5-30-85
Vol. 50 No. 104
Pages 22967-23104

federal register

Thursday
May 30, 1985

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Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

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Federal Deposit Insurance Corporation

Crop Insurance
Federal Crop Insurance Corporation

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

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Presidential Documents

Title 3—

The President

Proclamation 5347 of May 28, 1985

Minority Enterprise Development Week, 1985

By the President of the United States of America

A Proclamation

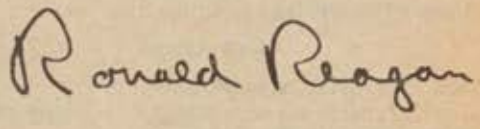
The greatest strength of our economic system is the opportunity it affords to every American to prosper according to his or her own talents and efforts. No other nation in history has so boldly set individual opportunity as its leading goal or come so close to achieving it.

This emphasis on opportunity works to the benefit of all Americans, but it especially helps Americans who are members of minority groups. In the past, these minority entrepreneurs were subject to laws and regulations that prevented them from competing freely in the marketplace. But those laws contradicted the spirit of freedom that animates our democracy, and today they are only an historical memory, a reminder of the need to be forever vigilant in defense of individual freedom.

Minority enterprises today form a significant proportion of all the Nation's businesses, and their number is continuing to grow. The talents, insights, and hard work of minority Americans are adding to our Nation's technological prowess, providing us with new solutions for important problems and creating jobs in many industries, some of which did not even exist only a few years ago. This is the genius of economic freedom, and we should do everything in our power to preserve this freedom and expand it so that opportunity for all will continue to be the defining characteristic of our society.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 6 through October 12, 1985, as Minority Enterprise Development Week, and I call upon all Americans to join together with minority business enterprises across the country in appropriate observances.

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



[FR Doc. 85-13106
Filed 5-28-85; 4:20 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 415, 417, 418, 419, 427, 429, and 430

[Doc. No. 2121S]

Barley, Forage Production, Oat, Rye, Sugar Beet, Sugarcane, and Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Barley, Forage Production, Oat, Rye, Sugar Beet, Sugarcane, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 415, 427, 429, 430, 417, and 418, respectively), effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crop. The intended effect of this rule is to provide additional time in which to file changes made in the policy for insuring crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective:* May 30, 1985.

Comment: Written comments, data, and opinions on this interim rule must be submitted not later than July 29, 1985, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

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

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

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

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

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

Section 16 of the policy for insuring barley, forage production, oats, rye, sugar beet, sugarcane, and wheat provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the development of the actuarial test procedures for analyzing the rates generated by the Milliman and Robertson (M&R) study, additional time to rework the rates is needed to determine the current rates for these commodities. Therefore, it is necessary to extend the date for filing such changes to the contract an additional 30 days. It has been determined that the date is extended to June 30, 1985, effective for the 1985 crop year only.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Program changes involving the rate adequacy for these commodities require a number of changes in the crop insurance policies in order to maintain the actuarial integrity of the crop insurance programs. The workload involved in these changes will not permit filing in the counties by the present contract date of May 31. There is not sufficient time to provide for public comment and implement these changes prior to May 31. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from May 31, 1985, until June 30, 1985, and made effective for the 1985 crop year only. All policyholders should be aware of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Parts 415, 417, 418, 419, 427, 429, and 430

Crop Insurance, Barley, Forage Production, Oats, Rye, Sugar Beet, Sugarcane, and Wheat (respectively).

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Barley, Forage Production, Oats, Rye, Sugar Beet, Sugarcane, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 415, 427, 429, 430, 417, and 418, respectively), effective for the 1985 crop year only, in the following instances:

1. The Authority citations for 7 CFR Parts 419, 415, 427, 429, 430, 417, and 418 continue to read as follows:

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

2. In 7 CFR 415.7(d), 429.7(d), and 417.7(d), paragraph 16. of the insurance policy, "contract changes" is revised to read as follows:

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by May 31 preceding the cancellation date, except that for the 1985 crop year only, all contract changes will be available at your service office by June 30 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

3. In 7 CFR 419.7(d), 427.7(d), 430.7(d), and 418.7(d), paragraph 16. of the insurance policy, "contract changes" is revised to read as follows:

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date, and by May 31 (June 30 for the 1985 crop year) preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on April 23, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: May 23, 1985.

[FR Doc. 85-12901 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 304, and 347

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Forms, Instructions, and Reports; Foreign Activities of Insured State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations to expand the delegated authority of the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, that of the appropriate regional director to act on the following applications, requests, and notices of acquisition of control: (1) Requests for approval of minor or nominal deviations from requirements prescribed by prior FDIC action; (2) applications for deposit insurance submitted on behalf of proposed or newly organized nonmember banks; (3) applications for deposit insurance submitted on behalf of state member banks that have withdrawn from membership in the Federal Reserve System; (4) applications for federal deposit insurance submitted on behalf of operating noninsured banks or institutions, and (5) applications to exercise any trust powers.

The FDIC is also delegating to the Board of Review the authority to act on: (1) Applications to establish and operate any new branch or relocate any existing branch; (2) applications to exercise any trust powers; (3) applications for deposit insurance filed by state member banks upon withdrawal from membership in the Federal Reserve System; (4) notices of acquisition of control of insured state nonmember banks; (5) applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures; and (6) requests for approval of any deviations from requirements prescribed by prior action of the Board of Review taken under delegated authority.

Additionally, the FDIC is substituting letter applications for application forms for banks applying to continue deposit insurance upon withdrawal from the Federal Reserve System and for insured state nonmember banks applying to reduce or retire capital.

These amendments, which expand the authority of the Board of Review, the Director, and the regional directors to act on the above applications and which implement letter applications in two new instances, are expected to reduce the time necessary to process such applications and requests and thus benefit insured banks.

Lastly, Part 303 has been reorganized to a significant degree in order to improve its clarity and overall utility to the reader.

EFFECTIVE DATE: May 30, 1985.

FOR FURTHER INFORMATION CONTACT: George P. Muraco, Assistant Director, Corporate Applications and Special Activities Section, Division of Bank Supervision, (202) 389-4545, or Charles J. Magyar, Review Examiner, Applications Section, Division of Bank Supervision, (202) 389-4345, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Part 303 of the FDIC's regulations sets forth delegations of authority by the Board of Directors to act on certain applications requests, and notices of acquisition of control to the Board of Review, the Director of the Division of Bank Supervision ("Director"), and, where confirmed in writing by the Director, to the appropriate regional director. In its continuing efforts to streamline the processing of applications, the FDIC is making, among other changes, changes to the delegations of authority in the following areas.

