for the retaining ring test have been added to accommodate the test of headlamp unit designs not originally covered in this standard when it was written, even though Standard No. 108 requires that all sealed beam lamps meet the test requirements.

6.5.1 The amount of allowable deflection from the application of torque, simulating the use of a mechanical aimer, was changed from 0.25 degree to 0.30 degree.

Figures 3 and 4, depicting deflectometers, were added to accommodate other headlamp systems under the torque deflection test.

The agency believes that there will be no substantive effect on safety by such action, and this proposal does offer reduced burden to the industry in that only one set of test procedures need to be met for original equipment headlamps instead of two.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a final regulatory evaluation was prepared for the Type F headlamp system, and this evaluation addressed the simultaneous use, co-aiming, and auxiliary filament features that are being considered in this proposal. (See Public Docket No. 84–04; Notice 2). Since use of Type F headlamps is optional, the proposal would impose no additional requirements but would permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes

available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their coments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph (1) S4.1.1.44 shall be redesignated (a) and revised to read:

* * * * *

(a) The designation "UF" if it provides an upper beam, "LF" if it provides a lower beam, or "LFA" if it provides a lower beam and contains an auxiliary filament; and

* * * * *

2. A new paragraph S4.1.1.46 would be added to read:

* * * * *

S4.1.1.46 Type F headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming of both headlamps, provided that:

(a) When tested in accordance with Section 3.5.2 of SAE Standard J579c, *Sealed Beam Headlamp Units for Motor Vehicles*, December 1978, and mechanically aimed on the LF lamp, the mounted assembly (Type UF and Type LF headlamps, mounting rings, aiming rings, and aim adjustment mechanism) shall be designed to conform to the test point values of Figure 15 for both lower and upper beams tested sequentially without reaim greater than ¼ degree when any conforming Tupe UF and LF headlamps are tested and replaced by another set of conforming headlamps of the same type, and

(b) There shall be no provision for adjustment between the common or parallel aiming and seating planes of the two lamps.

* * * * *

4. A new paragraph S4.5.8 would be added to read:

* * * * *

S4.5.8 On a motor vehicle equipped with a Type F headlighting system, the lower beam headlamps (Type LF) may be wired to remain permanently activated when the upper beam headlamps (Type UF) are activated.

* * * * *

BILLING CODE 4910-59-M

FIG. 15

PHOTOMETRIC TEST POINT VALUES

UPPER BEAM		
Test Points deg	cd. max.	cd. min.
2U-V	--	1,500
1U-3R and 3L	--	5,000
H-V	70,000	40,000
H-3R and 3L	--	15,000
H-6R and 6L	--	5,000
H-9R and 9L	--	3,000
H-12R and 12L	--	1,500
1-1/2D-V	--	5,000
1-1/2D-9R and 9L	--	2,000
2-1/2D-V	--	2,500
2-1/2D-12R and 12L	--	1,000
4D-V	5,000	--

[a]From the normally exposed surface of the lens face.

[b]A tolerance of ±1/4 deg in location may be allowed for at any test point.

LOWER BEAM		
Test Points deg[b]	cd. max.	cd. min.
10U-90U[a]	125	--
1U-1-1/2L to L	700	--
1/2U-1-1/2L to L	1,000	--
1/2D-1-1/2L to L	3,000	--
1-1/2U-1R to R	1,400	--
1/2U-1R to 3R	2,700	--
1/2D-1-1/2R	20,000	10,000
1D-6L	--	1,000
1-1/2D-2R	--	15,000
1-1/2D-9L and 9R	--	1,000
2D-15L and 15R	--	850
4D-4R	12,500	--
4D-V	7,000	--
H-V	5,000	--

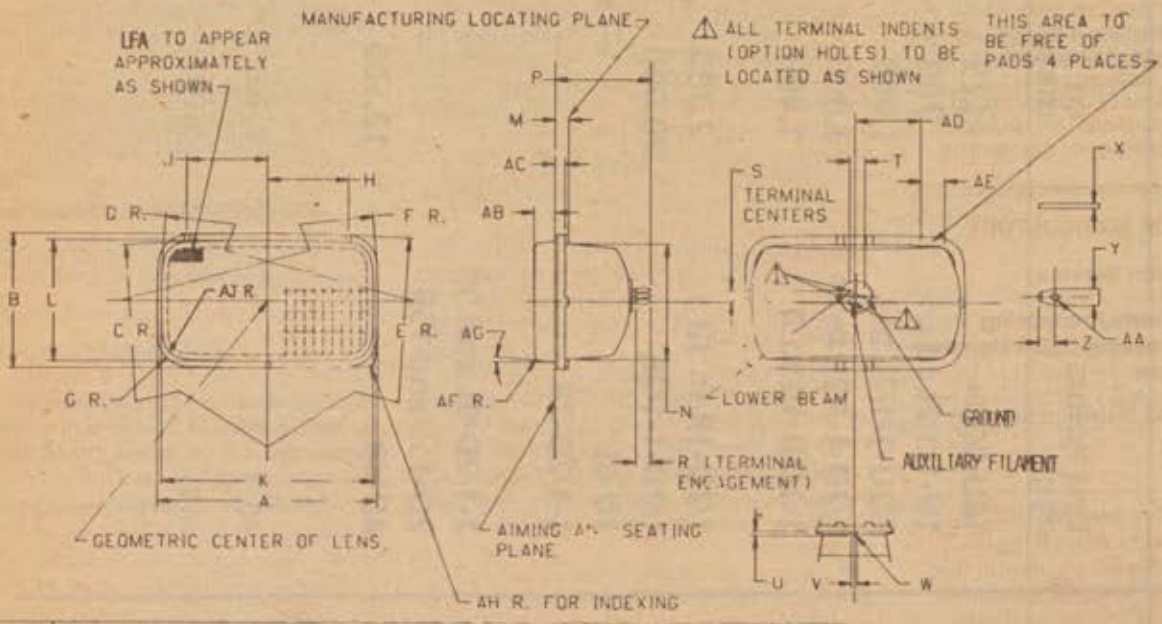
5. Figure 15 would be revised as follows:

6. Paragraphs S4.1.1.13(b), S4.1.1.21, S4.1.1.33, S5.1 and Tables I and IIIf (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") would be amended by changing "December 1974" to "December 1978."

7a. In Tables I and III the right hand column "Applicable SAE standard or recommended practice" would be amended by adding the wording "(See S5 for subreferenced SAE materials)".

7b. Tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") would be amended by changing "J580b February 1974" to "J580 AUG 79."

8. A new Figure —— would be added as follows:



LETTER	INCH	MM	LETTER	INCH	MM
A	5.93 +.050 −.040	150.50 +1.20 −1.00	R	.41 MIN.	10.5 MIN.
B	3.64 +.050 −.040	92.50 +1.20 −1.00	S	.30 ± .010	7.6 ± 0.30
C	63.0 ± 3.34	1600.0 ± 100.0	T	.41 ± .010	10.43 ± 0.30
D	23.6 ± 1.97	600.0 ± 50.0	U	.024 MIN.	0.60 MIN.
E	63.0 ± 3.94	1600.0 ± 100.0	V	.315 MAX.	8.0 MAX.
F	23.8 ± 1.97	600.0 ± 50.0	W	RADIUS	RADIUS
G	.787 ± .010	20.00 ± 0.30	X	.032 ± .002	0.82 ± 0.04
H	2.16 ± .010	55.0 ± 0.30	Y	.110 ± .004	2.80 ± 0.10
J	2.16 ± .010	55.0 ± 0.30	Z	.104 ± .010	2.65 ± 0.30
K	5.689 +.008 −.040	144.50 +.020 −1.00	AA	.051 ± .010 DIA.	1.30 ± 0.30 DIA.
L	3.252 +.008 −.040	82.60 +.020 −1.00	AB	.54 ± .020	14.3 ± 0.50
M	.46 MAX.	11.7 MAX.	AC	.295 MAX.	7.50 MAX.
N	3.19 MAX.	81.0 MAX.	AD	1.77	45.0
P	2.87 MAX.	73.0 MAX.	AE	.63	16.0
			AF	.13 ± .02	3.2 ± 0.5
			AG	5° ± 1°	5° ± 1°
			AH	.24 ± .02	6.0 ± 0.5
			AJ	.63 MIN.	16.0 MIN.

FIG. - TYPE LFA RECTANGULAR SEALED BEAM HEADLAMP UNIT

Because the proposals are refinements of certain proposals on which public notice has already been provided, and because of the need of manufacturers to finalize tooling so that the new headlamp systems may be made available on motor vehicles manufactured on or after July 1, 1985, the agency is providing a comment period of only 30 days following publication of this notice.

Issued on: May 2, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11099 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Commodity Processing System for Processing USDA Donated Food; Termination

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Effective June 30, 1985, the National Commodity Processing (NCP) System will end. Under an interim rule published June 28, 1983, the Food and Nutrition Service (FNS) entered into agreements with processors to convert dairy commodities end honey into various and products. The Secretary of Agriculture authorized operation of the program through June 30, 1985. The effectiveness of the program has been assessed. The program will not be renewed.

FOR FURTHER INFORMATION CONTACT: Mary Lou Wheeler, Special Operations Branch, Nutrition and Technical Services Division, FNS, 3101 Park Center Drive, Room 416, Alexander, Virginia 22302, Telephone (703) 756–3888.

EFFECTIVE DATE: July 1, 1985.

SUPPLEMENTARY INFORMATION: Section 203 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c *note*), directed the Secretary of Agriculture to encourage the consumption of commodities through processing agreements with private companies. Section 212 of that act indicates that section 203, along with other sections of the act, expires on September 30, 1985. The Food and Nutrition Service, exercising discretionary authority, chose to implement the statutory mandate as a new program specifically designed to fill the gaps that existed under state processing as it was and is currently structured. Interim regulations governing the operations of the NCP System were published June 23, 1983 (48 FR 28609). The Program was authorized through June 30, 1985, as indicated by the June 23 publication (48 FR 28610).

FNS hoped through NCP agreements to encourage the consumption of bonus dairy commodities and honey by making them available to all eligible outlets in processed forms. The NCP System was to supplement the processing program administered by state agencies. It was not the intent of FNS to replace state processing agreements.

The goals of the NCP System were to:

- Provide an opportunity for many recipient agencies to receive processed end products;
- Reduce the paperwork for private industry associated with entering into many individual state agreements;
- Utilize an additional 100 million pounds of commodity products held in Commodity Credit Corporation (CCC) storage; and
- Provide an incentive to processors to develop new products for use by eligible recipients which, in turn, would incease the demand for surplus commodities.

The Food and Nutrition Service, in its assessment of the need and effectiveness of the program, has determined that the goals of the program were not met. Program indicators show that NCP accomplishments were limited in terms of the amount of donated food sold, recipient agency participation, geographic areas served and processors involved. NCP has not achieved its sales goals, reduced Federal storage costs or extended bonus processing to new states and recipient agencies. Specifically:

- NCP sales during the two year period were much lower than the anticipated level of 100 million pounds. Approximately 40 million pounds of donated food were ordered since the NCP System began. Sales figures for the two-year period represent inventory drawdowns of only 20 million pounds.
- The Federal cost of administering the NCP System considerably exceeded savings due to reduced food storage costs.
- Recipient agency registration was concentrated geographically and by recipient agency outlet type.
- The majority of NCP sales were made to a small number of schools located in select states.
- NCP sales and food orders were concentrated among a few processors.
- The NCP lacks accountability. During the course of the program, FNS conducted two sales verification tests. Sales reported by processors could not be verified by the purchasing recipient agencies. Recipient agencies also could not verify that they received the total value pass-through for the donated food used to manufacture the end products. It was evident that there were major reporting and recordkeeping problems that needed to be addressed to strengthen the overall accountability of the NCP System.

Since NCP was implemented, many state agencies discontinued all state processing agreements involving bonus dairy commodities, believing them to be duplicative of NCP efforts. The operation of two similar processing programs generated a great deal of confusion among processors, state agencies and recipient agencies. NCP sales activity was concentrated only in those states that dropped state processing agreements.

There was minimal evidence of new product development. Types of outlets purchasing NCP end products were almost entirely those previously involved in state processing programs. Sales activity reported for charitable institutions, nutrition programs for the elderly and other eligible outlets (with the exception of schools) was minimal.

Therefore, the Department has decided that the NCP System will not be renewed. The current NCP contract year expires on June 30, 1985. All agreements will therefore be allowed to expire by their terms. Termination of the contracts on that date will allow for an orderly phasing out of the program.

The Department plans to propose regulations in the near future to strengthen the state processing program so that the elimination of the NCP System will not result in gaps in services provided under state processing programs. The proposed regulations will encourage uniformity in the State processing program to assure benefits of processing activities are available to all interested eligible recipient agencies. The regulations will strengthen the accountability and monitoring requirements of the state processing program to assure that processors pass

on the full value benefits to all participating recipient agencies.

(Catalog of Federal Domestic Assistance No. 10.550)

Authority: (Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431))

Dated: May 7, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-11489 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Northern Rio Arriba Electric Cooperative, Inc., Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, The Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has adopted an Environmental Assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC) and made a Finding of No Significant Impact with respect to a project proposed by Northern Rio Arriba Electric Cooperative, Inc. (Rio Arriba), the County of Los Alamos and the Middle Rio Grande Conservancy District. The project consists of construction, operation and maintenance, as agent for the County of Los Alamos, of a 69 kV switching station and transmission line and one 6 MW hydroelectric generating unit at the existing El Vado Dam. The project is located in Rio Arriba County, New Mexico.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact (FONSI), the EA prepared by FERC as supplemented by REA and Rio Arriba's Borrower's Environmental Report (BER), may be reviewed at or obtained from the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1915), or at the office of Northern Rio Arriba Electric Cooperative, Inc. (Mike Avant, Manager), P.O. Box W, Chama, New Mexico 87520, telephone (505) 756–2181, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for approval from Rio Arriba, has reviewed the BER submitted by Rio Arriba as well as the EA and other documents obtained from FERC and has determined that they represent an accurate assessment of the environmental impact of the proposed project. Rio Arriba's project consists of constructing and operating, as agent for the County of Los Alamos, 19 km (12 mi.) of 69 kV transmission line and a 69 kV switching station to serve as outlet facilities for a 6 MW hydroelectric generating unit which the County of Los Alamos proposes to install at the existing El Vado Dam. Operation of the dam and reservoir would not be affected by the installation of the hydroelectric generating facilities.

REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands or threatened and endangered species.

Alternatives examined for the proposed transmission facilities include no action and alternative line routes. REA determined that the proposed project is an acceptable alternative to wheel energy from a renewable resource to the County of Los Alamos.

Based upon support documents, FERC prepared an EA concerning the proposed project and its impacts. The EA was supplemented by REA based upon the BER received from Rio Arriba. REA has independently evaluated the proposed project and has concluded that technical assistance and approval of the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with their regulations, FERC published notices and requested comments on the application submitted by the County of Los Alamos in the **Federal Register** and newspapers local to the project on March 29, 1984. There were no adverse comments. The notices published by FERC meet the REA notice requirements contained in 7 CFR Part 1794.62.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated: May 6, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85-11481 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–40. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Electron Loss Spectrometer, Model ELS 22 with Accessories. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended use: See notice at 49 FR 50419.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) high resolution electron loss spectroscopy capable of examining energies over a range of 1 to 50 electron volts and (2) ion scattering spectroscopy. The National Bureau of Standards advises in its memorandum dated February 25, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientifc Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11472 Filed 5-10-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Tennessee; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301).

Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No. 84–298. Applicant: University of Tennessee, Knoxville, TN 37920. Instrument: Titanium Product System for Osseointegration. Manufacturer: Befors Nobelpharma, Sweden. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is necessary to the intended research and teaching of jawbone-anchored titanium bridgework based upon the principle of osseointegration. The National Institutes of Health advises in its memorandum dated January 3, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11471 Filed 5–10–85; 8:45 am]

BILLING CODE 3510-05-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Turkey

May 7, 1985.

On March 22, 1985 a notice was published in the **Federal Register** (50 FR 11534) announcing that, on February 28, 1985 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached on a mutually satisfactory solution concerning this category, the United States Government has decided to control imports of cotton sheeting in Category 313, produced or manufactured in Turkey and exported during the twelve-month period which began on February 28, 1985 and extends through February 27, 1986 at a level of 12,713,472 square yards. Should further consultations result in agreement, further notice will be published in the **Federal Register.**

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 of consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313, exported during the period which began on February 28, 1985 and extends through February 27, 1986 in excess of the designated limit.

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

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 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).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 7, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), 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; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 13, 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 Turkey and exported during the twelve-month period which began on February 28, 1985, in excess of 12,713,472 square yards.[1]

Textile products in Category 313 which have been exported to the United States prior to February 28, 1985 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under 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 F.R. 55709), as amended on April 7, 1983 (48 F.R. 15175), May 3, 1983 (48 F.R. 19924), December 14, 1983 (48 F.R. 55607), December 30, 1983 (48 F.R. 57584), April 4, 1984 (49 F.R. 13397), June 28, 1984 (49 F.R. 26622), July 16, 1984 (49 F.R. 28754), November 9, 1984 (49 F.R. 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.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–11470 Filed 5–10–85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

Summary

The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours

[1] The level has not been adjusted to reflect any imports exported after February 27, 1985.

needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 4 and Related Clauses in Part 52.204.

Information concerns certain data (e.g., DUNS identification codes) required to support management information system requirements. This, in turn, supports the generation of various reports including those to Congress.

Small business firms.

Responses: 40,541.

Burden Hours: 3,142.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, DC 20301-3060, telephone (202) 697-8334. This is a revision of an existing collection.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

May 8, 1985.

[FR Doc. 85-11468 Filed 5-10-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Discretionary Grant Program Application Notice for Bilingual Education: Education Personnel Training Program for New Projects; Correction

In the application notice published in the **Federal Register** on April 30, 1985 on page 18403, in the third column under *Available Funds*, the first sentence beginning "It is expected that $37,000,000 * * *." is changed to read, "It is expected that $3.7 million * * *."

For further information contact: Ramon Chavez. Telephone (202) 245-2695.

(Catalog of Federal Domestic Assistance No. 84.003, Bilingual Education Program)

Dated: May 7, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc 85-11507 Filed 5-10-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Technical issues associated with the IEA's Fifth Allocation Systems Test (AST-5) and the AST-5 Test Guide.
3. Any technical issues relating to:
(a) Stocks and supply disruptions;
(b) Review of emergency response programs of Canada, Japan, and the United Kingdom; and
(c) Oil statistical reports.
4. Subcommittee A organization, leadership and succession.
5. Future work program.

II. A joint meeting of Subcommittees A and C of the IAB will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 2:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action: Federal Trade Commission staff questions regarding Industry Supply Advisory Group (ISAG) /IEA Secretariat use of price information.

III. A meeting of Subcommittee C of the IAB will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, commencing immediately upon completion of the joint meeting of Subcommittees A and C that is scheduled to begin on that date at 2:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Status of U.S. legislation.
4. Antitrust clearances for AST-5.
5. Breach of contract defense.
6. Dispute Settlement Center.
7. Future work program.

IV. A meeting of the IAB will be held on May 21, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. If space is not available at the IEA offices, the meeting will be held at the Delegation du Benelux, 12-14 rue Octave-Feuillet, Paris, France. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note of IAB meeting of January 15, 1985.
3. Correspondence and communications with IEA and Reporting Companies.
4. Report from Subcommittee A.
5. Report from Subcommittee C.
6. AST-5 issues, including ISAG/Secretariat Operations Manual and AST-5 Test Guide.
7. Stocks and supply disruptions.
8. Review of emergency response programs of Canada, Japan and the United Kingdom.
9. Oil statistical reports.
10. Draft program of work for the IEA's Standing Group on Emergency Questions.
11. ISAG staffing and work program.
12. IAB organization, leadership and succession.
13. Date of next meeting and future business.

V. A meeting of the IAB will be held on May 22, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 50th meeting.
3. AST-5:
(a) Oral report by the Chairman of the AST-5 Technical Sub-Group;
(b) AST-5 Test Guide (IEA/SEQ (85) 26);
(c) Oral report on the data test; and
(d) Briefing meetings (IEA/SEQ (85) 23).
4. Emergency preparedness:
(a) Progress report on follow-up on stocks and supply disruptions:
(i) Minimum operating stock requirements;
(ii) Cost of stocks (IEA/SEQ(85)14);
(iii) Logistical constraints (IEA/SEQ(85)21);
(iv) Effectiveness and consequences of oil consumption reduction methods;
(v) Member countries legislation (IEA/SEQ(85)22);

(vi) Short-term fuel switching; and
(vii) Trends in OECD oil stocks (IEA/SEQ(85)25).
(b) Review of emergency response programs:
(i) Canada (IEA/SEQ(85)6);
(ii) Japan (IEA/SEQ(85)7); and
(iii) United Kingdom (IEA/SEQ(85)8).
5. 1986 Draft Program of Work (IEA/SEQ(85)12).
6. Oil supply and demand:
(a) End April Oil Market Report (IEA/SEQ(85)19);
(b) Current Oil Market Situation (IEA/SEQ(85)20);
(c) Quarterly Oil Forecast (IEA/SEQ(85)17); and
(d) Base Period Final Consumption (IEA/SEQ(85)18).
7. Any other business.
8. Date of next meeting.

VI. A meeting of the IEA Group of Reporting Companies will be held on May 23, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. This is a briefing meeting for personnel of IEA Reporting Companies and their affiliates, and for others who will participate in AST-5. The agenda for the meeting is under the control of the IEA. It is expected that the following draft agenda will be followed:

1. Opening remark.
2. Emergency Sharing System.
3. Background of AST-5.
4. AST-5 Test Guide:
(a) Objectives and scope;
(b) Timetable;
(c) Organization and responsibilities
(i) Secretariat;
(ii) ISAG;
(iii) Reporting Companies/Reporting Company Affiliates; and
(iv) National Emergency Sharing Organizations
(d) Data;
(e) Voluntary offer process; and
(f) Non-implementation of some voluntary offers.
5. National Programs.
6. Appraisal Reports.
7. Question and Answer Session.
8. Closing Remarks.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meetings are open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, representative of members of the IEA Group of Reporting Companies, and invitees of the SEQ. The meeting of the IEA Group of Reporting Companies is open only to representatives of members of the Group of Reporting Companies, representatives of the aforesaid U.S. government agencies, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, representatives of IEA member governments, and invitees of the IEA.

Issued in Washington, D.C., May 8, 1985.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 85-11632 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: Pursuant to 10 CFR 600.7(b), the DOE announces that it intends to award on a restricted eligibiilty basis a grant providing support to the 1985 Eighth Annual Summer Field Institute on Western Energy and Minerals Opportunities Problems and Policy Issues. The DOE will provide partial support for this effort in the amount of $50,000.

Procurement Request No. 01-85FE60653.

Project Scope: The Colorado School of Mines is sponsoring a Summer Field Institute during July and August 1985, open to participants from Federal, state and local governments, industry, the media, banking and academias. The program consists of a series of on-site conferences at which the participants are introduced to the technological, economical, environmental, social and policy-related aspects of western energy and mineral development. As DOE has a vital interest in energy and mineral development, it has been determined that DOE's partial support to the Colorado School of Mines for Field Institute on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on May 7, 1985.

Ben Goldman,

Director, Contract Operations, Office of Procurement Operations.

[FR Doc. 85-11474 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order; Petroleum Supply, Inc. and Don Ragland

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amended Proposed Remedial Order to Petroleum Supply, Inc. and Don Ragland.

SUMMARY: Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Amended Proposed Remedial Order which was issued to Petroleum Supply, Inc. and Don Ragland, (collectively referred to as PSI), 8705 Katy Freeway, Suite 200, Houston, Texas 77024. This amended Proposed Remedial Order alleges that PSI charged prices in excess of its maximum lawful selling price in violation of 10 CFR 212.10 and 210.93 during the period May 1977 through December 1977 in the amount of $142,744.50. In addition, the Amended Proposed Remedial Order alleges that PSI engaged in conduct (1) that circumvented or contravened or resulted in the circumvention of contravention of applicable regulations in violation of 10 FR 205.202 and (2) that constituted a means to obtain a price for crude oil which was higher than permitted by the regulations in violation of 10 CFR 210.62(c) during the period May 1977 through December 1977 in the amount of $142,744.71. The Amended Proposed Remedial Order also alleges that PSI charged prices in excess of its actual purchase prices during the period January through June of 1978 without performing any service or other function traditionally and historically associated with the resale of crude oil in violation of 10 CFR 212.186, 210.62(c) and 205.202 in the amount of $49,680.35.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office

of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 7th day of May, 1985.

Avrom Landesman,

Director, Enforcement Programs.

[FR Doc. 85-11531 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission; Pontook Hydro Partners, Ltd. and New Hampshire Water Resources Board

May 8, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: P-2861-010.

c. Date Filed: April 18, 1985.

d. Applicant: Pontook Hydro Partners, Ltd. and New Hampshire Water Resources Board.

e. Name of Project: Pontook Project.

f. Location: On the Androscoggin River in the Town of Dummer, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: William J. Madden Jr., Bishop, Liberman, Cook, Purcell & Reynold, 1200 Seventeenth St., N.W., Washington, D.C. 20036.

i. Comment Date: May 30, 1985.

j. Description of Proposed Transfer: On March 26, 1981, a license was issued to Robert W. Shaw to construct, operate, and maintain the Pontook Project No. 2861. On August 23, 1983, the license was transferred to Pontook Hydro Partner, Ltd (Licensee). The Licensee intends to add the New Hampshire Water Resources Board to the license in order that the New Hampshire Water Resources Board can maintain ownership of the Dam and surrounding property. For that reason the Licensee and the New Hampshire Water Resources Board have filed a request to transfer the license to Pontook Hydro Partner, Ltd and the New Hampshire Water Resources Board (Transferees).

The Licensee has complied with the terms and conditions of the license. The Transferees have agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as it were the original licensees.

k. This notice also consists of the following standard paragraphs: B.

l. Filing and service of Responsive Documents: Any filing must bear in all capital letters the title "COMMENTS", "PROTEST " or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicant specified herein.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11514 Filed 5-10-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearing Appeals

Cases Filed; Week of March 29 Through April 5, 1985

During the Week of March 29 through April 5, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 29 through Apr. 5, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 1, 1985	Economic Regulatory Administration/Almarc Manufacturing, Inc., Washington, DC.	HRW-0026	Remedial order finalization. If granted: The Proposed Remedial Order issued to Almarc Manufacturing, Inc. on Oct. 1, 1984, would be issued as a final Remedial Order.
Do	J.H. Seale & Son, Inc., Sumter, SC	HEE-0136	Exception to the reporting requirements. If granted: J.H. Seale & Son, Inc. would not be required to file Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Apr. 2, 1985	Revere Petroleum Corp. and Richard Dobyns, Houston, TX	HRD-0278	Motion for discovery. If granted: Revere Petroleum Corp. and Richard Dobyns would receive discovery in connection with a Proposed Remedial Order issued to them (Case No. HRO-0125).
Apr. 3, 1985	Kent Oil & Trading Co., Washington, DC	HEF-0578	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with a Jan. 20, 1984 Settlement Agreement between the DOE and Kent Oil & Trading Co.
Do	MAPCO, Inc., Washington, DC	HEF-0577	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with a Consent Order between the DOE and MAPCO, Inc.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

(Week of Mar. 29 through Apr. 5, 1985)

Date	Name and location of applicant	Case No.	Type of submission
Do	McTan Corp., Washington, DC	HEF-0576	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Oct. 3, 1984 Consent Order between the DOE and McTan Corp.
Apr. 5, 1985	Russell Daniel Oil Co., Inc., St. Francisville, LA	HEE-0137	Exception to the reporting requirements. If granted: Russell Daniel Oil Co., Inc. would not be required to file Form EIA-1605-0139 regarding its sales of diesel and kerosene.

REFUND APPLICATIONS RECEIVED

(Week of Mar. 29 to Apr. 5, 1985)

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/2/85	Weller/Baltimore County Public Schools	RF78-7.
4/1/85	Belridge/Chevron, USA	RF124-1.
4/1/85	Stinnes Interoil/Gulf States Oil & Refining Co.	RF125-1.
4/1/85	Point Landing/Farmers Export Co.	RF122-4.
4/1/85	Hertz/Banding, Inc.	RF78-127.
4/1/85	Hendel's/Andrew McPhee	RF79-11.
4/1/85	Little America/Nebraska Public Power District	RF112-6.
4/1/85	Seminole Refining/The Mitchell Co., Inc.	RF111-6.
4/3/85	OKC Corp./Rainey Oil Co.	RF13-26.
4/3/85	Waller Petroleum Co./Tower Sales, Inc.	RF78-8.
4/3/85	Tenneco Oil Co./E.P. Mobet Co.	RF7-112.
4/3/85	Tenneco Oil Co./Follett Oil Co., Inc.	RF7-113.
4/3/85	Tenneco Oil Co./Steffey & Findlay, Inc.	RF7-114.
4/3/85	Tenneco Oil Co./Moore Oil Co., Inc.	RF7-115.
4/3/85	Tenneco Oil Co./H.V. Johnson & Son.	RF7-116.
4/3/85	Tenneco Oil Co./Seller Oil Co., Inc.	RF7-117.
4/3/85	Tenneco Oil Co./Wiseman Oil Co., Inc.	RF7-118.
4/3/85	Tenneco Oil Co./Joel F. Hollowell Oil.	RF7-119.
4/3/85	Tenneco Oil Co./Blue Oil Co.	RF7-120.
4/3/85	Tenneco Oil Co./Lease Warner, Inc.	RF7-121.
4/3/85	Tenneco Oil Co./Maston Service Co.	RF7-122.
4/3/85	Tenneco Oil Co./Wilhelm Energy Ser.	RF7-123.
4/4/85	Seminole Refining/Dixie Oil Co., Inc.	RF111-5.
4/1/85 to 4/5/85	Gulf Refund Applications	RF40-2611 to RF40-3005.

[FR Doc. 85-11537 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 1 through April 5, 1985

During the week of April 1 through April 5, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Remedial Order

South Central Terminal Co., Inc. (Formerly Bi-Petro Refining Co., Inc.), April 5, 1985; HRO-0146

Bi-Petro Refining Co., Inc. (now South Central Terminal Co., Inc.) objected to a Proposed Remedial Order (PRO) issued to it on the grounds that the products sold by the firm were not covered products within the meaning of 10 CFR 212.31. According to Bi-Petro, the regulation describing the products sold by the firm was limited by technical industry standards for specification gasoline. However, the OHA determined that both the agency and Congress intended the DOE's regulations to apply to the widest possible range of petroleum products, not just those meeting industry specifications. The OHA further found that Bi-Petro's products were suitable for use as a fuel in internal combustion engines and, therefore, that they were governed by the regulatory provisions involving the sale of gasoline. Accordingly, the OHA found that Bi-Petro had failed to properly establish its maximum lawful selling price for that product, and that the PRO, as modified, should be issued as a final Remedial Order.

Request for Exception

W.I. Waggoner Estate, April 5, 1985; BEE-1399

The W.T. Waggoner Estate (Waggoner) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart L. The firm sought retroactive exception relief allowing it to charge a price of $.20 per barrel above the sum of its acquisition cost, transportation and gathering cost, and administrative overhead, in its resales of crude oil during the period January 1, 1978 through November 30, 1980. In considering the request, the DOE found that Waggoner qualified for retroactive exception relief, in that the firm had demonstrated compelling reasons for a grant of such relief. However, in arriving at a level of relief which would allow Waggoner a reasonable rate of return in its crude oil resales, the DOE found that the firm had exaggerated the magnitude of the costs it was allowed to recover under the Subpart L regulations. The DOE concluded that a $.30 per barrel gross markup above the acquisition cost was a reasonable level of relief for Waggoner's operations during the period in question.

Interlocutory Order

Economic Regulatory Administration, April 3, 1985; HRZ-0236; HRZ-0237

The ERA filed a motion to amend the Proposed Remedial Order (PRO) issued to United Independent Oil Company (United) in order to add the specific legal finding that the firm's actions resulted in the circumvention or contravention of the Entitlements Program in violation of 10 CFR 205.202. The ERA also filed a motion to join Peter L. Hirschburg as a party respondent to the United PRO. In considering these motions, the OHA found that the motions were not filed at an unduly late stage of the proceeding, that their acceptance would further the agency's goal of presenting a complete and effective case, and that United and Mr. Hirschburg would not be prejudiced by the amendments. Accordingly, the ERA motions were granted.

Supplemental Orders

Kentucky Oil & Refining Co., April 2, 1985; HYX-0010; HYX-0013

In this Decision and Order, the DOE reviewed exception relief that Kentucky Oil & Refining Company received under the DOE Crude Oil Entitlements Program during the firm's fiscal year ending on December 31, 1981. The DOE rejected Kentucky's request that the amount of exception relief be increased to alleviate a special hardship that the firm experienced in 1980. The DOE concluded that the special hardship, if any, was not caused by the DOE regulatory programs, and did not justify and increase in exception relief. The DOE also summarized outstanding exception orders issued to Kentucky under the Entitlements Program, and determined that Kentucky had a net final entitlements purchase obligation of $1,634,630. The DOE ordered that this obligation be satisfied in accordance with the policies inunciated in the agency's Notice issued on January 9, 1985.

Thriftway Company, April 4, 1985; HYX-0019

In this Decision and Order, the DOE summarized outstanding exception orders issued to Thriftway Company under the DOE Crude Oil Entitlement Program. The DOE determined that Thriftway had a final net entitlements purchase obligation of $378,347. The DOE ordered that this obligation be satisfied in accordance with the policies enunciated in the agency's Notice issued on January 9, 1985.

Implementation of Special Refund Procedures

Beverly Hills Oil Company, et al., April 4, 1985; HEF-0328, et al.

The DOE issued a Decision and Order concerning Petitions for Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in the matters of Beverly Hills Oil Co. (HEF-0328); Jim Cox Oil Co. (HEF-0345); E. Dunlap Corp. (HEF-0351); James W. Harris Production Co. (HEF-0369); and Prosper Energy Corp. (HEF-0485). ERA requested that the OHA formulate a mechanism by which those parties potentially injured by the five firms' crude oil pricing practices during a stipulated time

period could apply for a refund from moneys received as a result of enforcement proceedings or court actions or from consent order funds which the firm agreed to pay in settlement of disputes regarding its compliance with DOE regulations. The Decision and Order determined that, because of the similarities between the violations alleged in the present cases and other previously-instituted refund proceedings involving crude oil producers, the application procedures formulated in the *Alkek, Adams,* and *A. Johnson* proceedings would be utilized. The Decision further determined that those parties who filed refund applications in those proceedings would be deemed to have filed an application for refund in the *Beverly Hills* proceedings.

Collins Oil Company; C.C. Dillon Company; Enterprise Oil & Gas Company; Foster Oil Company, April 3, 1985; HEF-0051; HEF-0063; HEF-0070; HEF-0075

On April 3, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final decision and Order establishing procedures for the disbursement of $94,797.28 (plus accrued interest) obtained as a result of Consent Orders entered into by Collins Oil Co., C.C. Dillion Co., Enterprise Oil & Gas Co., and Foster Oil Co. The funds will be available to customers who purchased refined petroleum products from the consent order firms during the relevant consent order period. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the amount they were allegedly overcharged by the particular consent order firm.

Kiesel Company; L.P. Rech Distributing Company, April 2, 1985; HEF-0107; HEF-0152

The DOE issued a Decision and Order implementing a plan for the distribution of $7,500 and $7,853.08 received as a result of two consent orders which the DOE entered into with Kiesel Co. and L.P. Rech Distributing Co., plus enterest that has accrued on these amounts. The Kiesel consent order was entered into on January 14, 1981. The DOE determined that a portion of the Kiesel settlement fund should be distributed to fifty-six customers who purchased petroleum products from Kiesel during the March 1, 1979 through July 31, 1979 consent order period. The Rech consent order was entered into on September 15, 1980. The DOE determined that the entire Rech settlement fund should be distributed to one customer who purchased petroleum products from Rech during the September 1, 1979 through November 30, 1979 period, provided that the purchaser can demonstrate injury. In both cases, the customers were identified by DOE audits, and will be allotted refunds (after each files an application for refund) based on presumptions of injury which have been employed in prior, similar proceedings. Applications for refunds filed by other firms will also be considered. Any such claims will, of course, be analyzed and, if necessary, refunds to identified purchasers will be adjusted to accommodate successful applicants.

Refund Application

Vangas Inc./Michael J. Grimm, et al., April 4, 1985; RF68-00001, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 22 end-users of Vangas propane. The applicants purchased the Vangas products directly, and applied for refunds in accordancewith the Vangas special refund procedures. *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984). After examining the statements and supporting information submitted by the applicants, the DOE determined that 21 of the applicants would be eligible for refunds of less than $15, and in accordance with the *Vangas* decision, these applications were denied. One applicant, Elmco Merzoian Bros. Farm Management, received a refund of $20, including interest.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 2, 1985.

[FR Doc. 85-11535 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

H. Michael Clyde, April 8, 1985; HFA-0277

H. Michael Clyde filed an Appeal from a partial denial by the Director, Classification and Technical Information Division of the Albuquerque Operations Office, of a Request for Information which Mr. Clyde had submitted under the Freedom of Information Act. Mr. Clyde had requested access to documents concerning the compliance with affirmative action and equal employment opportunity obligations by Los Alamos National Laboratory (LANL) and the University of California (UC). In considering the Appeal, the DOE found that the majority of withheld documents were exempt from mandatory disclosure pursuant to the attorney work-product privilege of Exemption 5. In reaching this conclusion, the DOE determined that the UC/DOE contract provided DOE with an interest in UC/LANL litigation sufficient to support the application of the work-product privilege. In addition, since the DOE must determine whether to pay UC/LANL's litigation costs or to intervene in litigation, the DOE determined that several documents were properly withheld pursuant to the deliberative process privilege of Exemption 5. The DOE further determined that documents prepared by another agency may be referred to that agency for release under the FOIA. However, if the requester protests the referral, the DOE must process the request in consultation with the other agency. Finally, the DOE determined that the Director should issue a new determination concerning the withholding of the names of individuals contained in settlement documents pursuant to Exemption 6. In this regard, the DOE noted it was unclear how release of this information would constitute an unwarranted invasion of personal privacy. Accordingly, the Appeal was granted in part.

Remedial Order

Whitaker Oil Company, April 10, 1985; HRO-0035

Whitaker Oil Company (Whitaker) filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to the firm on February 24, 1982, by the Economic Regulatory Administration (ERA). In the PRO, the ERA alleged that during the period November 1973 through March 1974, Whitaker charged prices for motor gasoline, No. 2 diesel fuel, kerosene, toluene, and xylene which exceeded the firm's maximum lawful selling prices for those products by $992,427.93. In its Statement of Objections, Whitaker asserted, among other things, that enforcement of the PRO was barred by the doctrine of laches and the Georgia statute of limitations; various rulings and regulations were not properly promulgated or applied; and the ERA made numerous errors in its audit concerning non-product cost increases, classes of purchaser, pricing periods, treatment of inventory on a firm-wide rather than a separate-inventory basis, and treatment of the firm's exchange transactions. Whitaker also challenged the inclusion of sales of toluene and xylene in the ERA's audit of the firm. After considering Whitaker's arguments, the Office of Hearings and Appeals (OHA) determined that the PRO should be issued as a final Remedial Order with certain modifications: (1) The alleged overcharges attributable to Whitaker's sales of motor gasoline, $511,000, should be eliminated in accordance with exception relief granted the firm in *Whitaker Oil Co.* 12 DOE ¶ 81,024 (1985); (2) the overcharge amount in sales of other products should be reduced by $725.38 to reflect ERA's practice in prior cases of not applying the equal application rule in periods prior to September 1974; and (3) overcharges of $47,330.47 alleged in sales of xylene for the period January 30 through March 31, 1974, should be eliminated pursuant to OHA's finding that the product was not subject to federal price controls during that period.

Request for Exception

Seneca Oil Company, April 11, 1985; HEE-0075

Seneca Oil Company filed an Application for Exception from the provisions of § 212.79 which, if granted, would have permitted Seneca to certify as "newly discovered crude oil" certain quantities of crude oil produced from five properties during the period November 1, 1979 through December 31, 1980. The approval of exception relief would have relieved Seneca of any obligation to refund revenues obtained as a result of improperly classifying the production of the properties as "newly discovered crude oil." After a review of the firm's contentions, the DOE determined that Seneca had not satisfied the applicable criteria for the approval of exception relief. Accordingly, Seneca's Application for Exception was denied.

Motion for Evidentiary Hearing

Knox Oil of Texas, Inc., and Michael L. Reed, April 9, 1985; HRH-0029

Knox Oil of Texas, Inc. and Michael L. Reed filed a Motion for Evidentiary Hearing regarding a Proposed Remedial Order (PRO) issued to them in connection with crude oil sales made by Kelly Oil Company. They requested the evidentiary hearing in order to inquire into the factual basis for the PRO's allegation that they are jointly and severally liable for Kelly's overcharges. The OHA found that the PRO set forth sufficient and readily comprehensible factual allegations regarding Knox's and Reed's control of Kelly and their benefits from the allegedly improper Kelly transactions. Accordingly, OHA determined that no discovery was warranted, and the motion was denied.

Interlocutory Order

Getty Oil Company, April 11, 1985; HRZ-0238

On November 7, 1983, Getty Oil Company requested the recusal of 52 current or former Department of Energy employees from participation in *Economic Regulatory Administration/Getty Oil Co.*, Case No. HRR-0074. In considering Getty's request, the DOE determined that Getty did not establish sufficient support for its contentions of unauthorized *ex parte* communications involving DOE personnel or improper congressional influence upon the DOE decision-making process. Accordingly, DOE concluded that Getty's request for recusal of the DOE employees be denied.

Implementation of Special Refund Procedures

Blex Oil, Inc.; Cross Oil Company; Independent Oil and Tire Company, April 10, 1985; HEF-0038; HEF-0058; HEF-0094

On April 10, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $4,314.31 (plus accrued interest) obtained as a result of Consent Orders entered into between the DOE and Blex Oil, Inc., Cross Oil Co., and Independent Oil & Tire Co. The funds will be available to customers who puchased refined petroleum products from one of the consent order firms during the relevant consent order period. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the volume of refined petroleum products they purchased from one of the consent order firms.

Columbia Oil Company; Empire Oil Company, April 10, 1985; HEF-0052; HEF-0068

On April 9, 1985, the Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for distributing $17,179.41 (plus accrued interest) as a result of Consent Orders entered into between the DOE and Columbia Oil Co. and Empire Oil Co. Under these procedures the funds will be distributed to customers who purchased motor gasoline from Columbia during the period April 1, 1979 through September 30, 1979, or from Empire during the period March 1, 1979 through July 31, 1979, and who can establish that they were injured as a result of these purchases. The Decision states, however, that end-users or resellers requesting refunds of $5,000 or less will not be required to provide a separate, detailed showing of injury. The Decision sets forth specific information which must be included in refund applications.