Delegations of Authority to the Director of the Division of Bank Supervision and, Where Confirmed in Writing by the Director, to the Appropriate Regional Director

(1) Section 303.11(a)(6) currently delegates to the Director and the appropriate regional director the authority to act on requests for approval of minor or nominal deviations from requirements prescribed by prior FDIC action. Redesignated § 303.7(a)(4) eliminates the references to "minor" or "nominal" and permits the delegate who acted previously in the matter to approve requests for *any* deviations from the originally prescribed requirements.

(2) Section 303.12(d) currently sets forth certain guidelines under which the Director and the appropriate regional director may approve applications for deposit insurance submitted on behalf of proposed or newly organized nonmember banks.

Redesignated § 303.7(c)(2) will increase the minimum initial capitalization necessary for delegated approvals for proposed new banks from $750,000 to $1 million and eliminate the requirement that a chief executive officer be selected prior to action by the regional director. The guideline relating to selection on a chief executive officer will instead be included in redesignated § 303.10(a) as a "standard condition" that may be imposed under delegated authority.

A review of 416 proposed new banks which opened for busines between January 1, 1979 and March 31, 1984 revealed that only 38 of the applicants were initially capitalized at less than $1 million and only 12 of these were approved with an initial capitalization of less than $750,000. Therefore, the $1 million minimum initial capitalization is believed reasonable. This minimum will serve only as a guideline for delegated authority action. Recommendations

regarding requests for a lower initial capitalization will be forwarded to Washington for action by the Board of Directors.

The second revision to the guidelines also grants more flexibility under delegated authority by removing the restriction that the proponents select a chief executive officer prior to approval. Rather, this criterion will be included as a "standard condition" in redesignated § 303.10(a), thereby permitting the regional director to act although the principal operating officer(s) have not been chosen.

(3) Section 303.7(c)(3) is being added to impose guidelines under which the Director and the appropriate regional director may approve applications for deposit insurance submitted on behalf of state member banks that have withdrawn from membership in the Federal Reserve System. The guidelines require: (A) Favorable resolution of the factors set forth in 12 U.S.C. 1816 and (B) agreement by the applicant to the continuation of any corrective programs or enforcement actions imposed by the Federal Reserve System or agreed to by the applicant unless the bank has complied with all outstanding provisions.

From January 1, 1983 through September 30, 1984, only six applications for continuation of federal deposit insurance upon withdrawal from the Federal Reserve System have been acted on. Five of these actions were taken under delegated authority with the remaining application approved by the Board of Directors.

(4) There is currently no delegation of authority to act on applications for federal deposit insurance submitted on behalf of operating noninsured banks or institutions. From January 1, 1983 through September 30, 1984, 55 applications for federal deposit insurance for operating noninsured banks were considered with all approved except one which was tentatively denied (subsequently approved) and one which was denied. The average processing time from receipt of the application in the Washington Office to final action was 83 days. In order to reduce substantially the overall processing time in connection with such applications, the Board of Directors is delegating the authority to approve deposit insurance applications of operating noninsured banks or institutions to the Director and the appropriate regional director when the following requisites have been met: (A) The Board of Directors has determined the eligibility for federal deposit insurance for the class of institution to which the applicant belongs in the state in which the applicant is located. (B) The factors set forth in 12 U.S.C. 1816 have been favorably resolved. (C) The applicant meets the Corporation's minimum capital requirements. (D) No unresolved "management interlocks" as prohibited by 12 CFR Part 348 exist. (E) The applicant has no fewer than five directors. The delegation is found in § 303.7(c)(4).

(5) Finally, the Board of Directors is imposing the following criteria in connection with the delegation of authority to act on applications for the prior written consent of the Corporation to exercise any trust powers. (A) The factors set forth in 12 U.S.C. 1816 have been favorably resolved. (B) Proposed trust management is determined capable of satisfactorily handling the anticipated trust business. (C) The applicant's board of directors has formally adopted Form 114—"Statement of Principles of Trust Department Management."

This delegated authority is further limited in accordance with the following: (1) The Director or regional director may approve but not deny applications where the applicant's composite CAMEL, Compliance, and CRA ratings are 1 or 2; (2) the Director or regional director may approve or deny where one or more of the applicant's composite CAMEL, Compliance, or CRA ratings are 3 but none of the ratings are 4 or 5; and (3) the Director or regional director may deny but not approve where any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 4 or 5.

Delegations of Authority to the Board of Review

The Board of Directors in § 303.8, is delegating to the Board of Review the authority to approve or deny the following applications when the Director or appropriate regional director is precluded from acting:

(1) Applications to establish and operate any new branch or relocate a main office or branch;

(2) Applications to exercise any trust powers;

(3) Applications for deposit insurance filed by state member banks upon withdrawal from membership in the Federal Reserve System;

(4) Notices of acquisition of control of insured state nonmember banks;

(5) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures; and

(6) Requests for approval of any deviations from requirements prescribed by prior action of the Board of Review taken under delegated authority.

These delegations would eliminate the necessity for Board of Directors action on many routine applications and thereby improve the overall processing time.

Letter Applications

In addition to the foregoing changes and in order substantially to improve the processing time for banks applying for continuation of federal deposit insurance upon withdrawal from the Federal Reserve System, the FDIC is implementing the use of a letter application in lieu of the current application form. The letter application shall comply with redesignated § 303.5. At the same time, obsolete existing § 303.4 is removed to eliminate any reference to an application form for applications to reduce or retire capital since the letter application is currently being used.

Reorganization of Part 303

Part 303 has undergone an extensive reorganization to provide increased clarity, to eliminate redundant phrases, to provide definitions for terms used throughout the part, to merge related guidelines which are scattered in the current version, and, in general, to be of greater assistance to the reader. Distribution and derivation tables follow the revised part in order to explain the changes made strictly for purposes of reorganizing the part. The reorganization also requires a conforming change to § 347.4(d).

Part 304

Section 304.3 contains a summary of forms and instructions prepared by the Corporation. Those descriptions of forms which are to be used in connection with applications are being deleted because many of them are obsolete and would continue to become obsolete on a recurring basis even if revised. Revised Part 303 eliminates the need for a summary of forms by directing where the forms may be obtained.

Regulatory Considerations

The above changes to Part 303 are being made in an effort to reduce the time involved in processing the applications and requests discussed above and to reissue a clearer regulation. The changes do not affect insured nonmember bank publication requirements with respect to applications or the public's right to protest any application. Applicants and requesters continue to have the same rights of reconsideration and appeal as prior to these amendments.

The amendments to the regulations are procedural in nature, i.e., the conditions and criteria set out in establishing the delegations discussed are not standards or criteria against which an application or request is to be measured to determine substantively whether the request is to be granted or denied. The restrictions on delegated authority are merely guideposts by which the Board of Review, the Director, and/or the appropriate regional director can determine who has the authority to act on the application or request. The changes in delegated authority do not alter any of the rights or obligations of any applicant bank or individual. The other changes merely serve to reorganize the format of the regulation.

The amendments are being accomplished in final form without opportunity for public comment on the basis of the above under authority of 5 U.S.C. 553(b)(A) (Administrative Procedure Act) which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure. The amendments, which constitute nonsubstantive changes to FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in 5 U.S.C. 553(d) that substantive rules be published not less than 30 days prior to their effective date is inapplicable. As these amendments neither alter any existing nor create any new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. However, a new § 303.13 has been added in order to display the control numbers assigned to the existing information collection requirements of Part 303 by the Office of Management and Budget. Finally, the requirements of the Regulatory Flexibility Act are inapplicable as the amendments are not subject to required public comment under the Administrative Procedure Act.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

12 CFR Part 304

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Foreign banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 347

Banks, banking, Credit, Foreign banks, banking, Reporting and recordkeeping requirements, State nonmember banks.

For the reasons set out above, Parts 303, 304, and 347 of Title 12 of the Code of Federal Regulations are amended as set forth below.

1. 12 CFR Part 303 is revised to read as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Sec.

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. 88-463, 754 Stat. 129; sec. 2, Pub. L. 87-827, 76 Stat. 953; Pub. L. 88-593, 78 Stat. 940; Pub. L. 89-79, 79 Stat. 244; sec. 1, Pub. L. 89-356, 80 Stat. 7; sec. 12(c), Pub. L. 89-485, 80 Stat. 242; sec. 3, Pub. L. 89-597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. 89-695, 80 Stat. 1055; sec. 2(b), Pub. L. 90-505, 82 Stat. 856; secs. 6(c)(7), (12), (13), Pub. L. 95-369, 92 Stat. 616-620; title III, secs. 306, 309 and title VI, sec. 602, Pub. L. 95-630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829); title I, sec. 108, Pub. L. 90-321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. 93-495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. 96-221, 94 Stat. 171 (15 U.S.C. 1607).

§ 303.0 Scope and definitions.

(a) *Scope.* This part prescribes (1) where applications, requests, and notices of acquisition of control (hereinafter, collectively, "applications") should be filed, (2) the contents of the applications when the application is to be made by letter, and (3) the location where forms and instructions may be obtained when the application is to be made on a form. Part 303 also prescribes procedures to be followed by both the FDIC and applicants during the process of considering an application. Finally this part sets forth delegations of authority by the FDIC's Board of Directors to the Board of Review, the Director of the Division of Bank Supervision (or his delegate(s)), and to the regional directors to act on certain applications and other matters and the conditions, where applicable, that limit such delegations.

(b) *Definitions.* For the purposes of this Part 303:

(1) The term "regional director" shall refer to a regional director (Bank Supervision).

(2) The term "appropriate regional director" shall refer to the regional director (Bank Supervision) of the FDIC region in which the applicant bank, the proposed or newly organized nonmember bank, the insured branch of a foreign bank, the resulting or assuming bank, or the bank in which stock is being acquired, as appropriate, is or will be located.

(3) Words importing the masculine gender are to be applied to females.

(4) The term "composite CAMEL rating" means the rating accorded under the Uniform Financial Institutions Rating System. *See* 1 FDIC, LAW, REGULATIONS, RELATED ACTS (FDIC) 5079.

(5) The term "Compliance rating" means the rating accorded under the Uniform Interagency Compliance Rating System. *See* 1 FDIC, LAW, REGULATIONS, RELATED ACTS (FDIC) 5213.

(6) The term "CRA rating" means the rating accorded under the Uniform Interagency Community Reinvestment Act Assessment Rating System. *See* 1 FDIC, LAW, REGULATIONS, RELATED ACTS (FDIC) 5227.

§ 303.1 Application by nonmember bank [1] for deposit insurance.

Application for deposit insurance by an existing or proposed nonmember bank should be filed with the appropriate regional director. The appropriate application forms and instructions may be obtained from the appropriate regional director.

[1] A nonmember bank is a bank which is not a member of the Federal Reserve System.

§ 303.2 Application by insured State nonmember bank to establish a branch [3] or move its main office or branch.

(a) Application by an insured state nonmember bank (except a District bank) to establish and operate a new branch (including a remote service facility) or to move its main office or branch should be filed with the appropriate regional director. The application shall be mailed or delivered to the regional director on the date on which the notice required in § 303.6(f)(1) is published or not more than 30 days subsequent to the first required publication of notice. The application shall be in letter form and shall contain the following information:

(1) The exact location of the proposed site, including street address (unless one has not been assigned to the location);

(2) Details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(3) The impact of the proposal on the human environment, specifically, information on compliance with local zoning laws and regulations and the effect on traffic patterns;

(4) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence that clearance has been obtained from the State Historic Preservation Officer;

(5) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the Community Reinvestment Act; and

(6) The name and address of and the date of publication in the newspaper in which the notice required by § 303.6(f)(1) is published.

In cases in which additional information is necessary for evaluation of the application, the applicant may be required to furnish specific information on an individual basis.

(b) The regional director may delay processing, including extending the comment period, for good cause and must report any delays in processing on at least a quarterly basis to the Board of Directors, stating the reasons the delay was necessary.

(c) *Special procedures for remote service facilities.*

(1) *Definition.* Remote service facilities include automated teller machines, cash dispensing machines, point-of-sale terminals, and other remote electronic facilities where deposits are received, checks paid, or money lent.

(2) *Application procedures.* (i) For the purposes of this section "establishing" means owning or leasing a remote service facility either individually or jointly. An establishing bank or a foreign bank with an insured state branch shall file a letter with the appropriate regional director giving full particulars of the proposal, including the matters listed in paragraph (a) of this section, to establish an initial remote service facility and comply with the provisions of § 303.6(f). Once this application has been approved, an establishing bank or a foreign bank with an insured state branch may establish additional remote service facilities or relocate existing facilities without formal application by notifying the appropriate regional director in writing of the intended action and complying with the notice provisions of § 303.6(f). The notice shall include the matters listed in paragraph (a) of this section. Such informal application shall be deemed to be an application for the purposes of §§ 303.6, 303.7, 303.8, and 303.9. In the case of additional remote service facilities, unless notified otherwise within 15 days of the last publication of notice as required by § 303.6(f) or within 15 days after the regional office's receipt of the notice, whichever is later, or in the case of relocations, unless otherwise notified within 21 days of the last publication of notice as required by § 303.6(f) or within 21 days after the regional office's receipt of the notice, whichever is later, the additional remote service facility or relocation will be considered approved. If it is determined that the proposal warrants further consideration, the regional director will notify the applicant within the 15- or 21-day period that the remote service facility should not be established or relocated until further action is taken by the FDIC.

(ii) An establishing bank or foreign bank with an insured State branch having one or more remote service facilities established under preexisting regulations may establish additional remote service facilities or relocate existing remote service facilities without formal application by following the procedures set forth in paragraph (2)(i) of this paragraph (c).

[3] The term "branch" includes any "domestic branch" or "foreign branch" as the terms are defined in section 3(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(o)).