Cosby Oil Company, April 10, 1985; HEF-0056

On April 10, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $47,616.73 (plus accrued interest) obtained as a result of a Consent Order entered into between the DOE and Cosby Oil Company. The funds will be available to customers who purchased motor gasoline from Cosby during the period November 1, 1973 through April 30, 1974. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the amount they were allegedly overcharged by Cosby.

Refund Applications

Arcone Oil Company, Agway, Inc., et al., April 11, 1985; RF21-1, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three first purchasers of No. 2 fuel oil from Arcone Oil Co., Inc. The DOE denied two of the Applications because the claimants were spot purchasers and had failed to show injury. The third applicant was also a spot purchaser. However, since this applicant is an agricultural cooperative, the DOE determined that it was eligible to receive a refund based on the volume of No. 2 fuel oil that it bought from Arcone and sold to members of the cooperative. The refund granted in this proceeding totals $11,364.

Petro-Lewis Corporation/Enterprise Products Company, April 9, 1985; RF63-0001

Enterprise Products Co. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and Petro-Lewis Corporation. In assessing the merits of the Application, the DOE found that Enterprise paid above-market average costs during several months of the Petro-Lewis consent order period. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Enterprise's competitive disadvantage from negative $1,193,308 (the firm's net excess cost) to $63,637 (the firm's above-market price volumetric share) to $265,749 to (the firm's gross excess cost). A refund of $63,637 was found to equitably compensate Enterprise for the disadvantage it suffered as a result of Petro-Lewis' overcharges. In addition, the firm received accrued interest which brought the total refund amount to $105,109.

Windham Gas and Oil/Hi-Lo Oil; Workingman's Friend Oil, April 12, 1985; RF43-00010; RF43-00011

The DOE issued a Decision and Order concerning Applications for Refund filed by two resellers of fuel oil. Hi-Lo purchased the Windham proucts directly from Windham, while Workingman's Friend purchased from Hi-Lo. Both applied for refunds in accordance with the Windham special refund procedures. *Windham Gas & Oil*, 12 DOE ¶ 85,074 (1984). The DOE determined that Hi-Lo should not receive a refund for the gallons of product that it sold to Workingman's Friend, because it could be presumed to have passed along any overcharges. After examining the statement and supporting information submitted by the applicants, the DOE approved refunds totalling $1,339 including interest.

Dismissals

The following submissions were dismissed:

Name of Company and Case No.
Dersch Oil Company, Inc.—HEE-0127
Southwestern Gulf Petroleum Co.—HRO-0194

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-11536 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with

the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 6, 1985.

Field Energy Resources, Inc., Houston, Texas, HRO-0284, Crude Oil

On April 8, 1985, the State of Texas filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Tulsa Office of the Economic Regulatory Administration (ERA) issued to Fields Energy Resources, Inc. (Fields) on February 18, 1985. Fields formerly did business at 7500 San Felipe, Suite 350, Houston, Texas 77063. In the PRO, the ERA alleges that Fields charged prices in excess of its maximum lawful selling prices in violation of 10 CFR 210.62 (the normal business practices rule) and 212.186 (the anti-layering rule) during the period May through December 1980 in the amount of $561,669.80. The ERA also alleges violations of 10 CFR 212.183 (the permissible average markup rule) during August and November of 1980 in the amount of $163,351.48.

[FR Doc. 85-11532 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Crystal Oil Corp. et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $3,807,115 in consent order funds to members of the public. This money is being held in escrow following the settlements of separate enforcement proceedings involving Crystal Oil Co. (Case No. HEF-0204), Howell Corp. and Quintana Refinery Co. (Case No. HEF-0212), and Pride Refining, Inc. (Case No. HEF-0218).

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 the appropriate case number(s).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to three separate consent orders entered into by Crystal Oil Co., Howell Corp. and Quintana Refinery Co., and Pride Refining, Inc. (collectively referred to as the consent order firms), which settled possible regulatory violations in the firms' sales of certain refined petroleum products during the relevant audit periods.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the consent orders. The DOE has tentatively established procedures under which purchasers of consent order products from a consent order firm during the relevant audit period may file claims for refunds from the consent order funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 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: May 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 2, 1985.

Names of Firms:
Crystal Oil Co.
Howell Corp. (Quintana Refinery Co.)
Pride Refining, Inc.

Date of Filing:
October 13, 1983

Case Numbers:
HEF-0204
HEF-0212
HEF-0218

The procedural regulations of the Department of Energy (DOE) provide that the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to implement special refund procedures for the purpose of providing restitution to persons who were injured by alleged or adjudicated violations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations may be used in situations where the DOE is unable to identify readily those persons who may have been injured by such alleged or adjudicated violations or to ascertain readily the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

On October 13, 1983, the ERA filed a petition requesting that the OHA establish refund proceedings in order to distribute funds totalling $3,807,115.00 received pursuant to three separate consent orders entered into by the DOE and the following firms: Crystal Oil Co. (Crystal), headquartered in Shreveport, Louisiana; Howell Corp. (Howell) and Quintana Refinery Co. (Quintana), both headquartered in Houston, Texas; and Pride Refining, Inc. (Pride) headquartered in Abilene, Texas. These four firms shall be referred to collectively in this Proposed Decision as "the consent order firms."

During the periods covered by the consent orders, all of the consent order firms were refiners of crude oil and engaged in the sale of refined petroleum products. ERA audits of the consent order firms revealed possible violations

of the Mandatory Petroleum Price Regulations.[1] In order to settle all claims and disputes between the ERA and the firms with respect to their sales of certain specified petroleum products during specified periods of time, Crystal and Pride each entered into separate consent orders with the DOE and Howell and Quintana together entered into a consent order with the DOE.[2] Pursuant to these consent orders, the firms remitted specified amounts to the DOE which are currently being held in separate escrow accounts pending distribution by the DOE.[3] Information regarding the three consent order firms and the scope of the consent orders is set forth in Appendices A–C to this Proposed Decision.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such procedures with respect to the funds remitted by the consent order firms. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings to parties who were injured by alleged or adjudicated regulatory violations is the focus of Subpart V proceedings. *See generally Vickers.* Based upon our experience with Subpart V cases, we propose that the distribution of refunds in the present cases should take place in two stages. In the first stage, we will attempt to refund moneys to identifiable customers who were injured by the consent order firms' alleged regulatory violations during the appropriate consent order periods. After meritorious claims are paid in the first stage, a second-stage refund procedure may become necessary.

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers and refiners acting in the capacity of resellers) of the products covered by the consent orders, and (ii) firms, individuals, or organizations that were consumers (end-users) of the consent order products.[4] The products purchased by claimants will have been purchased either directly from a consent order firm or from another firm in a chain of distribution leading back to that firm. As explained below, we propose that the consent order funds be distributed to claimants who demonstrate safisfactorily that they have been injured by a consent order firm's alleged regulatory violations.

A. Claims Based Upon Alleged Overcharges

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.,*10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of consent order products made by the consent order firms during the appropriate consent order periods. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we intend to 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:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are proposing to adopt in these cases 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 efficent way possible in view of the limited resources available.

The 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 of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. In the present cases, the audit files do not contain specific alleged overcharge amounts to particular customers that might serve as a basis for allocating the refunds. Therefore the volumetric approach is appropriate in these cases. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.,* 12 DOE ¶85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products C./Siouxland Propane Co.,* 12 DOE ¶85,054 at 88,164 (1984). To determine the per gallon volumetric amount, each consent order amount will be divided by the estimated total volume of refined petroleum products which the consent order firm sold during the consent order period.[5] Refunds will be calculated by multiplying the volumetric amount by the total amount of the products within the scope of the consent order that an applicant purchased from a consent order firm during the consent order period. The interest which has accrued on the money in each escrow account will be distributed to each successful claminant in proportion to its refund amount.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the consent orders that are the subjects of these proceedings is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶82,541 (1982). As we have

---

[1] The Pride consent order also resolves allegations concerning Pride's compliance with the Mandatory Petroleum Allocation Regulations.

[2] None of the consent orders contains an admission by a consent order firm or a finding by the DOE that any DOE regulations were violated.

[3] In addition, under the terms of their respective consent orders, Crystal reduced its bank of unrecovered increased motor gasoline costs by $5 million, and Howell and Quintana made direct refunds to certain customers. *See* Appendix B.

[4] Several products covered by the consent orders were deregulated during the course of the consent order periods. *See* Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,535. Claimants will, of course, be ineligible for refunds based upon purchases of products subsequent to the deregulation of those products.

[5] The per gallons volumetric amount for Crystal is specified in Appendix A. We are awaiting additional information as to the refined product sales of the other consent order firms so that we may calculate volumetric amounts in those cases. The volumetric amounts will be included in a final Decision and Order, at which point potential claimants will be able to compute the refunds for which they may qualify.

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 proedures 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 therefore to utilize its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered products from the consent order firms 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 small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happend downstream of that initial impact.

Under the presumptions we propose to adopt, 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 monthly purchases below a threshold level.[6] Previous OHA refund decisions have expressed the threshold either in terms of a purchase volume figure from the consent order firm, or as a dollar refund figure. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984) (TOGCO), 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 proposed to follow the same approach here. The adoption of a threshold level below which a claimant does not have 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 make a detailed showing of injury not to exceed the amount of the refund to be gained. In the present cases, we believe that the establishment of a presumption of injury for all volumetric claims of $5,000 or less is reasonable. *See id.; Marion Corp.*, 12 DOE ¶85,014 (1984).

In addition to the presumptions we intend to adopt in these proceedings, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent orders.[7] Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order periods, 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 increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of the petroleum products specified in the consent orders need only document their purchase volumes from a consent order firm in order to make a sufficent showing that they were injured by the alleged overcharges.

B. Allocation Claims in the Pride Proceeding

In addition to resolving allegations of overcharges, the Pride consent order covers any alleged allocation violations by Pride during the consent order period. Accordingly, purchasers of allocated products from Pride may file applications for refund based on allegations of Pride's violation of the allocation regulations.

Claims for refunds based on alleged allocation violations are substantially different from those based on alleged overcharges. Allocation claims are based on a consent order firm's alleged failure to furnish petroleum products that it was obligated to supply the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. In prior cases, we have generally found that an allocation claimant should have been aware of the alleged violation at the time it occurred, and we have required that the claimant have taken some contemporaneous action to mitigate the injury. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 at 88,220 (1982). In contrast to the per gallon volumetric refund amount usually given in the case of an alleged price violation, allocation claimants have been awarded refunds in the nature of damages attributable to the monetary loss that was caused by the alleged failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶85,012 (1982). An allocation claimant in this proceeding must therefore have contemporaneously complained of Pride's alleged allocation violations and must provide a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury that it sustained. *See Aztex Energy Co.*, 12 DOE ¶85,116 n.6 (1984).

C. General Issues

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban*, 9 DOE at 88,225; *see also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until a final Decision and Order is issued. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to notify potential claimants for whom we have addresses in order to publicize the

[6] Two groups of purchasers shall be presumed not to have been injured by any overcharges, and will therefore be ineligible for refunds in this proceeding. First, resellers that were spot purchsers from a consent order firm will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previosly noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through to their own customers the full amount of the firm's quoted selling price at the time of purchase. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchase(s) upon which the refund claim is based. Second, purchasers from a consent order firm that were affiliated with that firm in such a way that any refunds received by them would inure to the benefit of the consent order firm shall be presumed to be ineligible for refunds.

[7] Even though they operate as resellers, cooperatives will be excused from the requirement that they make a detailed showing of injury with respect to that portion of their purchases that was resold to their members, since any refunds received by cooperatives will be passed on to their customers, who typically are also their member-owners. *See Office of Special Counsel*, 9 DOE ¶82,537 (1982).

distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, we will provide copies to several petroleum marketing organizations.

In the event that money remains after all first-stage claims have been disposed of, those funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first-stage refund procedures are completed.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms listed in the Appendices to this Decision and Order will be distributed in accordance with the foregoing Decision.

Appendix A

Crystal Oil Co.

Case Number:
HEF-0204
Consent Order Number:
641S00098
Consent Order Effective Date:
March 9, 1981
Period Covered by Consent Order:
August 19, 1973 through December 31, 1975
Consent Order Amount:
$1,000,000.00
Consent Order Products:
Motor gasoline, diesel fuel, No. 6 fuel oil, jet fuel, naphtha, butane, propane, natural gasoline, asphalt flux.
Location of Firm:
Headquarters: Shreveport, LA. Other operations in Arkansas, Texas, Indiana, Ohio, Michigan, Florida, Mississippi, Alabama, Georgia.
Names of Subsidiaries:
Mercury Discount Co.,
Berry Petroleum Corp., Tulsa Oil Corp.,
Crystal Petroleum Co., Inc.,
Eastern Petroleum Co.,
Longview Refining Co.,
Adobe Refining Co.,
Stone's Independent Oil Co.,
Stone's Independent Oil, Inc.,
Stone's Independent Oil Distributors, Inc.,
Triangle Oil Co.,
Joe E. Hutchison Distributing Co.,
Hi-Octane Terminal Co.,
Panhandle Towing Co.,
Crystal-Princeton,
Crystal-Sharjah Oil Co.,
Rico Argentine Mining Co.
Volume of Products Covered by Consent Order Sold During Consent Order Period:
858,727,230 gallons
Volumetric Refund Amount:
$0.00117 per gallon

Special Information

Several Crystal subsidiaries were acquired during the consent order period. Specifically, the Longview Refining Co. was acquired in October 1973, the Adobe Refining Co. in November 1973, and Crystal-Princeton in December 1973. Refunds based on purchases from these Crystal subsidiaries will only be available for purchases occurring after these acquisition dates.

The Crystal consent order does not specify that it is limited to sales of refined petroleum products and Crystal apparently sold some crude oil during the consent order period. However, we have concluded that this special refund proceeding should be limited to refined products in light of the fact that Crystal in 1976 entered into a separate consent order that specifically covered crude oil sales. In fact, the **Federal Register** notice of the proposed Crystal consent order referred only to sales of refined petroleum products. 46 FR 5050 (January 19, 1981).

Appendix B

Howell Corp., Quintana Refinery Co.

Case Number:
HEF-0212
Consent Order Number:
610S00068
Consent Order Effective Date:
September 25, 1979
Period Coverdd by Consent Order:
August 19, 1973 through December 31, 1978
Consent Order Amount:
$2,207,115.00
Consent Order Products:
Motor gasoline, distillates, general refinery products
Locations of Firms:
Consent Order covered sales from two refineries in Corpus Christi and San Antonio, Texas. *See* Special Information below.
Volume Sold During Consent Order Period:
See footnote 5.
Volumetric Refund Amount:
See footnote 5.

Special Information

The Howell/Quintana consent order was negotiated with Howell, Quintana, and a joint venture called the Quintana-Howell Joint Venture (QHJV). It resolves violations allegedly committed by Howell, both separately and as a partner in the QHJV, and by Quintana as a partner in the QHJV. The violations alleged in the consent order involved a San Antonio, Texas refinery operated by Howell and a Corpus Christi refinery owned by Howell and operated by the QHJV. The Consent Order also coveres sales made by "certain independent processors, many of whom are stockholders in Quintana." Consent Order ¶A2.

In addition to remitting $2,207,115.00 to the DOE, Quintana and Howell made direct refunds totalling $5,776,723.00 to several purchasers who were identified as allegedly overcharged paties. These purchasers were: the City Public Service Board (San Antonio, TX), Consolidated Edison, Texas Utility Fuel Co. (Dallas, TX), #2 SW Methodist Hospital (San Antonio, TX), Veterans Administration Hospital (San Antonio TX), and the Southwest Research Institute (San Antonio, TX). These purchasers shall be deemed to have received restitution for the alleged overcharges and shall be ineligible for any refunds in this proceeding.

Appendix C

Pride Refining, Inc.

Case Number:
HEF-0218
Consent Order Number:
6D0S00036
Consent Order Effective Date:
May 20, 1983
Period Covered by Consent Order:
January 1, 1973 through January 28, 1981
Consent Order Amount:
$600,000.00
Consent Order Products:
Refined petroleum products
Location of Firm:
Abilene, Texas
Volume Sold during Consent Order Period:
See footnote 5.
Volumetric Refund Amount:
See footnote 5.

[FR Doc. 85-11534 Filed 5-10-85; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2834-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a

notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-233); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460, telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

• *Title:* Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment (EPA # 1000). (This renewal of an existing regulation has reduction of burden hours.)

Abstract: EPA requires owners of certain PCB transformers to maintain records of inspection and maintenance. EPA can review these records to ensure compliance with TSCA.

Respondents: Owners of certain PCB transformers.

* * * * *

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmenal Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW, Washington, D.C. 20460
and
Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: May 6, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-11393 Filed 5-10-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2834-3]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to IBM Corporation (EPA Project Number SFB 84-03)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 10, 1985, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR § 52.21 to the applicant named above. The PSD permit grants approval to construct a 65-megawatt cogeneration facility to be located at 5600 Cottle Road, San Jose, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 25 ppmv at 15% O_2.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: James Hanson (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8218, FTS 454-8218.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of selective catalytic reduction and water injection.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Court of Appeals. A petition for review must be filed by July 12, 1985.

Dated: May 1, 1985.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 85-11490 Filed 5-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Revisions to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purpose of this notice is to make revisions to existing systems of records.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending ten (10) existing systems of records to specifically include the taxpayer identification number (which may be the social security number) in the categories of records section of each system of records in which a debt may be incurred and which may have to be turned over 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)).

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Keener, Freedom of Information and Privacy Specialist, (202) 646-3981.

SUPPLEMENTARY INFORMATION: On October 25, 1983, 48 FR 49376, FEMA published a compatible disclosure to consumer reporting agencies to relevant systems of records in accordance with the Debt Collection Act of 1982. Section 4 of the Debt Collection Act of 1982 requires each Federal agency to require applicants to furnish their taxpayer's identification number. For individuals, that number is their Social Security number. This provision satisfies the Privacy Act's requirement (in section 7) that agencies must have an authorizing Federal statute in order to condition the provision of a benefit on the applicant providing his or her taxpayer's identification number. At this time, FEMA is amending the categories of records section of the relevant systems of records to specifically include the taxpayer's identification number (which for individuals is the Social Security number).

Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A-108, Transmittal Memoranda Nos. 1 and 3. Thus, a change to the system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice.

The relevant systems are: FEMA/RMA-1, Payroll and leave accounting; FEMA/RMA-2, Travel and Transportation Accounting; FEMA/RMA-9, Claims Collection Files; FEMA/NETC-3, Student Academic and Course Records; FEMA/FIA-1, Federal Crime Insurance Progam; FEMA/FIA-2, National Flood Insurance Application and Related Documents Files; FEMA/GC-1, Claims (litigation); FEMA/GC-2, FEMA Enforcement (Compliance); FEMA/SLPS-1, Disaster Recovery Assistance Files; FEMA/SLPS-2, Temporary Housing Files; and FEMA/SLPS-12, Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files.

Dated: May 6, 1985.

Robert Mahaffey,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/RMA–1, Payroll and leave accounting. The complete text of this notice appears at 46 FR 49727, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49377. At the end of the section entitled, "Categories of records in this system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA–1

SYSTEM NAME:

Payroll and leave accounting.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM.

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/RMA–2, Travel and Transportation Accounting. The complete text of this notice appears at 46 FR 49728, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA–2

SYSTEM NAME:

Travel and Transportation Accounting.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/RMA–9, Claims Collection Files. The complete text of the notice appears at 47 FR 53487, November 26, 1982. Amendments were made on March 23, 1983, 48 FR 12133, and October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence of read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA–9

SYSTEM NAME:

Claims Collection Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/NETC–3, Student Academic and Course Records. The complete text of this notice appears at 47 FR 53489, November 26, 1982. Amendments were made on March 23, 1983, 48 FR 12133; October 25, 1983, 48 FR 49376; and November 15, 1984, 49 FR 45257. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/NETC–3

SYSTEM NAME:

Student Academic and Course Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

FEMA/FIA–1, Federal Crime Insurance Program. The complete text of this notice appears at 46 FR 49720, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; June 26, 1984, 49 FR 26144; and February 11, 1985, 50 FR 5684. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/FIA–1

SYSTEM NAME:

Federal Crime Insurance Program.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/FIA–2, National Flood Insurance and Related Documents Files. The complete text of this notice appears at 47 FR 53492, November 26, 1982. Amendments were made on October 25, 1983, 48 FR 49376 and February 17, 1984, 49 FR 6188. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/FIA–2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

FEMA/GC–1, Claims (litigation). The complete text of this notice appears at 46 FR 49471, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; December 13, 1984, 49 FR 48612; and March 11, 1985, 50 FR 9713. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/GC–1

SYSTEM NAME:

Claims (litigation).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/GC–2, FEMA Enforcement (Compliance). The complete text of this notice appears at 46 FR 49742, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; December 13, 1984, 49 FR 48612; and March 11, 1985, 50 FR 9714. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/GC–2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS–1, Disaster Recovery Assistance Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer

identification number (social security number)."

FEMA/SLPS-1

SYSTEM NAME:

Disaster Recovery Assistance Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS-12, Temporary Housing Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/SLPS-2

SYSTEM NAME:

Temporary Housing Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS-2, Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files. The complete text of this notice appears at 48 FR 15710, April 12, 1983. Amendments were made on October 25, 1983, 48 FR 49378 and October 18, 1984, 49 FR 40969. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/SLPS-12

SYSTEM NAME:

Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

[FR Doc. 85-11492 Filed 5-10-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

William P. Fitch, 221 East Gordon Street, Savannah, GA 31401

Cargo Master Corp., 1462 N.W. 82nd Avenue, Miami, FL 33126

Officers:

Julio Blanco, President/Director

Jesus S. Moreira, Vice President/Director

Polo Express International Corporation, 12811 SW 43rd Drive, Unit A-124, Miami, FL 33175

Officer: Leopoldo D. Tejada, President

Belcap International Corp., 174 E. Nassau Street, Islip Terrace, NY 11752

Officers:

James Capezio, President

Susan J. Accardi, Vice President

Exxacta International, Ltd., 8000 Cooper Avenue, Bldg. #3, Glendale, NY 11385

Officers:

Hans J. Hottenrott, President

Janice Peral-Hottenrott, Secretary/Treasurer

Dade Foreign Service, Inc., 9708 N.W. 6th Terrace, Miami, FL 33172

Officers:

Maria E. Palacio, President

Ismael Roque, Secretary

ITS Forwarding Company, c/o Lavino Shipping Company, North Carolina Maritime Bldg., Wilmington, NC 28401

Officers:

Francis H. Muldoon, Chairman/President

William J. Neumann, Senior V.P./Chief Finance Officer

Craig N. Johnson, Executive Vice President

Jack Tilley, Vice President

Thomas J. McConney, Jr., Treasurer

William C. Miller, Secretary, General Counsel

Michael Lanier, Controller

Dated: May 8, 1985.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11508 Filed 5-10-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2465

Name: General Transportation Services, Inc.

Address: 11 St. Marks Street, Linden, NJ 07036

Date Revoked: April 16, 1985

Reason: Voluntarily requested revocation

License Number: 2377

Name: Air-Ocean International, Inc.

Address: 1614 Del Norte Street, Houston, TX 77039

Date Revoked: April 19, 1985

Reason: Failed to maintain a valid surety bond

License Number: 382

Name: Erskine Freight Forwarding Company, Inc.

Address: 822 Broadway, Bayonne, NJ 07002

Date Revoked: May 3, 1985

Reason: Surrendered license voluntarily.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-11509 Filed 5-10-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire Banc One Credit Corporation, Columbus, Ohio, thereby engaging in the activities of making, acquiring, selling, and servicing for its own account and the account of others loans and other extensions of credit including issuing letters of credit and accepting drafts, agricultural loans, commercial loans, consumer loans, industrial loans, credit card loans, mortgage loans and loan factoring. These activities would be conducted from offices in Columbus, Ohio and Casselberry, Florida.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11461 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be 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 June 3, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to continue to engage *de novo* through its subsdiary, Trefoil Capital Corporation, New York, New York, in the previously approved activities of commercial finance and factoring; and to expand the geographic scope of these activities to include the entire United States.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street N.W., Atlanta, Georgia 30303:

1. *National Banking Corporation of Florida, Inc.*, Miami, Florida; to engage *de novo* through its subsidiary, Confidata Corporation, Pompano Beach, Florida, in data processing activities in the State of Florida.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11462 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

Malden Trust Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in sections 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 person 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 June 3, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Malden trust Corporation*, Malden, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Malden Trust Company, Malden, Massacusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Great American Corporation*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares or assets of State Bank & Trust Company of Golden Meadow, Golden Meadow, Louisiana.

C **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Shawneetown Bancorp, Inc.*, Shawneetown, Illinois; to acquire 100 percent of the voting shares or assets of

Saline County State Bank, Stonefort, Illinois.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City Missouir 641098:

1. *Granite Bancshares, Inc.*, Granite, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Granite, Granite, Oklahoma.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *CapitalBank Corporation*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11463 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements; State-Based Diabetes Control Programs; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for Cooperative Agreements for short-term State-Based Diabetes Control Programs that address the prevention of blindness due to diabetic retinopathy. Catalog of Federal Domestic Assistance Number is 13.988. This cooperative agreement program is authorized by section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Diabetic retinopathy is the leading cause of new cases of legal blindness in American adults under the age of 75 years. The risk of blindness due to diabetic retinopathy is greatest in people with Type I diabetes and increases with duration of diabetes in both Type I and Type II. In the 1970's the National Institutes of Health conducted a nationwide clinical trail called the Diabetic Retinopathy Study. It demonstrated that timely diagnosis and panretinal laser photocoagulation treatment of persons with advanced proliferative diabetic retinopathy can reduce the incidence of severe visual loss by approximately 60 percent. Other studies have suggested that eye care for people with diabetes is frequently inadequate. Patients at high risk for visual loss are those who are not under the care of ophthalmogists and who have either had Type I diabetes for 5 or more years or who have Type II diabetes. The objective of the cooperative agreement program is to implement programs to prevent blindness due to diabetic retinopathy and develop systems to document their efficacy.

Eligible applicants for this program are official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

Purpose and Cooperative Activities

A. Purpose—

The purpose of the cooperative agreements is to implement programs to ensure that diabetic patients who are at high risk for visual loss due to diabetic retinopathy are identified, examined, and treated. (Project funds may not be used for treatment.) The focus of the program is on diabetic retinopathy, but since patients with diabetes are at increased risk for visual loss due to glaucoma and cataract, examination should also include acuity testing and tonometry, and appropriate treatment of these conditions must be assured.

B. Cooperative Activities

1. Recipient Activities

a. Identify a high-risk target population.

b. Identify available diagnostic and treatment resources.

c. Assess current patterns of care.

d. Define and coordinate the activities of State agencies and other groups participating in the project, such as professional and voluntary organizations and third-party payers.

e. Ensure that high-risk patients are examined by sensitive diagnostic techniques. (Clinical examination through undilated pupils is not adequate to diagnose proliferative diabetic retinopathy.) Acceptable techniques to diagnose diabetic retinopathy include:

1. Examination by general ophthalmologists or retinal specialists.

2. Examination by other health-care professionals who have demonstrated the ability to perform sensitive diagnostic examinations.

3. Fundus photography using standard fundus cameras.

4. Fundus photography using "non-mydriatic" cameras. Examinations must also include acuity testing and tonometry, and should include blood pressure measurement.

f. Ensure that necessary referral and followup systems are in place which will assure that patients are treated through non-project resources.

g. Conduct appropriate patient and professional education.

h. Develop a system to monitor and document the impact of the program, which at a minimum will include assessment of the number of high-risk patients examined, the number found to have treatable eye disease, the number referred for treatment, and the number treated. Counting blindness is optional.

2. Centers for Disease Control Activities

a. Develop and disseminate public health recommendations for the diagnosis and treatment of diabetic retinopathy.

b. Collaborate in the planning, operation, and evaluation of program activities through site visits, telephone and written consultation, and through CDC sponsored meetings.

c. Collaborate on the development of data systems and in the State's analysis and evaluation of data.

d. Participate in the development of patient and professional education, screening, referral, tracking, and monitoring program components.

Approximately $800,000 will be available in Fiscal Year 1985 to award from seven to nine cooperative agreements. Priority consideration will be given to funding approximately five applications from States that do not currently have diabetes cooperative agreements with CDC. The average award will be $100,000, with individual cooperative agreements ranging from approximately $40,000 to $110,000. The cooperative agreements will be funded for a 12-month budget period. The duration of the project period will be 1 year.

Progress reports must be submitted on a quarterly basis. Final financial status and progress reports are required no later than 90 days after the end of the project period.

Guidelines for Applications

Applications for cooperative agreements must include a narrative which describes:

1. The background and need for support including a description of the high-risk population, and a description of the problem with a discussion of contributing factors.

2. Specific objectives which are consistent with the purpose of the cooperative agreement, and which are measurable. (Include a milestone chart

consistent with the timeframe of the project period.)

3. The methods and activities undertaken to accomplish the objectives including:

a. How the high-risk target population will be identified.

b. How the applicant plans to utilize currently available health care resources.

c. How the appliant plans to define and coordinate the activities of State agencies and other groups participating in the project, such as professional and voluntary organizations, and third-party payers.

d. How the target population will be examined by sensitive diagnostic techniques and referred to ensure treatment, with treatment provided through non-project resources.

e. How patient and professional education efforts will be conducted.

f. How the applicant plans to obtain adequate staff by the start of the budget period.

g. Identification of all personnel to be involved in the project, their qualifications, duties, and the extent of their involvement.

4. How the impact of the program will be assessed, including as a minimun, the number of high-risk patients identified, examined, referred for treatment, and the number treated.

5. The level of professional and community support and involvement in the program. (Letters of support from practitioners in the community, general ophthalmologists and/or retinal specialist, and voluntary organizations should be included.)

6. A budget justification and any other information which will support the need for assistance.

Review Criteria

Applications will be reviewed and evaluated based upon the following factors:

1. The need for support as demonstrated by the description of the target population, the problem, and the contributing factors.

2. The consistency of the measurable objectives with the state purpose of the cooperative agreement and the ability to complete the objectives and milestones of the project within the specific time period.

3. The adequacy of the applicant's plans to ensure examination of high-risk individuals by sensitive diagnostic techniques, to refer those in need for treatment, and to assure adequate treatment (paid for by non-project resources) for patients needing treatment.

4. The ability of the applicant to generate community and professional support and involvement in the program, to utilize available resources, and to coordinate the activities of groups participating in the program including governmental agencies, professional and voluntary organizations, third party payers, consultants, and the diabetes community at large.

5. The adequacy of the applicant's plans to conduct patient and professional education.

6. The ability of the applicant to identify staff for the program who are available at the start of the budget period and trained to carry out the required tasks.

7. The adequacy of the applicant's plans to monitor and document the impact of the program.

8. The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds.

Application Information

The 8th Annual CDC Diabetes Control Conference will be held May 20–23, 1985, at the Atlanta American Hotel, Atlanta, Georgia. The Tuesday afternoon plenary session will address Diabetic Eye Disease: A Comprehensive Approach. Following the afternoon plenary session, there will be a pre-application meeting beginning at 5:45 p.m., for anyone interested. Attendance or non-attendance at this meeting will have no bearing on the applicant's ranking in the review process.

The original and one copy of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 155 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.), on Monday, June 24, 1985.

Deadline

Applications will be considered to meet the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before 4:30 p.m. (e.d.t.), on June 24, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575, or FTS 236–6575. Technical assistance may be obtained from Lisle S. House, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–1851, or FTS 236–1851.

Dated: May 3, 1985.

William E. Muldoon,

Assistant Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85–11464 Filed 5–10–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 82N–0224]

Quality Assurance in Nuclear Medicine Facilities; Availability of Final Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of final recommendations prepared by its Center for Devices and Radiological Health (CDRH) on quality assurance programs in nuclear medicine facilities. The final recommendations include the agency's rationale for the recommendations as well as references that can be used as guides in conducting quality control monitoring. These final recommendations are available as a technical report in CDRH's radiation recommendations series. They are intended to encourage and promote the development of voluntary quality assurance programs in nuclear medicine facilities.

ADDRESSES: Single copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402. Written comments on the final recommendations may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Phyllis Segal, Center for Devices and Radiological Health (HFZ-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2436.

SUPPLEMENTARY INFORMATION: FDA is making available a document entitled "Recommendations for Quality Assurance Programs in Nuclear Medicine Facilities." These recommendations, prepared by CDRH's Office of Training and Assistance, are directed to all nuclear medicine facilities where radiopharmaceuticals are used for diagnosis or therapy or where in vitro assays involving radioactive materials are performed. "Quality assurance," as referred to in the document, means the use of planned systematic actions that result in consistently high-quality performance of all components of the nuclear medicine procedure and minimum ionizing radiation exposure to patients and personnel.

In the **Federal Register** of January 14, 1983 (48 FR 1823), FDA published a notice of availability of draft recommendations for quality assurance programs in nuclear medicine facilities. The comments received in response to the notice of availability indicated a widespread interest in comprehensive voluntary recommendations. The agency received many valuable suggestions that have been incorporated into the final recommendations. The final recommendations are part of the radiation recommendations series issued by CDRH, and they represent the agency's use of an educational approach to foster development of quality assurance programs in nuclear medicine facilities.

Interested persons may at any time submit additional data and comments relating to quality assurance in nuclear medicine facilities. The comments will be considered in determining whether further updates are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The final recommendations, comments received, and an analysis of those comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

The "Recommendations for Quality Assurance Programs in Nuclear Medicine Facilities" may be purchased from the Superintendent of Documents (address above) for $1.50. To order, reference 017-015-00225-0.

Dated: April 30, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11466 Filed 5-10-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Administration

[Docket No. N-85-1531; FR-2116]

Productivity Review List

AGENCY: Office of Assistant Secretary for Administration, HUD.

ACTION: Notice of Revised OMB Circular A-76 Productivity Review List.

SUMMARY: Notice is hereby given that under Office of Management and Budget (OMB) Circular A-76, the Department of Housing and Urban Development (HUD) is publishing its productivity review list (previously known as Schedule for Conducting Cost Comparison Studies) of commercial activities currently performed by the Department. In accordance with OMB's Productivity Improvement memorandum of September 27, 1984, this inventory replaces the one published at 49 FR 35254 on September 6, 1984. All activities currently under review were announced in the previous **Federal Register** notice. All activities are located at HUD Headquarters in Washington, D.C.

Contracts may or may not result from the review of each activity. Results of the review of an activity will be made available upon request to any interested party.

FOR FURTHER INFORMATION CONTACT: Margaret L. Harrison, Office of the Assistant Secretary for Administration, telephone (202) 755-6940. (This is not a toll-free number.)

Dated: May 7, 1985.

Judith L. Tardy,

Assistant Secretary for Administration.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PRODUCTIVITY REVIEW LIST, SUBJECT TO A-76 REVIEWS

Activity	Estimated start date	Estimated completion date
1. Computer operations support	05/84	04/85
2. Production and data control	05/84	09/85
3. Computer operations software development and testing	01/86	09/86
4. Computer operations-voice and data communications	01/86	09/86
5. Telecommunications services	10/86	09/87
6. ADP Systems development and maintenance	01/87	09/87
7. Training	09/86	09/87
8. Audiovisual	01/85	12/85
9. Warehouse	10/85	09/86
10. Motor Pool	10/86	09/87

[FR Doc. 85-11529 Filed 5-10-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 8, 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 forward to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 28, 1985.

Carol D. Shull,

Chief of Registration National Register.

To assist in the preservation of historic properties the 15-day commenting period for the following nominations has been waived.

MARYLAND

Dorchester County

Wingate, *WILMA LEE (Chesapeake Bay Skipjack Fleet TR)*, Bishops Head Rd., Hearns Creek

Somerset County

Chance, *IDA MAY (Chesapeake Bay Skipjack Fleet TR)*, Upper thorofare
Deal Island, *SEA GULL (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *CALEB W. JONES, (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *CITY OF CRISFIELD, (Chesapeake Bay Skipjack Fleet TR)* Lower thorofare

Wenona, *CLARENCE CROCKETT, (Chesapeake Bay Skipjack Fleet TR)* Lower thorofare
Wenona, *F.C. LEWIS, JR (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *FANNIE L. DAUGHERTY (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *H.M. KRENTZ (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *HELEN VIRGINIA (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *HOWARD (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *SOMEREST (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *SUSAN MAY (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare
Wenona, *THOMAS W. CLYDE (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare

St. Mary's County

Piney Point vicinity, *DEE OF ST. MARY'S (Chesapeake Bay Skipjack Fleet TR),* St. George's Creek

Talbot County

Clairborne, *CLAUDE W. SOMERS (Chesapeake Bay Skipjack Fleet TR),* Old Ferry Terminal, Washington St.
St. Michaels, *ROSIE PARKS (Chesapeake Bay Skipjack Fleet TR),* Mill St.
St. Michaels, *STANLEY NORMAN (Chesapeake Bay Skipjack Fleet TR),* Edgar Cove
Tilghman, *ANNA McGARVEY (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *E.C. COLLIER (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *ELSWORTH (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *ESTHER F. (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *HILDA M. WILLING (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *KATHRYN (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *LADY KATIE (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *LORRIANE ROSE (Chesapeake Bay Skipjack Fleet TR),* Knapps Narrows.
Tilghman, *MAGGIE LEE (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *MARTHA LEWIS (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *MINNIE V (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *NELLIE L. BYRD (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *RALPH T. WEBSTER (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *REBECCA T. RUARK (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *RUBY G. FORD (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd.
Tilghman, *SIGSGEE (Chesapeake Bay Skipjack Fleet TR),* Knapps Narrows
Tilghman, *VIRGINIA W (Chesapeake Bay Skipjack Fleet TR),* Knaps Narrows

[FR Doc. 85-11417 Filed 5-10-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-180X)]

Chicago and North Western Transportation Co., Abandonment Exemption; Dodge, Cuming, Stanton, and Madison Counties, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Chicago and North Western Transportation Company of a 78-mile line in Dodge, Cuming, Stanton, and Madison Counties, NE, subject to standard labor protective conditions.

DATES: This exemption will be effective on June 12, 1985. Petitions to stay must be filed by May 23, 1985. Petitions for reconsideration must be file by June 3, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-180X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative, Anne E. Keating, Esq., 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. 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 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11487 Filed 5-10-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-39 (Sub-8X); Finance Docket No. 30630]

St. Louis Southwestern Railway Co. Discontinuance of Service Exemption in Coryell and McLennan Counties, TX; the Atchison Topeka and Santa Fe Railway Co.—Lease Exemption in McLennan County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the following transactions, subject to the standard employee protective conditions: (1) Docket No. AB-39 (Sub-No. 8X), The St. Louis Southwestern Railway Company (SSW), from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, for the discontinuance of service on 18.08 miles of its rail line in Coryell and McLennan Counties, TX; and (2) Finance Docket No. 30630, The Atchison, Topeka and Santa Fe Railway Company, from the prior approval requirements of 49 U.S.C. 11343, to lease and operate 1.9 miles of the above SSW rail line in McLennan County, TX.

DATES: These exemptions will be effective on June 12, 1985. Petitions to stay must be filed by May 23, 1985 and petitions for reconsideration must be filed by June 3, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 18X) and/or Finance Docket No. 30630, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Joint petitioners' representatives: Gary A. Laakso, St. Louis Southwestern Railway Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

Michael W. Blaszak, The Atchison, Topeka and Santa Fe, Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604

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: May 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11486 Filed 5-10-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Kaiser Aluminum & Chemical Corp. and Reynolds Metals Co.; Notice of Cooperative Research Development Agreement

Notice is hereby given that pursuant to Section 6(a) of the National Cooperative Research Act of 1984, Public Law No. 98-462 (the "Act"), Kaiser Aluminum & Chemical Corporation and Reynolds Metals Company have filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to a cooperative research and development agreement effective January 29, 1985 and (2) the nature and objectives of the venture. 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 the venture and its general areas of planned activities are given below.

The parties to the cooperative research and development agreement are Kaiser Aluminum & Chemical Corporation and Reynolds Metals Company. The venture is for the research and development of suitable ingot metallurgy and manufacturing processes for the manufacture of commercially acceptable aluminum-lithium alloy products from ingots, and appropriate aluminum-lithium recycling technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-11484 Filed 5-10-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Eli Lilly Industries, Inc.; Registration as Manufacturer of Controlled Substances

By Notice dated January 22, 1985, and published in the **Federal Register** on January 30, 1985; (50 FR 4282) Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7 State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above from for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 1, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11476 Filed 5-10-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Committee Management Advisory Committee for Design, Manufacturing, and Computer Engineering; Notice of Establishment

Pursuant to the Federal Advisory Committee Act (Pub.L. 92-463), I have determined that the establishment of the Advisory Committee for the Division of Design, Manufacturing, and Computer Engineering is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Design, Manufacturing, and Computer Engineering.

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impact of Foundation-supported research and related activities in design, manufacturing, and computer engineering.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The committee will operate on a continuing basis subject to its renewal every 2 years.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be individuals eminent in design, manufacturing, and computer engineering. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities, women and minorities, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, Foundation policy and procedures, GSA Interim Regulations on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Erich Bloch,

Director.

May 8, 1985.

[FR Doc. 85-11495 Filed 5-10-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325/324]

Carolina Power & Light Co.; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considerating issuance, pursuant to 10 CFR 20.302(a), of an approval to burn radioactively contaminated oil, to the Carolina Power & Light Company (CP&L, the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The approval would permit the licensee a one-time approval to dispose of 12,000 gallons of oil containing about 21 μCi of Co-60 by incineration in the incinerator built and approved for operation by the State. Any approval for continuous burning during the plant lifetime would require Technical Specifications.

The Need for the Proposed Action

The approval is requested because burning the oil rather than burying it at a low level waste disposal site would save a significant amount of money (about one-third of a million dollars) and a significant amount of burial space (over 4,000 cubic feet).

Environmental Impact of the Proposed Action

A. Radiological Impact Assessment/ Public Radiation Exposure

The staff's estimates of the impacts on the public from the proposed burning of contaminated oil considered the major sources of radioactivity and the principal environmental pathways. Public radiation exposure from the proposed burning of contaminated oil at

the Brunswick plant can be evaluated by comparing the estimated quantity 21 μCi of Co-60 released from burning the oil with the annual average release of Co-60 from normal operations. Table 1 compares this release rate with the effluent releases of Co-60 for the years 1976 through 1981 from the plant for normal operations. The maximum release of Co-60 from the burning of contaminated oil is about 0.1% of the average of the plant's actual annual releases of Co-60 for normal operations.

TABLE 1. COMPARISON OF THE ESTIMATED QUANTITY OF COBALT-60 AIRBORNE RELEASE FROM ONE TIME BURNING OF 12,000 GALLONS OF CONTAMINATED OIL WITH THE ANNUAL AVERAGE AIRBORNE RELEASES OF COBALT-60 FROM NORMAL OPERATIONS

Year of normal operations	Airborne releases of Cobalt-60 per year per reactor [1] (microcuries)
1976	1,200
1977	14,000
1978	7,800
1979	19,000
1980	78,000
1981	17,000
Average	23,000
Burning of contaminated oil	21

[1] Carolina Power and Light Company, "Brunswick Steam Electric Plant, Semiannual Environmental and Effluent Release Reports," January 1, 1976 through December 31, 1981.

On the basis of this comparison, the staff concludes that the offsite environmental impact that may occur during the period of this procedure will be much smaller than that which occurs during normal operation.

The staff has estimated the doses to individual members of the public as well as the population as a whole in the area surrounding Brunswick based on burning oil containing 21 μCi of Co-60 using the calculational methods presented in Regulatory Guide 1.109. The staff estimated the total body and organ doses for the ground shine and inhalation pathways for individual members of the general public of all ages at the worst site boundary location, 914 meters northeast of the plant resulting from the release of airborne radioactive effluents during incineration of the waste oil. All of the activity in the oil was conservatively assumed to be released as an effluent. A conservative atmospheric dispersion factor

$$\frac{X}{Q} \text{ of } 8.4\times10^{-4}$$

sec/m ^{3} and relative deposition factor,

$$\frac{D}{Q} \text{ of } 6.4\times10^{-9}$$

for ground level release (USNRC 1983) were used in these estimates. These dose estimates are presented in Table 2.

TABLE 2. DOSES TO THE MAXIMALLY EXPOSED INDIVIDUAL MEMBERS OF THE GENERAL PUBLIC OF ALL AGES RESULTING FROM THE INCINERATION OF WASTE OIL RELEASING RADIOACTIVITY EQUIVALENT TO 21 MICRO-CURIES OF Co-60

Pathway/age group	Highest dose (mrem/yr)	
	Total body	Any organ
Ground shine/all ages	<0.001	[1] <0.001
Inhalation/ Adult	<0.001	[2] <0.003
Teen	<0.001	[2] <0.005
Child	<0.001	[2] <0.004
Infant	<0.001	[2] <0.003

[1] Skin.
[2] Lung.

The total body and skin doses to individual members of the public of all ages due to the external gamma radiation from Co-60 deposited on the ground surface are estimated to be less than 0.001 mrem/yr. The total body and lung doses to individual members of the general public of all ages via the inhalation pathway were estimated to be less than 0.01 mrem/yr.

To provide a perspective on the radiological impact of burning the waste oil, note that the preceding dose estimates are less than 0.1% of the NRC dose design objectives of Appendix I to 10 CFR 50 and the EPA radiation protection standards in 40 CFR Part 190.

The doses to the population of 190,000 within 80 kilometers of the plant site (USAEC, 1974) are estimated to be less than 0.0005 person-rem to the total body from the airborne effluents of burning the waste oil.

By comparison, every year the same population of about 190,000 persons will receive a cumulative total body dose of more than 19,000 person-rems from natural background radiation of about 0.1 rem per year person (NCRP–45, 1975). Thus, the total body dose to the population from the burning of oil is estimated to be less than one ten-millionth of the annual dose due to natural background. On this basis, the staff concludes that the doses to individuals in unrestricted areas and to the population within 80 kilometers due to airborne effluents from the burning of oil will not be environmentally significant.

In summary, the estimated radioactive releases resulting from the burning of oil are less than those due to normal plant operation. The doses due to these releases are small compared to the NRC dose design objectives in Appendix I to 10 CFR 50, the EPA dose standards in 40 CFR Part 190 and to the annual doses from natural background radiation. Therefore, the radiological impact of the incineration of waste oil will not significantly affect the quality of the human environment.

B. Radiological Impact Assessment/ Occupational Exposure

This section contains the staff's estimates of the radiological impacts on the plant workers from the proposed burning of contaminated oil. Potential onsite radiation dose problems are minimized by the small quantity of radioactivity (21 μCi of Co-60) present in the oil. Normal radiation control procedures (NUREG–0800 and Regulatory Guide 8.8) should preclude any significant doses from surface contamination and special procedures and containment to control any spillage of contaminated oil are not required. If all of the Co-60 contained in the contaminated oil were deposited at one point in the auxiliary boiler or general purpose incinerator over the expected 20–30 year life of the plant, the maximum 1-foot exposure rate is estimated to be approximately 2.5 mR/hr. It is highly unlikely that all of the Co-60 contained in the contaminated oil will be accumulated at one point.

Assuming an average worker exposure time of 1 hr/day, the annual dose to the worker would be 0.070 rem/yr at a distance of 3 feet. This dose estimate to the worker due to the proposed burning of oil is less than 2% of the 10 CFR 20 dose limit of 5 rem/yr.

Based on the above assessment, the staff concludes:

(1) The licensee has taken appropriate steps to ensure that occupational dose will be maintained as low as is reasonably achievable and within the limits of 10 CFR Part 20.

(2) The estimated doses to the general public are:

(a) Much less than those incurred during normal operation at Brunswick Steam Electric Plant, Units 1 and 2, and

(b) negligible in comparison to the dose members of the public receive each year from exposure to natural background radiation.

C. Non-Radiological Impacts/Air Pollution

The licensee applied to the State of North Carolina (the State) for a permit to build and operate an incinerator. Among the wastes to be incinerated was waste lubricating oil. The State issued a

permit (No. 5556R) to allow the construction and operation of the incinerator on October 22, 1984. The permit limits the amounts of PCB, Pb, etc. that may be in the waste to be incinerated. A consultation with the State revealed that an evaluation of the incineration of the waste lubricating oil, as well as other wastes, resulted in combustion products that were within the limits of the air quality standards and, based on its review, the State issued the permit.

The State is aware of the Auxiliary Boilers (register No. 15 NCAC 2D.0202) at the Brunswick Plant and, while operating these boilers with No. 2 fuel oil, CP&L does not need a permit.

Based on consultation with the State and its review of the operation of the incinerator, including waste lubricating oil, we find operation of the incinerators with waste lubricating oil is an acceptable impact. Operation of the Auxiliary Boilers with waste lubricating oil is not an acceptable impact without a State permit.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff consulted with the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management and the Department of Human Resources, Radiological Protection Branch. Based on that consultation, the staff found that the Auxiliary Boiler is registered under No. 15 NCAC 2D.0202 which does not include the combustion of waste lubricating oil, and the Incinerator is operated under Air Permit No. 5556R which does permit the combustion of waste lubricating oil.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed approval.

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 approval dated November 21, 1983, as supplemented April 20, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Southport-Brunswick County Library, 104 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

References

USAEC, 1974, "Final Environmental Statement related to the continued construction and proposed issuance of an operating license for the Brunswick Steam Electric Plant, Units 1 and 2," United States Atomic Energy Commission, p. V–43, Docket Nos. 50–324 and 50–325, January 1974.

U.S. Nuclear Regulatory Commission, RG 1.109, Revision 1, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I," October 1977.

USNRC, 1983, Memorandum dated December 19, 1983 from I.W. Spickler to J.V. Nehemias on "Burning of Contaminated Oil at Brunswick," Docket Nos. 50–325/324.

National Council on Radiation Protection (NCRP), 1975, "Natural Background Radiation in the United States," NCRP Report No. 45.

U.S. Nuclear Regulatory Commission, NUREG–0800, "Radiation Protection," in: "Standard Review Plan," Chapter 12, July 1981 (formerly issued as NUREG–75/087).

U.S. Nuclear Regulatory Commission, Regulatory Guide 8.8, Revision 3, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations will Be as Low as is Reasonably Achievable," June 1978.

[FR Doc. 85–11505 Filed 5–10–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

Dairyland Power Cooperative; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Provisional Operating License No. DPR–45, issued to the Dairyland Power Cooperative for operation of the La Crosse Boiling Water Reactor (LACBWR) in Vernon County, Wisconsin. Notice of consideration of issuance of this amendment was published in the **Federal Register** on October 26, 1983 (48 FR 49584).

The amendment, as proposed by the licensee, would change the LACBWR Technical Specifications to require that Type A containment leakage tests be performed no less often than every 18 months if two consecutive tests are failed. The requirements in 10 CFR Part 50, Appendix J, Section III.A.6.(b) state that such tests are required at every refueling outage or every 18 months whichever comes first. Since fuel cycles at La Crosse are usually 12–15 months in duration, the licensee's proposal does not comply with Appendix J and was consequently denied.

The licensee's current Technical Specifications require Type C containment leakage testing during each refueling shutdown, but in no case at intervals longer than 2 years. The licensee's application proposed that this testing be done only "at intervals no greater than 2 years". Section III.D.3 of Appendix J requires that Type C tests be performed at each reactor shutdown for refueling, but in no case at intervals greater than 2 years. Thus, the licensee's proposed changes does not comply with Appendix J and was denied.

All other provisions of the Appendix J portion of the amendment request have been approved by Amendment No. 40 or will be resolved by separate correspondence. Notice of issuance of Amendment No. 40 will be published in the Commission's next regular monthly **Federal Register** notice.

The licensee was notified of the Commission's denial of the proposed technical specification changes by letter dated April 23, 1985.

By June 1985 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to O.S. Heistand, Jr., Esquire, Morgan, Lewis and Bockius, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 29, 1982, and (2) the Commission's Safety Evaluation issued with Amendment No. 40 to DPR–45 dated April 23, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear

Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-11506 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 309-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "General Guidance for Designing, Testing, Operating, and Maintaining Emission Control Devices at Uranium Mills" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to describe procedures acceptable to the NRC staff for designing, testing, operating, and maintaining emission control devices to ensure the reliability of their performance.

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 accomplished 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 8, 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 Rockville, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Keith G. Steyer,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 85-11503 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (PASNY/the licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the licensee to operate the James A. FitzPatrick Nuclear Power Plant (the facility) at power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Oswego County, New York. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48(c)(4) of 10 CFR Part 50 requires a licensee to complete, if necessary, the alternative shutdown capability at a nuclear power plant according to the schedule detailed in the rule. The schedule in the rule calls for implementation to be complete before startup after the earliest of the following events commencing 180 days or more after NRC approval of the design of the alternative shutdown capability:

(1) The first refueling outage;

(2) A planned outage lasting 60 days or more; or

(3) An unplanned outage lasting 120 days or more.

By letter dated April 26, 1983, the NRC staff transmitted a Safety Evaluation to the licensee which concluded that the licensee's alternative safe shutdown capability and associated proposed modifications met the requirements of sections III.G.3 and III.L of Appendix R to 10 CFR Part 50 within the control room, cable spreading room and relay room and were therefore acceptable. (These three areas were identified in an earlier staff Safety Evaluation as areas in which redundant systems could be damaged by a single fire, thereby affecting safe shutdown. The licensee committed to provide alternative safe shutdown capability for these areas.) In accordance with the schedule set forth in the rule and cited above, all necessary modifications are to be completed before startup from the current Reload 6/Cycle 7 refueling outage, which began on Febraury 16, 1985.

By letter dated March 15, 1985, the licensee informed the NRC staff that, as a result of an independent third party review of its fire protection progarms and systems, it had identified a condition existing at the FitzPatrick facility similar to that described in IE Information Notice No. 85-09, "Isolation Transfer Switches and Post-Fire Shutdown Capability," dated January 31, 1985. This Information Notice describes a condition at Kansas Gas and Electric Company's Wolf Creek nuclear power plant that could disable the plant's alternative shutdown system in the event of a fire in the control room. Fire damage could open fuses, rendering the equipment inoperable if the fuses open before control is transferred to the alternate shutdown circuit. At FitzPatrick, the scheme used to transfer control of shutdown systems to the alternative shutdown system does not include redundant fuses. To correct this condition, the licensee has committed to install redandant fuses in alternative shutdown system circuits.

In its March 15, 1985 letter, the licensee stated that, because this condition was identified only recently, the installation of redundant fuses could not be completed prior to startup from the refueling outage currently in progress as required by 10 CFR 50.48(c)(4). Therefore, in accordance with the provisions of 10 CFR 50.12, the licensee has requested a schedular

exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completing all modifications required for alternative shutdown capability until the startup of Cycle 8 (estimated January 1987). In a subseqent letter dated April 5, 1985, the licensee provided justification as to why the installation of redundant fuses could not be completed prior to startup from the current outage, now scheduled for May 6, 1985. Among the reasons stated are:

(1) The design and engineering of the modifications, including preparation of procurement specifications for Class 1E equipment, design of new conduit runs and seismically qualified supports, and revision of around 100 plant drawings, would require between five to seven months.

(2) Estimated procurement time for all requisite materials and components is at least five months after issuance of specifications.

(3) A significant portion of the required work can be performed only during an outage because of equipment locations and operating restrictions.

The licensee's letters dated March 15 and April 5, 1985 also described interim compensatory measures to be taken to provide an acceptable level of alternative shutdown capability until the necessary modifications are completed. The licensee has committed to implement these measures prior to startup from the refueling outage now in progress.

The areas affected by the schedular exemption are the control room, cable spreading room and relay room. The cable spreading room and relay room are presently protected by area-wide automatic fire detection and fire suppression systems, which annunciate alarms in the constantly-manned control room. If a fire should occur in these locations, it would be detected in its formative stages before significant flame propagation or temperature rise occurred. The plant fire brigade would be summoned and fire extinguishment achieved by the use of portable fire extinguishers or manual hose stations. If rapid fire spread occurred, the automatic fire suppression system in these rooms would actuate to put out the fire and protect vulnerable shutdown-related systems. The staff, therefore, has reasonable assurance that safe shutdown capability can be maintained for the cable spreading room and relay room pending completion of the licensee's planned modifications.

In the control room, the licensee, by letter dated April 5, 1985, committed to implement a continuous fire watch until modifications are complete. The fire watch will observe all areas of the control room and will be able to react immediately upon any indication of fire. The watch will be trained in the safe use of portable fire extinguishers and will, therefore, be capable of suppressing a fire before significant damage to shutdown-related systems occurs.

The staff therefore has reasonable assurance that, pending completion of the licensee's Appendix R-related modifications, the advent of a fire in any of these areas will not result in damage to systems such that safe shutdown could not be achieved and maintained.

The staff has reviewed the licensee's justification for schedular exemption and the interim compensatory measures to be taken and finds these acceptable. Thus, the staf has concluded that schedular exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of March 15, 1985, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completion of alternative shutdown capability at the James A. FitzPatrick Nuclear Power Plant until the startup of Cycle 8 (estimated January 1987).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 15515).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 6th day of May, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11504 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1985, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1985, 26.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 74.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 6, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-11465 Filed 5-10-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22021; File No. SR-BSECC-84-01]

Self-Regulatory Organizations; Order Approving Proposal Rule Change by Boston Stock Exchange Clearing Corp.

On May 29, 1984, the Boston Stock Exchange Clearing Corporation ("BSECC") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change establishes the relationship between, and respective duties of, BSECC and its members consistent with section 17A of the Act and Division of Market Regulation Standards for the Registration of Clearing Agencies (the "Standards"). The Commission solicited public comment concerning the proposal rule change on July 27, 1984. No comments were received. As discussed below, the Commission is approving the proposed rule change.[1]

The proposed rule change revises BSECC's rules to reflect recent changes in BSECC's operations and BSECC's relationships with the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company (the "DTC"). The proposal rule change covers, among other things: (1) Minimum qualifications for

[1] *See* Securities Exchange Act Release No. 21178 (July 27, 1984), 49 FR 31022 (August 2, 1984).

membership; (2) maintenance and use of participant clearing fund deposits; (3) services offered to members; (4) member business conduct; (5) establishment of fees; (6) audit and other financial reporting; (7) procedures with respect to disciplining participants for violations of BSECC rules; (8) procedures with respect to denial of participation status to any applicant and prohibiting or limiting any person's access to BSECC's services; and (9) authority for appropriate disciplinary actions for violation of BSECC's rules.

New BSECC Rule I establishing qualifications for membership, the rights and obligations of members using BSECC's services, and the use of services by non-members. Rule II governs BSECC's clearing fund contributions and BSECC's use and investment of clearing fund assets. Rule II also authorizes BSECC to collect, on a pro rate basis, additional clearing fund contributions but establishes a maximum assessment so that a participant can ascertain its maximum potential liability.

New Rule III authorizes BSECC to provide various services to its members. These services include trade comparison, clearance and bood-entry settlement. (BSECC relies on NSCC and DTC to perform many of the tasks necessary in offering these services.) BSECC also offers members BSE specialists financing services to meet their daily settlement obligations and member institutions access to DTC's Institutional Delivery System.

New Rule IV concerns the business conduct of members. Under this Rule, for example, members must have representatives available during normal business hours. The Rule specifies BSECC's right to act on behalf of a member, members' accessibility to the premises of BSECC, settlement of members' accounts and what constitutes sufficient "Notice" to members by BSECC. In addition, the rule gives BSECC the right to inspect member's books and records and to request information from its members concerning activities that might affect that member's dealings or relationship with BSECC.

New Rule V authorizes BSECC to charge fees on a non-discriminatory basis for services rendered. The Rule also authorizes BSECC to charge members for unusual expenses like the production of records pursuant to a court order or other legal proceeding.

New Rule VI concerns annual financial statements and internal accounting control reports and distribution of those reports. Among other things, the rule provides for an annual financial audit of BSECC's financial statements and an annual review of internal accounting control by BSECC's independent accountant.[2]

Rule IX covers the termination and suspension of BSECC members except by reason of insolvency. The Rule enables a member to terminate membership in BSECC voluntarily. That termination would be effective 30 days after the member's written notice to BSECC. The rule also authorizes BSECC to terminate membership summarily for cause, *i.e.*, to cease to act for a member, in certain circumstances.[3] Rule IX specifies that BSECC promtly must notify the terminated member,the Commission and any member that might be affected by the termination. In addition, the member has a right to a prompt hearing in accordance with Rule XI. Notwithstanding termination of BSECC membership, however, the terminated member would continue to be liable for all services or securities transactions compared, cleared or settled through BSECC. As collateral for these liabilities, Rule IX would grant BSECC a lien on the terminated member's funds or securities, to the extent such liens are authorized under Securities Exchange Act Rules 8c-1 and 15c2-1.

New Rule X covers insolvencies of BSECC members and defines a member as insolvent if the member fails or is unable to perform its contracts or obligations. The Rule further states that BSECC shall cease to act for the insolvent member from the "time of insolvency," unless it determines to do otherwise and notifies the insolvent member and other members as to how pending matters will be handled. The Rule gives BSECC the authority to close out the insolvent member's positions and grants BSECC a lien on all of the member's securities and cash except on customer fully paid securities that would be prohibited by Commission Rules 8c–1 and 15c2–1 under the Act.

New Rule XI sets forth BSECC's procedures concerning discipline and denial of access. The Rule lists sanctions that BSECC can impose on members for violations of its rules or its agreements with members. The list of sanctions include the right to censure, suspend, expel, limit member activities or fine. The rule also allows BSECC to impose a fine of less than $1,000 upon a member using a summary notice process. When BSECC imposes such fines, BSECC must notify the affected members of the charges, the fine, and the member's right to request a hearing within ten days of BSECC's notice. If the member requests a hearing, collection of the fine is stayed until the hearing process is completed; otherwise, the fine becomes final ten days after written notification to the member.

Before BSECC may impose any sanction or any fine over $1,000, new Rule XI requires BSECC to give the member notice of the charges and the member's right to a hearing. The member has twenty-five days from receipt of the notice to file a reply and/or request for a hearing concerning the allegations. Upon receipt of a request for a hearing, BSECC must select a three-member panel, a hearing officer and two panelists, to hear the case and render a decision. The member has a right to a fair and impartial panel and has the right to object, for cause, to any prospective panelists. The conduct of the hearing and the admissibility of evidence shall be determined by the hearing officer in accordance with section 6 of new Rule XI. Upon conclusion of the hearing, section 7 of new Rule XI requires that each specific charge be determined by a majority of the panel, and once the panel has reached a decision, the member be properly notified in writing of the panel's decision.

Sections 8 and 9 of new Rule XI concerns the review process. Within twenty days after notification of the panel's decision, the affected member may request the BSECC's Board of Directors to review the decision. The Board, upon review, either summarily or after a hearing, may sustain, reverse or modify such determination or return the matter to the panel for further findings. Upon completion of the hearing process, notice of the final decision must be given to that member and a copy of that notice sent to the Commission.

---

[2] As discussed in Securities Exchange Act Release No. 21335 (September 28, 1984), 49 FR 37879 (September 28, 1984), the Commission granted BSECC a one year exemption from the Act and Standards with respect to the annual report on BSECC's system of internal accounting control. Under the terms of that exemption during FY 1985, BSECC's independent accountant will open with respect to BSECC's system of internal accounting control for a period fo three months. Thereafter, BSECC will obtain a for-the-period annual report.

[3] *I.e.*, the Rule Authorizes BSECC to cease to act for a member when that member: (1) Fails to satisfy its clearing fund deposit obligations; (2) fails to pay any fine, fee or other charge; (3) fails to meet its settlement obligations; (4) experiences financial or operational conditions such that continuation as a member would jeopardize the interest of other members or BSECC; or (5) fails to meet the qualifications and requirements for membership set forth in Rule I.

Finally, Rule XIII has been revised to reflect current BSECC procedures regarding such things as: Delegation of authority; amendments to the by-laws, rules or procedures; suspension of the rules or procedures; and the indemnification of BSECC by its members except in cases of gross negligence, fraud or criminal acts of BSECC or its officers, employees or agents.

Discussion

BSECC believes that the proposal is consistent with sections 17A(b)(3) and 17A(b)(5) of the Act because the proposed amendments, among other things, provide: (i) Minimum qualifications for membership; (ii) adequate safeguards for securities and funds which are in BSECC's custody or control or for which it is responsible; (iii) equitable allocation of reasonable dues, fees and other charges among its participants; (iv) fair procedures with respect to disciplining participants, denying participation status to any applicant and prohibiting or limiting any person's access to BSECC's services; and (v) authority for appropriate disciplinary actions for violations of BSECC's rules. In addition, BSECC believes these revisions will conform BSECC's rules to Division of Market Regulation standards for full registration of clearing agencies.

During the course of the full registration review process, this proposed rule change was specifically considered by the Commission and was found to be consistent with the provisions of the Act and the Standards. For the reasons discussed in the Full Registration Order,[4] the Commission finds that the proposed rule change is consistent with the Act and the rules thereunder and, in particular, section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11518 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

[4] *See* Securities Exchange Act Release No. 21335 (September 20, 1984), 49 FR 37879 (September 26, 1984).

[Release No. 34-22020; File No. SR-BSECC-84-02]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange Clearing Corp.

On September 7, 1984, the Boston Stock Exchange Clearing Corporation ("BSECC") submitted to the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would conform BSECC's By-laws to sections 17A(b)(A)–(I) of the Act and Division of Market Regulation Standards for the Registration of Clearing Agencies (the "Standards").[1] On March 22, 1985, BSECC amended the proposed rule change.

The proposed rule change, among other things, revises BSECC's By-laws relating to: (1) The selection and composition of BSECC's Board of Directors; (2) the selection and duties of BSECC's Audit Committee; and (3) the establishment of BSECC's clearing fund. The proposed rule change also deletes from BSECC's By-laws several sections that have been incorprated into BSECC's Rules during the Commission's review of BSECC's registration application.

As amended on March 22, 1985, the proposed rule change revises Article II of BSECC's By-laws to specify that a majority of BSECC directors must be BSECC members. Article II would require BSECC's Nominating Committee to solicit names for possible nomination from all segments of the BSECC community and to select BSECC directors with a view toward assuring fair representation of the interest of a cross-section of BSECC members. New Article X establishes an Audit Committee composed of non-management BSECC and Boston Stock Exchange directors.

New Article VIII of BSECC's By-laws clarifies BSECC's authority to maintain a clearing fund "to make good losses suffered by the Corporation or its clearing members incident to the operation of its clearance and settlement business." BSECC's rules, however, set forth specific requirements concerning the clearing fund, such as minimum member contributions, BSECC's investment of clearing fund assets, and BSECC's use of clearing fund assets to meet certain clearance and settlement losses or liabilities.

The proposed rule change would delete several by-law provisions, including all references in Article VII to membership requirements (these requirements are now stated in BSECC's Rules). In addition, Section 1 of Article VIII, Article IX and Section 2 of Article X regarding certain member services now appear in the rules and, therefore, also would be deleted. Finally, former Article XI, concerning the promulgation of BSECC Rules, would be renumbered Article IX.

BSECC believes the proposed rule change is consistent with the Act. In particular, BSECC believes that new Article II is consistent with section 17A(b)(3)(C) of the Act and the Standards, because the revisions would help ensure that a cross-section of the member community enjoys fair representation in the selection of the board of directors and the administation of BSECC's affairs. BSECC also believes that Article VIII (authorizing a clearing fund) and Article X (establishing an audit committee) are consistent with section 17A(b)(3)(A) of the Act and the Standards, because these Articles help to ensure the safeguarding of securities and funds in BSECC's custody or control or for which it is responsible.

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 of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written 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 Room.

Copies of the 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 within 21 days after the date of publication in the **Federal Register.**

During the course of the full registration review process, the Commission specifically considered the substance of this proposed rule change and found it to be consistent with the Act and the Standards. For the reasons discussed in the Full Registration Order

[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

dated September 20, 1984,[2] the Commission believes that the proposed rule change is consistent with the Act and the rules thereunder. The Commission believes that the proposal's benefits should be made available to BSECC and is participants as soon as possible.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11519 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22018; File No. SR-MCC-85-2]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving Proposed Rule Change

Midwest Clearing Corporation ("MCC") on March 11, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. On March 26, 1985, the Commission published notice of the proposed rule change in the **Federal Register** to solicit public comment.[1] No comment has been received. The Commission is approving the proposal.

MCC's proposal would require mandatory input of accrued interest on trade input forms [2] for MCC's Municipal Bond Comparison System ("MBCS").[3] Under MCC's current System, participants may submit accrued interest on the trade input forms.[4] If a Participant enters the accrued interest, the interest is shown on contract sheets and receive/deliver tickets.

MCC began monitoring trade input forms in February 1985 for inclusion of accrued interest data and anticipates that its monitoring efforts will end in early May. During this monitoring period, comparison input has not been rejected for missing or incomplete accrued interest data. After the end of the monitoring period, participants will be required to input accrued bond interest on their trade input forms, and MCC may reject bond input that is submitted without accrued interest data.

MCC believes the proposed rule change is consistent with the requirements of the Act in that it provides for the prompt and accurate clearance and settlement of municipal securities transactions. MCC further believes that the proposal will facilitate municipal bond trade comparison and thereby enhance the establishment of a naitonal system for municipal securities clearance and settlement.

For the following reasons, the Commission believes MCC's proposal is consistent with Section 17A of the Act and should be approved. The Commission agrees with MCC that the proposal will facilitate the prompt and accurate clearance and settlement of municipal securities transactions. The Commission agrees with MCC and the great majority of its participants that accrued interest should be a mandatory comparison item. Parties to a municipal securities transaction should agree about the amount of accrued interest, which can be substantial, due from the buyer and payable to the seller on settlement day. The Commission also believes that MCC's proposal will help to eliminate any financing expenses and settlement delays from having to resolve accrued interest differences outside the automated clearing agency environment. Accordingly, the Commission believes that the proposal will enhance the establishment of a national system for municipal securities clearance and settlement.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11521 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22019; SR-OCC-85-5]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of a Proposed Rule Change.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

OCC's proposed rule change would amend OCC Rule 602(a) to reduce clearing members' minimum margin OCC requirements for Treasury securities and foreign currency options. The proposed rule change is necessary to conform Rule 602(a) to OCC Rule 601.[1]

OCC believes that the proposed rule change is consistent with the requirements of the Act in that it removes an impediment to participation in the non-equity options market by reducing costs. OCC further believes that the proposal would not adversely affect the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register.** Please refer to File No. SR-OCC-85-5, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of OCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

---

[2] *See* Securities Exchange Act Release No. 21335 (September 20, 1984), 49 FR 37879 (September 26, 1984).

[1] Securities Exchange Act Release No. 21664 (March 19, 1985), 50 FR 11976 (March 26, 1985).

[2] This requirement applies to all municipal bond input, *i.e.*, T+1, As-of, Withhold, and Demand-As-Of. For zero coupon bonds, multipliers, and other bonds trading without interest, participants must enter zeros into the accrued interest field.

[3] For a description of MCC's MBCS, *see* Securities Exchange Act Release No. 21723 (February 5, 1985), 50 FR 5833 (February 12, 1985) and Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28490 (July 12, 1984), in which the Commission approved that System.

[4] A recent participant survey conducted by MCC showed that more than 85 percent of all MBCS participants submit accrued interest as part of their comparison input. A majority of MBCS users have recommended to MCC that accrued interest input should be mandatory.

[1] *See* Securities Exchange Act Release No. 20930 (May 4, 1984), 49 FR 20097 (May 11, 1984), in which the Commission approved a proposed rule change amending OCC Rule 601 to reduce the minimum margins for Treasury securities and foreign currency options.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11520 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Order 85-5-40; Docket 42731]

Application of Trail Lake Flying Service, Inc. d/b/a Harbor Air Service for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-5-40), Docket 42731.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order granting Trail Lake Flying Service d/b/a Harbor Air Service a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation and in intra-Alaska all-cargo Service.

DATE: Persons wishing to file objections should do so in Docket 42731 by May 24, 1985 and addressed to the Documentary Services Division, C-55, Department of Transportation, Washington, D.C. 20590.

ADDRESSE: Responses should be filed in Docket 42731 and addressed to the Documentary Services Division, C-55, Department of Transportation, Washington, D.C. 20590, and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Arthur B. Barnes, Office of Essential Air Service, Service Analysis Division I, S-63, Department of Transportation, 400 7th Street, N.W., Washington, D.C. 20590 (202) 426-9813.

Dated: May 7, 1985

Mathew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-11475 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-037]

Acceptance of Plan Review, Inspections and Examinations by the American Bureau of Shipping (ABS) on Behalf of the United States Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice of public comment period.

SUMMARY: The Coast Guard is requesting public comment on the implementation of certain delegations by the Coast Guard to the American Bureau of Shipping regarding vessel plan review, inspection and tonnage measurement.

DATE: Comments must be received prior to June 10, 1985.

ADDRESS: Comments may be mailed to Commandant (G-CMC/21), U.S. Coast Guard, Washington, D.C. 20593.

SUPPLEMENTARY INFORMATION: Discussion: In 1981, the Coast Guard was given authority by Congress to delegate certain plan review and vessel inspection and examination functions to the American Bureau of Shipping (ABS), a private sector, non-profit classification society. There followed three Memoranda of Understanding (MOU) between the Coast Guard and ABS, two MOUs concerning vessel plan review and inspection and one MOU concerning vessel tonnage measurement.

The first MOU concerning plan review and inspection was signed June 9, 1981 and implemented by Navigation and Vessel Inspection Circular (NVIC) 7-81. This MOU was expanded by MOU II signed April 27, 1982 and implemented by NVIC 10-82. These MOUs sought to reduce duplication in plan review and vessel examination. These MOUs do not relieve the Coast Guard of its statutory rsponsibilities for commercial vessel safety. To carry out these responsibilities, the Coast Guard has maintained oversight and is the final reviewing authority in administrative appeals of the activities delegated to ABS. The delegations contained in the MOUs sought to shorten time to review certain vessel construction plans, simplify inspection procedures, and allow better use of Coast Guard inspection personnel.

The MOU concerning vessel tonnage measurement was signed February 1, 1982 and was implemented by NVIC 1-82. This MOU provided for Coast Guard acceptance of certain ABS measurement certificates. Because of the cost involved, ABS measurement was offered as an alternative to Coast Guard measurement rather than being mandatory. The use of ABS measurement services will reduce the Coast Guard measurement workload.

To assess the effects of these delegations and to report to Congress, the Coast Guard is seeking comments from industry and the general public. In addition to general comments, we wish that the following questions be addressed. Have these procedures led to more efficient plan review and inspections? Have there been any undue problems with interpretation or in appeals of decisions under these delegations? What experience have you had with ABS tonnage measurement?

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

May 8, 1985.