§ 303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.

(a) *Merger, consolidation, asset acquisition or assumption transaction between insured banks.* Application by an insured bank for the consent of the Corporation to merge or consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, another insured bank—when the resulting or assuming bank is to be an insured state nonmember bank (except a District bank)—together with copies of all agreements or proposed agreements relating thereto, including the charter or articles of incorporation of the resulting or assuming bank, should be filed with the appropriate regional director.

(b) *With noninsured bank or institution.* Application by an insured bank for the consent of the Corporation to merge or consolidate with a noninsured bank or institution, or to convert into a noninsured institution, or to assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or to transfer assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured bank, together with copies of all agreements or proposed agreements relating thereto, should be filed with the appropriate regional director.

(c) *Conversion with diminution of capital or surplus.* Application for the consent of the Corporation to convert into an insured state nonmember bank (except a District bank)—when the conversion will result in the converted bank's having less capital stock or surplus than the converted bank at the time of the shareholders' meeting approving such conversion—together with copies of the charter and/or articles of association of the converted bank, should be filed with the appropriate regional director.

(d) The appropriate application forms and instructions, as well as instructions concerning notice to depositors, may be obtained upon request from the office of said regional director.

§ 303.4 Change in bank control.

(a) *Acquisitions of control.* [3] Under the Change in Bank Control Act of 1978,

[3] Control is defined in section 7(j)(8)(B) of the Federal Deposit Insurance Act as "the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank." 12 U.S.C. 1817(j)(8)(B).

acquisitions by a person * or persons acting in concert of the power to vote 25 percent or more of a class of voting securities of an insured nonmember bank, unless exempted, require prior notice to the Corporation. In addition, a purchase, assignment, transfer, pledge, or other disposition of voting stock through which any person will acquire ownership, control, or the power to vote ten percent or more of a class of voting securities of an insured state nonmember bank will be presumed to be an acquisition by such person of the power to direct that institution's management or policies if:

(1) The institution has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*); or

(2) Immediately after the transaction no other person will own a greater proportion of that class of voting securities. Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank would not result in control for purposes of the Act. An acquiring person may request an opportunity to contest any presumption established by this paragraph (a) of this subsection with respect to a proposed transaction. The Corporation will afford the person an opportunity to present views in writing, or, where appropriate, orally before its designated representatives either at informal conference discussions or at informal presentations of evidence.

(b) *Notices.* Notice of proposed acquisition of control should be filed with the appropriate regional director. The appropriate forms and instructions for completing the same may be obtained upon request from the appropriate regional director. Notice shall not be considered given unless information provided is responsive to every item specified in paragraph 6 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(6)), or every item prescribed in the appropriate Corporation forms. With respect to personal financial statements required by paragraph 6(b) of the Change in Bank Control Act of 1978, an individual acquirer may include a current statement of assets and liabilities, as of a date within ninety days of the notice of proposed acquisition, a brief income summary, and a statement of material changes since the date thereof, subject to the authority of the regional director, the Director of the Division of Bank Supervision, or the Corporation to require additional information.

(c) *Exempt Transactions.* The following transactions are not subject to the prior notice requirements of the Change in Bank Control Act of 1978:

(1) The acquisition of additional shares of an insured state nonmember bank by a person who continuously since March 9, 1979, held power to vote 25 per cent or more of the voting shares of that institution, or by a person who has acquired and maintained control of that institution after complying with the Act's procedures;

(2) The acquisition of additional shares of an insured state nonmember bank by a person who under paragraph (a) of this section would be presumed to have controlled that institution continuously since March 9, 1979, if:

(i) The transaction will not result in that person's direct or indirect ownership or power to vote 25 per cent or more of any class of voting securities of the institution; or

(ii) In other cases, the Corporation determines that the person has controlled the institution since March 9, 1979.

(3) The acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift: *Provided,* The acquirer advises the regional director within thirty days after the acquisition and provides such of the information specified in paragraph 6 of the Control Act as the regional director requests;

(4) A transaction subject to approval under section 3 of the Bank Holding Company Act or section 18 of the Federal Deposit Insurance Act;

(5) A transaction described in sections 2(a)(5) or (3)(a) (A) or (B) of the Bank Holding Company Act by a person there described;

(6) A customary one-time proxy solicitation and receipt of pro-rata stock dividends; and

(7) The acquisition of shares in foreign banks which have an insured branch or branches in the United States: *Provided, however,* This exemption does not extend to the reports and information required under sections 7(j) (9), (10), and (12) of the Federal Deposit Insurance Act.

§ 303.5 Other applications.

(a) Except as otherwise provided by rule or regulation, all applications, requests, and submittals for which no form of application has been prescribed by the Corporation should:

(1) Be in writing;

(2)(i) Be signed by the president, cashier, or managing officer of the bank in the case of (A) an application by a bank whose insured status has been terminated under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured bank or (B) an application made by an insured bank under Part 328 of this title; or

(ii) Be signed by the applicant or a duly authorized agent in all other cases;

(3) Contain a statement of the applicant's interest therein, a complete and concise statement of the action requested, and the reasons and facts relied upon as the basis for such requested action; and

(4)(i) Be addressed to the appropriate regional director in the case of an application, request, or notice of acquisition of control from or relating to a particular bank or institution; or

(ii) The Executive Secretary of the Corporation at the principal office of the Corporation in all other cases.

The applicant shall furnish such other pertinent information as may be required by the Corporation. Forms to be executed in conjunction with an application for consent to exercise trust powers may be obtained from the office of the appropriate regional director.

(b) In addition to the foregoing, an application by a bank whose insured status has been terminated under section 8 of the Federal Deposit Insurance Act for permission to continue or resume its status as an insured bank should (1) be accompained by a certified copy of the resolution of its board of directors and (2) contain a statement that the bank's insured status has been terminated (including the date thereof and the basis therefor) and that the insurance of its deposits has not ceased.

(c) Applications under § 347.4 of this title to acquire or hold stock or other evidence of ownership in a foreign bank or other financial entity shall be submitted to the appropriate regional director in letter form and, unless otherwise directed by the Corporation, shall contain full information concerning the foreign bank or other financial entity including (unless previously furnished): (1) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember banks; (2) Recent balance sheet and income statement of the foreign bank or other financial entity; (3) Brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or

*Person is defined in section 7(j)(8)(A) of the Federal Deposit Insurance Act as "an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1817(j)(8)(A).

indirect business transacted in the United States); (4) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to the issuing bank holding 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidences of ownership, and the amount held by each; and (5) Information concerning the rights and privileges of the various classes of shares outstanding.

§ 303.6 Application procedures.