[FR Doc. 85-11498 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in April 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Renewal and Party to Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2000-X	DOT-E 2000	Union Carbide Corp. Danbury, CT	49 CFR 172.101, 173.304(a), 173.315(a)(2).	To authorize use of a non-DOT specification portable tank or a DOT Specification 4L cylinder, for shipment of flammable liquefied compressed gases. (Mode 1.)
2000-P	DOT-E 2000	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to Exemption 2000. (Mode 1.)
3353-X	DOT-E 3553	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173.163(a)(7), 173.239a(a)(2)	To authorize transport of ammonium perchlorate, potassium chlorate or sodium chlorate, in a non-DOT specification steel or aluminum portable tank. (Modes 1, 2.)
3768-P	DOT-E 3768	Vanchem, Inc., Lockport, NY	49 CFR 173.119, 173.245, 173.288	To become a party to Exemption 3768. (Mode 1.)
4177-X	DOT-E 4177	Hydrodyne Industries, Inc., Hauppauge, L.I., NY.	49 CFR 173.302(a)(1), 175.3	To authorize use of a non-DOT specification pressure vessel containing a nonflammable, nonliquefied gas. (Modes 1, 2, 3, and 4.)
4262-X	DOT-E 4262	Schlumberger Well Services, Houston, TX	49 CFR 172.191, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Modes 1, 3.)
4262-X	DOT-E 4262	Schlumberger Offshore Services, Houston, TX.	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Modes 1, 3.)
4338-X	DOT-E 4338	Stauffer Chemical Co., Westport, CT	49 CFR 173.119(m), 173.245a, 173.247	To authorize use of DOT specification 3AA2015 cylinders and DOT Specification 51 portable tanks, for shipment of certain corrosive liquids and a flammable liquid. (Modes 1, 2, and 3.)
4354-P	DOT-E 4354	Vanchem, Inc., Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To become a party to Exemption 4354. (Modes 1, 2, and 3.)
4453-P	DOT-E 4453	Ladshaw Explosives, Inc., New Braunfels, TX.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4575-X	DOT-E 4575	Union Carbide Corp., Danbury, CT	49 CFR 173.314(c), 173.315(a)	To authorize use of DOT Specification 106A500X and 110A500W multi unit tankcar tanks; DOT Specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed AAR 120A300W, 112A340W tank cars, for transportation of certain liquefied compressed gases. (Modes 1, 2, and 3.)
4884-X	DOT-E 4884	Union Carbide Corp., Danbury, CT	49 CFR 173.302(a)(1), 175.3, 178.61	To authorize shipment of gas-calibration mixtures of compressed gases, in non-DOT specification stainless steel cylinders complying with DOT Specification 4BW, with certain exceptions. (Modes 1, 2, 3, 4, and 5.)
4884-P	DOT-E 4884	Ashland Oil, Inc., Columbus, OH	49 CFR 173.302(a)(1), 175.3, 178.61	To become a party to Exemption 4884. (Modes 1, 2, 3, 4, and 5.)
5022-X	DOT-E 5022	Aerojet Strategic, Propulsion Co., Sacramento, CA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5022-X	DOT-E 5022	National Aeronautics and Space Administration Washington, DC.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To authorize shipment of certain Class A and Class B explosives in temperture controlled equipment. (Modes 1, 2.)
5022-X	DOT-E 5022	The Boeing Co., Seattle, WA	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5206-X	DOT-E 5206	Mesabi Powder Co., Hibbing, MN	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Kesco, Inc., Kittanning, PA	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Atlas Powder Co., Dallas, TX	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Austin Powder Co., Cleveland, OH	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5248-X	DOT-E 5248	Rockwell International Corp., Anaheim, CA.	49 CFR 173.431(a), 175.3	To authorize shipment of a certain quantity of polonium/210 in any DOT Specification approved outer Type A packaging. (Modes 1, 2, and 4.)
5600-P	DOT-E 5600	Synthatron Corp., Parsippany, NJ	49 CFR 175.3, Part 173	To authorize to become a party to Exemption 5600. (Modes 1, 2, and 4.)
5600-X	DOT-E 5600	Ozark-Mahoning Co., Tulsa, OK	49 CFR 175.3, Part 173	To authorize transport of flammable or nonflammable compressed gases, flammable or corrosive liquids presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
6151-X	DOT-E 6151	Virginia Chemicals, Inc., Portsmouth, VA	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixures in inside nonrefillable aluminum containers comparable to DOT Specification 2Q, with intergral pressure relief system. (Modes 1, 2.)
6267-X	DOT-E 6267	Alden Leeds, Inc., South Kearny, NJ	49 CFR 173.154, 173.217(a)	To authorize use of DOT and non-DOT specification doubled-faced fiberboard boxes, for shipment of certain oxidizing materials. (Modes 1, 2, and 3.)
6267-P	DOT-E 6267	Hydrotech Chemical Corp., Marietta, GA	49 CFR 173.154, 173.217(a)	To become a party to Exemption 6267. (Modes 1, 2, and 3.)
6296-X	DOT-E 6296	Platte Chemical Co., Fremont, NE	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1, 2.)
6531-X	DOT-E 6531	Tavco, Inc., Chatsworth, CA	49 CFR 173.302(a)(1), 175.3	To authorize use of a non-DOT Specification pressure vessel for shipment of a nonflammable compressed gas. (Modes 1, 2, 4, and 5.)
6589-P	DOT-E 6589	International Safety Devices, Inc., Hesperia, CA.	49 CFR 173.302(a)(1), 175.3	To become a party to Exemption 6589. (Modes 1, 2, 4, and 5.)
6610-P	DOT-E 6610	Akzo Chemie America, Chicago, IL	49 CFR 173.221	To become a party to Exemption 6610. (Modes 1, 2.)
6752-X	DOT-E 6752	Pennwalt Corp., Philadelphia, PA	49 CFR 173.301(d)(3), 173.304(a)(2)	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders forming part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6759-X	DOT-E 6759	Hercules, Inc., Wilmington, DE	49 CFR 173.87, 177.835(g)(2)	To authorize transport of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6762-P	DOT-E 6762	Kem Manufacturing Corp., Tucker, GA	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, and 4.)
6762-P	DOT-E 6762	Nutmeg Chemical Co. New Haven, CT	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, and 4.)
6772-P	DOT-E 6772	Thomas Gray & Associates, Inc., Orange, CA.	49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369.	To become a party to Exemption 6772. (Mode 1.)
7052-P	DOT-E 7052	Datasonics, Inc., Cataumet, MA	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Southwest Electronics, Inc., Stafford, TX	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7076-P	DOT-E 7076	Thomas Scientific, Philadelphia, PA	49 CFR 173.286(b)	To become a party to Exemption 7076. (Modes 1, 2, 3.)
7286-X	DOT-E 7286	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain nonliquefied compressed gases in DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7413-X	DOT-E 7413	Chilton Metal Products Division, Chilton, WI.	49 CFR 173.302(a), 173.304(a)(1), 175.3, 178.42.	To authorize transport of carbon dioxide, nitrogen and compressed air, in a non-DOT specification brazed steel cylinder. (Modes 1, 2, 3, 4, and 5.)
7451-X	DOT-E 7451	Union Carbide Corp. Danbury, CT	49 CFR 173.304, 173. 315	To authorize use of non-DOT Specification pressure vessels, for transportation of a nonflammable gas. (Modes 1, 3.)
7505-X	DOT-E 7505	Platte Chemical Co., Greeley, CO	49 CFR 173.28(m), 173.346(a)(2), 173.358(a)(2), 173.359(a)(2), 173.359(b)(2).	To authorize use of DOT Specification 17C drums, previously used for shipment of class B poisons and reconditioned (decontaminated). (Mode 1.)
7513-X	DOT-E 7523	Messer Griesheim Industries, Inc., Valley Forge, Pa.	49 CFR 173.315(a)(1)	To authorize shipment of pressurized liquid oxygen, in DOT Specification MC-331 cargo tanks. (Mode 3.)
7721-X	DOT-E 7721	Applied Environments Corp., Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking, and sale of non-DOT Specification steel cylinders, for transportation of nonflammable, nonliquefied compressed gases. (Modes 1, 2, and 4.)
7822-X	DOT-E 7822	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a)	To authorize shipment of liquid helium in specifically insulated non-DOT specification, triple shell, portable tanks. (Modes 1, 3.)
7929-X	DOT-E 7929	Austin Power Co., Beachwood, OH	49 CFR 173.65	To become a party to Exemption 7925. (Modes 1, 2.)
8009-X	DOT-E 8009	MCF Services, Inc., Golden, CO	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To become a party to Exemption 8009. (Mode 1.)
8053-X	DOT-E 8053	Eastman Kodak Co., Rochester, NY	49 CFR 173.148(a), 175.3	To authorize shipment of monoethylamine in inside glass bottles/metal cans, overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2, and 4.)
8086-X	DOT-E 8086	Boeing Aerospace Co., Seattle, WA	49 CFR 172.101, 172.102, 173.116(b), 173.119, 173.206, 173.87.	To authorize transport of a cruise missile containing hazardous materials, packed in a wooden box. (Mode 1.)
8099-X	DOT-E 8099	Union Carbide Agricultural Products Co., Danbury, CT.	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solid. (Modes 1, 2, and 3.)
8099-X	DOT-E 8099	Union Carbide Corp., Danbury, CT	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solids. (Modes 1, 2, and 3.)
8127-X	DOT-E 8127	Societe Nationale Des Poudres et Explosifs Bergerac, France.	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (Modes 1, 2, and 3.)
8127-X	DOT-E 8127	Hercules, Inc., Wilmington, DE	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (Modes 1, 2, and 3.)
8131-X	DOT-E 8131	Lockheed Space Operations Co., Lompoc, CA.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3.	To become a party to Exemption 8131. (Modes 1, 2, and 4.)
8144-X	DOT-E 8144	ICI Americas, Inc., Wilmington, DE	49 CFR 173.133, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums. (Modes 1, 3, and 4.)
8144-X	DOT-E 8144	Hercules, Inc., Wilmington, DE	49 CFR 173.133, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums. (Modes 1, 3, and 4.)
8144-X	DOT-E 8144	Atlas Powder Co., Dallas, TX	49 CFR 173.133, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums. (Modes 1, 3, and 4.)
8167-X	DOT-E 8167	Monostat Corp., New York, NY	49 CFR 173.287, 173.3	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystyrene/glass bottle inside packaging. (Modes 1, 2, 3, and 4.)
8184-P	DOT-E 8184	Austin Powder Co., Beachwood, OH	49 CFR 173.65	To become a party to Exemption 8184. (Modes 1, 2, and 3.)
8184-X	DOT-E 8184	Trojan Corp., Salt Lake City, UT	49 CFR 173.65	To authorize transport of flaks trinitrotoluene in non-DOT specification composite bags. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	Eurotainer, S.A., Paris, France	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8230-P	DOT-E 8230	Seastar Chemicals, Div. of Seastar Instruments, Sidney, S.C., Canada.	49 CFR 173.268(b)(6), 173.269(a)(4)	To become a party to Exemption 8230. (Modes 1, 2, 3, and 4.)
8232-X	DOT-E 8232	Eurotainer, S.A. Paris, France	49 CFR 173.123(a), 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)
8445-P	DOT-E 8445	Thomas Gray & Associates, Inc., Orange, CA.	49 CFR Part 173, Subpart D, E, F, &H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Hughes Aircraft Co., Fullerton, CA	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	U.S. Department of the Army, Falls Church, VA.	49 CFR Parat 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8451-X	DOT-E 8441	Stresau Laboratory, Inc., Spooner, WI	49 CFR 173.65, 173.86(e), 175-3	To authorize shipment of not more than 25 grams, of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, snd 4).
8494-X	DOT-E 8494	Fruehauf Corp., Omaha, NE	49 CFR 178.342-6(a)	To authorize manufacture, marking and sale of DOT Specification MC-307 aluminum cargo tanks equipped with glass sight gauges in lieu of the acceptable gauging devices, for transportation of flammable gases. (Mode 1.)
8495-X	DOT-E 8495	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47	To increase the volumetric water capacity to not exceed 100 lbs. and the design service pressure to not exceed 1400 psi. (Modes 1, 2, 4, and 5.)
8495-X	DOT-E 8495	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize manufacture, marking and sale of welded steel container, fabricated in compliance with DOT Specification 4DS with certain exceptions, for transportation of compressed gases. (Modes 1, 2, 4, and 5.)
8498-X	DOT-E 8498	Hunter Drums, Limited, Burlington, Ont., Canada.	49 CFR 173.26, Part 173 Subpart F	To renew and to authorize hydrobromic acid solutions of up to 63%, and up to 60% hydrogen peroxide additional commodities. (Modes 1, 2, and 3.)
8507-X	DOT-E 8507	U.S. Department of Energy, Washington, DC.	49 CFR 173.302, 175.3	To authorize use of non DOT specification stainless steel welded conical pressure vessel, for shipment of a compressed gas. (Modes 1, 2, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8510-X	DOT-E 8510	Dow Chemical Co., Freeport, TX	49 CFR 173.178	To authorize shipment of salt-coated magnesium granules in a non-DOT specification wax-impregnated, intermediate bulk, fiberboard box with an inside polyethylene bag. (Modes 1, 2, and 3.)
8518-X	DOT-E 8518	Pacific Tank and Manufactring, Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking, and sale of non-DOT Specification cargo tanks complying generally with DOT specification MC-307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Modes 1.)
8536-X	DOT-E 8536	Pennwalt Corporation Buffalo, NY	49 CFR 173.157(a)(5)	To authorize an increase in the maximum allowable gross weight of a DOT Specification 12B corrugated fiberboard box, for shipment of wet benzoyl peroxide. (Modes 1, 2, and 3.)
8539-X	DOT-E 8539	Aero Taxi-Rockford, Inc., Rockford, IL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Modes 4.)
8550-X	DOT-E 8550	ESA, Inc. (Formerly Environmental Sciences Assoc.), Bedford, MA.	49 CFR 173.119(m)(6), 175.3	To authorize shipment of a hydrochloric acid/propanol mixture, classed as a flammable liquid, in non-DOT specification one-pint polyethylene bottles, not to exceed 6 bottles to one outside DOT Specification 12B fiberboard box. (Modes 1, 2, 3, and 4.)
8551-X	DOT-E 8551	Streamline Manufacturing, Inc., vice Huber Mfg., Gulfport, MS.	49 CFR 173.119(a), (m), 173.245(a), 173.3469(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specifiction MC-307/312 except for bottom outlet valve variations and certain other valve variations and certain other features, for transportation of flammable, corrosive, or poisonous waste liquids or semi-solids. (Modes 1.)
8552-X	DOT-E 8552	Brenner Tank, Inc., Fond du Lac, WI	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification carge tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Modes 1.)
8555-X	DOT-E 8555	Morton Thiokol, Inc., Brigham City, UT	49 CFR 173.92	To authorize shipment of large rocket motor segment on a special highway vehicle. (Modes 1.)
8558-X	DOT-E 8558	Trojan Corp., Salt Lake City, UT	49 CFR 173.53	To authorize transport of a pharmaceutical described as an initiating explosive, in a 5 gallon polyethylene pail containing, not over 40 pounds of material overpacked in a 15 gallon DOT Specification 37A steel drum, with ring bolt closure. (Mode 1.)
8564-X	DOT-E 8564	Eaton Corp., Formerly Bunker Ramo Electronic Sys., Westlake Village, CA.	49 CFR 173.206, 173.247	To authorize transport of battery containing lithium metal and thionyl chloride, packed in separate compartment, in DOT Specification 19 wooden boxes. (Mode 1.)
8564-X	DOT-E 6564	Altus Corp., San Jose, CA	49 CFR 173.206, 173.247	To authorize transport of battery containing lithium metal and thionyl chloride, packed in separate compartment, in DOT Specification 19 wooden boxes. (Mode 1.)
8602-X	DOT-E 8602	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, making and sale of non-DOT specification vacuum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8620-X	DOT-E 8620	Polar Tank Trailer, Inc., Holdingford, MN	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8682-X	DOT-E 8682	Beall Trans-Liner Portland, OR	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosive waste liquids or semi solids. (Mode 1.)
8723-X	DOT-E 8723	Pacific Powder Co., Tenino, WA	49 CFR 173.114a(h) (3)	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Mode 1.)
8723-X	DOT-E 8723	Pacific Motor Transport, Inc., Tenino, WA	49 CFR 173.114a(h)(3)	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Mode 1.)
8755-X	DOT-E 8755	U.S. Department of Interior, Anchorage, AK.	49 CFR 172.101, 173.119, 175.3, 175.320(c).	To authorize shipment of gasoline and turbine fuel, classed as flammable liquids in non-DOT specification rubberized fabric containers (Sealdrums). (Mode 4.)
8859-X	DOT-E 8859	AVM Corp., Pittsburgh, PA	49 CFR 173.306(f) (2) (iii), 173.306(f) (3), 175.3.	To authorize shipment of a compressed gas in accumulators which deviate from required test criteria. (Modes 1, 4, and 5.)
8870-X	DOT-E 8870	EM Science, Cincinnati, OH	49 CFR 172.101, 173.286, 175.3	Request party status and to authorize organic peroxide as an additional commodity. (Modes 1, 2, 3, 4, and 5.)
8877-X	DOT-E 8877	Allied Chemical, Morristown, NJ	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 firberboard boxes with inside, glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	KTI Chemicals, Inc., Danbury, CT	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	Union Carbide Corp., Danbury, CT	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosvie, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
887-X	DOT-E 8877	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8897-X	DOT-E 8897	Kerrco, Inc., Hastings, NE	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tanks, for shipment or corrosive materials. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8910-X	DOT-E 8910	Canber Products Limited Waterloo, Ontario, Canada.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed in a steel cage, for shipment corrosive of liquids. (Modes 1, 2.)
8933-X	DOT-E 8933	Ford Aerospace & Communications Corp., Newport Beach, CA.	49 CFR Parts 100-199	To authorize transport of an electric car, containing a sodium-sulfur battery which is below its operating temperature or is depleted. (Mode 1)
8937-X	DOT-E8937	Dow Chemcial Co., Freeport, TX	49 CFR 173.178	To renew and authorize water as an additional mode of transportation. (Modes 1, 2, and 3.)
8937-X	DOT-E 8937	Amax Specialty Metals Corp., Salt Lake City, UT.	49 CFR 173.178	To authorize shipment of coated magnesium granules in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2000 pounds each. (Modes 1, 2, and 3.)
8946-X	DOT-E 8946	U.S. Department of the Army Falls Church, VA.	49 CFR 173.127	To authorize shipment of nitrocellulose wet with not less than 30% by weight of heptane, in DOT Specification containers. (Mode 1.)
8965-X	DOT-E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To Authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
8967-X	DOT-E 8967	Hercules, Inc., Wilmington, DE	49 CFR 173.93(a)(11)	To Authorize shipment of a solid propellant explosive, in a non-DOT specification fiberboard tube, overpacked in a non-DOT specification palletized metal cage. (Mode 1.)
8968-X	DOT-E 8968	Degussa Corp., Teterboro, NJ	49 CFR 173.206	To Authorize use of a non-DOT Specification IMO Type 1 portable tank for transporation of a flammable solid. (Modes 1, 2, and 3.)
8969-X	DOT-E 8969	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 173.79(b), 173.92(b)	To Authorize shipment of certain rocket motors with ignite installed (Modes 1, 3.)
8971-X	DOT-E 8971	NL McCullough/NL Industries, Inc., Houston, TX.	49 CFR 172.101, column (4), 173.246, 175.3.	To Authorize use of a non-DOT specification steel cylinders of equal or greater integrity than those currently authorized, for transportation of a liquid oxidizer. (Modes 1, 2, 3, and 4.)
8978-X	DOT-E 8978	A/S Hellesens, Soborg, Denmark	49 CFR 172.101, 175.3	To Authorize transport of lithium cells containing more than 12, but not more than 50, grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8983-X	DOT-E 8983	Universal Propulsion Co., Inc., Phoenix, AZ.	49 CFR 173.238	To Authorize transport of aircraft rocket engines, commercial, which do not comply with the requirements of 49 CFR 173.238, Note 1, as engines contain a small amount of Class B explosives.
8995-X	DOT-E 8995	Worum Chemical Co., Saint Paul, MN	49 CFR 173.315(a)(1), 173.346	To Authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
8995-X	DOT-E 8995	Olin Corp., Stamford, CT	49 CFR 173.315(a)(1), 173.346	To Authorize use of non-DOT specification steel portable tanks for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
8999-X	DOT-E 8999	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY.	49 CFR 173.154, 175.3, 175.85, Part 172, Subpart C, Subpart D, E.	To Authorize transport of emergency oxygen generators without marking, labeling, shipping papers or specification packaging. (Modes 1, 2, 3, 4, and 5.)
9019-X	DOT-E 9019	Completion Services, Inc., Lafayette, LA	49 CFR 173.119, 173.125, 173.263, 173.264, 173.277, 46 CFR 64.9.	To Authorize use of a marine portable tank, for transportation of certain flammable and corrosive liquids. (Mode 1.)
9024-X	DOT-E 9024	Fauvet-Girel, St Laurent Blangy, France	49 CFR 173.315	To Authorize use of a non-DOT specification IMO Type 5 portable tank for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	SLEMI, Paris, France	49 CFR 173.315	To Authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9108-P	DOT-E 9108	Austin Powder Co., Beachwood, OH	49 CFR 173.77	To become a party to Exemption 9108. (Mode 1.)
9222-P	DOT-E 9222	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.119(b), 173.154	To become a party to Exemption 9222. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
9220-N	DOT-E 9220	Custom Packaging Systems, Inc., Manistee, MI.	49 CFR 173.182, 173.217, 173.245b	To authorize manufacture, marking and sale of non-DOT specification collapsible flexible bag, disposable bulk container, for transportation of corrosive solids and oxidizers. (Modes 1, 2, and 3.)
9254-N	DOT-E 9254	Speer Products Inc., Memphis, TN	49 CFR 173.304, 173.33a, 175.3	To authorize shipment of insecticides and liquefied gas mixtures in inside nonrefillable aluminum containers comparable to DOT Specification 2Q, with integral pressure relief system. (Modes 1, 2, 3, and 4.)
9308-N	DOT-E 9308	Pennwalt Corp., Buffalo, NY	49 CFR 173.243	To authorize shipment of a corrosive liquid, n.o.s., in a DOT Specification 2E polyethylene bottle equipped with a vented closure, to be overpacked in a DOT Specification 12B40 fiberboard box. (Modes 1 and 3.)
9336-N	DOT-E 9336	Avant Air, Newport Beach, CA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9337-N	DOT-E 9337	Northland American, Inc., Minneapolis, MN.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9347-N	DOT-E 9347	Boondock International, Inc., Houston, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of flammable and nonflammable gases used for sampling purposes. (Modes 1, 4.)
9348-N	DOT-E 9348	Duracell Inc., Bethel, CT	49 CFR 173.206, 175.3, 175.85, Part 107 Appendix B.	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Mode 5.)
9349-N	DOT-E 9349	Atlantic Cylinder Corp., Jacksonville, FL	49 CFR 173.34(f)(1)(2)(3), Part 107 Appendix B.	To authorize rebuilding, retesting, marking and selling of DOT Specification 4B, 4BA and 4BW cylinders, for transportation of compressed gases, flammable liquids and corrosive materials. (Modes 1, 2, 3, 4, and 5.)
9354-N	DOT-E 9354	Companhia Nitro Quimica Brasileira, Sao Paulo, Sp Brazil	49 CFR 173.127	To authorize transport of alcohol-wet nitrocellulose in non-specification fiber drums. (Modes 1, 2, and 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
9355-N	DOT-E 9355	Eastman Kodak Co., Rochester, NY	49 CFR 173.206, 175.3, 175.85, Part 107 Appendix B.	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Mode 5.)
9358-N	DOT-E 9358	Ashland Oil, Inc., Dublin, OH	49 CFR 178.210, part 173, Subpart D, F	To authorize shipment of various flammable or corrosive liquids in glass or DOT Specification 2E polyethylene bottles of up to one-gallon capacity, packed no more than four to a non-DOT specification thermoformed high density polyethylene case, instead of a DOT Specification 12A box. (Mode 1.)
9364-N	DOT-E 9364	Security Chemical Co., Fort Valley, GA	49 CFR 173.359	To authorize shipment of a parathion mixture, liquid, in a DOT Specification 12P corrugated fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallon capacity. (Mode 1.)
9372-N	DOT-E 9372	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 173.110(c)(1), 173.60(b), 173.60(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1, 3.)
9377-N	DOT-E 9377	Atlas Powder Co., Dallas, TX	49 CFR 173.64(a)(5)	To authorize transportation of high explosives containing more than 5% moisture in packagings without inner plastic bags or other linings. (Modes 1, 2, and 3.)
9385-N	DOT-E 9385	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m) (13), (14)	To authorize transport of certain amines in DOT Specification 111A100W4, 112A200W and 114A340W tank cars. (Mode 2.)
9387-N	DOT-E 9387	Virginia Chemicals, Inc., Portsmouth, VA	49 CFR 173.334	To authorize transport of an organic phosphate compound pressurized, with a nonflammable compressed gas, in concentrations and quantities greater than now authorized in the regulations, in DOT Specification 3B cylinders. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9423-N	DOT-E 9423	ICS Corp., Kent, WA	49 CFR 173.34(d)	To authorize shipment of air in nonrefillable aluminum cylinders that are part of an emergency breathing apparatus. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7220-X	Greif Brothers Corp., Springfield, NJ	49 CFR Parts 173, Subpart D, E, F, & H	To authorize manufacture, marking and sale of non-DOT specification reusable, blow-molded, polyethylene containers, for shipment of certain corrosive, flammable liquids, oxidizers and Class B poisonous liquids. (Modes 1, 2, 3, and 4.)
7688-X	Rheem Manufacturing Co., Linden, NJ	49 CFR 173, Subpart F, 178.19	To authorize manufacture, marking and sale of non-DOT specification reusable polyethylene container, for transportation of corrosive liquids and oxidizers. (Modes 1, 2, 3, and 4.)
8948-X	Immuno Nuclear Corp., Stillwater, MN	49 CFR 173.242, 173.25(b)	To authorize shipment of limited quantities of a radioactive material, flammable liquid and corrosive material (liquid), in non-DOT specification single wall, corrugated fiberboard boxes. (Modes 1, 4.)

Denials

8129-X Request by Acurex Corporation, Mountain View, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by McKesson Corporation, Dublin, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Mine Safety Appliances Company, Evans City, PA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Stauffer Chemical Company, Westport, CT, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Kerr-McGee Chemical Corporation, Oklahoma City, OK, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Burroughs Wellcome Company, Greenville, NC, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Hewlett-Packard Co., Palo Alto, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Chemical Waste Management, Inc., Oak Brook, IL, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by GTE Network Systems Incorporated, Albuquerque, NM, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by CECOS International, Inc., Buffalo, NY, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by University of California, Davis, Davis, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material

overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-P Request by University of California, Riverside, Riverside, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-P Request by Washington State University, Pullman, WA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Borg-Warner Chemicals, Inc., Parkersburg, WV, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by GSX Services, Inc., formerly Triangle Resources, Laurel, MD, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by McDonnell Douglas Corp., Saint Louis, MO, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Findly Chemical Disposal, Inc., Riverside, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Ecoflo, Inc., Bladensburg, MD, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Virginia Polytechnic Institute & State University, Blacksburg, VA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Aqua-Tech, Inc., Port Washington, WI, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Loma Linda University, Loma Linda, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

9227-X Request by Canadian Arsenals Limited, Gardeur, Quebec, Canada, to authorize shipment of barium styphnate, monohydrate, an initiating explosive, Class A in packaging prescribed in 173.74 denied April 12, 1985.

9309-N Request by Sky Lines International, Inc., Mobile, AL, to authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment denied April 12, 1985.

9391-N Request by Dowell Schlumberger, Inc., Tulsa, OK, to authorize shipment of hydrochloric acid, classed as a corrosive material in 3,100 gallon capacity DOT Specification 60 rubber lined portable tanks in the State of Alaska only denied April 22, 1985.

9395-N Request by Overland Tank & Trailer Mfg. Inc., Abilene, TX, to manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids denied April 5, 1985.

9414-N Request by Union Carbide Corporation, Danbury, CT, to authorize shipment of tetrafluoromethane (halocarbon 14) non-liquefied, nonflammable gas, in DOT Specification 3AL, aluminum cylinders denied April 12, 1985.

Issued in Washington, DC, on May 2, 1985.

J.R. Grothe, Chief,

Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-11493 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Workshop/Intern Program for East Asian Journalists: This project constitutes a three-week summer workshop and intern exchange program for East Asian journalists primarily from the Association of Southeast Asian Nations (ASEAN) area. The program is designed for mid-level journalists who are fluent in English who may also work for an English language newspaper, magazine or other media element. It will include two weeks of presentations, site visits, workshops and panels led by recognized print-media journalists both from the local community and those with national prominence. Discussions will center on accuracy in reporting; editorial writing; news gathering, interviewing and related procedures; and case studies in economic or security affairs reporting. A third week will optimally include a structured hands-on intern program. A second program on electronic or broadcast journalism is envisioned for 1986.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations must postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected

organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency 301 4th Street, S.W., Washington, D.C. 20547.

Dated: May 7, 1985.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 85-11460 Filed 5-10-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 8:30 a.m. Tuesday, May 14, 1985.

LOCATION: Quality Inn, 300 Army-Navy Drive, Arlington, Virginia.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Swimming Pool and Spa Safety Conference.

The Commission will cosponsor with the National Spa and Pool Institute a safety conference Tuesday, May 14, 1985 at the Quality Inn, 300 Army-Navy Drive, Arlington, Virginia, beginning at 8:30 a.m., to discuss accidents relating to diving, infant drowning and entrapment.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-11523 Filed 5-9-85; 8:57 am]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, May 15, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: ATV Task Force Status Report.

The staff will provide the Commission with a status report on ATV activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800.

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-11524 Filed 5-9-85; 8:57 am]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 16, 1985, See Times Below.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Open to the Public

8:30 a.m.

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

Closed to the Public

9:30 a.m.

2. Enforcement Matter OS # 4665

The Commission and staff will discuss Enforcement Matter OS # 4665.

3. Compliance Status Report

The staff will brief the Commission on various Compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-11528 Filed 5-9-85; 8:57 am].

BILLING CODE 6355-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, May 6, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of South Boston Savings Bank, an operating noninsured savings bank located in Boston, Massachusetts, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11573 Filed 5-9-85; 12:57 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, May 6, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,225-L (Amended)

The First National Bank of Midland, Midland, Texas

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11574 Filed 5-9-85; 12:57 pm]

BILLING CODE 6714-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

May 8, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: May 15, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary. Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 813th Meeting—May 15, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8736-000, Christopher M. Anthony

CAP-2.
Project No. 5447-003, D. William Saulsberry

CAP-3.
Project No. 8644-001, Pacific Hydropower Company

CAP-4.
Project No. 4059-003, South Fork Irrigation District

CAP-5.
Project No. 3492-004, city of Haines, Oregon

CAP-6.
Project No. 7358-002, Salt Lake County Water Conservancy District

CAP-7.
Project No. 2515-000, Potomac Edison Company

CAP-8.
Project No. 6115-001, Hydro Development Group, Inc. and Pyrites Associates

CAP-9.
Project No. 2030-009, Portland General Electric Company

CAP-10.
Docket Nos. EL80-19-000 and 004 through 016, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
Docket Nos. EL80-24-000 and 002 through 014, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
Docket Nos. EL78-24-029 and 032 through 042, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York

CAP-11.
Docket No. ER85-375-000, Centel Corporation-Kansas

CAP-12.
Docket Nos. ER85-380-000 and ER77-175-004 (Remand), ER78-19-000 (Phase II), et al., and ER81-588-000, Florida Power & Light Company

CAP-13.
Docket No. ER 85-400-000, Virginia Electric and Power Company

CAP-14.
Docket No. ER85-401-000, Jersey Central Power and Light Company

CAP-15.
Docket No. ER85-404-000, Commonwealth Edison Company

CAP-16.
Docket No. ER85-398-000, Northern States Power Company (Wisconsin)

CAP-17.
Docket No. ER84-604-003, Southwestern Public Service Company

CAP-18.
Docket Nos. ER82-618-000, ER82-622-000, ER82-661-000, ER83-241-000, ER83-687-000 and ER83-712-000, Idaho Power Company

CAP-19.
Docket No. E-9206-000, McDowell County Consumers Council, Inc. v. American Electric Power Company, et al.

CAP-20.
Docket No. QF85-210-000, Pynoyl Corporation

CAP-21.
Omitted

CAP-22.
Docket No. RE80-11-006, Southern California Edison Company

CAP-23.
Docket No. RE83-3-002, New York State Electric and Gas Company

Consent Miscellaneous Agenda

CAM-1.
Docket Nos. RM83-56-001 through 003, application for license, permit and exemption from licensing for water power projects

CAM-2.
Docket No. RM85-16-000, delegation to the Chief Administrative Law Judge

CAM-3.
Docket No. RM78-17-000, rules of practice and procedure for Commission review of DOE adjustment request denials

CAM-4.
Docket No. RM79-32-000, establishment of final NGPA adjustment procedures

CAM-5.
Docket No. RM79-76-107 (Kansas-1), high-cost gas produced from tight formations

CAM-6.
Docket No. GP83-29-000, Texas Railroad Commission, section 103 NGPA determination, C.J. Wofford, Parker Higginbottom #1 well, FERC JD. No. 83-26112
Docket No. GP83-30-000, Texas Railroad Commission, section 103 NGPA determination, C.J. Wofford, H.G. Higginbottom #1 well, FERC JD. No. 83-26111

CAM-7.
Docket No. GP80-23-004, Texas Gas Transmission Corporation

CAM-8.
Docket No. GP83-23-000, Commonwealth of Pennsylvania, section 108 NGPA determination, J&J Enterprises, Inc., R&P #9 well, FERC J.D. No. 82-20075

CAM-9.
Docket No. RO84-2-000, Crown Central Petroleum Corporation

CAM-10.
Docket No. FA84-7-000, Sea Robin Pipeline Company

Consent Gas Agenda

CAG-1.
Docket No. RP85-135-000, Pacific Interstate Offshore Company

CAG-2.
Docket Nos. RP85-138-000 and RP85-139-000, Consolidated Gas Transmission Corporation

CAG-3.
Omitted

CAG-4.
Docket Nos. TA85-3-32-000 and 001, Colorado Interstate Gas Company

CAG-5.
Docket Nos. TA85-2-52-002 and RP84-77-003, Western Gas Interstate Company

CAG-6.
Docket No. TA85-2-42-002, Transwestern Pipeline Company

CAG-7.
Omitted

CAG-8.
Docket Nos. TA83-1-32-000, TA84-1-32-000, TA85-1-32-000, RP79-59-000 and RP82-54-000, Colorado Interstate Gas Company

CAG-9.
Docket No. RP85-112-001, Boundary Gas, Inc.

CAG-10.
Docket Nos. RP85-29-000 and TA85-1-49-000, Montana-Dakota Utilities Company

CAG-11.
Docket No. RP81-38-009, Tennessee Gas Pipeline Company, Division of Tenneco Inc.

CAG-12.
Docket Nos. RP84-20-001 through 003, Panhandle Eastern Pipe Line Company

CAG–13.
Docket No. RP84–45–000, Texas Gas Pipe Line Corporation
CAG–14.
Docket Nos. ST83–442–001, ST80–299–002, ST82–249–001, ST83–260–001, ST83–317–001, ST83–660–000, ST83–678–000, ST84–29–000, ST84–632–000, ST84–650–000, ST84–804–000, ST84–896–000, ST84–1013–000 and ST85–126–000, Acadian Gas Pipeline System
CAG–15.
Docket Nos. ST82–95–002, ST82–442–001, ST83–668–000, ST84–628–000 and 001, Red River Pipeline Corporation
CAG–16.
Docket No. RI84–9–001, Grace Petroleum Corporation
CAG–17.
Docket Nos. RI74–188–051 and RI75–21–046, Independent Oil & Gas Association of West Virginia
CAG–18.
Docket No. CI85–180–001, Pogo Producing Company
CAG–19.
Docket No. CI85–181–001, McMoran Offshore Exploration Company
CAG–20.
Docket No. CI84–10–000, Felmont Oil Corporation and Essex Offshore, Inc.
CAG–21.
Docket No. G–7645–003, Mobil Oil Corporation
CAG–22.
Docket Nos. RP83–137–019 through 022, Transcontinental Gas Pipe Line Corporation
Docket Nos. RP83–11–037 through 039 and RP83–30–035 through 037, Transcontinent Gas Pipe Line Corporation
Docket Nos. CP83–340–027 through 029, producer-suppliers of Transcontinentl Gas Pipe Line Corporation
Docket Nos. CP83–428–035 through 037, producer-suppliers of Transco Gas Supply Company and Transcontinental Gas Pipe Line Corporation
CAG–23.
Docket No. TC85–14–000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG–24.
Docket No. CP84–700–001, Colorado Interstate Gas Company
CAG–25.
Docket Nos. CP75–16–005, CP75–81–004 and CP75–104–045, High Island Offshore System
CAG–26.
Docket No. CP85–232–000, Northwest Pipeline Corporation
Docket No. CI85–172–000, Coastal Oil and Gas Corporation
CAG–27.
Docket No. CP85–96–000, Superior Offshore Pipeline Company
Docket No. CP85–111–000, Trunkline Gas Company
CAG–28.
Docket Nos. CP85–212–000 and 001, Columbia Gas Transmission Corporation
CAG–29.
Docket No. CP85–302–000, El Paso Natural Gas Company
CAG–30.
Docket No. CP85–95–000, United Gas Pipe Line Company

I. Licensed Project Matters

P–1.
Reserved

II. Electric Rate Matters

ER–1.
Docket No. EF84–4061–000, U.S. Secretary of Energy—Southwestern Power Administration
ER–2.
Docket No. QF84–442–000, Turbine Tech, Inc.
ER–3.
Docket No. EL84–31–000, Kern River Cogeneration Company

Miscellaneous Agenda

M–1.
Docket No. RM84–15–000, generic determination of rate of return on common equity for public utilities
M–2.
Docket No. RM83–63–000, automatic authorization for holding certain positions that require Commissin approval under section 3050(B) of the Federal Power Act
M–3.
Reserved
M–4.
Reserved
M–5.
Docket No. RM83–53–000, obligations of sellers and purchasers of first-sale natural gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978

I. Pipeline Rate Matters

RP–1.
Docket Nos. TA85–3–7–000 and 001, Southern Natural Gas Company
RP–2.
Docket Nos. TA85–2–47–000, 001 and 002, MIGC, Inc.
RP–3.
Docket Nos. TA85–1–26–000 and 003 (PGA85–1b), Natural Gas Pipeline Company of America
RP–4.
(A) Docket Nos. RP83–113–014 through 016, Pacific Gas Transmisison Company
Docket No. RP83–135–004, Pacific Interstate Transmission Company
Docket No. RP83–136–003, Pacific Offshore Production Company
Docket No. RP84–28–001, Pacific Interstate Offshore Company
Docket No. RP83–139–005, El Paso Natural Gas Company
Docket Nos. RP81–130–014 through 016 (not consolidated), Transwestern Pipeline Company
(B) Docket Nos. RP81–130–007, 017 and 018, Transwestern Pipeline Company
(C) Docket No. TA83–2–42–002, Transwestern Pipeline Company
RP–5.
Omitted
RP–6.
Docket Nos. RP80–55–000, RP80–118–000, RP81–73–000, RP82–32–000, RP80–55–008, RP80–118–010, RP80–55–009 and RP80–118–011, Sea Robin Pipeline Company
RP–7.
Docket Nos. RP80–72–000 and 003, Algonquin Gas Transmission Company
RP–8.
Docket No. RP80–107–016, Natural Gas Pipeline Company of America
RP–9.
Docket Nos. ST83–692–001, ST83–717–001, ST83–719–001, ST83–720–001, ST83–721–001, ST83–738–001, ST84–14–001, ST84–104–001, ST84–114–001, ST84–157–001, ST84–293–001, ST84–396–001, ST84–427–001, ST84–522–001 and ST84–851–001, Northern Natural Gas Company, a Division of Internorth, Inc.

II. Producer Matters

CI–1.
Docket No. CI83–249–001, et al., Tenneco Oil Company, et al.

III. Pipeline Certificate Matters

CP–1.
Docket No. CP84–21–000, Steve Bowman, et al., v. Columbia Gas Transmission Corporation, et al.
Docket No. CP84–99–000, Columbia Gas Transmission Corporation
CP–2.
Omitted
CP–3
Docket No. CP66–43–000, Texas Eastern Transmission Corporation
CP–4.
Docket No. CP84–659–000, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP82–158–000 and 004, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company, Division of Tenneco Inc., Columbia Gulf Transmission Company, ANR Pipeline Company, Northern Natural Gas Company, Division of Internorth, Inc. and Southern Natural Gas Company
CP–5.
Docket No. CI83–269–038, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd., and Tenneco West, Inc.
Docket Nos. RP83–11–000 through 026 and RP83–30–000, Trancontinental Gas Pipe Line Corporation
Docket No. CP83–279–002, producer-suppliers of Trans continental Gas Pipe Line Corporation
Docket No. CP83–340–003, producer-suppliers of Transco Gas Supply Company
Docket Nos. CP83–428–001 through 014, producer-suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket No. CP83–452–027, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket Nos. CP83–502–000 through 004, CP83–502–008 and 013, Tennessee Gas Pipe Line Company, a Division of Tenneco Inc.
Docket No. CP83–333–029, Panmark Gas Company, et al.
Docket No. CP84–244–008, Texas Eastern Transmission Corporation and producer-suppliers of Texas Eastern Transmission Corporation

Docket No. CI84-332-013, Cities Service Oil and Gas Corporation, Cities Offshore Production Company and Oxy Petroleum, Inc.
Docket No. CI84-374-001, TXP Operating Company
Docket No. CI84-485-014, Amoco Production Company
Docket No. CI84-539-000, El Paso Natural Gas Company
Docket No. CP84-510-000, Sun Exploration and Production Company
Docket No. CI85-36-000, Texas Gas Exploration Company
Docket No. CI85-51-000, Exxon Corporation
Docket No. CI84-555-000, ANR Production Company
Docket No. CI84-556-000, Cenergy Exploration Company
Docket No. CI85-17-000, Mesa Petroleum
Docket No. CI84-571-000, Champlin Petroleum
Docket No. CI84-557-000, Arco Oil & Gas Company, a Division of Atlantic Richfield Company
Docket No. CI85-4-000, Shell Offshore, Inc. and Shell Western E & P, Inc.
Docket No. CI85-29-000, Odeco Oil & Gas Company
Docket No. CI85-41-000, American Petrofina Company of Texas and Petrofina Delaware, Inc.
Docket No. CI85-50-000, Diamond Shamrock Exploration Company
Docket No. CI85-99-000, Union Texas Petroleum Company
Docket No. CI85-156-000, Conoco, Inc.
Docket No. CI84-565-000, Yankee Resources, Inc.
Docket No. CI85-167-000, Chevron USA, Inc.
Docket No. CI85-173-000, Marathon Oil Company
Docket No. CI85-176-000, Kerr-McGee Corporation
Docket No. CI85-239-000, Samson Resources Company
Docket No. CI85-244-000, Arkoma Production Company
CP-6.
Docket No. CI85-255-000, Citizens Energy Corporation and Citizens Resources Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11515 Filed 5-9-85; 8:57 am]

BILLING CODE 6717-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, May 15, 1985.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting
2. Review of Central Liquidity Facility Lending Rate
3. Insurance Fund Report
4. Assessment of Examination Fee for Conversion of State and Privately Insured Credit Unions to National Credit Union Share Insurance Fund
5. Clarifying Amendment to 12 CFR 701.6, Fees Paid By Federal Credit Unions
6. Clarifying Amendment to 12 CFR 741.5, Insurance Premium and One Percent Deposit

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-11572 Filed 5-9-85; 12:57 pm]

BILLING CODE 7535-01-M

8

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

At its meeting on May 7, 1985, the Board of Governors of the United States Postal Service unanimousy voted to close to public observation its meeting scheduled for June 3, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano.

The Board of Governors has determiend that, pursuant to section 522b(c)(6) of Title 5, United Sates Code, and § 552(c)(6) of Title 5, United States Code, and §7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determiend that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(6) of Title 5 United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 85-11618 Filed 5-9-85; 3:53 am]

BILLING CODE 7710-12-M

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, May 6, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting scheduled for Tuesday, May 14, 1985, at 2:30 p.m.

Consideration of whether to approve or disapprove proposals by the Chicago Board Options Exchange, Incorporated ("CBOE") which would increase the representation of floor members on the CBOE Board of Directors and allow CBOE members to elect the Executive Committee Chairman. For further information, please contact Holly Hasley Smith at (202) 272-2371.

Commissioner Cox, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

Dated: May 8, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11575 Filed 5-9-85; 12:58 pm]

BILLING CODE 8010-01-M

10

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: ———, FR ——— (May —, 1985).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (e.d.t.), Wednesday, May 8, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Sullivan Central High School, Little theater, Route 4, Blountville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER:

The following item is added to the previously announced agenda:

D. Personnel Items

1. Personal Services Contract with Quality Technology Company, Lebo, Kansas, for Development and Implementation of a Program for the Identification, Investigation, and Reporting of Employee-Raised Issues of Concern, with Special Emphasis on those Issues Dealing with Nuclear Safety at TVA Facilities; Requested by Nuclear Safety Review Staff.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-800, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Approved:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

John B. Waters,

Director.

Dated: May 3, 1985.

[FR Doc. 85-11571 Filed 5-9-85; 12:38 pm]

BILLING CODE 8120-01-M

federal register

Monday
May 13, 1985

Part II

Department of Health and Human Services

Social Security Administration

Availability of Funding for Planned Secondary Resettlements of Refugees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Availability of Funding for Planned Secondary Resettlements (PSR) of Refugees

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Notice of availability of funding for grants to assist interested refugees to effect planned secondary resettlements to favorable communities.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies for the purpose of providing assistance to eligible refugees in high welfare dependency areas who wish to relocate in a planned way to communities offering favorable employment and resettlement opportunities. Eligible refugees include those who have experienced recurrent or continuing unemployment and/or public assistance dependency. Planned secondary resettlement (PSR) grants will be conducted in two phases: A planning phase to assess and prepare prospective receiving communities and to identify and prepare interested refugees for participation in PSR; and a resettlement phase to implement a planned relocation, involving the provision of services to facilitate prompt employment and a positive resettlement. Planned secondary resettlement is distinguished from "secondary migration" in that planned secondary resettlement involves a considered assessment of the resettlement area prior to relocation, pre-relocation identification of employment opportunities, and consultations with, and advance notification to, appropriate government authorities.

DATE: *Closing Date:* Not Applicable. This is a standing announcement. Grant applications will be reviewed periodically. (See *Review and Award Procedures* for a schedule of proposal due dates and panel review dates.) Applications received later than July 15, 1985 will only be considered for funding in Fiscal Year 1986. Proposals will be evaluated by an independent panel on the basis of the weighted criteria listed in Section V of this Notice. However, all final funding decisions rest with the Director, ORR. Grants will be awarded subject to the availability of funds.

Authorization

Authority for this activity is contained in section 412(c) of the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980 (Pub. L. 96-212), 8 U.S.C. 1522(c).

Available Funds

Approximately $600,000 will be available for this grant program in Fiscal Year 1985. The Director estimates these funds could support up to four grant awards, at an average cost of $150,000 each. The anticipated range for these grants is $75,000 to $300,000 depending on the distance from sending site to receiving site, the size of the population to be resettled, the number of sending and receiving sites to be involved, and the availability of other support. The anticipated range for planning phase costs is $10,000 to $25,000; the range for resettlement phase costs is estimated at $65,000 to $135,000. Higher funding amounts will be considered for applications involving multiple sites. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Office of Refugee Resettlement to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Future Fiscal Year funding for this grants program will be contingent upon appropriations. If adequate funds are available, the Director, ORR, anticipates continuation of this program.

Awards will not exceed an 18 month period of performance for planning and resettlement phases combined.

Application and Funding Process

Applicants shall submit one application which addresses both phases (planning and resettlement) of a proposed project. While applicants will be expected to describe proposed activities and costs in both phases with as much specifity as possible, the description of the proposed resettlement phase plan will be viewed as preliminary and subject to revision during the course of the planning phase.

Funding of PSR grants shall be incremental. Applicants approved for funding shall receive funds for the planning phase only. Release of resettlement phase funding will be contingent upon the submission of an acceptable final resettlement plan at the conclusion of the planning phase. The resettlement plan will be evaluated by the Office of Refugee Resettlement on the basis of the quality and completeness of all components of the plan as specified in Section II, 4. Grantees will be expected to provide a detailed description of proposed resettlement activities and budget at that time.

Should a grantee fail to provide an acceptable resettlement plan, ORR reserves the right not to continue the grant beyond the planning phase. Under such circumstances it would be considered against the Government's best interests to proceed with funds release for the resettlement phase.

Eligible Grantees

State agencies responsible for the administration of State refugee programs, public and private non-profit organizations that have had demonstrated experience in the provision of services to refugees, such as refugee mutual assistance associations (MAAs) and national or local voluntary resettlement agencies, are eligible to apply for funds under the PSR program. Applicants will be required to demonstrate clearly how they will maintain communication with the refugee community in which the identified group of refugees currently resides.

Any combination or consortium of qualified organizations may join together to make application so long as one organization is clearly identified as the responsible grantee. Examples of possible combinations include, but are not limited to: a consortium of MAAs; MAAs and voluntary agencies; States and voluntary agencies; a national voluntary agency with local affiliates; MAAs and States; or any combination of the above.

It is anticipated that, in most cases, the participant organization representing the receiving site will be the primary applicant. However, linkages, through contractual arrangements, with organizations representing sending sites are not only encouraged, but are desired. If a refugee group or an organization (e.g., MAAs or voluntary agencies) representing refugees interested in relocating to a favorable site wishes to initiate a PSR, they are encouraged to link with an established organization or agency in a receiving site to make application.

Program Information

I. Purpose

The purpose of this announcement is to provide an opportunity for refugees residing in high welfare dependency/high unemployment areas [1] who have

[1] For purposes of this announcement, these areas include areas with high welfare dependency or high unemployment among time-expired refugees (over 36 months) as well as areas with a high dependency or unemployment rate among time-eligible refugees. High welfare dependency shall be defined as any rate of over 55% in a given locale.

not been able to find employment to relocate to areas in the U.S. that offer favorable prospects for employment and positive resettlement. The Planned Secondary Resettlement Program serves two objectives:

- To increase refugee self-sufficiency while reducing welfare dependency and/or high unemployment; and
- To increase the use of underutilized communities while seeking to ease the burden of heavily impacted communities.

Planned secondary resettlements should be viewed as a self-sufficiency strategy of last resort and as such should be considered only for those refugees who have little or no chance of obtaining full-time employment where they currently reside.

Accordingly, grants provided for under this program are intended to be applied to groups of refugees who have experienced particularly severe labor market problems and are at risk of long term welfare dependency in the areas in which they reside. While not limited to any ethnic or nationality group, refugee resettlement program experience to date suggests that certain populations are particularly at risk, such as the Highland Lao ethnic groups, as well as segments of the Khmer population.

Resettlement supported under PSR grants must be keyed to assisting refugees to relocate to communities which provide significantly better opportunities for full employment of heads of household than exist in the refugees' current community. Central to a planned secondary resettlement if the pre-relocation identification of employment opportunities that will enhance the economic self-sufficiency of participating refugees. No grants will be awarded to support resettlements in high welfare utilization areas or in areas where the job market is insufficient to accommodate the refugee population residing in those areas.

Resettlements to be supported under PSR grants must proceed from a clear expression of interest and readiness on the part of the refugee group to participate in a resettlement.

II. Program Description

1. It is expected that each planned secondary resettlement grant will involve a minimum of one, and a maximum of 5, sending sites and no more than 2 receiving sites. That is, in each PSR project, eligible and interested refugees could be recruited from one to five different communities for secondary resettlement in one or two favorable communities. It is anticipated that the total number of refugees to be resettled under PSR will not be less than 40 per receiving community, nor more than 200 per grant.

2. Planned secondary resettlements shall be conducted in two phases: A planning phase and a resettlement phase.

3. *Planning phase:* The planning phase is for the purpose of undertaking all preparatory activities needed to ensure a smooth and successful planned resettlement. Such activities shall include at a minimum:

- Pre-resettlement consultations with the designated State refugee agency when the applicant is not the State agency; pre-resettlement consultations with local refugee and resettlement organizations when the applicant is the State agency.
- A detailed assessment of the capacity of the receiving community to provide tangible opportunities for employment, appropriate social services, adequate and affordable housing, health care, favorable educational facilities for children, and a receptive community climate for refugees.
- Introductory visits by representatives of the receiving site to prospective sending site(s) to make presentations to interested refugees, refugee community leaders and other interested parties, on available opportunities in the prospective receiving community.
- On-site visits by prospective PSR refugees and/or refugee community representatives to the proposed receiving site for a first-hand assessment of the community and its resources.
- Identification of eligible refugees in the sending site(s) who wish to relocate to the proposed receiving site(s).
- Preparation of a final resettlement plan if the planning phase indicates feasibility of a resettlement project.
- Other reasonable planning-related activities in support of project goals.

Applicants are advised in developing a planning phase budget to allow for a sufficient number of on-site visits by prospective PSR refugees and their leaders to the receiving site. Such visits should be limited to the number necessary to permit prospective refugees seeking relocation to assess the receiving site. The budget should reflect an emphasis on these types of visits rather than on visits by receiving site representatives to sending sites.

The period of performance for planning phase activities normally shall not exceed 6 months from the date of award. ORR will consider a longer time period if good cause is clearly indicated in the application.

4. *Resettlement Plan.* Upon completion of the planning phase, grantees will be required to submit a detailed resettlement plan which contains the following elements:

a. A description of all activities undertaken during the planning phase, including documentation of refugee involvement and interest.

b. A breakdown of the numbers of individuals and families to be resettled, from each sending site and to each receiving site, and a proposed timetable for resettlement.

c. Statements of intent, signed by the heads of household of the participating families, indicating an interest and commitment to relocate to the proposed site and to accept employment in the new site. (A sample Statement of Intent is included at the conclusion of this announcement.)

d. A detailed description of the characteristics of each refugee family identified for planned resettlement, in terms of time in the U.S., current public assistance and/or employment status, employment/unemployment history in the U.S., and ethnicity.

e. An updated assessment (both qualitative and quantitative) of the capacity of the prospective resettlement community to receive the planned refugee population with particular regard to:

- Available employment opportunities
- Available and affordable housing
- Available and affordable health care services
- Supportive social services such as interpreter/translator services.

f. Evidence that the receiving site offers immediate or imminent prospects for full employment with advancement potential, and that local employers would be interested in hiring relocated refugees.

g. A plan which establishes timeliness for securing employment for relocated refugees.

h. Evidence of the availability of adequate and affordable health insurance for PSR refugees through employer-provided health benefits.

i. Evidence of consultation with the appropriate State Refugee Coordinator(s) for the receiving site(s) if the State agency is not the applicant.

j. Certification of acceptability of the resettlement plan on the part of the sending organization and at least one adult member of each participating refugee family.

k. A final detailed plan for the organization, delivery and coordination of social services, including the identities of proposed service providers

at the resettlement site, the specific services to be provided, the methods by which service needs of the resettlement population were determined, and the period of performance for each proposed service provider funded from the grant.

l. A plan for the provision of housing and resettlement allowances to the participating families.

m. A final itemized budget with complete narrative justification for the resettlement phase.

Funds for the resettlement phase of a PSR grant will be released to the grantee once a resettlement plan is received and found to be acceptable by ORR. The acceptability of a plan will be evaluated by ORR on the basis of the quality and completeness of all components of the plan as specified above. Should the plan be unacceptable, ORR is under no obligation to fund the resettlement phase.

5. *Resettlement Phase:* The planned secondary resettlement shall be implemented during this phase. Allowable activities include:

- Any priority social service (as recognized by ORR);
- Day care services for preschool children to enable secondary wage earners to obtain employment;
- Short-term emergency health coverage;
- Targeted training expenses in cases where employers guarantee employment for refugees successfully completing on-the-job training;
- Training stipends for employees in unpaid or reduced wage training programs;
- Resettlement allowances as noted below;
- Information management/data tracking services to permit monitoring and evaluation of PSR results.

6. *Resettlement Allowance:* To enable participating refugees to meet transportation and basic food and shelter expenses during the initial resettlement period, a resettlement allowance will be an allowable cost item under PSR grants. Such allowances will be restricted to the following costs:

- Reasonable transportation and moving costs
- Living expenses for a period not to exceed 60 days, including food, shelter, utilities and local transportation costs, whose monthly total shall not exceed local AFDC payment levels. Monthly totals exceeding the local AFDC level will be considered by ORR only if fully justified by special circumstances.
- One-time-only security deposits for housing and utilities.

These expenses shall be covered only in cases where wages/income are not immediately available to meet these essential costs during the initial resettlement period.

Resettlement allowances must be justified in the resettlement plan on the basis of need of the defined resettlement group. Resettlement allowances may be paid by the grantee directly to the qualifying head of household, or to an agency or organization designated to coordinate or supervise the resettlement. The resettlement allowances must be applied in full to expense items noted above.

It is expected that applicants will make a good faith effort to obtain funds for this purpose from private sources before applying for resettlement allowances under the PSR program. For example, a major source of support for cases of intra-state resettlements might be the relocation assistance allowance for Work Incentive Program (WIN) registered refugees. (See 45 CFR 224.33.)

7. *Eligible Refugee Populations:* The eligible population under this grant program is limited to refugees (single adults and families) who have lived in the U.S. for at least 18 months and have experienced recurrent or continuing unemployment during their period of residency and/or are receiving public assistance. These eligibility criteria must be met by the primary adult wage earner in each participating family. The following special exception will be made regarding these eligibility criteria: Recently arrived refugees (those who have been in the U.S. less than 18 months) may participate in a planned resettlement with their anchor relatives (relatives with whom recently arrived refugees have been reunited) as long as 80% of the refugees proposed for PSR meet the eligible population criteria.

8. *Eligible Sending Sites:* Eligible sending sites will be limited to communities where there is a high welfare dependency (over 55%) or unemployment rate among the refugee population (including time-expired refugees). Under special circumstances, the Director may determine additional sites to be eligible as sending sites.

9. *Characteristics of Receiving Sites:* It is expected that receiving sites proposed for PSR will have demonstrably favorable conditions for refugee resettlement. In general, the following conditions are required to be present in proposed receiving sites:

- The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or accessible and affordable health services within the community;
- The capacity to provide job placement, ESL and other social services on a timely and ethnically appropriate basis;
- A high employment rate and, concomitantly, a low welfare dependency rate (30% or below) among the existing refugee population;
- An expanding job market in skill areas in which PSR refugees would be qualified; and
- A minimum of racial discrimination or community tension likely to have an adverse effect on refugees.

III. Application Content

The application should set forth in detail the following:

1. An identification of proposed sending and receiving sites.

2. An identification of the refugee welfare dependency rate and refugee unemployment rate in each proposed sending site.

3. A description of the suitability of each proposed receiving site including: Specific refugee employment opportunities; availability of employee health benefits; availability of adequate housing and health care services; ethnicity, size, employment and welfare rates within the receiving refugee community; availability of refugee social services; and an analysis of the local economy regarding the likelihood of stable and expended employment opportunities for refugees.

4. A description of the proposed resettlement population in terms of numbers to be resettled, ethnicity, length of time in the U.S., employment history, and public assistance status.

5. A description of proposed planning phase activities and sequence (timelines and milestones) for achieving the objectives of the planning phase, including the development of a resettlement plan. The applicant should specify a plan for on-site visits by prospective PSR refugees and refugee community representatives to the receiving site(s), with a budget justification for the proposed number of individuals to be included in site visits. A plan for conducting a detailed presentation in prospective sending communities which describes the economic and social conditions in the receiving site(s) should also be provided. Applicants shall describe in detail, the type of presentation proposed and the scope of information to be provided.

6. A preliminary plan for the resettlement phase, including an outline of services to be provided, the identification of proposed service deliverers, a plan for coordination of

services and a proposed timetable for relocation of participating families. (A fully developed resettlement phase plan will be required of grantees at the conclusion of the planning phase.)

7. An identification of the organizations/agencies proposed for participation in the PSR project; a clear delineation of their proposed responsibilities; a description of their qualifications in relation to those responsibilities; and the mechanism for coordination among these organizations. Evidence shall be provided of the fiscal management capacity of the organization which will be responsible for the disbursement of resettlement allowance funds. Proposed sending organization(s) should be identified and their qualifications described.

8. A detailed management plan which: Indicates who will have fiscal and overall program responsibility, identifies the organizational structure and the lines of authority, and describes the proposed staffing plan and staff qualifications.

9. A plan which describes how linkage and communication will be established and maintained with the targeted refugee community in the proposed sending site(s).

10. A description of steps the applicant has taken, or plans to take, to coordinate proposed activities with existing mutual assistance associations or other refugee representatives in the receiving and sending sites.

11. An itemized budget with complete narrative justification for the planning phase and a preliminary, itemized budget for the resettlement phase.

IV. Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The extent to which the proposed resettlement population conforms with the eligible population criteria stated in this announcement. (15 points)

- Evidence that the proposed target population is currently unemployed and has had a history of unemployment and/or welfare dependency in the U.S.;
- The extent to which the proposed population consists of refugees who have been in the U.S. for 18 months or more.

2. The extent to which the narrative description of the proposed receiving site(s) provides justification for their selection. (15 points)

- The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or available health services which are affordable;
- The availability of affordable housing;
- The capacity to provide job placement, ESL and other social services on a timely and ethnically appropriate basis;
- A high employment rate and, concomitantly, a low welfare dependency rate, among the existing refugee population;
- An expanding job market suitable to refugees.

3. The extent to which the proposed sending sites conform with the eligible sending site criteria stated in this announcement. (10 points)

- Existence of a high welfare dependency or unemployment rate among the resident refugee population;

4. The reasonableness and specificity of proposed planning phase activities, sequence, and timeliness. (15 points)

- Reasonableness of proposed activities and timeliness in achieving the objectives of the planning phase;
- Adequacy of plan for on-site visits by prospective PSR refugees and refugee community representatives to the receiving community;
- Adequacy of the proposed community presentation in conveying a comprehensive view of the economic and social conditions in the receiving site(s), including a realistic view of available resources and opportunities.

5. The reasonableness of proposed resettlement phase activities, sequence, and timeliness; (15 points)

- Relevance of proposed resettlement services to the needs of the refugees to be resettled;
- Reasonableness of proposed timetable for relocation of participating families.
- Reasonableness of proposed resettlement services in relation to existing refugee services in the receiving community.

6. The quality of proposed participating organizations, project management and staffing (15 points)

- Adequacy of qualifications of participating organizations in relation to proposed roles. Extent to which proposed organizations have demonstrated track records as providers of services to refugees;
- Extent to which the organization to be responsible for the disbursement of resettlement allowance monies has a demonstrated capability in fiscal management.
- Extent to which the proposed receiving organization(s) has an established, positive relationship with the resident refugee community;
- Adequacy of project management plan and plan for coordination among participating organizations;
- Adequacy of staffing patterns and qualifications.

7. The extent to which the applicant has coordinated or plans to coordinate proposed activities with existing mutual assistance associations or other refugee representatives in both sending and receiving sites. (15 points)

8. The adequacy of the budget narrative and the reasonableness of the proposed budget in relation to proposed planning activities. (10 points)

9. The reasonableness of the proposed budget for the resettlement phase, in relation to the activities proposed. (10 points)

SUPPLEMENTARY INFORMATION:

Review and Award Procedures

Applications will be evaluated by a review panel of ORR staff and other experts according to the above criteria, and in accordance with the HHS Grants Administration Manual. Final funding decisions will be made by the Director, ORR.

Following is a schedule of panel review dates and the corresponding proposal due dates.

Proposed due dates	Panel review dates
July 15, 1985	July 29, 1985.
September 27, 1985	Oct. 21, 1985.
December 16, 1985	Jan. 13, 1986.
April 4, 1986	Apr. 21, 1986.

The Office of Refugee Resettlement reserves the right to cancel or reschedule panel review dates in cases where the number of applications received would not, in the judgment of the Director, warrant the expenditure of public monies to convene a panel review. In such instances, all eligible applicants will be notified in writing of the schedule adjustment at least ten calendar days before the scheduled review date.

Executive Order 12372 Notification Process

These applications are covered by the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Applicants should contact the designated Single Point of Contact (SPOC) in their State as early as possible to alert the SPOC of the prospective application and receive specific instructions regarding the State's review process. Applicants should submit the material required by the State to the SPOC. State SPOC offices are encouraged to send their comments on the application to ORR as soon as possible for consideration prior to the award process. Directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application from the deadline date for final application submission to ORR through the process established by the State. SPOCs' comments should be transmitted to Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C St. SW., Washington, D.C. 20201 or to the applicant to be forwarded to ORR. A list of State SPOCs is included at the end of this announcement.

Application Request and Submission

Eligible Applicants may request grant applications (Standard Form 424 "Federal Assistance") from the Office of Refugee Resettlement, HHS, Grants Management Office, Room 1229, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, Betsy Andress, (202) 245–1715. For program related information, contact Toyo Biddle, telephone: (202) 245–1966.

To be considered for funding from Fiscal Year 1985 funds, prospective grantees must submit a signed original application and one copy to the Grants Management Office by 5:00 p.m., Eastern Daylight Time on July 15, 1985, or send by first class mail post-marked by 11:59 p.m. A second copy should be sent concurrently to the appropriate Regional Director, ORR. Proposals received or after the above noted date and time will be retained for review at the next scheduled panel review date.

The Director, ORR, encourages pre-application before the submission of a formal grant application. Pre-applications will be received at any time and reviewed by Office of Refugee Resettlement staff within 30 days of receipt. The submission of a pre-application proposal will: (a) Establish communication between the applicant and the ORR; (b) enable early determination of the applicant's eligibility; and (c) determine how well the project might fare in the panel review process, in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures in preparing an application. The pre-application process provides technical assistance to applicants to aid them in improving their submissions. Pre-applications should contain enough detail around the critical elements of the proposed project to enable ORR to make a considered judgment. Pre-applications are not mandatory.

Prospective grantees who wish to submit a pre-application prior to submitting a formal application by July 15, 1985, must do so no later than June 3, 1985, to permit adequate review and response time.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C Street, SW., Washington, D.C. 20201. ATTN: Mr. Stan Le.

An application 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.

If an application is sent through the U.S. Postal Service, the Director 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.

Applicants should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, the applicant should check with its local post office. Applicants are encouraged to use registered, or at least first class mail.

Applications Delivered by Hand

An application that is hand-delivered should be taken to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C Street, S.W. Washington, D.C. 20201. The Grants Management Office will accept a hand-delivered application between 8:30 a.m. and 5:00 p.m. Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered after 5:00 p.m. on July 15, 1985 will be accepted, but will not be reviewed until the first panel review for FY 1986.

FOR FURTHER INFORMATION CONTRACT:

Mr. Jack Anderson, Regional Director, ORR, Region I, Room 2403, J.F.K. Federal Bldg., Government Center, Boston, MA 02203, 617–223–6180

Mr. William Neary, Regional Director, ORR, Region III, Room 10400, 3535 Market Street, P.O. Box 13716, 215–596–0210

Mr. James Turman, Regional Director, ORR, Region VI, Room 1630, 1200 Main Tower, Dallas, TX 75202, 214–767–4301

Mr. Edwin LaPedis, Regional Director, ORR, Region VIII, Rm. 1185, Federal Building, 19th & Stout Street, Denver, CO 80294, 303–837–8387

Ms. Suanne Brooks, Regional Director, ORR, Region IV, Suit 2112, 101 Marietta Tower, Atlanta, GA 30323, 404–221–2250

Mr. Derek Schoen, Regional Director, ORR, Region V, 35th Floor, 300 S. Wacker Drive, Chicago, IL 60606, 312–353–5182

Mr. John Crossman, Regional Director, ORR, Region X, Mail Stop 212, 2901 Third Avenue, Seattle, WA 98121, 206–442–8049

Ms. Toyo Biddle, Division of Operations, Room 1229, Switzer Bldg., 330 C street

SW., Washington, D.C. 20201, 202–245–1966

Mr. Larry Laverentz, Assistant Regional Director, ORR, Region VIII, 601 East 12th Street, Rm 210, Kansas City, MO 64106, 816–758–7081

Ms. Sharon Fujii, Regional Director, ORR, Region IX, Room 352 (Mail Stop 352), 50 United Nations Plaza, San Francisco, CA 94102, 415–556–8582

Mr. Manuel R. Fleitas, Director, Florida Office, ORR, 701 SW 27th Avenue, Room 701, Coral Gables, FL, 305–643–2667.

IX. A–95 Notification Process

The PSRP grants are not covered by the requirements of OMB Circular A–95.

Applicable Regulations

The following HHS regulations apply to grants under this Notice:

45 CFR Part 16—Department Grant Appeals Process;

45 CFR Part 74—Administration of Grants;

45 CFR Part 75—Informal Grant Appeals Process;

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Benefitting from Federal Financial Assistance;

45 CFR Part 90—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

Records and Reports

Grantees will be required to report financial status and program progress quarterly, and separately from ORR's regular Refugee Resettlement Program.

Both financial status (SF 269s) and program progress reports will be due 30 days after the first calendar day of each quarter following the effective date of the grant award, except for the final financial and program progress reports which shall be due 90 days after the expiration or termination of grant support.

Dated: April 23, 1985.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Dept. of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Room 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296-3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202
For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359-3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834 or 751-2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444-5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471-2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733-4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215
For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466-0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528-8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310, Tel. (503) 373-1998.

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina, 29201, Tel. (803) 758-2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773-3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741-1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475-6156

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, Virginia 23211, Tel. (804) 786-1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington, 98504, Tel. (206) 753-2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, Madison, Wisconsin 53702, Tel. (608) 266-1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266-8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol

Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 09940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

Sample Statement of Intent

(To be presented in English and in the native language of the refugees to be relocated)

1. I certify that I am interested in resettling in _____.

2. I am willing to accept employment and am determined to become self-sufficient.

3. I have received an orientation packet and have studied its contents.

4. I am making this move of my own free will.

Signature of PSR refugee head of household: _____

[FR Doc. 85–11485 Filed 5–10–85; 8:45 am]

BILLING CODE 4190–11–M

federal register

Monday
May 13, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 403

Medicare Program; Recognition of State Reimbursement Control Systems; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[BERC-240-P]

Medicare Program; Recognition of State Reimbursement Control Systems

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the conditions and procedures under which HCFA would permit Medicare payments for hospital services to be made in accordance with a State hospital reimbursement control system, rather than under Medicare reimbursement principles. This proposal would implement section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), section 601(c) of the Social Security Amendments of 1983 (Pub. L. 98-21) and section 2315(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

DATE: To assure consideration, comments must be received by June 27, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attn: BERC-240-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland. In commenting, please refer to file code BERC-240-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202-245-7890).

Please address a copy of comments on information collection requirements to: Fay Iudicello, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, (301) 594-4010

SUPPLEMENTARY INFORMATION:

I. Background

A. Tranditional Hospital Reimbursement

Traditionally, Medicare payments for inpatient hospital services under Title XVIII of the Social Security Act (the Act) have been made on a retrospective, reasonable cost basis. Under this reasonable cost reimbursement method, hospitals have been paid for the costs they actually incurred in providing services to Medicare beneficiaries. While this reimbursement method has guaranteed payment for almost all allowable hospital expenditures, it has provided little economic incentive for hospitals to moderate costs.

In recent years, this cost-based reimbursement mechanism has come under increasing criticism as being a major contributor to inflationary pressures on health care costs. Because of this, Medicare has experimented with a number of alternative reimbursement approaches, including a variety of prospective reimbursement and State ratesetting demonstration projects. Medicare participation in these demonstrations is authorized under the Social Security Amendments of 1967 and 1972. Both the dissatisfaction with the retrospective reasonable cost reimbursement system and the experience gained under the ratesetting demonstration projects contributed to recent enactment of the hospital reimbursement reform legislation described in the following section of this preamble.

B. Legislation

Medicare reimbursement has been significantly affected by the passage of several pieces of legislation. On September 3, 1982, the President signed into law the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). Section 101 of Pub. L. 97-248 added a new section 1886 to the Act, and made conforming changes in other sections of Title XVIII of the Act. Subsequently, on April 20, 1983, the Social Security Amendments of 1983 (Pub. L. 98-21) were enacted. Section 601 of this legislation amended the new section 1886 of the Act. Further changes to section 1886 of the Act resulted from the enactment of section 2315(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which was signed into law on July 18, 1984.

Under Pub. L. 97-248, section 1886(a) of the act provided for the extension of the routine hospital cost limits, authorized under section 223 of the Social Security Amendments of 1972 (Pub. L. 92-603), to include total operating costs of all inpatient hospital services. (These costs were defined as all routine operating costs special care unit operating costs, and ancillary services operating costs.) Before section 1886(a) was added to the Act, the section 223 limits applied only to operating costs of inpatient general routine care (that is, bed, board, and routine nursing services.)

In addition, the costs to which the expanded limits applied were to be determined on a per discharge or per admission basis, and the limit for each hospital was required to be set based on the mix of types of Medicare cases treated by the hospital. However, under section 1886(a)(1)(D) of the Act, as added by Pub. L. 98-21, the expanded cost limits no longer apply to hospitals whose cost reporting periods begin on or after October 1, 1983, because, except for certain excluded hospitals, the prospective payment system (section 1886 (d) of the Act, enacted as part of Pub. L. 98-21) applies to these hospitals.

Section 1886(b) of the Act provided for a new 3-year limitation on payment for hospital costs, which required that we establish a ceiling level for the allowable rate of increase of hospitals' inpatient operating costs per case.

Section 602(e) of Pub. L. 98-21 added a new paragraph (14) to section 1862(a) of the Act to prohibit payments to hospitals for non-physician services under Part B unless the hospital is granted a waiver by HCFA in accordance with the specified conditions as set forth in section 602(k) of Pub. L. 98-21.

In addition, we note that section 108 of Pub. L. 97-248 established section 1887(a) of the Act, which directs the Secretary to prescribe regulations that distinguish between (1) professional medical sevices that are personally rendered to individual patients and are reimbursed under Part B on a charge basis, and (2) professional medical services performed by a physician that are generally beneficial to patients and are reimbursed on a reasonable costs basis. Reasonable cost reimbursement for provider-based physician services cannot exceed a reasonable compensation equivalent established by the Secretary in regulations. Section 1887(a)(1)(B) of the Act explicitly applies to professional services furnished to patients in hospitals that are reimbursed under section 1886(c) of the Act.

Section 1886(c) of the Act, as established by Pub. L. 97-248 and as since amended by section 601(c) of Pub. L. 98-21 and section 2315(a) of Pub. L. 98-369, generally authorizes Medicare reimbursement for impatient hospital services in accordance with a State's

hospital reimbursement control system, rather than under the Medicare reimbursement method. Under section 1886(c) of the Act, reimbursement may be made under a State's system if one of three alternative sets of requirements are met.

First, under section 1886(c)(1) of the Act, as enacted by Pub. L. 97-248, HCFA has discretion to allow Medicare hospital reimbursement to be made in accordance with a State reimbursement control system ("the State system") if the chief executive officer of the State requests approval of the State system, and if the State system meets specific minimum requirements as summarized below.

1. The State system must apply to substantially all non-Federal acute care hospitals in the State.

2. The State must apply to at least 75 percent of all inpatient revenues or expenses for the State.

3. The State must provide assurances that payors, hospital employees and patients in the State will be treated equitably under its system.

4. The State must provide assurances that its system will not result in greater Medicare expenditures over 36-month periods.

Section 601(c) of Pub. L. 98-21 amended section 1886(c)(1) of the Act to allow continuation of HCFA's discretionary authority for approval, as provided under Pub. L. 97-248, but added two additional requirements as follows.

5. The State system may not preclude health maintenance organizations (HMOs) or competitive medical plans (CMPs) from negotiating directly with hospitals concerning payment for inpatient services under section 1876 of the Act.

6. The State system must prohibit charging individuals for services for which such individuals are entitled to have payment made under Part A of Medicare under section 1866(a)(1)(G) of the Act; and also prohibit, in accordance with section 1862(a)(14) of the Act, payments under Part B of Medicare for nonphysician services provided to inpatients, unless waived by the Secretary in accordance with the regulations at 42 CFR 489.23, published as part of the prospective payment system interim final regulations on September 1, 1983 (48 FR 39838) and as final regulations on January 3, 1984 (49 FR 324).

Second, section 601(c) of Pub. L. 98-21 added section 1886(c)(5) to the Act to specify six additional requirements that, if met by a State system that also meets requirements one through six as presented above, would make HCFA's approval of a request by the State for Medicare reimbursement under its system mandatory. The additional requirements are that the State system must:

7. Be operated directly by the State or an entity designated by State law;

8. Use a payment methodology to be applied prospectively;

9. Provide for hospital reports, as required by the Secretary;

10. Provide satisfactory assurances that it will not result in admission practices that will reduce treatment to uninsured, low income, high cost, or emergency patients;

11. Not reduce payments without 60 days notice to HCFA and to hospitals; and

12. Provide satisfactory assurances that, in developing the program, the State has consulted with local officials concerning its impact on public hospitals.

Third, special provisions apply to those States that currently have demonstration projects with HCFA under section 402 of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1) or section 222(a) of the Social Security amendments of 1972 (42 U.S.C. 1395b-1 (note)) for the operation of state reimbursement control system. Under section 1886(c)(4) of the Act, as added by section 601(c) of Pub. L. 98-21 and subsequently amended by section 2315(a) of Pub. L. 98-369, HCFA approval of a State's application to continue the operation of a system upon expiration of the demonstration project is mandatory if, and for so long as, the system meets the requirements one through six presented above.

In addition to the specific requirements discussed above, a general requirement that all hospitals eligible for payment under section 1886(c) of the Act must meet is contained in section 1866(a)(1)(F) of the Act. This latter section was added to the Act by Section 602(f)(1) of Pub. L. 98-21. It requires hospitals, in order to be eligible for Medicare payment under section 1886(c) of the Act, to have and maintain an agreement with a utilization and quality control Peer Review Organizations or in the absence of such agreements with such organizations, agreements with Professional Standard Review Organizations or fiscal intermediaries.

With respect to requirement number four above, section 1886(c)(6) of the Act provides that if the Secretary determines that the assurances have not been met for any 36-month period, the payments to hospitals shall be reduced under either the States system or the Medicare payment system in a an amount equal to the excess over what Medicare would have paid for these services.

Under section 1886(c)(1) of the Act, a State's application for reimbursement under the State's system may not be denied on the basis that the system does not pay on a diagnosis related group (DRG) methodology or on the basis that the State system does not produce savings greater than what would have accrued under the Medicare payment system, either the cost reimbursement or the prospective payment system, whichever is applicable.

Section 1886(c)(1) of the Act also provides parameters regarding a State's discretion, under certain circumstances, to determine how to substantiate the assurance regarding whether the amount of payment that would otherwise have been made under Medicare will be exceeded. If we determine that this comparison is to be made by maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying the comparison test on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. Since we will not be determining whether the State's assurance is acceptable by reference to percentage increases above a base level (except in the case of States with existing demonstration projects), we are not proposing to allow States this option on the method of measurement.

Section 1886((c)(1) of the Act further provides that the State's rate of increase in payments need not be less than the national average rate of increase if the Secretary implements the comparison test by reference to the national average percentage increase in total payments. This provision will generally not be applicable, because, except where required by statute for continuation of existing demonstration projects, we do not intend to assess a State's assurance regarding the amount of payments by reference to the national average rate of increase. Under the proposed regulations, we would measure a State's assurance by comparison to what actual payments would have been under the Medicare system.

HCFA may, under certain conditions, permit an adjustment to take into account previous reductions in Medicare reimbursement amounts that were the result of the effectiveness of a State's reimbursement control system prior to the State's application for Medicare participation. Specifically, section 1886(c)(2) of the Act authorizes this adjustment if, as a result of the State's already existing reimbursement control

system, the State's aggregate rate of increase in hospitals' total operating costs is less than the national aggregate rate of increase in hospitals' total operating costs.

Under section 1886(c)(4) of the Act, HCFA would judge the effectiveness of a State system with an existing Medicare demonstration project on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under Medicare, as compared to the national rate of increase or inflation for such payments. The State would retain the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during its hospitals' three cost reporting periods beginning on or after October 1, 1983. After the date, however, this test would no longer apply. In this case, the State system would be treated in the same manner as under other waivers authorized by these proposed regulations.

To summarize, HCFA would have discretionary authority to approve Medicare reimbursement under a State system that meets each of the minimum requirements one through six above. This discretionary authority also would apply if a State system meets the minimum requirements and any of the additional requirements seven through twelve. However, if a State system meets all of the requirements, HCFA approval would be mandatory. Furthermore, if a State system was established and operated under an existing Medicare demonstration project and meets the requirements of items one through six above, HCFA approval would be mandatory as long as those minimum requirements continue to be met.

C. Medicare and Medicaid State Rate Control Experience to Date

Under section 402 of the Social Security Amendments of 1967 and section 222(a) of the Social Security Amendments of 1972, HCFA has broad discretion to waive certain Medicare and Medicaid provisions of the Act as necessary to conduct demonstration projects. Under this demonstration authority, HCFA has participated in a variety of efforts to develop, demonstrate and evaluate various prospective reimbursement and State ratesetting programs. These projects have resulted in a comprehensive evaluation of many methods of hospital reimbursement, such as rates based on negotiated budgets, budget reviews, formula methods and diagnostic specific payment rates.

Currently, in the States of Maryland, Massachusetts, New York and New Jersey, both Medicare and Medicaid pay for hospital services in accordance with payment methodologies incorporated in statewide, all payor systems, rather than under the Medicare and Medicaid requirements that would otherwise apply. Under these ratesetting systems, nearly all acute care hospitals are paid at rates determined under the State controlled systems.

Congress provided in section 1814(b) of the Act, which was enacted in 1980, that we could continue Medicare demonstration project reimbursement systems indefinitely so long as certain specified conditions were met. In light of the enactment of section 1886(c) of the Act, which establishes different conditions for the continuation of such demonstration projects, we do not intend to exercise our discretion under section 1814(b) of the Act. Rather, continuation of the projects will be assessed under the provisions of section 1886(c) of the Act.

In addition, Congress included section 603(b) in Pub. L. 98-21 to provide that, upon the request of a State that has an existing demonstration project (or upon the request of a party to the demonstration project agreement) approved under section 402 or section 222(a), the terms of the demonstration project agreement must be modified so that the demonstration project is not required to maintain the rate of increase in Medicare hospital costs in that State below the national rate of increase in Medicare hospital costs. To qualify under this provision, the demonstration project agreement must have been in effect as of March 1, 1983 and must have been approved after August 1982.

We intend to address requests for revisions in demonstration agreements approved under sections 402 or 222(a) under the existing demonstration project procedures and not under the requirements set forth in these proposed regulations.

II. Proposed Requirements for Approval of State Reimbursement Control Systems

In developing these proposed regulations to implement section 1886(c) of the Act, we have set forth requirements that are necessary to facilitate effective administration of the legislation. We believe that these requirements would assure protection for all involved parties, such as Medicare beneficiaries, participating providers, and the Medicare program.

These proposed regulations specify that HCFA *may* approve applications submitted by the Chief Executive Officer of the State for Medicare reimbursement under a State system if the *minimum* requirements presented below are met and *would be required to* approve an application if *all* the requirements are met. We also describe the proposed requirements for those States that had existing Medicare demonstration projects for reimbursement control systems under section 402 or 222(a) in effect on the date of enactment of Pub. L. 98-21 (that is, April 20, 1983).

Section 403.304 of these proposed regulations implements section 1886(c)(1) of the Act by specifying the minimum requirements and assurances that a State system must meet. The system would be required to—

- Apply to substantially all non-Federal acute care hospitals (these hospitals must have and maintain an agreement with a utilization and quality control Peer Review Organization);
- Apply to the review of at least 75 percent of all revenues or expenses in the State for inpatient services;
- Permit an HMO or CMP to negotiate the rate of payment for inpatient hospital services directly with a hospital;
- Limit hospital charges for beneficiaries to deductibles, coinsurance, and services for which the beneficiary would not be entitled to have payment made under Medicare Part A; and prohibit payment under Part B of Medicare for nonphysician services provided to hospital inpatients unless this prohibition is waived in accordance with regulations at 42 CFR 489.23.
- Assure the equitable treatment of all entities that pay hospitals for inpatient hospital services, hospital employees, and hospital patients, as follows—

—Assure that all entities that pay hospitals for inpatient hospital services are treated in a uniform and substantially equal manner in that all payors have equal opportunity to participate under the system and to receive available benefits of the system.

—Assure that the risks and savings are shared equitably by all entities that participate under the system.

—Assure that the State system will not result in reduction of the services or of due process rights to which Medicare beneficiaries are otherwise entitled.

- Assure that the system will provide a means for providers to appeal errors in the calculation of payment rates.
- Assure that Medicare payments made under the system over 36-month periods will not be greater than those that would have otherwise been made

under the Medicare principles of reimbursement.

The proposed § 403.304 would also provide, as noted earlier, that if a State had an existing Medicare demonstration project in effect on April 20, 1983, and requests a waiver under section 1886(c)(4) of the Act, the effectiveness of the State's system may be judged on the basis of the State system's rate of increase or inflation in payments for inpatient hospital services as compared to the national rate of increase or inflation in payment for such services during the State's hospitals' three cost reporting periods beginning on or after October 1, 1983.

The new § 403.304 would further provide that if the assurances and supporting data pertaining to the cost-effectiveness provisions, as described above, are insufficient, the State would be allowed to provide an additional assurance in order to meet the requirement. The additional assurance would be that the State would control expenditures by agreeing to do one of the following:

- The State would agree that Medicare payments under its system would be limited to the Medicare prospective payment rates. The State would be required to pay hospitals covered by its system any excess payment generated by the system.
- The State would agree on a predetermined percentage relationship between Medicare payments under the State's system and Medicare payments under the prospective payment system. This percentage relationship would be monitored by HCFA on a quarterly basis and the monitoring results would be provided to the State. If the payments show a deviation from the agreed upon predetermined relationship, then Medicare payments to the State would be automatically capped, with the State paying to hospitals under the system the excess over the prospective payment system expenditures. As an alternative to this second option, the State may provide through State legislation or binding regulations that, in accordance with its payment control assurance, reduced payments to hospitals will constitute full and final payment for services rendered to Medicare beneficiaries.

We propose in § 403.306 of these regulations that, if a State system meets the requirements of § 403.304 and meets the additional requirements and assurances specified in section 1886(c)(5) of the Act, HCFA approval of the system would be mandatory. As set forth in this proposal, these additional requirements would be that the system—

- Be operated directly by the State or an entity designated by State law.
- Provide for a methodology (that sets forth exceptions and adjustments if any, as well as any method for changes in the methodology) by which prospectively determined payment rates are established.
- Provide for hospitals to make reports as required by HCFA.
- Provide that the State must notify HCFA and affected hospitals 60 days prior to enactment of reductions or increases in payments that might generate from any material change in the system or the payment methodology. Approval would have to be granted by HCFA prior to the State's effective date for the change in payments.

In addition, under the proposed § 403.306, the State would have to provide satisfactory assurances to HCFA that—

- The operation of the sytem will not result in any change in hospital admissions practices that would result in—

—A significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third party coverage and who are unable to pay for hospital services;

—A significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services;

—The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital; or

—The refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services.

- The State consulted with local government officials, during the development of the system, concerning the impact of the system on public hospitals.

III. Discussion of Proposed Requirements

A. Requested by Chief Executive Officer

The Chief Executive Officer of the State would have to submit the request for approval of the State system on behalf of the State. This requirement is specified at section 1886(c)(1) of the Act and in these proposed regulations at § 403.304(b)(1). Normally, the Chief Executive Officer would be the Governor of the State. However, if a State or territorial constitution or other State or territorial statutory authority designates some other official as the highest official of the State with authority to act with respect to matters covered by these proposed regulations, then that official would qualify to submit the application.

B. Applicable to Substantially All Hospitals

Section 1886(c)(1)(A)(i) of the Act requires, as a condition for approval of a State's hospital reimbursement control system, that the system apply to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State. Under this statutory requirement, our proposal defines "Federal hospital" in § 403.302 and specifies in § 403.304 the proposed criteria for determining which hospitals must be excluded from the system and which hospitals may, at the State's option, be excluded. The proposed criteria are as follows:

1. Federal Hospitals

We have defined Federal hospitals, for purposes of these proposed regulations, to be those hospitals that are administered by, or that are under exclusive contract with, the Department of Defense, the Veterans Administration, or the Indian Health Service. Since payments for inpatient hospital services in these institutions are prescribed in the statutes and regulations governing these programs, these hospitals must be excluded from the State's system.

2. Acute Care Hospitals

We have generally considered acute care hospitals to be those facilities that are primarily engaged in providing a variety of diagnostic or therapeutic services to inpatients on a short-term basis. Thus, acute care hospitals are short-stay, general facilities as opposed to chronic-care hospitals or long-term care institutions. For the most part, the average length of stay in acute care hospitals does not exceed 25 days. Hospitals that ordinarily treat patients on a long-term or specialty basis, such as rehabilitation, psychiatric, tuberculosis, or childrens' hospitals, may be excluded from a State's reimbursement control system.

We note, however, that the exclusion of non-acute care hospitals would not be mandatory for HCFA's recognition of the system. States may apply their system to these facilities, if they desire, without influencing HCFA's approval of the system.

Section 602(f)(1) of Pub. L. 98-21 amended section 1866 of the Act by

adding section 1866(a)(1)(F), which requires that hospitals receiving payments under section 1886(c) of the Act must have and maintain an agreement with a utilization and quality control Peer Review Organization. Regulations at § 466.78(a), published in the **Federal Register** on April 17, 1985 (50 FR 15331), implement this requirement.

3. Mandatory Statewide Applicability

In order to ease the administration of the statutory requirement concerning applicability to all non-Federal acute care hospitals, we would further specify that the State reimbursement control system must be mandatory statewide. If the proposed system is mandatory as authorized and governed by State legislation or other enforceable mandate, the determination that the system applies to substantially all non-Federal acute care hospitals (except for those hospitals mentioned in item two above) would be relatively straightforward. This would also facilitate a lessening of the administrative burden to determine if the State system continues to meet this requirement. For example, if participation of hospitals was voluntary, at any point in time the State system may not meet the applicability requirements because hospitals may participate or not participate as they choose. The designated State agency or commission responsible for the operation of the system would be required to notify the affected hospitals in writing of the basis for the system and of the State's intention to adhere to mandatory applicability of the system. HCFA's determination would be based on this information.

C. Applies to 75 Percent of Revenues or Expenses for Inpatient Hospital Services

Under section 1886(c)(1)(A)(ii) of the Act, in order to approve Medicare payment under a State system, we must determine that the system applies to review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and that the State's system applies to 75 percent of revenues or expenses for inpatient hospital services under the State's Medicaid plan.

In implementing this statutory requirement, our proposal specifies that both the Medicare and Medicaid program must participate under the system. In addition, all other private third-party payors must be afforded the opportunity to participate under the system. Although HCFA would be responsible for determining if 75 percent of the revenues or expenses for inpatient hospital services are covered under the system, a State would be required, when applying for approval of its system, to submit an assurance and supporting documentation that this requirement is met. The State's assurance must identify the payors that participate under the system and how the State concluded that the 75 percent requirement is met. HCFA would review and evaluate the assurance and make a determination as to whether this requirement is met.

A State system need not be limited to inpatient services. At the discretion of the Secretary, a State that applies for approval of a State system for inpatient services could also seek approval to have its system cover outpatient services. If the State system applies to outpatient services, the State would be required to submit a separate waiver application subject to the same regulatory requriements of an inpatient waiver application, that is, the application would have to meet all the requirements for mandatory inpatient waiver approval as they apply to outpatient services. For example, the outpatient system would have to apply to all non-Federal acute care hospitals and to 75 percent of revenues or expenses for outpatient hospital services. Furthermore, the State would be required to assure equitable treatment of all entities and that the outpatient system will be cost effective independent of the inpatient system, in that payment for outpatient services will not result in greater Medicare expenditures over a 36 month period. The application for an outpatient waiver would be evaluated independent of the application for an inpatient waiver and would be approved only for those States that have an approved inpatient reimbursement system. The approval of outpatient provisions would be within HCFA's overall discretionary authority for approval of State systems. We recognize the statute specifically authorizes only inpatient hospital services. Therefore, we invite public comments regarding the optional application of State systems approved under section 1886(c) of the Act to outpatient services.

D. Equitable Treatment of All Entities

Section 1886(c)(1)(B) of the Act requires that satisfactory assurances be provided as to the equitable treatment under the system of all entities that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients. Thus, these proposed regulations require a number of assurances by the State in accordance with the statute.

1. Equitable Treatment of All Entities That Pay for Hospital Services

The State would be required to assure that all entities that pay for hospital services are provided equal opportunity to participate under the State system and consequently, share in its risks and benefits. Further, the State would be required to assure that its system provides for uniform treatment of all payors that participate in the system in terms of opportunity. Therefore, it is not necessary that every payor receive benefits under the system that are identical, as long as each payor has an equal opportunity to obtain or qualify for those benefits.

2. Risks and Savings Must Be Shared on an Equitable and Proportionate Basis

These proposed regulations specify that the State system must assure that risks and savings are shared by all third-party payors.

This requirement is in keeping with, and would help to implement, the statutory requirement in 1886(c)(1)(B) of the Act regarding equitable treatment of all payors.

3. Assurances of Equitable Treatment of Hospital Employees and Patients

To implement section 1886(c)(1)(B) of the Act, these proposed regulations require written assurances of equitable treatment of hospital employees and hospital patients. It would not be necessary for a State to include in these assurances a detailed narrative of how the system provides equitable treatment. However, HCFA would be free to request additional information to substantiate the assurances, if necessary.

4. Continuation of Medicare Coverage, Entitlement, and Program Administration

Recognition of State systems under the new law may alter the means by which Medicare inpatient hospital services may be reimbursed. However, section 1886(c) of the Act does not affect the coverage and entitlement provisions of title XVIII of the Act. On the contrary, it requires that each State assure equitable treatment of Medicare beneficiaries under its system by specifying equitable treatment of hospital patients. Threfore, these proposed regulations require the State to agree that it would not restrict Medicare beneficiaries' access to services. Entitlement to Medicare benefits would remain a Federal determination. Additionally, the beneficiaries' benefit package (for example, the days of care, statutory exclusion of certain services,

deductibles and coinsurance provided for by title XVIII of the Act) could not be changed by the State. Further, services currently covered in Medicare's payment rate to hospitals may not be restricted. Under a State system, States would be expected to assure at a minimum that Medicare beneficiaries will continue to receive all reasonable and necessary services as required under the present reimbursement system.

Similarly, section 1886(c) of the Act did not affect title XVIII of the Act with respect to program administration. Therefore, a State's system may not abridge the rights of providers that are assured under their Medicare participation agreements. The current procedures for assuring quality of care inherent in the provider survey and certification process, the present terms of provider agreements, and the Medicare procedures of utilization monitoring would generally remain intact. Further, Medicare intermediaries would continue their claims processing function, with necessary changes to accommodate the State's determination of Medicare reimbursement for providers. Medicare intermediaries would continue to process bills, make payments, and adjudicate and reconsider beneficiary bills and claims. This involves a consideration of the medical reasonableness and necessity of the services for which Medicare reimbursement is claimed. The State would, however, be responsible for provider appeals as discussed in section III.N. of this preamble.

E. Payments May Not Exceed Medicare Reimbursement Levels

Section 1886(c)(1)(C) of the Act requires that the Secretary be provided satisfactory assurances that, over 36-month periods, the first of which begins with the first month in which this provision applies to a State system, the amount of Medicare payments that are to be made under the State's system will not exceed the amount of payments that would otherwise have been made under the Medicare reimbursement principles for items and services provided under Medicare. States that have an existing Medicare demonstration project on April 20, 1983 and that have requested approval of a State system under section 1886(c)(4) of the Act may have the system's effectiveness judged on the basis of the State's system's rate of increase or inflation in payments for Medicare inpatient hospital services as compared to the national rate of increase in payments for such services during the three cost reporting periods beginning on or after October 1, 1983.