(a) *Scope of section.* Paragraphs (f) through (n) of this section apply to: (1) Applications for deposit insurance by proposed new banks; (2) applications by insured state nonmember banks to establish branches, including remote service facilities;[5] (3) applications by insured nonmember banks to relocate their main or branch offices, including remote service facilities; (4) applications to merge or to consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, a bank or institution, when the resulting or assuming bank is to be an insured state nonmember bank, and all other applications to merge or to consolidate with, or to assume liabilities, which require the Corporation's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));[6] and (5) any other applications, requests or submittals which the Board of Directors in its sole discretion deems appropriate. In the case of applications, requests, or submittals which come within the fifth category, the applicant will be notified at the time its application is accepted for filing that the procedures set forth in this section shall be followed in connection therewith.

(b) *Investigations and examinations.* With respect to all applications, requests, or submittals, the Board of Directors or the Board of Review, the Director of the Division of Bank Supervision, or the appropriate regional director acting under delegated authority may require any investigation or examination, or both, to be performed as deemed appropriate. Upon receipt of the report of any investigation or examination and any recommendations based on the report, the Board of Directors or the Board of Review, the Director of the Division of Bank Supervision, or the regional director, acting within the scope of delegated authority, as the case may be, will take any action determined necessary or appropriate under the circumstances.

(c) *Opportunity to present views.* With respect to any application, the Corporation may afford the applicant or other properly interested persons, including government agencies, an opportunity to present views orally before its designated representative or representatives, either at informal conference discussions or at informal presentations of evidence.

(d) *Notice of disposition of applications.* Prompt notice will be given of the grant or denial, in whole or in part, of any written application, petition, or other request of any interested person made in connection with any agency proceeding. In the case of denial, except in affirming a prior denial, or where the same is self-explanatory, such notice will be accompanied by a simple statement of the reasons therefor.

(e) *Opportunity to petition for reconsideration of a denied application, petition, or request.* Within 15 days of its receipt of notice that its application, petition, or other request has been denied, any applicant may petition the FDIC for reconsideration of such application, petition, or request (except an application, petition or request already previously denied upon reconsideration). The petition must be in writing and should (1) specify reasons why the FDIC should reconsider its action and (2) set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered. The petition should be filed with the appropriate regional director. If a particular insured bank or insured branch of a foreign bank was not the subject of the application, petition, or request on which reconsideration is sought, the petition should be filed with the Executive Secretary of the FDIC at the FDIC's principal office. Applications, petitions, or requests denied by the Board of Directors will be reconsidered by the Board of Directors. Applications, petitions, or requests denied under delegated authority by the Board of Review, the Director of the Division of Bank Supervision, or a regional director will be reconsidered by the Board of Review. Notwithstanding the foregoing, any action taken by the Board of Review pursuant to § 303.12(c) shall be subject to review by the Board of Directors in accordance with § 303.12(c)(7), and requests for reconsideration of denials of applications under section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) shall be made in accordance with the procedures set out in Part 308.

(f) *Notice of filing of application*—(1) *Notice by publication.* (i) In the case of applications in connection with a "merger transaction" (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Board of Directors determines it must act immediately in order to prevent the probable failure of one of the banks involved, the applicant must publish notice of the proposed transaction. This notice shall be published in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once each week on the same day for five consecutive weeks and, when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. Where the Board of Directors of the Corporation determines that an emergency exists which requires expeditious action, then notice shall be required to be published daily during a period of at least 10 calendar days. The published notice shall include the name and main office location of all banks or institutions involved in the transaction and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other bank or banks as branches, the following statement shall be added to the notice:

> It is contemplated that all of the offices of the above named banks will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

(ii) In the case of all other applications described in paragraph (a) of this section, on the date the deposit insurance application form or the letter application required in § 303.2 is mailed or delivered to the regional director or not more than 30 days prior to that date, the applicant shall publish notice or begin publication of notice if more than one notice is required, of the proposed transaction. Publication of notice shall be made at least once each week on the same day for two consecutive weeks for

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[5] For purposes of this section, unless the Corporation determines otherwise, an off-premises electronic facility which receives deposits for more than one depository institution is deemed to constitute a branch only of the bank or banks which own or lease the facility.

[6] Except as otherwise provided in paragraph (f)(1), the provisions of this § 303.6 shall not be applicable to any proposed merger or assumption transaction which the Board of Directors of the Corporation determines must be acted upon immediately to prevent the probable failure of one of the banks involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6)).

relocation applications and once for other applications described in paragraph (a) and shall be in a newspaper of general circulation in the community or communities referred to below:

(A) Applications to establish a branch.—Domestic Branch: In the communities in which the home office and the domestic branch to be established are located:

Foreign Branch: In the community in which the home office is located.

(B) *Applications to relocate an office.*—In the communities in which the home office, office to be closed, and office to be opened are located, provided that a foreign bank having an insured branch need only publish such notice in the communities in which the insured branch is located and is to be relocated.

(C) *Applications for deposit insurance.*—In the community in which the home office is or will be located, provided that a foreign bank making application for an insured branch need only publish such notice in the community in which the insured branch is to be located.

The published notice shall include the name of the applicant, the subject matter of the application, the location or locations at which the applicant proposes to engage in business.

(iii) In all instances, immediately after final publication, the applicant shall advise the regional director that the publication requirements have been met.

(2) *Notice by posting.* In the case of applications to relocate home offices or branch offices, in addition to the notice by publication described in paragraph (f)(1) of this section, notice of the application shall be posted in the public lobby of the office(s) to be relocated, if such public lobby exists, for at least 21 days beginning with the date of the last published notice required by paragraph (f)(1) of this section.

(3) *Comments:* Anyone who wishes to comment on an application may do so by filing comments in writing with the regional director at any time before the FDIC has completed processing the application. Processing will be completed, for applications other than branch relocation and remote service facility relocation applications and merger applications, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after FDIC's receipt of the application, whichever is later; for branch relocation and remote service facility relocation applications, not less than 21 days after the last publication or 21 days after FDIC's receipt of the application, whichever is later; for merger applications, not less than 30 days after the first publication or 30 days after FDIC's receipt of the application, whichever is later. This time period may be extended by the regional director for good cause. The regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

> Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (relocations—21st, mergers—30th, othe applications described in paragraph (a) of this section—15th) day following either the date of the (merger applications—first, all other applications described in paragraph (a)—last) required publication or the date of receipt of the application by the FDIC, whichever is later. The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

(5) *Solicitation of comments by regional director.* Whenever he deems it appropriate, the regional director may solicit comments from any person or institution which, in his opinion, might have an interest in or be affected by the pending application.

(g) *Public access to application file*—(1) *Inspection of application file.* Any person may inspect the nonconfidential portions of an application file. For a period extending until 180 days after final disposition of an application, the nonconfidential portions of the file will be available for inspection in the regional office of the Federal Deposit Insurance Corporation in which an application has been filed. During this period, the nonconfidential portion of the file will be produced for review not more than one working day after receipt by the regional office of the request (either written or oral) to see the file. Photocopies of the nonconfidential portions of the file will be available, upon request, to any person. A charge for making copies will be made in accordance with the fee schedule contained in § 309.5(b) of this chapter. No charge will be imposed for the search for, and review of, the application file. One hundred and eighty (180) days after the final disposition of an application, the nonconfidential portions of an application file will be made available in accordance with the provisions of § 309.5 of this chapter.