We may, under certain conditions, permit an adjustment to take into account previous reductions in the Medicare reimbursement amounts that were the result of the effectiveness of the State's reimbursement control system prior to application for Medicare participation. Specifically, the statute authorizes the Secretary to provide for this adjustment if, as explained in the legislative history for Pub. L. 97-248 (see H.R. Rep. No. 97-760, 97th Cong. 2nd Sess. 422 (1982)), a result of the State's existing system that does not include Medicare is that the State's aggregate rate of increase in hospitals' total operating costs is less than the national aggregate rate of increase in hospitals' total operating costs. Although the statute allows for such discretionary adjustment and we have provided for it in these proposed rules, we are concerned as to how a State entity would establish quantitatively such amounts. Moreover, we are also concerned as to how we would substantiate the savings realized by Medicare in some prior period. We invite specific public comment on the operation of this provision.

As noted below, the State's assurance and projections on cost-effectiveness must be based on the Medicare principles in effect at the time and must also include established future changes to the Medicare system. HCFA will review these projections to determine if the cost-effective assurance is acceptable for purposes of approving the application. However, the test of cost-effectiveness will be based on a comparison of actual expenditures under the State system and the amounts that Medicare would have paid absent the waiver. We wish to emphasize that, in most instances, it would be necessary for a State to make changes to its payment system to adapt to changes that occur in the national Medicare program after the State system is approved. Accordingly, once the application is approved, HCFA will monitor quarterly the Medicare expenditures under the State system and compare these amounts to what Medicare would have paid if the State system had not been in existence. Of course, any changes to the Medicare system would be included in this comparison. If we determine that the assurances have not been met or will not be met with respect to any 36-month period, sections 1886 (c)(3) and (c)(6) of the Act authorizes termination of the approval agreement or a reduction in payment to individual hospitals under the State system. If appropriate, we may reduce payments under the Medicare payment system in an amount equal to the amount by which the Medicare payments under the State system exceed the amount of Medicare payments that otherwise would have been paid to the hospitals involved, including the appropriate recognition of the time value of the excess payments (that is, the interest the Medicare Trust Fund earned, or would have earned, on these amounts). The amount of the overpayment would be recouped on a proportionate basis from each of those hospitals that received payments under the State system that exceeded the payments they would have received under the Medicare system. The hospital's proportionate share would be determined by a comparsion of the hospital's total overpayment to the total amount of excess payments under the State's system over the aggregate payments that the Medicare system would have paid. Recoupment may be accomplished by a hospital's direct payment to the Medicare program or by offsets against future payments to the hospital. If the expenditures test is applied by a rate of increase factor, the amount of excess payment would be determined by comparison of the State system rate of increase to the national rate of increase in order to determine the amount of excess payments to be recouped from each individual hospital.

As an alternative to the recoupment procedures described above, but subject to HCFA's acceptance, the State may provide by legislation or binding regulations for a process and procedure whereby excess payments will be recouped by the Medicare program.

Although the statute requires an assurance that payments under the State's system will not exceed the amount of payment that would have been made under the Medicare reimbursement principles over 36-month periods, these proposed regulations further require detailed and quantitative estimates, data, and reports to demonstrate the projected costs or savings for each hospital. This is necessary to substantiate the assurance that Medicare program expenditures will not exceed what Medicare would have paid over the 36-month period. The estimates and data are also necessary for the following reasons: (1) to provide a uniform basis to review the State's assurance irrespective of the design of the State's system, (2) to protect the Medicare program from excessive expenditures by allowing analysis as to whether it is reasonable to accept the State's assurance that its system will indeed not result in expenditures above the statutory requirements, and (3) to

assist HCFA to determine if payments to hospitals under the State's system or, if applicable, under the Medicare payment system, should be reduced in an amount equal to the excess over what Medicare would have paid during the period the State system was in effect. HCFA would monitor expenditures on a quarterly basis during the period the State system is in effect for purposes of comparision with amounts that would have been paid using the Medicare payment system to determine if excess payments have been made. The projections and supporting data would be especially critical if a State's system fails to meet the statutory requirements during a particular year. For example, if a State's system were to result in the projection of sizable expenditures above the limit in the first year of operation, we could reasonably conclude, unless there were quantitative supportive information to the contrary, that it is not likely that the system would result in payments that would equal the Medicare expenditure over the 36-month period.

Specifically, these proposed regulations require the State to submit estimates and data in support of its assurance. The State would be required to submit for *each hospital* projections for the first 12-month period covered by the assurance, in both the aggregate and on a per discharge basis, of Medicare inpatient expenditures without the State system in effect (that is, using the Medicare principles) and parallel projections of Medicare inpatient expenditures under the State's system, and the resulting cost or savings to the program including the time value of trust fund expenditures during the period the State system expenditures either exceeded or were less than Medicare system payments. The State would also be required to submit separate *statewide* projections for each year of the 36-month period, in both the aggregate and on an average weighted discharge basis, of inpatient expenditures under the State system and under the Medicare system. These projections would have to include a detailed description of the methodology and assumptions used to derive the expenditure amounts under both systems. In instances where the assumptions are different under the sets of projections, the State would have to provide a detailed explanation of the reasons for the differences. At a minimum, the following separate data would be included in the projections for the Medicare principles and for the State's system.

- The base year and the Medicare allowable and reimbursable cost (that is, costs that represent a full accounting period and that have been fully reported and reviewed or audited as appropriate) for each hospital that was used to develop the projections, including the amount of estimated pass through costs (for example, capital).
- The categories of costs that are included in the State system and that are reimbursed differently under the State system than under the Medicare system.
- The number of Medicare, and total, base year discharges and admissions for each hospital.
- The rate of change factor, and method of application of this factor, used to project the base year costs over the 36-month period to which the assurance would apply.
- Any allowance for anticipated growth in the amount of services from the base year. If applicable, the allowance would have to be depicted in separate estimates for population increases or increases in rates of admissions.
- Any adjustments to the projections the State is permitted to take into account due to previous reductions in the Medicare payment amounts that are the result of the effectiveness of the State's system prior to Medicare participation.
- States with existing Medicare demonstration projects that apply for approval under a rate of increase effectiveness test would also be required to submit data projecting the parallel rates of increase during the requisite period.

The estimates and projections of Medicare payments as required for the assurance must take into account all of the Medicare reimbursement principles in effect at the time. This would include the HCFA market basket (a measure that is used to reflect changes in the prices of goods and services that hospitals use in producing general inpatient services, which is explained in detail in the September 1, 1983 **Federal Register** (48 FR 39764)), the provisions of Pub. L. 97–248, and the Medicare prospective payment system.

1. Hospital Outpatient Services

For those State systems that include payment for Medicare outpatient services, these proposed regulations would also require the submission of a *separate* application and assurance for those services, and estimates and data in further support of the State's assurance. The estimates and data that the State would be required to submit include, but are not limited to, projections for the first 12-month period covered by the assurance for each hospital, in both the aggregate and on an average cost and payment per service basis, of Medicare outpatient expenditures without the State's system being in effect (that is, using the Medicare principles); comparable projections of Medicare outpatient expenditures under the State's system; and the resulting cost or savings to the Medicare program. In addition, the State would also be required to submit separate statewide projections of the aggregate outpatient expenditures for each system for each year of the 36-month period. The State would be required to submit the methodology and assumptions used to derive the expenditure amounts under both systems. The minimum requirements regarding the assurance and supportive data would be consistent with those listed for the inpatient hospital projections as described above. The cost-effectiveness test for expenditures for outpatient services would have to be met independently of the cost-effectiveness test for expenditures for inpatient services.

2. HCFA Review of Assurances

HCFA would review the State's assurances and data as a prerequisite to the approval of the State's system. HCFA would compare the State's projections of payment amounts to HCFA data in order to determine if the State's assurances are reasonable and fully supportable. If the assurances and supporting data are by themselves insufficient to provide satisfactory assurance to HCFA, then HCFA may agree that the States adoption of one of the following additional procedures provides a satisfactory assurance:

- The State agrees that the appropriate Medicare intermediaries each month will disburse to the State's hospitals no more Federal funds in the aggregate than would have been disbursed in the absence of the State system. Any additional funds necessary to pay hospitals for Medicare services as required by the State system will be furnished to the intermediaries by the State. These amounts will be refunded to the State by the intermediaries to the extent that, in subsequent months, the State's system requires a smaller aggragate payment for Medicare services than would have been paid in the absence of the State system.
- The State agrees that, as a result of projections that exceed Medicare payments in any particular period, there will be a payment schedule established that would limit State system hospital payments to a predetermined percentage relationship between projected State

system hospital payments and what payments under Medicare would have been. This payment pattern would be monitored on a quarterly basis and any deviation from the agreed upon payment pattern would automatically result in Medicare payments being capped at prospective payment system levels with an offset to recover prior excess payments, and the State would be required to make up the difference in payments. If the State chooses not to make up the difference in payments, the State would be required to have in place legislation or binding regulations that provide that reduced payments to hospitals will constitute full and final payment for services rendered to Medicare beneficiaries during the period covered by the reduced payments.

With regard to existing State systems currently under a HCFA demonstration project, HCFA is required under section 1886(c)(4) of the Act to judge the effectiveness of of the system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under Medicare as compared to the national rate of increase or inflation for such payments. The States with existing Medicare demonstration projects may retain the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during its hospitals' three cost reporting periods beginning on or after October 1, 1983. After that date, at our option the above test would no longer apply, and instead we may apply a test similar to that used for a new State system.

In connection with the maximum expenditure requirements, we believe that it is necessary to discuss our concerns and policy regarding the inclusion of additional categories of costs that are not usually allowable for reimbursement purposes under the Medicare program: for example, (1) the costs associated with bad debts or uncompensated care not attributed to Medicare beneficiaries; (2) the cost of poison control hotlines, etc., and (3) costs resulting from the administration of the State's system, or State taxes or other assessments that are specifically designated for purposes of financing the administration of the State's reimbursement control system. These proposed regulations would not preclude a State system from including these costs in the overall expenditure determination. However, we wish to emphasize that it would be a requirement that the total expenditure must not exceed the amounts that would have otherwise been paid under the Medicare reimbursement principles for items and services provided to Medicare beneficiaries. We believe that inclusion of such non-allowable costs must be monitored closely in order to achieve consistency with the legislative intent that the effect of a State system be budget neutral in terms of what Medicare would otherwise pay for services covered under the Medicare program.

Additionally, these proposed regulations provide that States are not to attain Medicare savings through shifting of costs to other payors, including the Medicaid program. HCFA would monitor this aspect in conjunction with the monitoring of expenditures under the State system. It would be inappropriate to increase Medicaid costs in order to achieve Medicare savings, since this would be inconsistent with the intent of the existing Medicaid upper limit requirement in regulations at § 447.253, and the legislative intent of sections 1902(a)(13)(A) and 1902(a)(30) of the Act, which limit maximum Medicaid payment for inpatient hospital services to that which would have been paid under the Medicare principles of reimbursement. The upper limit requirement in § 447.253 is based on section 1902(a)(30) of the Act and the intent of Congress in enacting section 2173 of Pub. L. 97–35, which amended section 1902(a)(13) of the Act. (See the Conference Report on Pub. L. 97–35, H.R. Rep. No. 97–208, 97th Cong. 1st Sess. 962 (1981).) The upper limit requirement was not affected by either section 101 of Pub. L. 97–248 or section 601 of Pub. L. 98–21. Therefore, these proposed regulations specify that the State's system must not produce aggregate expenditures for the Medicaid program in excess of what those expenditures would have been if the Medicare payment principles were used.

F. Exception for Health Maintenance Organizations (HMOs)

In section 1886(c)(1)(D) of the Act, Congress recognized that HMOs offer a competitive alternative to traditional health care providers. (See the Report of the Committee on Ways and Means on H.R. 1900, H.R. Rep. No. 98–25, 98th Cong., 1st Sess. 148 (1983).) Through years of study with various HMO demonstrations, it has been concluded that health care utilization of HMO enrollees is somewhat different than that of the population generally. Often this difference is reflected in lower hospital admission rates for inpatient care. This characteristic of their enrollees' utilization of services permits many HMOs to negotiate individual prepayment plans with the hospitals furnishing services to enrollees, such as monthly per capita payments. The payment plans that result from these negotiations may not be consistent with the State system. Thus, section 1886(c)(1)(D) of the Act and these proposed regulations specify that State systems must provide that HMOs or CMPs, as defined by section 1876(b) of the Act, may negotiate their own inpatient hospital service reimbursement rates. It is the intent of Congress that, to avoid undermining the State system and to provide the exception afforded HMOs or CMPs, the definition in section 1876(b) of the Act be narrowly interpreted. (See Report of the Committee on Ways and Means on H.R. 1900, H.R. Rep. No. 98–25, 98th Cong., 1st Sess. 146 (1983).) If an HMO or CMP chooses not to negotiate special reimbursement arrangements with hospitals, the usual State reimbursement rates and controls as provided under the State system would apply.

G. Operated Directly by the State or Designated Entity

In accordance with the provisions of section 1886(c)(5)(B)(i) of the Act, these proposed regulations give each State the option to operate its State system itself or to designate a legal entity to operate the system in accordance with State law.

H. Prospectively Determined Rates

Section 1886(c)(5)(B)(ii) of the Act requires that the system must provide for payment rates that are prospectively determined. Under these proposed regulations, the application for approval would have to include a detailed description of the methodology used in determining the rates. Although the rate, once computed, is final, the system would allow for exceptions and adjustments that could arise from possible computation errors. Flexibility in the development of the methodology may be considered to allow for possible changes in the methodology where needed. However, such changes could not include or entail additional Federal expenditures for items and services that are not covered by the Medicare program and that were not included in the original ratesetting methodology and in the agreement regarding that methodology unless the State advises HCFA at least 60 days prior to the proposed effective date and HCFA approves such changes in advance of the effective date.

I. Required Reports.

We would require hospitals covered by a State's system, in accordance with

section 1886(c)(5)(B)(iii) of the Act, to submit either Medicare cost reports or approved substitute reports in lieu of cost reports to HCFA or its intermediaries in order that proper monitoring of the State's assurances (discussed previously) may be accomplished. The States in turn would be responsible for the design, and for obtaining HCFA approval, of substitute reports. Furthermore, we would require the States to submit financial, statistical, administrative, or any other reports that may be needed to satisfy the requirements in sections 1886(c)(1) (A), (C), and (E) of the Act, which pertain to the level of revenues, expenses or payments controlled or incurred by the operation of the State system.

J. Admission Practice Assurances

The State would have to provide satisfactory assurances that operation of the cost control system would not result in any change in the patient admission practices of participating hospitals, as required by section 1886(c)(5)(C) of the Act.

1. Financially Distressed Patients

Two assurances would be required by the State regarding the admission practices of financially distressed patients. The first assurance requires that the system would not result in any change in hospital admission practices that results in a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third party coverage and who are unable to pay for hospital services. The second assurance is that the system would not result in any change in hospital admission practices that results in a significant reduction in the proportion of patients for which payment is (or is likely to be) less than the anticipated charge for, or cost of, such services.

2. High Cost or Prolonged Length of Stay Patients

As proposed, the State would have to assure that the operation of the system would not result in a refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

3. Emergency Service Patients

The State would be required to assure that the operation of the system would not result in the refusal to provide services to patients who are in need of emergency services if the hospital provides those services.

K. Material Changes in Payments

As required in section 1886(c)(5)(D) of the Act, we are stating in these proposed regulations that any change in the State system that has the effect of materially reducing or increasing payments to hospitals would take effect only upon 60 days advance notice to HCFA and to the hospitals whose payments are likely to be materially affected by the change. HCFA would respond prior to the effective date, granting or denying the proposed change. Generally, the basis for approval of a particular State payment system would be that the system is expected to yield certain results. Thus, we believe that, for purposes of accountability and adherence to the basis on which the system is initially approved, any material change in the system that would alter those results should be subject to approval prior to implementation. Therefore, we propose to require not only that notice of all material changes must be provided to HCFA but also that the changes be subject to HCFA's approval.

L. Consultation With Local Government Officials

The State, as a requirement of section 1886(c)(5)(E) of the Act, would assure HCFA that in developing the cost control system, the State consulted with local government officials concerning the effect of the system on publicly owned or operated hospitals. As part of this assurance, the State would be required to describe the consultation efforts it undertook with all local governmental officials, and to summarize the comments it received and the actions taken to respond to those comments.

M. Beneficiary Liability and Nonphysician Services

Under section 1886(c)(1)(E) of the Act, we would require that the State system limit hospital charges for beneficiaries to deductibles and coinsurance and to noncovered services, and prohibit payment to hospitals for nonphysician services under Part B unless the hospital is granted a waiver by HCFA in accordance with § 489.23 of the regulations. The system would also have to conform to the Medicare requirements that hospitals agree not to charge beneficiaries or the Medicare program for denied services due to inappropriate or unnecessary admissions or other inappropriate medical or other practices.

In accordance with § 489.23 a waiver may be granted by HCFA only during the prospective payment system transition period (that is, Federal fiscal years 1984–1986) in the case of hospitals that have allowed direct billing under Part B so extensively that immediate compliance with such restrictions would threaten the stability of patient care.

Except in instances where a waiver is granted in accordance with § 489.23, State systems and hospitals are required to comply with the rebundling requirements as set forth in sections 1862(a)(14) and 1866(a)(1)(H) of the Act, which apply the Medicare coverage provisions to *all* hospitals participating and entitled to payment under Medicare. The State systems would also be required to comply with the provider-based physician rules of section 1887(A) of the Act and implementing regulations at §§ 405.480–405.482 and §§ 405.550–405.557, without exception.

It should be noted that the authority provided the Secretary in section 1886(c) of the Act for approval of State systems does not extend to reimbursement for physician services. Therefore, we would expect that State systems would not seek waivers for such services under section 1886(c) of the Act. Rather, waivers for these types of projects would be sought and carried out under the various authorities granted to HCFA for research and demonstration activities under Medicare and Medicaid.

N. Provider Appeal Process

These proposed regulations require that the State reimbursement control system have an appeals process. Since the Medicare intermediary would not be setting the payment rates, it would not be the appropriate entity to resolve disputes over payment rates. Similarly, since the Medicare Provider Reimbursement Review Board (PRRB) is not intended to be knowledgeable regarding the State's procedures for ratesetting, it would not be an efficient or appropriate use of resources to involve the PRRB in appeals of State actions.

Providers would still be given the opportunity to present evidence and receive redress, if their payment is inaccurate as a result of errors arising from incomplete or inaccurate data, errors in calculations, etc. Although not specifically provided for in the statute, we believe that this requirement would be consistent with the legislative intent of section 1886(c)(1)(B) of the Act, which requires equitable treatment, and the provisions of 1886(c)(5)(B)(ii) of the Act, which indicate that the payment system should provide for exceptions and adjustments as well as for a method for changes in the methodology. The mechanism for appeals and the type of

appeals permitted would be at the State's discretion; however, the system may not permit providers to file administrative appeals that could lead to retroactive revision of a prospectively determined payment rate. Details of the appeals process would be included in the application for approval of the system, and the applicant would be required to provide additional information if HCFA requests it.

Beneficiary appeals would continue to be processed by a Medicare intermediary, or carrier, or the HHS Administrative Law Judges in accordance with the requirement for continuation of Medicare coverage, entitlement, and program administration. (See section III.D.4. of this preamble.) Beneficiary appeals generally would involve actions taken by the intermediary in applying the Medicare entitlement and coverage provisions under the State's system when processing claims.

O. Reporting and Billing

We propose that the State system must provide for timely provider reporting and billing and for submission of any reports required by HCFA, or substitute forms developed by the State and approved by HCFA.

Since the Medicare intermediary would continue to process claims under the State reimbursement control system, it is necessary that the system continue to use Medicare billing forms and that such forms be submitted to the appropriate Medicare intermediary.

IV. Evaluation and Approval

A. Evaluation

States that wish to obtain Medicare recognition of statewide reimbursement control systems would submit their applications to HCFA. HCFA would review each complete application for consistency with the requirements of the law and regulations and respond to the State within 60 days of receipt of the request. If questions arose during the evaluation, HCFA would contact the State for additional information or for clarification of specific aspects of the application. If HCFA concludes that further information is necessary from the State, a new 60-day period would begin when all the required information is received. Once HCFA completes its evaluation of the State's application, it would then notify the State of its decision.

B. Reconsideration of Denied Applications

The proposed regulations state that if HCFA denies approval of an application of a State system, and if the State is dissatisfied with the determination because it believes it has met all of the requirements for mandatory approval under § 403.306 or § 403.308, the State may request reconsideration of the denial by HCFA. The request would have to be submitted within 60 days of the date of the notice of HCFA's denial. HCFA would then notify the State of the results of its reconsideration within 60 days after HCFA receives the State's request.

C. Approval

If HCFA approves a State's application for Medicare recognition of the State reimbursement control system under 1886(c) of the Act, the Administrator of HCFA or his or her designee will enter into an agreement with the Chief Executive Officer of the State or his or her designee, or with the Chief Executive Officer of the entity designated by State law. The agreement would have to grant HCFA access to the State's records, and to provider records as authorized by section 1815(a) of the Act. Other conditions of the agreement would include the requirements of these proposed regulations and any other items that may be agreed upon by the parties to the agreement. These may include such features as time limitations, options for renewal, administrative and operating procedures, and reporting requirements.

D. Termination of Agreements

Section 1886(c)(3) of the Act authorizes the Secretary to terminate Medicare participation in an approved State system if there is reason to believe that the system no longer meets or will not be able to meet certain requirements set forth in section 1886(c) of the Act. Thus, the proposed regulations set forth rules regarding termination of agreements for Medicare recognition of State systems. HCFA would review the State's system quarterly and advise the State of its performance regarding compliance with section 1886(c) of the Act. If it is determined that the system is not operating as the State has assured, the agreement may be terminated. For example, if Medicare costs under the system are significantly exceeding projected or agreed upon expenditure levels so that it appears that the system will not meet the expenditure test over a 3-year period, or if applicable, the rate of increase test, the agreement may be terminated and offsets against future payments to hospitals would be made for the excess payments. The statutory requirements at sections 1886(c)(1)(C), 1886(c)(3) and 1886(c)(6) of the Act provide for these actions that may be taken either in conjunction with the State system or under the Medicare payment system if or when the State system is terminated.

HCFA would notify the State of the decision to terminate at least 90 days in advance of the termination date. The termination date would be the last day of a calendar quarter. The advance notice would provide the State with an opportunity to present evidence to substantiate why the system should be continued. A State may voluntarily terminate an agreement after giving notice at least 90 days in advance of the last day of the calendar quarter in which the State intends to terminate the agreement.

V. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires us to prepare and make available to the public a regulatory impact analysis for any regulations likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria specified in section 1(b) of the Order. We have determined that these proposed regulations do not meet the criteria for a "major rule" under section 1(b). Therefore, a regulatory impact analysis is not required.

We expect that State systems for Medicare reimbursement, particularly in conjunction with the implementation of the prospective payment system for Medicare inpatient hospital services under Pub. L. 98-21, will have a significant economic effect. However, the extent of this impact will depend on the choices made by States concerning whether to utilize a State reimbursement control system; whether to bring any such system under the Medicare program in accordance with these proposed regulations; and on the behavioral changes of providers in responding to whatever systems are developed by States. Some of the factors that would affect the extent of this impact include:

- Applying these requirements statewide and to substantially all acute care hospitals in the State; and
- Requiring a review of at least 75 percent of the State's revenues or expenses for inpatient hospital services, instead of a lesser percentage.

The types of effects that can be expected are discussed in some detail in the impact analysis for the regulations establishing the Medicare prospective payment system (48 FR 39804-07, 39852, September 1, 1983, and 49 FR 301, January 3, 1984). One of the effects

expected of this proposal, however, is to increase the number of hospitals that do not participate in the national Medicare hospital prospective payment system, because they will be subject to State systems.

Because the law and these proposed regulations are designed to encourage the establishment of systems using incentives and controls that would restrain increases in the costs of hospital care, and because the statute requires that the amount of Medicare payments, over 36-month periods, made under a State's system will not exceed the amount of payments that would otherwise have been made under Medicare reimbursement principles, we expect the system may produce some Medicare program savings. To the extent that State systems result in State Medicaid savings, we expect concomitant savings on Federal financial participation payments. In addition, State controls may result in reductions in expenditures for other payors, such as non-governmental insurers and private parties. The effects could be very wide-ranging, extending to diverse factors such as insurance premium levels, copayment obligations, bad debt levels, and hospital bond ratings.

Because of the number of economic factors involved, the range and extent of potential effects, and the contingency of those effects on future and unpredictable actions on the parts of States, providers, insurers, and consumers, the effects are inestimable in dollar terms. Moreover, the effects are primarily the result of statutory changes made by section 101 of Pub. L. 97-248, section 601 of Pub. L. 98-21, and section 2315(a) of Pub. L. 98-369. The administrative discretion exercised through these proposed regulations is minor compared to the impact of the statute and decisions made by States that will affect their hospitals. Based on our experience, we do not believe that, in the near term, these proposed rules will result in an annual economic impact of $100 million, or otherwise meet the threshold criteria for a "major rule". Therefore, a regulatory impact analysis is not required. However, we do solicit public comments on the economic impacts that would result from these provisions to assist us in the identification of potential economic impacts on hospitals.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these proposed regulations would not have a significant impact on a substantial number of small entities. That Act requires us to prepare and make available to the public an initial regulation flexibility analysis, under 5 U.S.C. 603(b), unless the Secretary so certifies. The purpose of the analysis would be to explain the expected impact of the proposed regulations and to analyze alternatives that might reduce negative effects of regulations on small entities. (A small entity is a small business, a nonprofit enterprise, or a government jurisdiction with a population of less than 50,000.)

Nearly all hospitals are small entities under the Regulatory Flexibility Act. In any State implementing a system under these proposed regulations, a substantial number of hospitals (non-Federal, acute care hospitals) would be affected. Many of those hospitals may be significantly affected. However, the impact of the State systems must be considered in view of the implementation of the prospective payment system for Medicare inpatient hospital services under Pub. L. 98-21. The Medicare prospective payment system and State systems have mutually exclusive impacts, in that they are explicitly established as alternatives and will not both affect any particular hospital at the same time. The effects of State systems are inestimable before the characteristics of such systems are known in detail, so the effects on hospitals cannot be analyzed at this time. Furthermore, any effects would be primarily the result of the implementation of the statutory requirements of Pub. L. 98-248, Pub. L. 98-21, and Pub. L. 98-369, as noted earlier, and not the result of these proposed regulations.

C. Paperwork Burden

Sections 403.318 and 403.320 of this proposed rule contain general information collection requirements that would be imposed on States. As required by the Paperwork Reduction Act of 1980, we will be submitting a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements.

VI. Public Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "DATES" section of this preamble and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

VII. List of Subjects in 42 CFR Part 403

Agreements, Federal hospitals, Hospitals, Inpatients, Medicare, Medicare supplemental health insurance panel, Medicare supplemental insurance, Reporting requirements, State reimbursement control system, Voluntary certification program.

PART 403—SPECIAL PROGRAMS AND PROJECTS

42 CFR Part 403 would be amended as set forth below:

1. A new Subpart C is added to the table of contents to read as follows:

Subpart C—Recognition of State Reimbursement Control Systems

Authority: Sections 1102, 1862(a)(14), 1866(a)(1)(F), 1871 and 1886(c) of the Social Security Act (42 U.S.C. 1302, 1395y(a)(14), 1395cc(a)(1)(F), 1395hh and 1395ww(c)).

2. A new Subpart C is added to Part 403 to read as follows:

Subpart C—Recognition of State Reimbursement Control Systems

§ 403.300 Basis and purpose.

(a) *Basis.* This subpart implements section 1886(c) of the Act, which authorizes payment for Medicare inpatient hospital services in accordance with a State's reimbursement control system rather than under the Medicare reimbursement principles as described in HCFA's regulations and instructions.

(b) *Purpose.* Contained in the subpart are—

(1) The basic requirements that a State reimbursement control system

must meet in order to be approved by HCFA:

(2) A description of HCFA's review and evaluation procedures; and

(3) The conditions that apply if the system is approved.

§ 403.302 Definitions.

For purposes of this subpart—

"Federal hospital" means a hospital that is administered by, or that is under exclusive contract with, the Department of Defense, the Veterans Administration, or the Indian Health Service.

§ 403.304 Minimum requirements for State reimbursement control systems—Discretionary approval

(a) *Discretionary approval by HCFA.* HCFA may approve Medicare payments under a State system, if HCFA determines that the system meets the requirements in paragraphs (b) and (c) of this section and, if applicable, paragraph (d) of this section.

(b) *Requirements for State reimbursement control system.* (1) An application for approval of the system must be submitted to HCFA by the Chief Executive Officer of the State.

(2) The State system must apply to substantially all non-Federal acute care hospitals in the State.

(3) All hospitals covered by the system must have and maintain a utilization and quality review agreement with a Peer Review Organization, as required under section 1866(a)(1)(F) of the Act and § 466.78(a) of this chapter.

(4) Federal hospitals must be excluded from the State system.

(5) Nonacute care or specialty hospitals (such as psychiatric, tuberculosis or children's hospitals) may, at the option of the State, be excluded from the State system.

(6) The State system must apply to at least 75 percent of all revenues or expenses—

(i) For inpatient hospital services in the State; and

(ii) For inpatient hospital services under the State's Medicaid plan.

(7) Under the system, HMOs and competitive medical plans, as defined by section 1876(b) of the Act, must be allowed to negotiate payment rates with hospitals.

(8) The system must limit hospital charges for Medicare beneficiaries to deductibles, coinsurance or non-covered services.

(9) Unless a waiver is granted by HCFA under § 489.23 of this chapter, the system must prohibit payment under Part B of Medicare for nonphysician services provided to hospital inpatients, as required under section 1862(a)(14) of the Act and § 405.310(m) of this chapter.

(10) The system must require hospitals to submit Medicare cost reports or approved reports in lieu of Medicare cost reports as required.

(11) The system must require—

(i) Preparation, collection, or retention by the State of reports (such as financial, administrative, or statistical reports) that may be necessary, as determined by HCFA, to review and monitor the State's assurances; and

(ii) Submission of the reports to HCFA upon request.

(12) The system must provide hospitals an opportunity to appeal errors that they believe have been made in the determination of their payment rates. The system, if it is prospective, may not permit providers to file administrative appeals that would result in a retroactive revision of prospectively determined payment rates.

(c) *Satisfactory assurances.* The State must provide to HCFA satisfactory assurance as to the following:

(1) The system provides for equitable treatment of hospital patients and hospital employees.

(2) The system provides for equitable treatment of all entities that pay hospitals for inpatient hospital services, including Federal and State programs. Under this requirement, the following conditions must be met:

(i) Both the Medicare and Medicaid programs must participate under the system.

(ii) The State must assure equitable and uniform treatment under the system of third-party payors of inpatient hospital services in terms of opportunity. Equitable opportunity must include, but need not be limited to, participation in the system and availability of discounts.

(iii) The State must assure that all third-party payors that participate under the system share in the system's risks and benefits.

(3) The amount of Medicare payments made under the system over 36-month periods may not exceed the amount of Medicare payment that would otherwise have been made under the Medicare principles of reimbursement for Medicare items and services had the State reimbursement control system not been in effect. States must submit the assurance and supporting data as required by § 403.320 to document that the payment limit is not exceeded. States that have an existing Medicare demonstration project in effect on April 20, 1983, and that have requested approval of a State system under section 1886(c)(4) of the Act, may elect to have the effectiveness of the State system under this paragraph judged on the basis of the State system's rate of increase or inflation in Medicare inpatient hospital payments as compared to the national rate of increase or inflation for such payments during the three cost reporting periods of the hospitals in the State beginning on or after October 1, 1983.

(d) *Additional cost-effectiveness assurance.* If the assurances and supporting data required under paragraph (c)(3) of this section are insufficient to provide assurance satisfactory to HCFA regarding the cost-effectiveness of the State's system, the State may additionally submit one of the following assurances in order to meet the cost-effectiveness test:

(1) The State must agree that each month Medicare intermediaries will disburse to the State's hospitals Federal funds that in the aggregate equal no more than would have been disbursed in the absence of the State system. Any additional funds necessary to pay hospitals for Medicare services required by the State's system will be paid to the intermediaries by the State. These additional amounts will be refunded to the State by the intermediaries to the extent that, in subsequent months, the State's system requires a smaller aggregate payment for Medicare services than would have been paid in the absence of the State's system.

(2) The State must agree that as a result of the projections that exceed what Medicare would pay in any particular period, the State and HCFA will establish an agreed upon payment schedule that will limit payments under the State's system based on a predetermined percentage relationship between projected State payments and what payments would have been under Medicare.

(3) If deviation from the predetermined relationship described in paragraph (d)(2) of this section occurs, the State must further agree that—

(i) Medicare payments would be capped automatically at payment levels based on the rates used for the Medicare prospective payment system and the State would be required to pay the difference to individual hospitals in its system; or

(ii) The State may provide by legislation or legally binding regulations that any reduced payments to hospitals under the system that result from this cost-effectiveness assurance will constitute full and final payment for hospital services rendered to Medicare beneficiaries for the period covered by these reduced payments.

§ 403.306 Additional requirements for State reimbursement control systems—Mandatory approval.

(a) *General policy.*—(1) *Mandatory approval.* HCFA will approve an application for Medicare reimbursement under a State system if the system meets all of the requirements of § 403.304 and of paragraph (b) of this section.

(2) *Exception.* HCFA may approve an application if the State system meets all of the requirements of § 403.304 but only some of the requirements of paragraph (b) of this section.

(3) *Time limit.* HCFA will respond to applications submitted by States under this section within 60 days after receipt of the application. HCFA's response may be in the form of a request for additional information. If HCFA concludes that further information from the State is necessary, a new 60-day period begins when all the required information is received by HCFA.

(b) *Additional requirements.*—(1) *Operation of system.* The system must—

(i) Be operated directly by the State or by an entity designated under State law;

(ii) Provide for payments to hospitals using a methodology under which—

(A) Prospectively determined payment rates are established; and

(B) Exceptions, adjustments, and methods for changes in the methodology are set forth;

(iii) Provide that a change by the State in the system that has the effect of materially changing payments to hospitals can take effect only upon 60 days notice to HCFA and to the hospitals likely to be materially affected by the change and upon HCFA's approval of the change.

(2) *Satisfactory assurances.*—(i) *Admissions practice.* The State must assure that the operation of the system will not result in any change in hospital admission practices that result in—

(A) A significant reduction in the proportion of patients receiving hospital services covered under the system who have no third-party coverage and who are unable to pay for hospital services;

(B) A significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is less, or is likely to be less, than the anticipated charges for or costs of the services;

(C) A refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital; or

(D) A refusal to provide emergency services to any person who is in need of emergency services, if the hospital provides the services.

(ii) *Consultation with local government officials.* The State must provide documentation that it has consulted with local government officials concerning the impact of the system on publicly owned or operated hospitals.

§ 403.308 State reimbursement control systems under demonstration projects—Mandatory approval.

HCFA will approve an application from a State for a State reimbursement control system if—

(a) The system was in effect prior to April 20, 1983; and

(b) The minimum requirements and assurances for approval of a State system are met under § 403.304 (b) and (c), and, if appropriate § 403.304(d)

§ 403.310 Reductions in payments.

(a) *General rule.* If HCFA determines that the satisfactory assurances required of a State under § 403.304(c) and, if applicable, § 403.304(d) have not been met, or will not be met, with respect to any 36-month period, HCFA will reduce Medicare payments to individual hospitals being reimbursed under the State's system or, if applicable, under the Medicare payment system, in an amount equal to the amount by which the Medicare payments under the system exceed the amount of Medicare payments to such hospitals that otherwise would have been made not using the State system, including the appropriate recognition of the time value of the excess payments (that is, the interest the Medicare Trust Fund earned, or would have earned, on these amounts).

(b) *Recoupment procedures.* The amount of the overpayment will be recouped on a proportionate basis from each of those hospitals that received payments under the State system that exceeded the payments they would have received under the Medicare payment system. Each hospital's share of the aggregate excess payment will be determined on the basis of a comparison of the hospital's proportionate share of the aggregate payment received under the State system that is in excess of what the aggregate payment would have been under the Medicare payment system. Recoupments may be accomplished by a hospital's direct payment to the Medicare program or by offsets to future payments made to the hospital.

(c) *Alternative recoupment procedures.* As an alternative to the recoupment procedures described in paragraph (b) of this section and subject to HCFA's acceptance, the State may provide, by legislation or legally binding regulations, procedures for the recoupment of the amount of payments that exceed the amount of payments that otherwise would have been paid by Medicare if the State system had not been in effect.

(d) *Rule for existing Medicare demonstration projects.* In cases of existing Medicare demonstration projects where the expenditure test is to be applied by a rate of increase factor, the amount of the excess payment will be determined, for the three hospital cost reporting periods beginning before October 1, 1986, by a comparison of the State system's rate of increase to the national rate of increase. Recoupment of excessive payments will be assessed and recouped as described in this section.

§ 403.312 Submittal of application.

The Chief Executive Officer of the State is responsible for—

(a) Submittal of the application to HCFA for approval; and

(b) Supplying the assurances and necessary documentation as required under §§403.304–403.308.

§ 403.314 Evaluation of State reimbursement control systems.

(a) *HCFA review.* HCFA will evaluate all State applications for approval of State systems and will request additional information if necessary. States must furnish the additional information requested by HCFA.

(b) *Notification.* HCFA will notify the State of its determination concerning approval of the application within 60 days of receipt of a complete application and background information.

(c) *Resubmittal of application.* A State may submit an amended reimbursement control system application under this subpart if HCFA denies the initial application.

§ 403.316 Reconsideration of denied applications.

(a) *Request for reconsideration.* If HCFA denies an application for a State reimbursement control system, the State may request that HCFA reconsider the denial if the State believes that its system meets all of the requirements in §§ 403.304 and 403.306 or, in the case of a State with a system operating under an existing demonstration, the applicable requirements of §§ 403.304 and 403.308.

(b) *Time limit.* (1) The State must submit its request for reconsideration within 60 days after the date of HCFA's notice that the application was denied.

(2) HCFA will notify the State of the results of its reconsideration within 60

days after it receives the request for reconsideration.

§ 403.318 Approval of State reimbursement control systems.

(a) *Approval agreement.* If HCFA approves a State reimbursement control system, a written agreement will be executed between HCFA and the Chief Executive Officer of the State. The agreement must incorporate any terms of the State's application for approval of the system as agreed to by the parties and, as a minimum, must contain provisions that require the following:

(1) The system is operated directly by the State or an entity designated by State law.

(2) For purposes of the Medicare program, the State's system applies only to Medicare payments for hospital services.

(3) The system conforms to applicable Medicare law and regulations other than those relating to the amount of reimbursement for inpatient hospital services, or for inpatient and outpatient services, whichever the State system covers. Applicable regulations include, for example, those specifying Medicare benefits and entitlement requirements for program beneficiaries, as specified in Parts 408 and 409 of this chapter; the requirements at Part 405, Subpart J of this chapter specifying conditions of participation for hospitals; and the requirements at Part 405, Subparts A, G, and S of this chapter on Medicare program administration.

(4) The State must obtain HCFA's approval of the State's reporting forms and of provider cost reporting forms or other forms that have not been approved by HCFA but that are necessary for the collection of required information.

(b) *Effective date.* An approved State system may not be effective earlier than the date of the approval agreement, which may not be retroactive.

§ 403.320 HCFA review and monitoring of State reimbursement control systems.

(a) *General rule.* The State must submit an assurance and detailed and quantitative studies of provider cost and financial data and projections to support the effectiveness of its system, as required by paragraphs (b) and (c) of this section.

(b) *Required information.* (1) Under § 403.304(c)(3) an assurance is required that the system will not result in greater payments over a 36-month period than would have otherwise been made under Medicare not using such system. If a State that has an existing demonstration project in effect on April 20, 1983 elects under § 403.304(c)(3) to have the effectiveness of its system judged on the basis of a rate of increase factor, the State must submit an assurance that its rate of increase or inflation in inpatient hospital payments does not exceed, for that portion of the 36-month period that is subject to this test, the national rate of increase or inflation in Medicare inpatient hospital payments. The election of the rate of increase test applies only to the three cost reporting periods beginning on or after October 1, 1983. At the end of these cost reporting periods, the State must assure, beginning with the first month after the expiration of the third cost reporting period beginning after October 1, 1983, that payments under its system will not exceed over the remainder of the 36-month period what Medicare payments would have been.

(2) Estimates and data are required to support the State's assurance, required under § 403.304(c)(3), that expenditures under the State system will not exceed what Medicare would have paid over a 36-month period. The estimates and projections of what Medicare would have otherwise paid must take into account all the Medicare reimbursement principles in effect at the time and, for any period in which payments either exceed or are less than Medicare levels, the value of interest the Medicare Trust Fund earned, or would have earned, on these amounts. Upon application for approval, the State must submit projections for each hospital for the first 12-month period covered by the assurance, in both the aggregate and on a per discharge basis, of Medicare inpatient expenditures under Medicare principles of reimbursement and parallel projections of Medicare inpatient expenditures under the State's system and the resulting cost or savings to Medicare. The State must also submit separate statewide projections for each year of the 36-month period, in both the aggregate and on a weighted average discharge basis, of inpatient expenditures under the State system and under the Medicare principles of reimbursement.

(3) The projection submitted under paragraph (b)(2) of this section must include a detailed description of the methodology and assumptions used to derive the expenditure amounts under both systems. In instances where the assumptions are different under the projections cited in paragraph (b)(2)(of this section, the State must provide a detailed explanation of the reasons for the differences. At a minimum, the following separate data and assumptions are to be included in the projections for the Medicare principles and for the State's system.

(i) The base and the Medicare allowable and reimbursable cost of each hospital that the State used to develop the projections, including the amount of estimated pass through costs.

(ii) The categories of costs that are included in the States system and are reimbursed differently under the State system than under the Medicare system.

(iii) The number of Medicare and total base year discharges and admissions for each hospital.

(iv) The rate of change factor (and the method of application of this factor) used to project the base year costs over the 36-month period to which the assurance would apply.

(v) Any allowance for anticipated growth in the amount of services from the base year (if applicable, the allowance must be presented in separate estimates for population increases or for increases in rates of admissions or both).

(vi) Any adjustment in which the State is permitted by HCFA to take into account previous reductions in the Medicare payment amounts that were the result of the effectiveness of the State's system even though Medicare was not a part of that system.

(vii) States applying under a rate of increase effectiveness test under § 403.304(c)(3) must also submit data projecting the parallel rates of increase during the requisite period.

(4) the projection must include both the aggregate payments and the payments per discharge for the individual hospitals and for the State as a whole.

(5) On a case by case basis, HCFA may require additional data and documentation as needed to complete its review and monitoring.

(6) For existing Medicare demonstration projects in effect on April 20, 1983, the assurance and data as required by paragraphs (a) and (b) of this section, if appropriate, may be based on aggregate payments or payments per inpatient admission or discharge. HCFA will judge the effectiveness of these systems on the basis of the rate of increase or inflation in Medicare inpatient hospital payments compared to the national rate of increase or inflation for such payments during the State's hospitals' three cost reporting periods beginning on or after October 1, 1983. The data submitted by the State for the period subject to the rate of increase test must include the rate of increase projection for that particular period of time. For the subsequent period of time, the State must assure that payments under its system will not exceed what Medicare

payments would have been, as described in § 403.304(c)(3).