(2) *Nonconfidential portions of application file.* Subject to the provisions of paragraph (g)(3) of this section, the following information in an application file will be available for public inspection:

(i) The application with supporting data and supplementary information.

(ii) Data, comments, and other information submitted by interested persons in favor of, or in opposition to, such application.

(iii) Those portions of the investigation report prepared by the Corporation's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant or applicants and either the future earnings prospects or the future prospects of the applicant or applicants.

(iv) A summary assessment of the applicant or applicants, based on their last Community Reinvestment Act examination.

(v) Where a hearing has been held pursuant to paragraph (i) of this section, any evidence submitted pursuant to paragraph (j)(3) of this section and the hearing transcript described in paragraph (j)(5) of this section.

(3) *Withholding of confidential information.* No material described in paragraph (g)(2) of this section shall be available if it is determined to be confidential under the provisions of 5 U.S.C. 552. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy.

(ii) Commercial or financial information the disclosure of which would result in substantial competitive harm to the submitter.

(iii) Information the disclosure of which could seriously affect the financial condition of any financial institution.

(h) *Proceedings*—(1) *Requests for hearing or other proceeding.* Anyone who has made a formal comment within the period specified in paragraph (f)(3) of this section may request a hearing at the time of making the formal comment. If a hearing or an oral presentation is requested, the request must be accompanied by a brief statement by the

person requesting the hearing or presentation of his or her interest in the application and of the matters which he or she wishes to discuss. If the Corporation determines that a hearing or other form of oral presentation should be allowed, the person making the request will be advised of the date, time, and location of the oral presentation.

(2) *Form of proceeding.* The Corporation may, at its discretion, decide to hold a hearing on the application in accordance with paragraph (i) of this section; it may decide to hold an informal proceeding in accordance with paragraph (h)(3) of this section; or it may decide not to hold a hearing or an informal proceeding in which case, where there has been a request for an opportunity to be heard pursuant to paragraph (h)(1) of this section, it will so advise the applicant and all persons who requested an opportunity to be heard. A decision as to the form of proceeding to be held will be made not more than 30 days after a request for a hearing has been made pursuant to paragraph (h)(1) of this section.

(3) *Informal proceedings.* If the Corporation decides to hold an informal proceeding, the regional director shall, not less than 10 days prior thereto, notify the applicant and each person who requested a hearing in accordance with paragraph (h)(1) of this section, of the date, time, and place of the proceeding. The regional director may, if he deems it advisable, notify other persons who have expressed an interest in the application and invite them to attend. The proceeding may assume any form, including a meeting with Corporation representatives at which the participants will be asked to present their views orally. The regional director shall also have the discretion to hold separate meetings with each of the participants where he deems it desirable.

(i) *Hearings.* Hearings of the kind provided for in this paragraph will not generally be afforded the participants if they have had the opportunity to participate in prior hearings before the appropriate state authority which covered essentially the same issues or if the regional director determines that less formal proceedings will be adequate.

(1) *Notice of hearing*—(i) *Contents.* If the Corporation determines that a hearing on the application is warranted, the regional director shall, not less than 10 days prior thereto, give notice of the scheduling of the hearing, and shall set forth in the notice the subject matter of the application, the significant issues to be presented, and the date, time, and place at which the hearing shall be held.

(ii) *To whom sent.* The above notice shall be sent by registered or certified mail to the applicant and to each person who requested a hearing in accordance with paragraph (h)(1) of this section. The regional director may also notify other persons who have expressed an interest in the application and invite them to participate in the hearing.

(2) *Attendance at hearing.* Each interested person who wishes to attend the hearing shall notify the regional director accordingly within 5 days after the date upon which he receives the above notice. Unless he has already done so, he shall submit a brief written summary of the matters which he wishes to cover at the hearing together with the number of names of witnesses he wishes to present. The applicant and other interested persons attending the hearing may be represented by counsel.

(3) *Presiding officer.* The presiding officer at the hearing shall be the regional director, his designee, or such other person as may be named by the Board of Directors or the Director of the Division of Bank Supervision. The presiding officer shall have the authority to appoint a panel to assist him.

(j) *Hearing rules*—(1) *Order of presentation.* The following schedule is intended to serve as a general guide to the conduct of the hearing. It is not fixed and may be varied at the discretion of the presiding officer. The presiding officer shall determine the order of opening and closing statements and presentations to be followed by all participants other than the applicant who in each instance shall have the opportunity to speak first.

(i) *Opening statements.* The applicant and each other participant may make opening statements which should concisely state what the participant intends to show.

(ii) *Applicant's presentation.* Following the opening statements, the applicant shall present its data and materials orally or in writing.

(iii) *Requester's presentation.* Following the applicant's presentation, each person who requested the hearing shall present his data and materials orally or in writing. Those who requested the hearing may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(iv) *Other interested persons.* Following the evidence of the applicant and the requesters, the presiding officer will recognize other interested persons who may present their views with respect to the application under consideration.

(v) *Summary statement.* After all the above presentations have been concluded, the applicant and each other participant may make a short concise rebuttal.

(2) *Witnesses.* Each participant is responsible for providing his own witnesses, including the payment of all expenses associated with their appearance at the hearing. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any member of the panel. The refusal of a witness to answer questions may be considered by the Corporation in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper, irrelevant, or repetitive. Formal rules of evidence shall not be applicable to these hearings. Documentary material submitted as evidence must be of a size consistent with ease of handling, transportation, and filing. Three copies of all such documentary material shall be furnished to the regional director, and any participant who specifically requests the same shall be furnished a copy at his own expense. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the person in reduced size for submission as evidence.

(4) *Procedural questions.* The presiding officer, or any designated member of the panel, shall determine all procedural questions not governed by this section. The presiding officer shall have the authority to limit the number of witnesses to be used by any person and to impose reasonable time limitations.

(5) *Transcript.* A transcript of each hearing will be arranged for by the Corporation. The person or persons who requested the hearing will be expected to pay all the expenses of such service, including the furnishing of one copy of the transcript of the regional director: *Provided, however,* That the Corporation may, for good cause, waive this requirement in individual cases. Where a hearing is held at the Corporation's initiative, the Corporation shall bear the expenses of such service. Copies of the transcript will be furnished to any interested person requesting the same at that person's expenses.

(6) *The hearing record*—(i) *Contents.* The nonconfidential portions of the

application, as described in paragraph (c) of this section, shall automatically be a part of the hearing record.