(7) If the amount of Medicare payments under the State system exceeds what would have been paid under the Medicare reimbursement principles in any given year, the State must also submit quantitative evidence that the system will result in expenditures that do not exceed what Medicare expenditures would have been over the 36 month period beginning with the first month that the State system is operating. For a State that has an existing demonstration project in effect on April 20, 1983 and that elects under § 403.304(c)(3) to have a rate of increase test apply, if the State's rate of increase or inflation exceeds the national rate of increase or inflation in a given year, the State must submit quantitative evidence that, over 36 months, its payments will not exceed the national rate of increase or inflation. Furthermore, if payments under the State's system must be compared to actual Medicare expenditures, at the end of the third cost reporting period, as described in paragraph (b)(1) of this section, and payments under the State's system exceed what Medicare would have paid in a given year, the State must submit quantitative evidence that, over 36 months, payments under its system will not exceed what Medicare would have paid.

(c) *Hospital Outpatient Services.* HCFA may approve a State's application to have the State's system apply to Medicare outpatient services if the following conditions are met:

(1) The State's inpatient system is approved.

(2) The State's outpatient application meets the requirements of § 403.304 (b) and (c), and § 403.306 (b)(1) and (b)(2)(ii).

(3) The State submits a separate application that provides separate assurances and estimates and data in further support of its assurance submitted under paragraph (b)(1) of this section, as follows:

(i) Upon application for approval, the State must submit estimates and data that include, but are not limited to, projections for the first 12-month period covered by the assurance for each hospital, in both the aggregate and on an average cost per service and payment basis, of Medicare outpatient expenditures under Medicare principles of reimbursement; parallel projections of Medicare outpatient expenditures under the State's reimbursement control system; and the resulting cost or savings to Medicare independent of the reimbursement system for hospital inpatient services.

(ii) The State must submit separate statewide projections for each year of the 36-month period of the aggregate outpatient expenditures for each system. The projections submitted under this paragraph must—

(A) Comply with the requirements of paragraphs (b) (3) and (5) of this section regarding a detailed description of the methodology used to derive the expenditure amounts;

(B) Include the data and assumptions set forth in paragraphs (b)(3) (i), (ii), (iii), (iv), and (v) of this section; and

(C) Include any assumption the State has adopted for establishing the number of Medicare and total base year outpatient services for each hospital.

(iii) The State must provide a detailed explanation of the reasons for any difference between the data or assumptions used for the separate projections.

(d) *Review of assurances regarding expenditures.* HCFA will review the State's assurances and data submitted under this section, as a prerequisite to the approval of the State's system. HCFA will compare the State's projections of payment amounts to HCFA data in order to determine if the State's assurance is reasonable and fully supportable. If the HCFA data indicate that the State's system would result in payment amounts that would be more than that which would have been paid under the Medicare principles, the State's assurances would not be acceptable. For States applying in accordance with § 403.308, if HCFA data indicate that the State's system would result in a rate of increase or inflation that would be more than the national rate of increase or inflation, the State's assurances would not be acceptable.

(e) *Medicaid upper limit.* In accordance with § 447.253 of this chapter, the State system may not result in aggregate payments for Medicaid inpatient hospital services that would exceed the amount that would have otherwise have been paid under the Medicare principles.

(f) *Monitoring of Medicare expenditures.* HCFA will monitor on a quarterly basis expenditures under the State's system as compared to what Medicare expenditures would have been if the system had not been in effect. If HCFA determines at any time that the payments made under the State's system exceed the State's projections, as established by the satisfactory assurances required under § 403.304.(c) and, if appropriate, the predetermined percentage relationship of the payments as required under § 403.304(d), HCFA will—

(1) Conclude that payments under State's system over a 36-month period will exceed what Medicare would have paid;

(2) Terminate the waiver; and

(3) Recoup overpayments to the affected hospitals in accordance with the procedures described in § 403.310.

§ 403.322 Termination of agreements for Medicare recognition of State reimbursement control systems.

(a) *Termination of agreements.* (1) HCFA may terminate any approved agreement if it finds, after the procedures described in this paragraph are followed, that the State system does not satisfactorily meet the requirements of section 1886(c) of the Act or the regulations in this subpart. A termination must be effective on the last day of a calendar quarter.

(2) HCFA will give the State reasonable notice of the proposed termination of an agreement and of the reasons for the termination at least 90 days before the effective date of the termination.

(3) HCFA will give the State the opportunity to present evidence to refute the finding.

(4) HCFA will issue a final notice of termination upon a final review and determination on the State's evidence.

(b) *Termination by State.* A State may voluntarily terminate a Medicare reimbursement control system by giving HCFA notice of its intent to terminate. A termination must be effective on the last day of a calendar quarter. The State must notify HCFA of its intent to terminate at least 90 days before the effective date of the termination.

(Catalog of Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance)

Dated: December 23, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 21, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-11502 Filed 5-10-85; 8:45 am]

BILLING CODE 4120-01-M

federal register

Monday
May 13, 1985

Part IV

Office of Personnel Management

5 CFR Part 831

Retirement; Interim Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Interim Rule with Request for Comments

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim rules and requesting comment on the rules to implement the Civil Service Retirement Spouse Equity Act of 1984. The interim rules also incorporate current regulations concerning the subjects covered by the Act, specifically civil service retirement survivor annuities, court orders affecting civil service retirement benefits, and lump-sum payments under the civil service retirement system.

DATE: Interm rules effective May 7, 1985; comments must be received on or before July 12, 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, NW., Wash., D.C.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4684, on provisions relating to survivor annuities and court orders affecting retirement benefits. Contract Francis J. Derby, (202) 632–4634, on provisions relating to lump-sum payments.

SUPPLEMENTARY INFORMATION: The Civil Service Retirement Spouse Equity Act (CSRSEA) of 1984, Pub. L. 98–615, amended the Civil Service Retirement Act (1) to require a joint waiver by annuitant and spouse of survivor benefits at the time of retirement; (2) to require that we recognize court orders granting survivor benefits to former spouses of Federal employees and retirees; (3) to require notice before payment of lump-sum refunds of contributions to the Civil Service Retirement System be given to some current spouses and former spouses entitled to survivor benefits, or a portion or an annuity, or a portion of the refund; (4) to provide that Federal retirees may elect survivor annuity for former spouses; (5) to provide that certain Federal retirees who were previously denied the option of providing survivor benefits to their current spouses will be permitted to provide such benefits; and (6) to provide survivor benefits payments to certain former spouses of Federal retirees who were divorced prior to the effective date of this legislation.

CSRSEA generally does not apply in the case of retirements or divorces before its effective date (May 7, 1985). However, under CSRSEA, some former spouses of annuitants who retire or died before the effective date of the Act will be eligible for a survivor benefit, which will not affect the annuity of the retired employee or Member. To qualify, the former spouse *must*: (1) Have been divorced after September 14, 1978; (2) not have remarried before age 55; (3) have been married to the annuitant during 10 years of creditable service; (4) be age 50 or older; (5) not be entitled to any other pension (other than benefits under title II of the Social Security Act or section 8345(j) of title 5, United States Code); and (6) apply for the benefit before May 9, 1987.

The interim regulations implementing CSRSEA apply primarily to persons who die in service on or after May 7, 1985, or retire on or after that date. Unless otherwise specified in the interim regulations only §§ 831.609 through 831.611, 831.615, 831.616, 831.619 through 831.624, and 831.627 and the portions of Subpart Q concerning court orders affecting employee retirement benefits apply to persons retired before May 7, 1985.

1. Consolidation of Existing Regulation

The current subpart F is entitled "Types of Annuities." The interim regulations consist of a new Subpart F, entitled "Survivor Annuities," which consolidates the current Subpart F, portions of Subpart J that regulate survivor annuities, and new regulations necessitated by the portions of CSRSEA that control entitlement to survivor annuities (without court orders).

The current Subpart J is entitled "Death Benefits." It has information about survivor annuities that belongs with Subpart F and information about lump-sum death benefits that belongs in Subpart T. This new format eliminates Subpart J by consolidating its provisions into Subparts F and T.

The current subpart Q is entitled "Apportionment From Civil Service Retirement Benefits." It implemented Pub. L. 95–366 (Sept. 15, 1978), which requires us to comply with certain State court orders which divide civil service retirement benefits payable to the former Federal employee during his or her lifetime. We are issuing a new Subpart Q, entitled "Court Orders Affecting Civil Service Retirement Benefits," which amends the current Subpart Q to incorporate the changes in handling State court orders on refunds and survivor annuities required by CSRSEA.

The current Subpart T is entitled "Payment of Lump Sums." It regulates payment of lump-sum benefits under the Civil Service Retirement System. The interim rules consolidate the current Subpart T, portions of Subpart J that cover lump-sum payments, and the changes required by CSRSEA into a revised Subpart T that retains its current title.

2. Survivor Annuities

The Terms "fully reduced annuity," "insurable interest annuity," "partially reduced annuity," and "self-only annuity" are used to describe benefits that are payable to former employees and Members. "Current spouse annuities" and "former spouse annuities" are defined as payable to survivors of former employees and Members. The definition of "marriage," although never before promulgated in our regulations, has been used by us in our adjudications relative to survivor benefits since 1979.

"Time of retirement" is defined as the date when a retiree's annuity commences. We considered using the date of separation from the Federal service as the time of retirement. However, employees can separate with title to a deferred annuity many years before they are eligible to begin receiving payments. Using the date of application would cause administrative difficulties because people can file applications before or long after becoming eligible for benefits.

Section 831.604(b) of the interim regulations applies to cases when a former spouse by a court decree has preempted the current spouse annuity under section 8341 of title 5, United States Code. Under these regulations: (1) A qualifying court order that awards a former spouse annuity will require an appropriate reduction in the retiree's annuity (regardless of any election to provide a current spouse annuity); (2) the retiree must make an election regarding the current spouse's survivor annuity at the time of retirement (even though that annuity has been wholly or partially preempted by a court-ordered former spouse annuity); (3) the current spouse's consent must be given (or waived) to permit a retiree to elect less than a fully reduced annuity to provide a current spouse annuity; (4) in the event of the retiree's death, payment of the current spouse annuity will be wholly or partially prevented as long as the former spouse remains eligible for a former spouse annuity.

The reduction in annuity to provide a current spouse annuity under § 831.604 terminates in accordance with the new section 8339(j)(5) of title 5, United States Code. The conditions under which the reduction is terminated are consistent with those provided under the prior section 8339(j)(1) of title 5, United States Code. Generally, the reduction will terminate upon the death of a current spouse for whose benefit the reduction was made or upon dissolution of the marriage to that spouse. Even if the latter condition is met, a reduction will not be terminated when that spouse has acquired entitlement (in the dissolution decree or by election under § 831.612) to a survivor benefit as a former spouse under the new section 8339(j)(5)(A) of title 5, United States Code.

Section 831.605 implements the new sections 8339(j)(3) and (5) of title 5, United States Code, which permits an employee or Member to elect to provide a survivor annuity for a former spouse or spouses at the time of retirement.

Section 831.606 regulates insurable interest annuities under the amended section 8339(k)(1) of title 5, United States Code. Under prior law, only an employee or Member who was unmarried at the time of retirement could make an election to provide an annuity for an individual who had an insurable interest in the employee or Member. Section 8339(k)(1), as amended by CSRSEA, extends this election to married individuals as well.

Section 831.606(a) restates the requirement of section 8339(k)(1) that only a person in good health and retiring on an immediate annuity under section 8336 of title 5, United States Code, or a deferred annuity under section 8338 of title 5, United States Code, is eligible to elect an insurable interest annuity. Persons retiring on disability annuities under section 8337 of title 5, United States Code, are excluded by statute.

Section 831.606(e) promulgates as a regulation our long-standing internal guidelines concerning the degree of relationship that would automatically constitute an insurable interest. Section 831.606(e) also permits us to require documentation of the beneficiary's age that is necessary to compute the rate of reduction.

Because of the large reduction frequently required (up to 40% of the self-only annuity) to elect an insurable interest election, our policy has been to require a written confirmation of election after the retiree has been informed by us of the amount of the reduction. Section 831.606(f) requires that confirmation in all such cases.

Within 2 years after the death or remarriage before age 55 of the former spouse for whom a retiree is providing a former spouse annuity, § 831.606(h) permits a retiree to end an insurable interest reduction elected to provide for a current spouse in order to elect a reduced annuity to provide a current spouse annuity. The conversion will provide a survivor annuity at a lower cost to the retiree than maintaining the insurable interest annuity. However, if the retiree elects to convert, he or she may not thereafter reinstitute the insurable interest annuity to provide for someone else. After conversion of the insurable interest annuity, the aggregate of all survivor annuities cannot exceed 55 percent of the retiree's annuity.

Section 831.606(i) provides that a similar election is not permitted in the reverse situation. Although revised section 8339(j)(5)(B) of title 5, United States Code, authorizes continuation of an annuity reduction to provide a former spouse annuity (after the death or remarriage of the former spouse) for the purpose of providing a current spouse annuity, nothing in CSRSEA authorizes a corresponding continuation to benefit a former spouse after the death of a current spouse.

Section 831.606(j) is the old § 831.601(b).

Section 831.607 implements the spousal consent requirement discussed in connection with § 831.604. Section 831.607(c) imposes a notarization requirement to discourage forged or coerced consent.

Section 831.608 presents the requirements for waiver of spousal consent. Section 2 of CSRSEA requires that we provide that a married employee may elect a self-only or a partially reduced annuity without the spouse's consent only when the spouse's whereabouts are unknown to the employee or, "due to exceptional circumstances" it would be "inappropriate" to require the employee to seek the spouse's consent. We are requiring in § 831.608(a) proof that the employee does not know the spouse's whereabouts before waiver can be granted on that ground. Waiver for exceptional circumstances (e.g., the spouse is suffering from diminished mental capacity, the spouse and the employee have been maintaining separate residences with no financial relationship for several years, the spouse abandoned the employee but, for religious or other reasons, the parties choose not to divorce) are permitted by § 831.608(b). However, before a waiver for exceptional circumstances is allowed, the regulations require documentation from a judicial body that substantiates the request for waiver. This procedure is necessary to guarantee that the current spouse receives due process before he or she loses the right to a survivor annuity without his or her consent.

Section 831.609 restates the rule of the old § 831.601(d), which permits a change of election until we complete the adjudication of the employee's or Member's retirement application. The standard for determining when we have completed adjudication is defined as 30 days after the date of the first regular monthly payment. This standard avoids the inconsistencies inherent in any standard that is controlled by a retiree's action, rather than our action. Under this rule, a retiree will have a reasonable period of time to change the survivor election after OPM has notified the retiree of the effect of the election by means of the annuity statement showing the adjudicated rate of the retiree's annuity as well as the survivor's rate.

Section 831.611 restates the old § 831.601(e).

Section 831.612 (a) and (b) implement the new section 8339(j)(3) of title 5, United States Code, which permits a retired employee or Member to elect to provide a survivor annuity for a former spouse within 2 years after the dissolution of the marriage to that former spouse. Section 831.612(c) implements the deposit requirement of section 8339(j)(3) of title 5, United States Code. Section 831.612(d) implements the new section 8339(j)(5) of title 5, United States Code, that provides for termination of the annuity reduction.

Section 831.613 concerns "post-retirement" elections of survivor benefits for spouses acquired after retirement. Under the pre-CSRSEA law that continues to apply to annuitants who are retired before May 7, 1985, a married employee who elects to provide a survivor benefit at the time of retirement and an employee who is unmarried at the time of retirement may elect to provide a survivor annuity to a new spouse acquired after retirement. In such a case, the retiree had to make the "post-retirement" election within 1 year after the new marriage, and an annuity reduction is continued (or in the case of an employee who was unmarried at the time of retirement is commenced) upon the making of the election. Except as provided in section 4(c) of CSRSEA (implemented in § 831.623), an employee retired before May 7, 1985, married at the time of retirement who did not elect to provide a survivor benefit at retirement may not elect a survivor benefit in the event of a subsequent marriage during retirement. Also, in the event of a marriage during a retirement that commenced before May 7, 1985, the

marriage must have lasted for at least 1 year before a survivor benefit election may be effective.

Section 831.613(a) sets the requirements for post-retirement elections for pre-CSRSEA retirees. Section 4 of CSRSEA provides that the retirement amendments made by section 2 will take effect May 7, 1985, and will apply to any individual who, on or after that date, is married to an employee who retires, dies, or applies for a lump-sum refund of contributions after that date. In other words, CSRSEA generally does not apply to persons retired before May 7, 1985. Accordingly, the prior law and regulations continue to apply to annuitants retired before May 7, 1985, for most purposes.

The 1-year time limit in § 831.613(a) (but not the requirement of an election before the retiree's death) can be waived when the retiree was not notified of the time limit in accordance with Pub. L. 95–317 and he or she exercised due diligence in seeking an annuity reduction to provide a current spouse annuity. This waiver is based on the Merit Systems Protection Board's decision in the case of *Davies* v. *Office of Personnel Management*, 5 MSPB 251 (1981).

Section 831.613(b) implements the CSRSEA provisions on post-retirement survivor elections. New subsections (j)(5)(C) and (k)(2) of section 8339 of title 5, United States Code, contain several changes, which apply to employees and Members who retire on or after May 7, 1985, or die in service on or after that date. First, the length of marriage requirement for eligibility for survivor annuity is reduced from 1 year to 9 months. Second, an employee married at the time of retirement who did not elect survivor benefits will be permitted to make such an election after a post-retirement marriage (provided that the marriage is not to the same spouse to whom the employee was married at retirement). The time limit for making the election is extended from 1 year following the remarriage or marriage, as the case may be, to 2 years.

Section 831.614 (a) and (b) state the general policy of CSRSEA that the total amount of survivor annuity benefits available will not be greater than under existing law. Generally, spousal survivor benefits attributable to the service of an employee or Member may not exceed 55 percent of that employee's or Member's annuity. The CSRSEA continues this policy but does permit this 55 percent to be divided between any former spouses and a current spouse and permits election of an additional insurable interest annuity in some cases.

Sections 831.615 and 831.616 are derived directly from current §§ 831.601(g), 831.1005, and 831.1006 without substantive change.

Section 831.617 on the rate of children's annuities result from the definitions of "former spouse" and "child" in section 8331 and 8341 of title 5, United States Code.

Section 831.618 states the marriage duration requirements before a survivor annuity right attaches based on a death of an annuitant who retired on or after May 7, 1985, or an employee or Member who died while employed in a position under CSRS on or after that date. Section 8341(a) of title 5, United States Code, as amended, provides that a spouse must be married to an employee, Member, or annuitant for only the 9 months immediately preceding death or be the parent of a child of that marriage to be eligible for a survivor annuity. Prior law (which continues to apply to annuitants who retired before May 7, 1985) required 1 year of marriage or a child born of that marriage. New section 8341(i) of title 5, United States Code, provides that the requirement that a surviving spouse of an employee or Member must have been married to an employee or Member for at least 9 months immediately before death should be deemed to be satisfied in any case in which the death was accidental or in which the surviving spouse previously had been married to the individual and the aggregate time married is at least 9 months. These statutory changes are reflected in § 831.618 (a) through (c).

Section 831.618(c) also adopts the reasoning of the recent decision of the Merit Systems Protection Board in *Smith* v. *Office of Personnel Management*, No. AT0831841098, November 15, 1984. In that case, the Board determined that children born out of wedlock who were later legitimated by a marriage of their parents were children of the legitimating marriage for purposes of section 8341(a) of title 5, United States Code. The regulation extends this rule to legitimate children by prior marriages between the same parties. This accomplishes two objectives: (1) It prevents a parent of an illegitimate child from being more favorably treated simply because the child was born out of wedlock and (2) it furthers the policy of CSRSEA by treating children born of the marriage in the same manner as CSRSEA treated the length of the marriage, namely, by considering all time when the current spouse and the employee were married to determine whether the duration requirement has been met.

Section 831.618(d)(1) defines "accidental" for this purpose. All homicides are considered accidental. The definition applicable to non-homicide cases was taken from the accidental death provision of the Federal Employees' Group Life Insurance Program except that death resulting from acts of war are not excluded from the § 831.618(d)(1) definition.

Section 831.618(d)(2) provides that we will accept certain State determinations of the cause of death. Judicial determinations such as the finding, in insurance litigation, that double indemnity is payable or, in a criminal case, that the death was a homicide are typical examples. An administrative finding from a coroner's inquest or similar proceeding is included. Lesser weight will be given to statements on the death certificate. However, without other evidence, the statement on the death certificate will be accepted as proof that the death was accidental.

Section 831.619(a) restates the general rule of the old § 831.1001. Section 831.620 restates the old § 831.1002.

Section 831.621 concerns the voluntary election to provide a former spouse annuity under section 4(b) of CSRSEA. Section 4(b) provides that a former spouse of an annuitant who retired before May 7, 1985, is entitled to a survivor annuity if the annuitant elects in writing before May 9, 1986, to have his or her annuity fully reduced and to deposit in the Civil Service Retirement and Disability Fund an amount reflecting the difference between the rate of a self-only annuity and the amount that he or she would have received if a reduction for the survivor annuity had been in effect since the annuity commenced. If a retired employee makes an election under section 4(b) but does not make the required deposit, we will collect the amount of the deposit by offset against the retiree's annuity up to a maximum of 25 percent of the net annuity payable to the employee.

Former spouses who meet the requirements set forth in § 831.622 will receive 55 percent of the annuity of the retired employee plus cost-of-living adjustments after the death of the retiree. If a retired employee has more than one former spouse who falls within the class of former spouses qualifying under § 831.622, each qualifying former spouse will receive the full survivor annuity.

Paragraph (a)(1) implements the statutory requirement that the marriage must have been dissolved after September 14, 1978, the effective date of Pub. L. 95–366. Pub. L. 95–366 authorized us to comply with certain State court

orders dividing civil service retirement benefits.

Paragraph (a)(3) implements the statutory requirement that the former spouse must not be entitled to any other employer-provided retirement or survivor annuity. Social security benefits under title 42, United States Code, and court awarded benefits under section 8345(j) of title 5, United States Code, are specifically excluded by CSRSEA. In view of the unambiguous language of the statute, receipt of any other employer-provided retirement or survivor annuity, regardless how small, will disqualify a former spouse from receiving an annuity under this section—notwithstanding remarks during the Senate's consideration of CSRSEA that only "substantial" employer-provided benefits should disqualify a former spouse from receiving a section 4(b) annuity. We believe that the statutory language and the legislative history as a whole, including our consultations during the drafting of this legislation, support this interpretation.

Paragraph (b)(1) relates to the application requirement for the above former spouses. We will accept correspondence as an informal application for meeting the timeliness requirements. Any informal application must be followed by an application on the appropriate form.

We require documentary proof that the requirements regarding date of application are met, but accept the former spouse's certification on the application as proof that the other requirements are met.

Section 831.623 implements section 4(c) of CSRSEA that provides that a retireee who retired before May 7, 1985, and who is married to a spouse acquired after retirement for whom the retiree was unable to provide a survivor annuity may provide a survivor annuity to the spouse if (1) the retiree was married at the time of retirement and elected not to provide a survivor annuity; or (2) the retiree notified us of the post-retirement marriage more than 1 year after the marriage and we disallowed the attempt to elect a reduced annuity because it was untimely. Under these circumstances, the retiree may elect in writing, within 1 year after the date of enactment, to provide for a survivor annuity for the current spouse. The retiree must deposit in the Civil Service Retirement and Disability Fund an amount reflecting the difference between what the retiree had received and what would have been received if the election had been in effect since the retiree's annuity commenced. If the retired employee does not make such a deposit, we will collect the amount by offset against the retiree's annuity up to 25 percent of the net annuity. The retiree may change his or her decision to make an election under § 831.623 until 30 days after the date of the first payment at the reduced annuity rate.

Section 831.624 regulates the collection of the deposits (including interest) required in making post-retirement elections under §§ 831.612, 831.613, 831.621, or 831.623. These payments are not subject to the procedures for the collection of annuity overpayments under subpart M because the retiree is deemed to consent to the collection. Reconsideration rights under § 831.109 are available to review whether the amount of the deposit has been correctly calculated.

Section 831.624(d) permits the spouse to complete the deposit if the retiree dies before making the entire deposit. Since the deposit is a prerequisite to payment of a survivor annuity, the deposit must be fully paid before the survivor annuity can be paid.

Section 831.625 regulates current and former spouse annuities in the event of remarriage by the recipient (except for former spouses entitled to survivor annuities under §§ 831.621 or 831.622). Whether age 55 or age 60 is the standard for terminating the annuity based on remarriage is determined by the date of the annuitant's retirement or the employee's or Member's death while serving in a position covered by CSRS, not the date of the remarriage. If the annuitant retired before May 7, 1985, or the employee or Member died in service before that date, the old law (age 60) continues to apply. If the annuitant retires on or after May 7, 1985, or the employee or Member dies in service on or after that date, the CSRSEA rule (age 55) controls. This is based on section 4(a) of CSRSEA that states that the retirement amendments to title 5, United States Code, apply only when the former employee or Member retires, dies in service, or requests a refund after May 7, 1985.

Since no statutory provision permits reinstatement of former spouse annuities, paragraph (d) provides that remarriage permanently extinguishes them. The solemnization of the remarriage is the event terminating the former spouse's entitlement. Accordingly, even if the remarriage is later annulled the entitlement is not reinstated. This rule is necessary for essentially the same policy reasons cited by the Missouri Court of Appeals when finding that alimony should not be reinstated following annulment of a remarriage. In *Glass* v. *Glass*, 546 S.W.2d 738 (Mo. App. 1977), the court supported its decision on the following policy considerations:

> (1) A former husband is entitled to rely on the remarriage ceremony of the former wife to recommit assets previously used for alimony obligations to her. (2) Unless the remarriage ceremony is taken as conclusive, any latent grounds for annulment between the remarried spouse and her new husband may remain suspended until the offended spouse seeks annulment, so that the former husband's alimony obligations may never be certainly determined. (3) Even though both former spouses may be innocent, the more active of the two [the one whose remarriage is later annulled] should bear the loss from the misconduct of a stranger. (At 741.)

Similar policy considerations apply in the context of the former spouse's annuity entitlements. First, the retiree is entitled to rely on the remarriage ceremony to provide a current spouse annuity for a subsequent spouse. Second, unless the remarriage is taken as conclusive, any latent grounds for annulment could prevent a current spouse's entitlement from becoming certain. Third, the spouse whose marriage is annulled should bear the loss rather than the spouse with no involvement whatsoever.

Section 831.626 continues our present procedure of requiring retirees who gain new title to an annuity to make all elections required upon retirement, when they apply to retire under the new annuity right. The elections under this section are made in accordance with the law at the time of the latest retirement.

Section 831.627 states the annual notice requirement of the Civil Service Retirement Act Amendment of July 10, 1978, Pub. L. 95–317, 92 Stat. 382. Section 3 of Pub. L. 95–317 requires that we, "* * * on an annual basis, inform each retiree of such retiree's right of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code." This provision does not appear in the United States Code.

Based on the reasoning of a Merit Systems Protection Board regional office decision, we determined that giving notice each calendar year was inadequate and that notice must be given at least every 12 months. Furthermore, the Merit Systems Protection Board determined in *Davies* v. *OPM*, 5 MSPB 251 (1981) (discussed in connection with § 831.613) that the time limit for making an election could be waived if the retiree did not receive the annual notice and acted with due diligence in making the election.

3. Court Orders Affecting Civil Service Retirement Benefits

State laws and State courts have traditionally controlled matters of domestic relations and property rights. Questions such as an individual's obligations to a former spouse are determined by the courts on a case-by-case basis taking into consideration many factors, such as the financial status of both parties, property settlements, children involved, etc.

As a result of the enactment of Pub. L. 93–647, which added section 459 to the Social Security Act (42 U.S.C. 659), since 1975, civil service retirement benefits have been subject to garnishment, attachment, or similar legal process to enforce support obligations.

In recent years, many State courts have ruled that future retirement benefits earned during a marriage should be considered marital property and subject to division in the event of a legal separation, divorce, or annulment of marriage. The Social Security Act garnishment amendments did not cover property settlements.

Pub. L. 95–366, effective September 15, 1978, required us to pay a portion of an annuity to someone other than the retiree to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Final rules implementing Pub. L. 95–366 were published in the **Federal Register** on March 7, 1980 (45 FR 14835). However, survivor benefits still could not be affected by court orders.

Now, under CSRSEA, State courts are permitted to award former spouse annuities to assure former spouses of their property rights regardless of whether the employee spouse survives. Awarding former spouse annuities could also be used to assure continuing support payments to a former spouse.

The revised Subpart Q incorporates this new type of benefit available by court order into the framework established for handling court orders dividing employee retirement benefits under section 8345(j) of title 5, United States Code.

The general rule of section 8346(a) of title 5, United States Code, is that State court orders have no effect on civil service retirement benefits. Subpart Q contains procedures for the exceptional cases when section 8346(a) does not apply.

Nothing in this subpart or anywhere else authorizes the United States, the Office of Personnel Management, or the Civil Service Retirement System to be made a party to divorce proceedings. The sovereign inmunity of the United States bars the attempted joinder.

Our experience has shown that joinders are sought for three reasons:

(1) To obtain information about an individual's contributions to the retirement system;

(2) To divide the retirement benefits; and

(3) To stay payment of benefits.

Under Federal laws and regulations, these ends can be attained despite the court's lack of jurisdiction over the Civil Service Retirement System.

We will release information from retirement records to a court in response to a subpoena. The proper place to submit the subpoena is determined by whether the person has been separated from the Federal service. If the individual about whom the information is sought is not a current Federal employee, the subpoena should be addressed to the Civil Service Retirement System at the Office of Personnel Management.

If the individual is still an active Federal employee, and all of his or her Federal service has been continuous and with the same agency, the records should be with the payroll office of that agency. Service must be made upon the agency in which the individual is employed.

If the individual is currently a Federal employee but has had a break in service or has worked for more than one agency, some of the records will be on file with us while others will still be with the employing agency. In this situation, process must be served on both.

It takes approximately 30 days to respond to a subpoena. Submissions must include the employee's (or former employee's) full name, date of birth and/or social security number or we will not be able to locate the record.

Section 8345(j) of title 5, United States Code, instructs us to divide civil service retirement benefits in accordance with State court orders. The required contents of the court order are set out in § 831.1704 of the the interim regulations. Our guidelines for interpreting language frequently used in orders dividing benefits is an appendix to subpart Q of the interim rules. An application to apportion benefits requires approximately 30 days processing time after receipt.

Finally, court orders may be necessary to maintain the status quo during the time the suit is pending. The way to accomplish this is to obtain an order directing us to pay some or all of the benefits that may become due to the court. Such an order should be served upon the Associate Director for Compensation.

We cannot pay any money into the court before it would be payable to the employee or retiree. Employee contributions in the retirement fund are not payable in a lump sum to an employee until he or she separates from the Federal service and submits an application for refund.

The definition of "employee retirement benefits" was taken from the definition of "retirement benefits" in the old § 831.1702. These are the benefits that were subject to court orders under Pub. L. 95–366 because they are payable to the person who performed the Federal service on which they are based.

The definition of "former spouse" contains two usages for the term. In connection with divisions of employee retirement benefits under section 8345(j) of title 5, United States Code, "former spouse" has the same meaning that it had under the old § 831.1703. In connection with awards of survivor annuities under section 8339(h) of title 5, United States Code, "former spouse" has the meaning given to it in section 8331(23) of title 5, United States Code.

The definition of "gross annuity" is taken from the Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits (49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984).

The definition of "net annuity" is derived directly from the old § 831.1705(a).

Section 831.1704(b) is a restatement of the old § 831.1703(c). It was rewritten to eliminate the confusion and clarify our original intent to exclude orders requiring us to compute the value of a variable about which we have no knowledge.

Section 831.1704(c)(1) rephrases the rule of the old § 831.1703(b) for clarity. The language is taken from Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits (49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984). The interpretation of Pub. L. 95–366 expressed in the old § 831.1703(b) has been upheld by the United States Court of Appeals in *McDannell* v. *Office of Personnel Management*, 716 F.2d 1063 (5th Cir. 1983).

Section 831.1704(c)(2) states a broader rule for honoring orders awarding former spouse annuities. No legitimate purpose could be served by denying effect to an order directing the retiree to provide a former spouse annuity.

Section 831.1705 contains the application requirements for all persons

seeking compliance with qualifying court orders. Section 831.1705(a) allows the application to be made in any writing. We recommend use of a letter. A special form is required only when payments must terminate upon remarriage.

Section 831.1705(b) contains the documentation requirements that must accompany the application. Previously we required that the certification of the court order be "recent." This requirement failed to serve any useful purpose. Accordingly, future applications will require only a proper certification; we are no longer requiring that the certification be "recent."

The quantity of identifying information required under § 831.1705(b)(3) varies with the type of civil service retirement benefit to be affected. Current retirees can be identified with only the name and claim number, date of birth, or social security number. The date of birth is essential in all other types of cases. Without the date of birth, we cannot effectively identify future incoming records.

The certification requirement of § 831.1705(c) applies to former spouse annuities of persons who have not attained age 55, and court orders affecting employee retirement benefits that terminate on remarriage. An example of the latter type order would be an alimony award to be paid from a civil service annuity.

Section 831.1706(a) and (b) are the old § 831.1705(b).

Section 831.1706(c) states the maximum amount available to comply with court orders. The limitations of the Federal Consumer Credit Protection Act (15 U.S.C. 1673(b)(2)) do not apply to court orders under this subpart.

Section 831.1707 states the preliminary review procedure of the old § 831.1706. Upon receipt of an order, we will check to see whether immediate action is necessary because either benefits are immediately payable or an immediate reduction in annuity is necessary to provide a former spouse annuity. If neither of the conditions is met, § 831.1707(a)(1) provides that we will acknowledge receipt of the court order and file the order for future consideration. Only after one of those conditions has been met will the order be reviewed.

Section 831.1707(b) provides that if, as a result of the preliminary review, the initial determination is that the order could be a qualifying court order, all interested parties will be given the notices provided in § 831.1708. On the other hand, if the initial determination is that the order does not qualify, § 831.1707(c) requires that the former spouse be given an explanation of the reasons that the order fails to qualify and a notice of his or her administrative review right. The former employee or Member will be notified that we have received a court order even when, as a result of the preliminary review, we determine that we will not honor the order.

Section 831.1709 retains the decision procedure from the old § 831.1708. The former spouse's claims will be disallowed only if the court order does not meet the requirements of § 831.1704 or a court determines that it should not be honored. Anyone adversely affected by a decision under § 831.1709 may request reconsideration under § 831.109. Section 831.109(g) prohibits us from implementing decisions under § 831.1709 until the administrative review process is completed.

Section 831.1711 states the timing requirement applicable to court orders. Section 831.1711(a)(1) states the rule under section 8345(j) of title 5, United States Code, that orders affecting employee retirement benefits can be honored regardless of when the orders were issued. On the other hand, § 831.1711(b)(1) states the rule under CSRSEA that orders creating a former spouse annuity are effective only if the marriage to the employee or Member was in force on or after May 7, 1985, and the employee or Member retires under the civil service retirement system or dies in a covered position on or after May 7, 1985.

Section 831.1712 contains procedures for handling employee retirement benefits that were being paid to a former spouse who dies. In 1980, when we promulgated regulations (45 FR 14835, March 7, 1980) to implement section 8345(j) of title 5, United States Code, we stated that we would promulgate a rule to provide restrictions and procedures applicable to payments after the death of the former spouse after further study. Section 831.1712 now establishes restrictions and procedures for these payments. (It should be noted that section 8345(j) of title 5, United States Code, requires that an apportionment of employee retirement benefits must terminate if the annuity benefit is suspended or terminated. This statute relieves us from the obligation of paying an apportioned benefit after the death of an *annuitant*.)

In cases when a former spouse dies while entitled to a portion of a retiree's payments in accordance with a court order, § 831.1712 requires that we request guidance from the court that issued the apportionment order. The court could then make further provision for future payments. This approach was chosen only after concluding that automatically paying the former spouse's share to the court was unfeasible because too many courts would not have procedures to handle and account for the funds.

Section 831.1713 is taken from the old §§ 831.1710 and 831.1711. Sections 831.1713 (a) through (d) are derived from the old § 831.1710 (a) through (d). Section 831.1713(e) is the old § 831.1711(c).

Section 831.1714 provides for publication and indexing of interpretive guidelines. We have received approximately 1000 State court orders dividing civil service retirement benefits. In implementing these orders, we have been forced to interpret many terms that are capable of more than one meaning. To insure consistency in interpretation and to simplify the task of interpreting ambiguous terms that are frequently used, we have developed a set of guidelines that we will use to interpret State court orders.

The legal community has attempted to draft orders dividing civil service retirement benefits that minimize the potential confusion generated in interpreting the orders. However, without knowledge that a term used in a decree has a technical meaning within the civil service retirement law, unclear orders frequently resulted. The guidelines for interpreting these technical terms should assist the legal community in drafting orders that will be interpreted by us to produce the intended result.

The guidelines contain no regulatory language. The original guidelines were published at 49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984. These guidelines are appended to subpart Q in the interim rules and apply to court orders dividing employee retirement benefits but not to court orders awarding survivor annuities.

Section 831.1715 restates the old § 831.1711(a).

Section 831.1716 provides for handling multiple court orders against one former employee or Member. Section 831.1716(a) states the order-of-issuance rule required by CSRSEA for formal spouse annuity cases whenever two or more former spouses are involved. Section 831.1716(b) states the usual rule for determining the effect of court judgments for cases when conflicting judgments affect the same parties.

Section 831.1717 restates the old § 831.1710(e). Section 831.1718 restates the old § 831.1711(d).

4. Payment of Lump Sums

Pub. L. 98–615 also affected lump-sum credit payments (refunds) of accumulated retirement deductions. A former employee's or Member's current spouse must be notified of the former employee's or Member's application for a lump-sum payment after May 6, 1985. Any former spouse from whom the employee was *divorced after May 6, 1985,* must also be notified of the application for lump-sum payment.

If the employee's or Member's current or former spouse does not acknowledge notification, the employee or Member may submit a signed postal return receipt as proof that he or she has mailed the notification to the current or former spouse. Alternatively, the employee or Member may submit affidavits signed by two individuals who witnessed the employee's or Member's personal attempt to obtain the current or former spouse's signature on the notification form. This is in substantial conformance with regulations found at old § 831.601(c) to Title 5, Code of Federal Regulations, which governed spousal notification of survivor annuity elections at the time of retirement under previous law, and which the Congress expressed its intent that we follow. (House Report No. 98–1054, September 24, 1984, p. 15.) The burden of proving a *bona fide* effort to notify the spouse or former spouse is placed upon the employee or Member, with the intent of keeping any delay in paying the refund within reasonable limits.

If the employee or Member is unable to obtain the acknowledgement of any *former* spouse, the employee or Member may, instead, submit a divorce decree, community property settlement or similar court-approved document wherein the former spouse has relinquished any rights to the annuity or the annuity was wholly awarded to the employee or Member. The object here is to require proof that the former spouse's entitlement to any benefit from the employee's or Member's annuity has been relinquished. If that is the case, there is no benefit which the former spouse could lose by the refund being paid and, therefore, notification would serve no reasonable purpose.

If the spouse's whereabouts are unknown, § 831.2008 sets out the conditions necessary for a waiver of the notification requirement.

The lump-sum payment will also be subject to any court order or decree *issued after May 6, 1985,* which directly relates to the lump-sum credit, if the payment of the lump-sum would adversely affect a former spouse's entitlement to a court-ordered share of an annuity and/or a survivor annuity. These regulations set forth procedures that we will follow to implement these provisions.

Sections 831.2005 and 831.2006 are the former §§ 831.1003 and 831.1004. Section 831.2001 has been expanded to include more definitions. Sections 831.2002 through 2004 remain essentially unchanged except that they are made subject to the restrictions of these new regulations and to section 3716 of title 5, United States Code, on administrative offset for government claims.

I find that there is good reason to make these amendments effective in less than 30 days (5 U.S.C. 533(d)(3)). The regulations are effective on May 7, 1985, to prevent irreparable harm to persons entitled to benefits under CSRSEA. Delaying rulemaking would be contrary to the public interest as expressed in CSRSEA because such a delay would require delayed payments in cases authorized by the revised statute most of which becomes effective May 7, 1985, until implementing regulations could be put in place. Although later payments could be retroactive to May 7, 1985, when entitlement attached on that date, delay could seriously harm entitled persons with an immediate need for payment.

Furthermore, CSRSEA imposes restrictions on the time in which application under sections 4(b) and 4(c) of the Act can be made. The 30-month period under section 4(b) and the 18-month period under section 4(c) began to run on November 9, 1984. It would be unconscionable to further delay processing applications while awaiting comments.

E.O. 12291, Federal Regulation

I have 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 this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Personnel Management Office, Retirement.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

PART 821—[AMENDED]

Accordingly, OPM is amending 5 CFR Part 831, as follows:

1. By revising Subpart F to read as follows:

Subpart F—Survivor Annuities

Sec.

Authority: 5 U.S.C. 8347.

Subpart F—Survivor Annuities

§ 831.601 Purpose.

This subpart explains the annuity benefits payable in the event of the

death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

§ 831.602 Relation to other regulations.

(a) Subpart Q of this part contains information about former spouses' entitlement to survivor annuities based on provisions in court orders or court-approved property settlement agreements.

(b) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(c) Parts 870, 871, 872 and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(d) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(e) Section 831.109 contains information about the administrative review rights available to a person who has been denied a survivor annuity or an opportunty to make an election under this subpart.

§ 831.603 Definitions.

As used in this subpart—

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Current spouse" means a living person who is married to the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

"Current spouse annuity" means a recurring benefit under CSRS that is payable (after the employee's, Member's, or retiree's death) to a current spouse who meets the requirements of § 831.618.

"Deposit" means a deposit required by the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98-615, 98 Stat. 3195. "Deposit," as used in this subpart does not include a service credit deposit or redeposit under sections 8334(c) or (d) of title 5, United States Code.

"First regular monthly payment" means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under CSRS and has paid the annuity accrued since the time of retirement. The "first regular monthly payment" is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a recurring benefit under CSRS that is payable to a former spouse after the employee's, Member's, or retiree's death.

"Fully reduced annuity" means the recurring payments under CSRS received by a retiree who has elected the maximum allowable reduction in annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

"Insurable interest annuity" means the recurring payments under CSRS to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree.

"Marriage" means a marriage recognized in law or equity under the whole law of the jurisdiction with the most significant interest in the marital status of the employee, Member, or retiree unless the law of that jurisdiction is contrary to the public policy of the United States. If a jurisdiction would recognize more than one marriage in law or equity, the Office of Personnel Management (OPM) will recognize only one marriage, but will defer to the local courts to determine which marriage should be recognized.

"Member" means a Member of Congress.

"Net annuity" means the net annuity as defined in § 831.1703.