(ii) *Closing the hearing record—additional statements.* Any person who participates in the hearing may request that the hearing record remain open for 10 days following receipt of the transcript by the regional director during which time the person may submit corrected copies of the transcript, or additional written statements or materials which he agreed to furnish at the hearing, to the regional director. Such person shall simultaneously mail or have delivered copies of the corrected transcript or additional statements or materials to all other persons who participated in the hearing.

(k) *Disposition and notice.* (1) The final disposition of any application or other matter under this section need not be determined exclusively by, or be limited to, the information contained in the public file established by paragraph (g) of this section.

(2) The applicant, and any other person who so requests in writing, shall be notified by the Board of Directors of the final disposition of the application or other matter. The Board of Directors shall also provide a statement of the reasons for the final disposition made.[7]

(l) *Notice to applicant in the case of a tentative denial.* Generally, in the case of an application subject to the provisions of this section, where the Board of Directors, based upon the information available at that time, plans to deny the application and no hearing has been held thereon pursuant to paragraph (i) of this section, the Director of the Division of Bank Supervision or his designee will send the applicant a written statement by registered or certified mail which shall specify the reasons for such tentative denial. The applicant shall have 15 days following the receipt of this statement within which to file a written request to amend its application or for an opportunity to submit information in rebuttal, either in writing or in the form of an oral presentation before one or more representatives of the Corporation designated for that purpose. Upon the filing of such request the applicant shall be given 30 days in which to amend its application or prepare its presentation to the Corporation. If the applicant requests and is granted an opportunity to make an oral presentation, it shall be advised of the date, time, place, and person or persons before whom such presentation shall be made.

(m) *Computation of time.* Section 308.22 shall govern the computation of any period of time prescribed or allowed by this section.

(n) *Retained authority.* In acting upon any particular application, the Board of Directors may by resolution adopt procedures which differ from this section when it deems it necessary and in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary of the Corporation in accordance with the requirements of 5 U.S.C. 552(a)(2).

§ 303.7 Delegation of authority to the Director of the Division of Bank Supervision and to the regional directors to act on certain applications, requests, and notices of acquisition of control.

The Board of Directors of the Federal Deposit Insurance Corporation has delegated to the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, to the Director's delegate(s), or to the appropriate regional director and the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.9) on the following applications, requests, and notices of acquisition of control.

(a) *Authority to approve or deny that is not subject to condition.* The delegation to act on the following applications and requests extends to the authority to approve or deny and is not subject to condition.

(1) Applications to establish and operate any new teller's window, drive-in facility, or any like office, as an adjunct to a main office or a branch office (including offices not considered branches under state law);

(2) Applications to operate temporary banking facilities as a public service for a period not to exceed one month during conventions, state and local fairs, college registration periods, and similar occasions, as well as during emergencies;

(3) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures;

(4) Requests for approval of any deviations from requirements prescribed by prior delegated action (to be acted upon by the delegate who acted previously in the matter);

(5) Applications for the acquisition and holding of stock or other evidences of ownership in a foreign bank or other financial entity that result in less than 25 percent ownership interest in such bank or entity; and

(6) Applications to establish remote service facilities other than an initial remote service facility or relocations thereof.

(b) *Authority to approve only that is not subject to condition.* The delegation of authority to act on the following applications and requests extends to the authority to approve only but is subject to no other condition.

(1) Applications for "phantom" bank mergers;[8] and other mergers which are corporate reorganizations, i.e., transactions involving banks controlled by the same holding company or transactions involving banks and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c);

(2) Applications for deposit insurance filed by proposed state nonmember banks which are formed in connection with a "phantom" bank merger;

(3) Requests to establish a management official interlock pursuant to § 348.4(b)(3) of the Corporation's regulations.

(c) *Delegations of authority that are subject to condition.* The delegation of authority to act on the following applications, requests, and notices of acquisition of control is subject to the conditions set forth below. The conditions are procedural in nature only and should not be construed as standards or criteria which will be used in determining whether a specific application will be approved or denied.

(1) *Branch applications and relocations.* (i) Authority to approve branch applications and relocations (including initial remote service facilities but excluding additional remote service facilities or relocations thereof and excluding those types of facilities listed in § 303.7(a) (1), (2)) is delegated only where the following requisites have been satisified.

(A) The applicant is in substantial compliance with applicable laws and with the rules and regulations of the Corporation.

(B) The applicant meets the minimum capital requirements as set forth in 12

[7] Where final authority to dispose of an application or other matter has been delegated to the Director of the Division of Bank Supervision or the regional directors pursuant to § 303.7, the Director of the Division of Bank Supervision or the appropriate regional director will provide the notice and statement described in this paragraph (k)(2).

[8] As used in paragraphs (b) (1) and (2) of this section, the term "'phantom' bank merger" applies to any merger or other transaction involving an existing operating bank and a newly chartered bank or corporation which is for the purpose of corporate reorganization and which would have no effect on competition or otherwise have significance under the relevant statutory standards as set forth in 12 U.S.C. 1828(c).

CFR Part 325 and the FDIC's "Statement of Policy on Capital";

(C) Any financial arrangements which have been made in connection with the proposed branch[9] and which involve the applicant's directors, officers, major shareholders,[10] or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties.

(D) The requirements of the National Historic Preservation Act, the National Environmental Policy Act, and Community Reinvestment Act have been considered and favorably resolved, except that this requisite does not apply to applications to establish foreign branches.

(ii) The authority of the Director of the Division of Bank Supervision is limited in accordance with the following: (A) The Director may approve but not deny any application if the applicant's composite CAMEL, Compliance, and CRA ratings are 1 or 2; (B) the Director may approve or deny an application if one or more of the applicant's composite CAMEL, Compliance, or CRA ratings are 3 but none of the ratings are 4 or 5; and (C) the Director may deny, but not approve an application if any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 4 or 5. The provisions of this paragraph (c)(1)(ii) and of paragraph (c)(1)(iii) are inapplicable to applications for establishing additional remote service facilities and applications to relocate existing remote service facilities.

(iii) The delegation to the appropriate regional director is valid only if, in addition to the preceding requirements and limitations of this paragraph, there is no comment protesting the application on CRA grounds by an organization other than a competing institution and any issues raised by any other comments are favorably resolved.