"Partially reduced annuity" means the recurring payments under CSRS to a retiree who has elected less than the maximum allowable reduction in annuity to provide a current spouse annuity or a former spouse annuity.

"Qualifying court order" means a court order that meets the qualifications of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity.

"Self-only annuity" means the recurring unreduced payments under CSRS to a retiree with no survivor annuity to anyone.

"Time of retirement" means the date when a retired employee's or Member's annuity entitlement commences.

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under CSRS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a partially reduced annuity, or a fully reduced annuity to provide a former spouse annuity, in accordance with § 831.605(b) or § 831.607; or

(2) The employee or Member elects a self-only annuity, a partially reduced annuity or a fully reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 831.608.

(b) Qualifying court orders that award former spouse annuities prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.614.

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance with § 831.607 or spousal consent is waived in accordance with § 831.608.

(c) An election under paragraphs (a) or (b) of this section is void if it—

(1) Conflicts with a qualifying court order; or

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent of the self-only annuity to which the employee or Member would be entitled.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse dies or remarries before age 55, unless—

(1) The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to

provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

§ 831.606 Election of insurable interest annuity.

(a) At the time of retirement, an employee or Member in good health, who is applying for a non-disability annuity, may elect an insurable interest annuity. Spousal consent is not required, but an election under this section does not exempt a married employee or Member from the provisions of § 831.604(a).

(b) An insurable interest annuity may be elected by an employee or Member electing a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c) An employee or Member may elect an insurable interest annuity to benefit a current or former spouse who, upon the retiree's death, will also be entitled to a current spouse annuity or a former spouse annuity.

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement and must submit evidence to demonstrate that he or she is in good health. OPM may also require a medical examination to demonstrate that the employee or Member is in good health.

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) A blood or adopted relative closer than first cousins;

(iii) A former spouse;

(iv) A person to whom the employee or Member is engaged to be married;

(v) A person with whom the employee or Member is living in a relationship which would constitute a common-law marriage in jurisdictions recognizing common-law marriages.

(2) When an insurable interest in not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(3) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

(f) After receipt of all required evidence to support an election of an insurable interest annuity, OPM will notify the employee or Member of initial monthly annuity rates with and without the election of an insurable interest annuity and the initial rate payable to the named beneficiary. No election of an insurable interest annuity is effective unless the employee or Member confirms the election in writing, dies, or becomes incompetent no later than 60 days after the date of the notice described in this paragraph.

(g) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(h) Except as provided in § 831.625(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(i) Upon the death of the current spouse, a retiree whose annuity is reduced to provide both a current spouse annuity and an insurable interest benefit for a former spouse is not permitted to convert the insurable interest annuity to a reduced annuity to provide a former spouse annuity.

(j) An employee or Member may name only one natural person as the named beneficiary of an insurable interest annuity. OPM will not accept the designation of contingent beneficiaries and such a designation is void.

§ 831.607 Election of a self-only annuity or partially reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a partially reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with § 831.608.

(b) Evidence of spousal consent or a request for waiver of spousal consent must be filed on a form prescribed by OPM.

(c) The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

§ 831.608 Waiver of spousal consent requirement.

(a) The spousal consent requirement will be waived upon a showing that the spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial determination that the spouse's whereabouts cannot be determined; or

(2) (i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the current spouse and stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as tax returns filed separately or newspaper stories about the spouse's disappearance.

(b) The spousal consent requirement will be waived based on exceptional circumstances if—

(1) The employee or Member is considered unmarried at the time of retirement based on § 831.610; or

(2) The employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

§ 831.609 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or

justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

§ 831.610 Marital status at time of retirement.

An employee or Member is unmarried at the time of retirement for all purposes under this subpart only if the employee or Member was unmarried on the date that the annuity begins to accrue.

§ 831.611 Changes of election after final adjudication.

Except as provided in section 8339 (j) or (k) of title 5, United States Code or § 831.621 or § 831.623, an employee or Member may not revoke or change the election or name another survivor, later than 30 days after the date of the first regular monthly payment.

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b) An election under paragraph (a) of this section will not be permitted—

(1) If it conflicts with a qualifying court order; or

(2) If it would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity; or

(3) In the case of a married retiree, if the current spouse does not consent to the election on the form described in § 831.607(c) and spousal consent is not waived by OPM in accordance with § 831.608; or

(4) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.604 (a)(1) or (a)(2).

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(d) The annuity reduction under this section terminates under the conditions stated in § 831.605(d).

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a post-retirement marriage, to provide a current spouse annuity.

(3) The reduction under paragraphs (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) In cases involving retirees who retired on or after May 7, 1985:

(1) Except as provided in paragraph (b)(3) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) Except as provided in paragraph (b)(3) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(i) The retiree was awarded a fully reduced annuity under § 831.604 at the time of retirement; or

(ii) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.608; or

(iii) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election.

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective if it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity.

(4) A retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(5) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

§ 831.614 Division of a survivor annuity.

(a) Except as provided in § 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

(b) By using the elections available under this subpart or to comply with a court order under Subpart Q, a survivor annuity may be divided into a combination of former spouse annuities and a current spouse annuity so long as the aggregate total of current and former spouse annuities does not exceed the maximum limitation in paragraph (a) of this section.

(c) Upon termination of former spouse annuity payments because of death or remarriage of the former spouse, or by operation of a court order, the current spouse will be entitled to a current spouse annuity or an increased current spouse annuity if—

(1) The employee or Member died while employed in a position covered under CSRS; or

(2) The current spouse was married to the employee or Member continuously from the time of retirement and did not consent to an election not to provide a current spouse annuity; or

(3) The current spouse married a retiree after retirement and the retiree elected, under § 831.613, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

§ 831.615 Child's annuity during school attendance.

For a child to be eligible for continuation of annuity beyond age 18 because of student status, the child, in addition to meeting all other requirements applicable to a child survivor who has not attained age 18,

must present a certificate on a form prescribed by OPM from the educational or training institution that certifies that the child is regularly pursuing a full-time day or evening course of resident study or training. For this purpose, a full-time course of resident study or training means a day or evening noncorrespondence course that contemplates school attendance at the rate of at least 36 weeks per academic year with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

§ 831.616 Proof of dependency.

(a) To be eligible for survivor annuity benefits, a child must have been dependent on the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

(b) A child is considered to have been dependent on the deceased employee, Member, or retiree if he or she is—

(1) A legitimate child; or

(2) An adopted child; or

(3) A child who lived with, and for whom a petition of adoption was filed by, the employee, Member, or retiree, and who was adopted by the surviving spouse of the employee, Member, or retiree after the employee's, Member's, or retiree's death; or

(4) A stepchild or recognized natural child who lived with the employee, Member, or retiree in a regular parent-child relationship at the time of the employee's, Member's, or retiree's death; or

(5) A recognized natural child for whom a judicial determination of support was obtained; or

(6) A recognized natural child to whose support the employee, Member, or retiree made regular and substantial contributions.

(c) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a natural child who did not live with the employee, Member, or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs; and

(2) Proof of inclusion of the child as a dependent on the decedent's income tax returns for the years immediately before the employee's, Member's, or retiree's death; and

(3) Cancelled checks, money orders, or receipts for periodic payments received from the employee, Member, or retiree for or on behalf of the child; and

(4) Evidence of goods or services that show regular contributions of considerable value; and

(5) Proof of coverage of the child as a family member under the employee's Member's, or retiree's Federal Employees Health Benefits enrollment; and

(6) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(d) Survivor benefits may be denied—

(1) If evidence shows that the deceased employee, Member, or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(2) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's, Member's, or retiree's recognition and support of the child.

§ 831.617 Rates of child annuities.

(a) (1) Subject to paragraphs (a)(2) and (a)(3) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(1) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member or retiree.

(2) When paragraph (a)(1) of this section applies because of the existence of a current spouse:

(i) Paragraph (a)(1) of this section applies even if the current spouse is not entitled to a current spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the current spouse.

(3) When paragraph (a)(1) of this section applies only because of the existence of a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member, or retiree:

(i) Paragraph (a)(1) of this section applies even if the former spouse is not entitled to a former spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the former spouse.

(iii) Paragraph (a)(1) of this section does not apply to any child of the former employee or Member if the former spouse has no offspring entitled to an annuity.

(b) The rate of annuity payable to a child survivor is computed under section 8341(e)(1) (i) through (iii) of title 5, United States Code, with adjustment in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child (who is entitled to a child's annuity) of the former employee or Member.

(c) On the death of the current spouse or the former spouse or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the spouse, former spouse, or child had not survived the former employee or Member.

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, can qualify for a current spouse annuity only if—

(1) The surviving spouse and the employee, Member, or retiree had been married for at least 9 months, as explained in paragraph (b) of this section; or

(2) A child was born of the marriage, as explained in paragraph (c) of this section; or

(3) The death of the employee, Member, or retiree was accidental as explained in paragraph (d) of this section.

(b) For satisfying the 9-month marriage requirement of paragraph (a)(1) of this section, the aggregate time of all marriages between the spouse applying for a current spouse annuity and the employee, Member, or retiree is included.

(c) For satisfying the child-born-of-the-marriage requirement of paragraph (a)(2) of this section, any child, including a posthumous child, born to the spouse and the employee, Member, or retiree is included. This includes a child born out of wedlock or of a prior marriage between the same parties.

(d)(1) A death is accidental if it results from homicide or from bodily injuries incurred solely through violent, external, and accidental means.

(i) Caused wholly or partially, directly or indirectly, by disease or bodily or mental infirmity, or by medical or surgical treatment or diagnosis thereof; or

(ii) Caused wholly or partially, directly, or indirectly, by ptomaine, by bacterial infection, except only septic infection of and through a visible wound

sustained solely through violent, external, and accidental means; or

(iii) Caused wholly or partially, directly or indirectly, by hernia, no matter how or when sustained; or

(iv) Caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane.

(2) A State judicial or administrative adjudication of the cause of death for criminal or insurance purposes is conclusive evidence of whether a death is accidental.

(3) A death certificate showing the cause of death as accident or homicide is *prima facie* evidence that the death was accidental.

§ 831.619 Time for filing applications for death benefits.

(a) A survivor of a deceased employee, Member, or retiree, may file an application for annuity, personally or through a representative, at any time within 30 years after the death of the employee, Member, or retiree.

(b) A former spouse claimng eligibility for an annuity based on § 831.622 may file an application at any time between November 8, 1984 and May 9, 1987. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.622 if the former spouse is eligible on that date.

§ 831.620 Commending and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622.

(b) A survivor annuity terminates at the end of the month preceding death or any other terminating event.

(c) A current spouse annuity terminated for reasons other than death may be restored under conditions defined in sections 8341(e)(2) and 8341(g) of title 5, United States Code.

(d) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. An annuity does not accrue for the 31st day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st day. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity to provide a former spouse annuity.

(b) The election should be made by letter addressed to OPM. The election must—

(1) Be in writing; and

(2) Agree to pay any deposit due under paragraph (d) of this section; and

(3) Be signed by the retiree; and

(4) Be filed with OPM before May 9, 1986.

(c)(1) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity under this seciton to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit if a fully reduced annuity is elected under this section.

(2) A retiree who elects a fully reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity must deposit an amount equal to the differences between the rate of annuity actually paid to the retiree and the amount of annuity which would have been paid had a fully reduced annuity been paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(3) A retiree who elects a fully reduced annuity under this section, and is not covered under paragraphs (c)(1) or (c)(2) of this section, must deposit an amount equal to the difference between the self-only annuity and a fully reduced annuity since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the former spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (e)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of the notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (e)(2) of this section.

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a) The former spouse of a retiree who retired before May 7, 1985, is entitled, after the death of the retiree, to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse meets all of the following requirements:

(1) The former spouse's marriage to the retiree was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former

spouse and the retiree ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissovled.

(2) The former spouse was married to the retiree for at least 10 years of the retiree's creditable civilian service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C.

(3) The former spouse is not receiving any other employer-provided retirement or survivor annuity.

(i) Employer-provided retirement or survivor annuity means recurring retirement or survivor payments (other than benefits under title II of the Social Security Act or under section 8345(j) of title 5, United States Code) that are made by, on behalf of, or under the terms of a contract with an employer and are based on past service of the former employee or Member or the former spouse.

(ii) Employer-provided retirement or survivor annuity to which the former spouse is entitled but not actually receiving because of a failure to apply for the benefit or because the benefits were waived (and the waiver was accepted by the retirement or survivor benefit plan) are not considered employer-provided benefits for purposes of this section.

(4) The former spouse has not remarried before reaching age 55.

(5) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(6) The former spouse is at least 50 years old when filing the application.

(b) (1) Application must be filed on the form prescribed for that purpose by OPM. The application form will require the former spouse to certify under the penalty provided by section 1001 of title 18, United States Code, that he or she meets the requirements listed in paragraph (a) of this section.

(2) In addition to the application form required in paragraph (b)(1) of this section, the former spouse must submit proof of his or her age and the date when the marriage to the retiree commenced, and a certified copy of the divorce decree terminating the marriage to the retiree.

(3) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application and at all times while a former spouse annuity, under this section, is being paid to that former spouse. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she ceases to meet any of the qualifications in paragraph (a) of this section.

(c) Survivor annuities payable under this section commence on the later of the day after the date of death of the retiree or the first day of the second month after the application is filed under § 831.619(b).

(d) Cost-of-living adjustments under section 8340 of title 5, United States Code, are applicable to annuities payable under this section.

§ 831.623 Second chance elections to provide survivor benefits.

(a) A married retiree who retired before May 7, 1985, and is not currently receiving a fully or partially reduced annuity to provide a current spouse annuity may elect a fully or partially reduced annuity to provide a current spouse annuity for a spouse acquired after retirement if the following conditions are met:

(1) (i) The retiree was married at the time of retirement and did not elect a survivor annuity at that time; or

(ii) The retiree failed to elect a fully or partially reduced annuity within 1 year after a post-retirement marriage that occurred before November 8, 1984, and the retiree attempted to elect a fully or partially reduced annuity after the time limit expired and that request was disallowed as untimely.

(2) The retiree applies for a fully or partially reduced annuity under this section before November 9, 1985.

(3) The retiree agrees to pay the amount due under paragraph (d) of this section.

(b) Applications must be filed on the form prescribed by OPM, except filing the form is excused when the retiree dies before filing the required form if:

(1) The retiree made a written request, after November 8, 1984, to elect a fully or partially reduced annuity under this section, and

(2) The retiree was denied the opportunity to file the required form because the retiree, without fault, did not receive the form in sufficient time for the retiree to be reasonably expected to complete the form before death.

(c) (1) In response to a retiree's inquiry about providing a current spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the current spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully or partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential current spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (c)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of this notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (c)(2) of this section.

(d) The retiree must state on the application form whether the application is made under paragraph (a)(1)(i) of this section or paragraph (a)(1)(ii) of this section. If the application is made under paragraph (a)(1)(ii) of this section, the retiree must prove that he or she had attempted to elect a fully reduced annuity and that OPM rejected that application because it was filed too late. The proof must consist of a copy of OPM's letter rejecting the previous election as untimely filed or an affidavit swearing or affirming that he or she made an untimely application which OPM rejected. The affidavit is sufficient documentation to provide proof of the retiree's attempt to elect a reduced annuity, unless the record contains convincing evidence to rebut the certification.

(e) A retiree who elects to provide a current spouse annuity under this section must agree to pay a deposit equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if a fully reduced annuity were being paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.612, 831.613, 831.621, or 831.623 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

(b) If a retiree fails to make a deposit required under § 831.621 or § 831.623 within 60 days after the date of the notice required by § 831.621(e) or § 831.623(c), the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(c) If a retiree fails to make a deposit required by §§ 831.612 or 831.613 within 2 years after the date of the post-retirement marriage or divorce, the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(d) If a retiree dies before a deposit required under §§ 831.612, 831.613, 831.621, or 831.623 is fully made, the deposit will be collected from the survivor annuity (for which the election required the deposit) before any payments of the survivor annuity are made.

§ 831.625 Remarriage.

(a) A current spouse annuity based on the death of a retiree who retired before May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS before May 7, 1985, terminates on the last day of the month before the current spouse remarries before attaining age 60.

(b) A current spouse annuity or a former spouse annuity based on the death of a retiree who retired on or after May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS on or after May 7, 1985, terminates on the last day of the month before the recipient remarries before attaining age 55.

(c) If a current spouse annuity is terminated because of remarriage of the recipient, the annuity is reinstated on the day of the termination of the remarriage by death, annulment, or divorce if—

(1) The surviving spouse elects to receive this annuity instead of a survivor benefit to which he or she may be entitled, under CSRS or another retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is repaid (in a single payment or by withholding payment of the annuity until the amount of the lump sum has accrued).

(d) If present or future entitlement to a former spouse annuity is terminated because of remarriage of the recipient or potential recipient, the entitlement is permanently extinguished. An annulment of the remarriage does not reinstate the entitlement.

§ 831.626 Elections by previously retired retiree with new title to an annuity.

(a) A reemployed retiree (after 5 or more years of reemployed annuitant service) who elects a redetermined annuity under section 8344 of title 5, United States Code, is subject to §§ 831.604 through 611 at the time of the redetermination.

(b) A disability retiree who recovers from disability or is restored to earning capacity is subject to §§ 831.604 through 611 at the time that he or she retires under section 8336 or 8338 of title 5, United States Code.

(c) A retiree who is dropped from the retirement rolls and subseqently gains a new annuity right by fulfilling the requirements of section 8333(b) of title 5, United States Code, is subject to §§ 831.604 through 611 when he or she retires under that new annuity right.

§ 831.627 Annual notice required by Pub. L. 95-317.

At least once every 12 consecutive months, OPM will send a notice to all retirees to inform them about the survivor annuity elections available to them, under sections 8339(j) and 8339(k)(2) of title 5, United States Code, in the event of post-retirement marriages.

Subpart J—[Removed]

2. By removing Subpart J and reserving it for future use.

3. By revising Subpart Q to read as follows:

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

Sec.

Authority: 5 U.S.C. 8347

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

§ 831.1701 Purpose.

This subpart regulates the Office of Personnel Management's adjudication of claims arising out of State court orders that affect civil service retirement benefits. The Office of Personnel Management (OPM) must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of a former employee's or Member's retirement benefits or a survivor annuity to a former spouse. This subpart prescribes the procedures to be followed by—

(a) A former spouse when applying for benefits based on a court order under sections 8345(j) or 8341(h) of title 5, United States Code; and

(b) The Associate Director in honoring court orders and in making payment to the former spouse.

§ 831.1702 Relation to other regulations.

(a) Part 581 of this Chapter contains information about garnishment of Government payments including salaries and civil service retirement benefits.

(b) Parts 294 and 297 of this chapter and § 831.106 contain information about disclosure of information from OPM records.

(c) Subpart F of this part contains information about entitlement to survivor annuities.

(d) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(e) Parts 870, 871, 872, and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(f) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(g) Section 831.109 contains information about the administrative review rights available to a person who has been adversely affected by an OPM action under this subpart.

§ 831.1703 Definitions.

In this subpart:

"Associate Director" means the Associate Director for Compensation in the OPM or an OPM employee officially authorized to act on his or her behalf.

"Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Employee retirement benefits" means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or lump-sum payments made pursuant to section 8342 (c) through (f) of title 5, United States Code.

"Former spouse" means (1) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order; or (2) in connection with a court order awarding a former spouse annuity, a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a former spouse annuity as defined in § 831.603.

"Gross annuity" means the amount of a self-only annuity less only applicable survivor reduction, but before any other deduction.

"Member" means a Member of Congress.

"Net annuity" means the amount of annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums pursuant to section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this title, (3) deducted for life insurance premiums pursuant to section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, or (5) properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which he or she was entitled.

"Qualifying court order" means a court order that meets the requirements of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in the subpart, does not include a current spouse, former spouse, child or person with an insurable interest.

"Self-only annuity" means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

§ 831.1704 Qualifying court orders.

(a) A former spouse is entitled to a portion of an employee's retirement benefits only to the extent that the divison of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variables whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For purposes of payments from employee retirement benefits, OPM will review court orders as a whole to determine whether the language of the order shows an intent by the court that the former spouse should receive a portion of the employee's retirement benefits directly from the United States.

(i) Orders that direct or imply that OPM is to make payment of a portion of employee retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid in accordance with § 831.1709.

(ii) Orders that specifically direct the retiree to pay a portion of employee retirement benefits to a former spouse (and do not contain language to show the court intends payment from the Civil Service Retirement System) will be honored unless the retiree objects to direct payment by OPM within the 30-day notice period prescribed in § 831.1708, but will not be honored even if the retiree raises only a general objection to payment by OPM within that 30-day notice period.

(2) For purposes of awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2) The employee or Member on whose service the former spouse annuity is based retired under CSRS before May 7, 1985.

(e) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

§ 831.1705 Applications by former spouse.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting benefits under CSRS; and

(2) A statement that the court order has not been amended, superseded, or set aside; and

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, claim number, date of birth, and social security number, if available; and

(4) The mailing address of the former spouse.

(c) When payments are subject to termination upon remarriage, no payment shall be made until the former spouse submits to the Associate Director a statement on the form prescribed by OPM certifying—

(1) That a remarriage has not occurred; and

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 831.1706 Amounts payable.

(a) Money held by an executive agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

(1) Separation from a covered position in the Federal service; and

(2) Application for payment of the money by the former employee or Member.

(b) Waivers of employee or Member annuity payments under the terms of Section 8345(d) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked before the expiration of the 30-day notice period provided by § 831.1708.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Member annuities, the net annuity.

(2) In cases involving lump-sum payments (refunds), the amount of the lump-sum credit.

(3) In cases involving former spouse annuities, the amount provided in § 831.614.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM receives written notice of the court order together with the additional information required by § 831.1705. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

(3) A court order will not be honored to the extent is is inconsistent with any joint designation or waiver previously executed under § 831.607 with respect to the former spouse involved.

§ 831.1707 Preliminary review.

(a)(1) Upon receipt of a court order and documentation required by § 831.1705 affecting the future civil service retirement benefits of an employee or Member who is living and has not applied for benefits under CSRS, the Associate Director will notify the former spouse that OPM has received the court order and documentation. The court order and documentation will be filed for further review when the employee or Member dies or funds become available under § 831.1706.

(2) When OPM has received a court order and documentation required by § 831.1705 affecting an employee or Member who retires, dies, or applies for a lump-sum benefit, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(3) Upon receipt of a court order and necessary documentation required by § 831.1705 affecting employee retirement benefits that are available under § 831.1706 or awarding a former spouse annuity to a former spouse of an employee who retired under CSRS or died, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(b) Upon preliminary determination that the court order is qualifying, the Associate Director will give the notifications required by § 831.1708.

(c) Upon preliminary determination that the court order is not qualifying, the former spouse will be notified of the basis for the determination and the right to reconsideration under § 831.109.

§ 831.1708 Notifications.

(a) In a case in which the court order affects employee retirement benefits:

(1) The Associate Director will notify the employee, Member, or retiree that a court order has been received that appears to require that a portion of his or her retirement benefits be paid to a former spouse and provide the employee, Member, or retiree with a copy of the court order. The notice will inform the former employee or Member—

(i) That OPM intends to honor the court order; and

(ii) Of the effect that the court order will have on the former employee or Member's retirement benefits; and

(iii) That no payments will be made to the former spouse for a period of 30 days from the notice date to enable the former employee or Member to contest the court order.

(2) The Associate Director will notify the former spouse—

(i) That OPM intends to honor the court order; and

(ii) Of the amount that the former spouse is entitled to receive under the court order, and in cases that award a portion of the benefits on a percentage basis or by a formula, how the amount was computed; and

(iii) That payment is being delayed for a period of 30 days to give the former employee or Member an opportunity to contest the court order.

(b) In a case in which the court order awards a former spouse annuity—

(1) The Associate Director will notify the retiree, if living, or, if the employee, Member, or retiree is dead, his or her surviving spouse, or the person entitled to the lump-sum death benefit under section 8342 of title 5, United States Code, if possible, that a court order has been received that requires the payment of a former spouse annuity. The notice will include a copy of the court order. The notice will state—

(i) That OPM intends to honor the court order; and

(ii) The effect it will have on the potential retirement benefit of the person receiving the notice; and

(iii) That any objection to honoring the court order must be filed within 30 days from the notice date.

(2) The former spouse will be notified—

(i) That OPM intends to honor the court order; and

(ii) Of the amount of survivor annuity that he or she will be entitled to receive and how the amount was computed; and

(iii) That anyone adversely affected has a period of 30 days in which to contest the court order.

(c) In a case in which the court order affects employee retirement benefits and awards a former spouse annuity all of the notices under paragraphs (a) and (b) of this section will be provided.

§ 831.1709 Decisions.

(a)(1) When the individual does not respond within the 30-day notice period provided for by § 831.1708, the court order will be honored in accordance with the notification.

(2) When a timely response to the notification is received, the Associate Director will consider the response. The former spouse's claim will be denied and the former spouse will be notified of the right to request reconsideration under § 831.109 whenever is is shown that—

(i) The court order is not a qualifying court order; or

(ii) The court order is inconsistent with a contemporaneous or subsequent court order.

(b) If any person who may lose benefits if OPM honors the court order objects to payment based on the validity of the court order and the record contains reasonable support for the objection, he or she will be granted 30 days to initiate legal action to determine the validity of the objection. If funds are available under § 831.1706 and evidence is submitted that legal action had been started before the 30 days have expired, money will continue to be withheld, but no payment will be made to the former spouse pending judicial determination of the validity of the court order.

§ 831.1710 Lump-sum credits.

Payment of the lump-sum credit to a former employee or Member will be subject to court orders in accordance with § 831.2009.

§ 831.1711 Effective dates.

(a)(1) The provisions of this subpart apply to any employee retirement

benefits regardless of the date of issuance of the court order or the date when the employee or Member retires.

(2) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefit. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's entitlement. These changes will be prospective only.

(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the beginning of the month after receipt of a qualifying court order and the documentation required by § 831.1705, and terminate no later than the last day of the month before the death of the retiree.

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to an individual who, on or after May 7, 1985, is married to an employee or Member who, on or after May 7, 1985, retires under CSRS or dies during employment covered by CSRS.

(2) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(i) The day after the employee, Member, or retiree dies; or

(ii) The first day of the second month beginning after OPM receives the court order, together with such additional information required by § 831.1705, whichever is later. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

§ 831.1712 Death of the former spouse.

(a) When the former spouse predeceases the retiree, and further employee retirement benefits that would have been subject to the court order are payable, the Associate Director will seek guidance from the court upon whose order the award to the former spouse was based about the proper disposition of the former spouse's share.

(b) The request for guidance from the court will—

(1) Explain the circumstances that led to the request; and

(2) Inform the court of limitations on payments under § 831.1713 applicable to the case; and

(3) Notify the court of the effect of its failure to provide guidance.

(c) While OPM is awaiting guidance from the court, the retiree will be paid only his or her share of the annuity. The former spouse's share may be disbursed only in accordance with paragraphs (d) and (e) of this section.

(d)(1) If no response (or an inadequate response) is received from the court within 60 days from the date of receipt of the request for guidance, the full annuity will be restored to the retiree effective on the date of the first annuity check due after the death of the former spouse.

(2) Disbursement will be made only after the completion of any reconsideration and appeals procedures required by § 831.109.

(e) Payment of all or part of the former spouse's share may be made only to one of the following—

(1) The retiree; or

(2) A child or children of the retiree (or a court-appointed representative for the benefit of such children); or

(3) The court (or other State, county or municipal agency which serves as a collecting and disbursing agent for the court).

(f) The request for guidance required by this section will be sent by certified mail, return receipt requested, addressed to the clerk of the court. Copies of the request for guidance will be sent by certified mail, return receipt requested, to the retiree and to the representative of the estate of the former spouse (if an address is available).

§ 831.1713 Limitations.

(a) Employee retirement benefits are subject to apportionment by court order only while the former employee or Member is living. Payment of apportioned amounts will be made only to the former spouse and/or the children of the former employee or Member. Payment will not be made to any of the following:

(1) The heirs or legatees of the former spouse; or

(2) The creditors of the former employee or Member, or the former spouse; or

(3) Other assignees of the former employee or Member, or the former spouse.

(b) The amount of payment under this subpart will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.

(c) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence of a special schedule of accrual or payment of amounts due the former spouse.

(d) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse will also resume.

(e) Since the former spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 831.1714 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the **Federal Register** a notice of the guidelines it uses in interpreting court orders. Upon publication of the notice in the **Federal Register** of such guidelines, they will become an appendix to this subpart.

§ 831.1715 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to court order if such payment is made in accordance with the provisions of this subpart.

§ 831.1716 Receipt of multiple court orders.

In the event that OPM receives two or more qualifying court orders—

(a) When there are two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under §§ 831.614 and 831.1706.

(b) Where there are two or more court orders relating to the same former spouse, the one issued last will be honored.

§ 831.1717 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases unless the court directs otherwise.

§ 831.1718 Settlements.

The former spouse may request that an amount be withheld from the retirement benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation of OPM for the period in which the request is in effect.

Appendix A to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

UNITED STATES OF AMERICA

Office of Personnel Management

Compensation Group

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquires and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 831.1703.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing formula in a decree is a month.

1. This policy is based on the provision of section 8332 of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits became payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement and Disability Fund.

V. Orders Directing the Annuitant To Make Payment

A. Orders which specifically direct the retiree to pay a portion of retirement benefits to a former spouse will be honored unless the retiree objects to direct payment by the Office of Personal Management, but will not be honored even if the retiree raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Management is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid.

4. By revising subpart T to read as follows:

Subpart T—Payment of Lump Sums

Sec.

Authority: 5 U.S.C. 8347.

Subpart T—Payment of Lump Sums

§ 831.2001 Definitions.

"Court order or decree" means the order or decree of any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands or any Indian court, as defined section 8331(24) of title 5, United States Code.

"Current spouse" means a person who is married to the employee or Member at the time the application for refund is filed.

"Former spouse" means a living person who was married for at least 9 months to an employee or Member who had performed at least 18 months of creditable service in a position covered by the retirement system.

"Retirement system" means the civil service retirement system as described in subchapter III of chapter 83 of title 5, United States Code.

§ 831.2002 Eligibility for lump-sum payment upon filing an Application for Refund of Retirement Deductions (SF 2802).

Except as provided in §§ 831.2007 through 2009 or in section 3716 of title 31, United States Code, on administrative offset for government claims, a former employee or Member who has been separated from a covered position for at least 31 days at the time of filing an application for refund and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a refund for the total lump-sum credit to his or her credit in the Retirement Fund.

§ 831.2003 Eligibility for lump-sum payment upon death or retirement.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of a former employee, Member, annuitant, or survivor annuitant, the total lump-sum credit to the former employee's or Member's credit in the Retirement Fund is payable, except as provided in section 3716 of title 31, United States Code, on administrative offset for government claims, to the person(s) entitled in the normal order of precedence described in section 8342(c) of title 5, United States Code.

(b) If an annuity is payable, the former employee, Member or the person entitled in the order of precedence described in section 8342(c) of title 5, United States Code, may be paid, except as provided in section 3716 of title 31, United States Code, administrative offset for government claims, lump-sum payment of—

(1) Retirement deductions withheld from the employee's or Member's pay after he or she became eligible for the maximum annuity, if the employee or Member does not elect to treat those deductions as voluntary contributions toward the purchase of an additional annuity; and

(2) Retirement deductions withheld from the employee's or Member's pay during his or her final period of service if the employee or Member was not subject to the retirement system for at least one of the last 2 years before final separation from service and if the service covered by the deductions is not used for title to annuity; and

(3) Partial redeposits of refunds previously paid; and

(4) Partial deposits for civilian service performed on and after October 1, 1982; and

(5) Partial deposits for post-1956 military service; and

(6) Annuity accrued and unpaid.

(c) A former employee, Member, or survivor who is eligible for an annuity may not be paid a lump-sum payment of—

(1) Partial or completed deposits for nondeduction civilian service performed before October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(2) Completed deposits for nondeduction civilian service performed on and after October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(3) Completed deposits for post-1956 military services, unless the service covered by the deposit is not creditable under the retirement system.

Payments of the partial or completed deposits mentioned in this paragraph are subject to 31 U.S.C. 3716 (administrative offset for government claims).

§ 831.2004 Amount of lump-sums.

If applicable, the amount of a refund will include interest computed as described in § 831.105(b).

§ 831.2005 Designation of beneficiary for lump-sum payment.

(a) The Designation of Beneficiary must be in writing, signed, and witnessed,and received in OPM before the death of the designator.

(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this section, has any force or effect.

(c) A witness to a Designation of Beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted.

§ 831.2006 Designation of agent by next of kin.

When a deceased employee, Member, or annuitant has not named a beneficiary and one of the next of kin entitled makes a claim for lump-sum benefit, other next of kin entitled to share in the lump-sum benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

(a) Payment of the lump-sum credit based on a refund application filed on or after May 7, 1985, may be made only if any current spouse and any former spouse (from whom the employee or Member was divorced after May 6, 1985) are notified of the former employee's or Member's application.

(b) Notification of the former spouse will not be required if the marriage to the former spouse was of less than 9 months duration or if the employee has not completed a total of 18 months of creditable service covered under the retirement system.

(c) Proof of notification will consist of a signed and witnessed statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions (SF 2802).

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) A signed postal return receipt as evidence that the notification was received at the address of the current or former spouse; or

(2) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the notification attempt was made and that the employee's or Member's purpose should have been clear to the current or former spouse.

(e) If a *former* spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement of a former spouse, the employee or Member may submit a certified copy of a court order or decree wherein the former spouse has relinquished all claim to the employee's or Member's annuity or which awards the annuity wholly to the employee or Member.

§ 831.2008 Waiver of spouse and/or former spouse notification requirement.

The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(a) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the former employee or Member and two other persons at least one of whom is not related to the former employee or Member attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse from whom the employee or Member was divorced after May 6, 1985 if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order or decree before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders or decrees—

(i) When there are two former spouses, the court orders or decrees will be honored in the order in which they were issued until the lump-sum has been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the lump-sum credit.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order or decree regular on its face, if such payment is made in accordance with this subpart.

[FR Doc. 85–11562 Filed 5–10–85; 8:45 am]

BILLING CODE 6325–01–M

Reader Aids

Federal Register

Vol. 50, No. 92

Monday, May 13, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

18445-18626.....1
18627-18848.....2
18849-18984.....3
18985-19160.....6
19161-19304.....7
19305-19516.....8
19517-19666.....9
19667-19896.....10
19897-20084.....13

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

The President

Executive Orders:
12348 (Revoked by EO 12512).....18453
12511.....18449
12512.....18453
12513.....18629

Proclamations:
5331.....18445
5332.....18447
5333.....18451
5334.....18627
5335.....19517

5 CFR

831.....20064

7 CFR

226.....19305
301.....19313
800.....18985
810.....18455
907.....19519
908.....18814, 19519
910.....18979, 19667
911.....18849
918.....19321
925.....18849
944.....18849
981.....19161
989.....18631
1032.....18459
1106.....18460

Proposed Rules:
52.....18865, 19183
319.....19158
911.....19535
1040.....18677
1124.....18495
1207.....19026
1423.....19026

8 CFR

238.....19322

9 CFR

51.....19162
78.....19163
92.....19323
145.....19897
147.....19897
166.....18632
307.....19990
310.....19900
317.....19903
318.....19903-19905
327.....19906
381.....19906

Proposed Rules:
92.....18865
327.....19029

10 CFR

2.....18852
50.....18852, 19323

Proposed Rules:
40.....19695
70.....19695
150.....19695

11 CFR

Proposed Rules:
110.....18678

12 CFR

7.....19324
268.....18768
535.....19325
584.....19329

Proposed Rules:
5.....19183
564.....19030, 19185
615.....19379

14 CFR

39.....18853-18857, 19332, 19333, 19667-19669, 19908
61.....19290
71.....18857, 18858, 18989, 19334, 19670, 19671, 19909
97.....19520

Proposed Rules:
Ch. I.....18869
Ch. III.....19280
23.....19108
39.....18870-18875, 19033
71.....18877, 19380, 19950, 19951
75.....19380
91.....19108, 19381

15 CFR

90.....18989
376.....18461
377.....19521, 19522
379.....18858
399.....18461, 18858
2007.....19671

16 CFR

13.....19334
239.....18462
444.....19335
455.....18471

Proposed Rules:
13.....19536, 19697
702.....18495
1032.....19699

17 CFR

4.....18858
12.....19910

140 18858
210 18990
229 18990
230 ..... 18990, 19010
239 ..... 18990, 19010
240 18990
249 18990
271 19339
276 19339

Proposed Rules:
12 19951
210 19035
231 19035
240 19196
241 19035
275 18500

18 CFR
141 19912
389 19912

20 CFR
260 19523
320 19523
404 19164
416 19164

21 CFR
5 19341
146 19524
179 18859
182 19164
184 19164
431 19917
436 19917
440 19917
442 19917
444 19917
446 19917
448 19917
449 19917
450 ..... 19675, 19917
452 19917
453 19917
455 19917
460 19917
520 ..... 19167, 19168
524 19168
536 19917
539 19917
540 19917
544 19917
546 19917
548 19917
555 19917
556 18471
558 ..... 18471, 18859, 18860, 19169, 19525

Proposed Rules:
74 19538
201 19382

22 CFR
1501 18860
1503 18634

Proposed Rules:
1502 18678
1504 18878

24 CFR
201 19341
203 ..... 19341, 19923, 19924
226 19924
232 18472
234 ..... 19341, 19924
235 18472
941 19927

Proposed Rules:
25 18680
200 18680
203 18680
205 18680
207 18680
213 18680
221 18680
227 18680
232 18680
234 18680
242 18680
244 18680

25 CFR

Proposed Rules:
31 19701

26 CFR
1 ..... 18473, 18861, 19343, 19344
5 18473
6a 19344
602 ..... 18473, 19344

Proposed Rules:
1 ..... 18884, 19383

27 CFR

Proposed Rules:
4 19384

28 CFR

Proposed Rules:
51 19122

29 CFR

Proposed Rules:
2620 19386

30 CFR
914 19929
918 19931

Proposed Rules:
701 19037
736 19037
740 19037
746 19037
750 19037
772 19037
913 18536
916 19953
931 19356
935 18885
943 19212
946 19357

Proposed Rules:
901 19390

31 CFR
103 18478
540 19890

Proposed Rules:
128 19702

32 CFR
1903 19154

Proposed Rules:
169 18886
169a 19703
199 18888
218 19538

33 CFR
100 ..... 19526, 19931
110 18635
117 ..... 18479, 18635, 19526, 19527, 19932
165 ..... 18635, 19528, 19933
183 18636

Proposed Rules:
100 ..... 18688–18692, 19954
117 19955

34 CFR
690 ..... 19296, 19302

Proposed Rules:
76 19146
581 19146

35 CFR
101 19676
107 19676
111 19676
113 19676
123 19676

Proposed Rules:
256 19539

36 CFR
7 19880
13 19880

Proposed Rules:
7 19545–19547
8 19548

37 CFR
308 18480

38 CFR
21 19933

40 CFR
52 ..... 18482–18484, 19529, 19530, 19682
60 ..... 18636, 19022
81 ..... 18485, 19530
180 ..... 18485, 19358, 19531
439 18486
712 18861
716 18861

Proposed Rules:
12 19136
52 ..... 18537, 18693, 18889, 19038, 19548
60 19725
65 19550
81 ..... 18890, 19038
261 ..... 18622, 19550, 19956
266 19956
403 19664
721 19039
799 19213

42 CFR
400 19684
405 19684
447 19684

Proposed Rules:
403 20048

43 CFR

Public Land Orders:
6602 18487
6303 19690

Proposed Rules:
3040 18614
3100 18614
3130 18614
3200 18614

44 CFR
55 18487
56 18487
57 18487
64 19690–19692
67 ..... 19022, 19024

Proposed Rules:
5 19551
6 19551
67 ..... 19039, 19044
205 19870

45 CFR
301 19608
302 19608
303 19608
304 19608
305 19608
307 19608

Proposed Rules:
30 18694
201 18704

46 CFR
45 19532
276 19170

Proposed Rules:
516 19727

47 CFR
0 18487
1 ..... 18637, 19359
2 18662
63 18637
69 19025
73 ..... 18818, 19936
76 18637
78 18637
83 18489
97 ..... 18662, 18665, 19361

Proposed Rules:
Ch. I 18537, 19050
0 19392
1 ..... 18705, 18706
2 19956
15 19551
25 19413
31 19421
43 ..... 18705, 18706
73 ..... 19392, 19956
74 19555
76 18538
90 19956

48 CFR
232 18666
252 18666
1301 19361
1302 19361
1304 19361
1305 19361
1306 19361
1314 19361
1315 19361
1319 19361
1331 19361
1337 19361
1353 19361

Proposed Rules:
Ch. 5 18708
Ch. 44 18802

49 CFR
23 18493
173 18667

175.....18667
Proposed Rules:
Ch. V.....18708
541.....19728
567.....19728
571.....19744, 19961–19986
1039.....19558
1175.....19424
1241.....18539, 18891

50 CFR

17.....19370–19374
20.....19178
611.....19946
671.....19948
672.....19946
675.....19946
661.....18672
663.....18668
Proposed Rules:
17.....18893, 18968, 19761
20.....19268
216.....18713
630.....18717
642.....19558
669.....19559
682.....18983, 19764

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 3, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

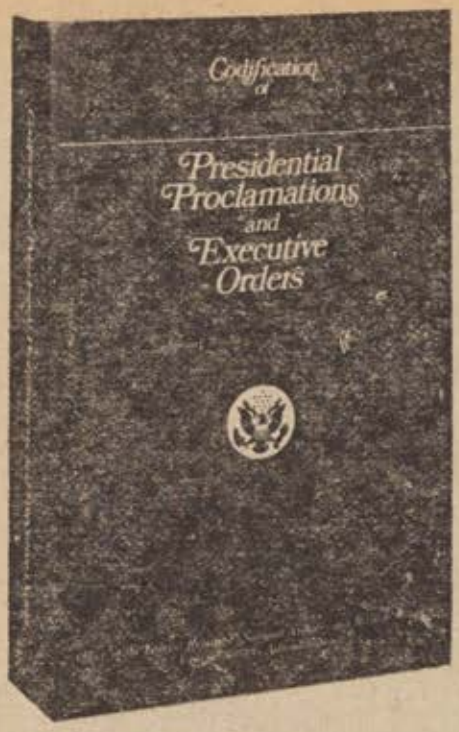
Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
300–399	8.00	Jan. 1, 1985
400–699	12.00	Jan. 1, 1985
700–899	14.00	Jan. 1, 1985
900–999	14.00	Jan. 1, 1985
1000–1059	12.00	Jan. 1, 1985
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
*1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
*500–599	16.00	Apr. 1, 1985
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
*500–599	8.00	[1] Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	5.50	July 1, 1984
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

* 1 No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

UPDATED EDITION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1981, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1981 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge

VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $10.00 per copy. Stock No. 022-002-00097-0.*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE

(Rev. 4-1-85)