(2) *Approval of applications for deposit insurance submitted on behalf of proposed or newly organized nonmember banks.* Authority to approve applications for deposit insurance submitted for proposed or newly organized state nonmember banks is delegated only where each of the six factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) has been considered and favorably resolved and the guidelines set forth in the Corporation's policy statement entitled "Applications for Deposit Insurance" have been satisfied, including but not limited to the following:

(i) Equity capital is not less than $1,000,000;

(ii) Legal fees and other expenses incurred in connection with the proposal are determined to be reasonable;

(iii) No unresolved "management interlocks," as prohibited by Part 348 of this chapter, exist;

(iv) The projected ratio of equity capital and reserves to assets, including projected profits and losses, is at least 10 percent at the end of the third year of operation;

(v) Profitable operations are projected at least for the third year of operations;

(vi) The proposed aggregate direct and indirect investment in fixed assets is determined to be reasonable relative to the applicant's proposed equity capitalization, projected earnings capacity, and other pertinent bases of consideration;

(vii) Any financial arrangements made or proposed in connection with the proposed bank involving the applicant's directors, officers, 5 percent shareholders or their interests are determined to be fair and made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features. The applicant also must have fully disclosed, or agreed to disclose fully, any such arrangement to all of its proposed directors and shareholders prior to the opening of the bank;

(viii) Stock financing arrangements conform to the guidelines established in the Corporation's policy statement on "Applications for Deposit Insurance." The authority to approve an application, however, may not be subdelegated to any regional director (i) where there is direct or indirect financing, by proposed directors and officers and 5 percent or more shareholders, of more than 75 percent of the purchase price of the stock subscribed to by any one individual, or (ii) where there is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered, or (iii) where warehoused or trusteed stock exceeds 10 percent of initial capital funds;

(ix) Management rating, fidelity coverage, accrual accounting, and compliance with the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901–2905) and applicable implementing regulations (12 CFR Part 345) are favorably resolved in accordance with the guidelines set forth in FDIC's policy statement on "Applications for Deposit Insurance"; and

(x) The authority to approve an application, however, may not be subdelegated to a regional director if a protest under the Community Reinvestment Act is filed, other than a protest filed for competitive reasons by a financial institution.

(3) *Approval of applications for deposit insurance submitted on behalf of state member banks that have withdrawn from membership in the Federal Reserve System.* Authority to approve applications for deposit insurance is delegated only when all of the following requisites have been satisfied.

(i) The six factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) have been considered and favorably resolved; and

(ii) The bank has agreed to continue any corrective program imposed by the Board of Governors of the Federal Reserve System or previously agreed to by the bank except that such agreement by the bank is not a prerequisite to the delegated authority to approve where the bank is found to have fully complied with that corrective program.

(4) *Approval of applications for federal deposit insurance filed on behalf of operating noninsured institutions.* Authority to approve applications for deposit insurance on behalf of operating noninsured institutions is delegated only when all of the following requisites have been satisfied:

(i) The Board of Directors has determined the eligibility for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(ii) The six factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) have been considered and favorably resolved;

(iii) The applicant meets the minimum capital requirements as set forth in 12 CFR Part 325 and the FDIC's "Statement of Policy on Capital";

(iv) All "management interlocks" as prohibited by Part 348 of this title have been resolved; and

(v) The applicant has no fewer than five directors.

(5) *Applications for permission to merge or consolidate with any other insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank or insured branch of a foreign bank*

[9] Including arrangements relating to fees, the acquisition of property, rentals, and construction contracts.

[10] The term "major shareholder" means any shareholder who directly or indirectly controls 5 percent or more of any class of the applicant's outstanding voting stock.

(hereinafter referred to as "merger transactions"). Authority to act on merger transactions is delegated only where:

(i) The delegate has reviewed any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Attorney General may have provided in response to a request for such reports by the Corporation. If the Attorney General has determined that the merger transaction may have a significant adverse effect on competition, the delegation provided herein shall be ineffective. If the Corporation does not receive an opinion from the Attorney General within 30 days of the date on which the Corporation has requested the opinion, the delegate shall request the Washington Office of the Corporation's Legal Division to provide a formal opinion on the question whether the merger transaction may have a significant adverse effect on competition. If the delegate has requested the Corporation's Legal Division to provide a formal opinion in accordance with the above, the delegate shall not approve the application until the Legal Division has issued an opinion stating that the merger transaction will have no significant adverse effect on competition. If, however, the Legal Division has determined that the merger transaction may have a significant adverse effect on competition, the delegation provided herein shall be ineffective. Where the Attorney General (or the FDIC's Legal Division in the absence of a competitive factors report by the Attorney General within 30 days of a request for such a report by FDIC) determines that the merger transaction would not have a significant adverse effect on competition, the delegate shall not deny the application based solely upon his or her independent assessment of the competitive factors involved.

(ii) The authority of the Director of the Division of Bank Supervision and the appropriate regional director, where the delegation has been confirmed in writing by the Director, to act on merger transaction application is limited in accordance with the following: (A) The Director or regional director may approve but not deny any application if, upon consummation of the merger transaction, the bank would warrant a composite CAMEL rating, a Compliance rating, and a CRA rating of 1 or 2; (B) the Director or regional director may approve or deny an application if, upon consummation of the merger transaction, one or more of the bank's composite CAMEL, Compliance, or CRA ratings would warrant a 3, but none of the ratings would warrant a 4 or 5; and (C) the Director or regional director may deny, but not approve an application if, upon consummation of the merger transaction, any one of the bank's composite CAMEL, Compliance, or CRA ratings would warrant a 4 or 5.

(iii) Except in those cases where the merging institutions do not operate in the same relevant market(s), the delegated authority to act on merger transactions is effective only where the bank, upon consummation of the merger transaction, would not have more than 15% of the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s). Further, the delegated authority to act on merger transactions is effective only where the merger transaction would not produce a change in the Herfindahl-Hirshman Index of more than 113 for any market as measured by the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate.

(iv) The delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the bank would not meet the minimum capital requirements as set forth in 12 CFR Part 325 and the FDIC's "Statement of Policy on Capital." (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with 12 CFR Part 346.)

(6) *Applications to exercise any trust power.* (i) The authority of the Director of the Division of Bank Supervision and the appropriate regional director, where the delegation has been confirmed in writing by the Director, is limited in accordance with the following: (A) The Director or regional director may approve but not deny any application if the applicant's composite CAMEL, Compliance, and CRA ratings are 1 or 2; (B) the Director or regional Director may approve or deny an application if one or more of the applicant's composite CAMEL, Compliance, or CRA ratings are 3 but none of the ratings are 4 or 5; and (C) the Director may deny but not approve an application if any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 4 or 5.

(ii) The delegated authority of the Director of the Division of Bank Supervision and the appropriate regional director, where the delegation has been confirmed in writing by the Director, to approve applications is further limited to instances in which all of the following requisites have been satisfied: (A) The six factors set forth in section 6 of the Federal Deposit Insurance Act have been considered and favorably resolved; (B) the proposed trust management is determined capable of satisfactorily handling the anticipated trust business; and (C) the applicant's board of directors has formally adopted Form 114—"Statement of Principles of Trust Department Management."

(7) Requests for extension of time, not to exceed one year on any one request relating to the same application, within which to perform acts or conditions required by prior Corporation action on bank applications;

(8) Notices of acquisition of control of insured state nonmember banks: *Provided, however,* That this authority shall extend to the power to issue a written notice of the Corporation's intent not to disapprove an acquisition of control, but not to the power to disapprove an acquisition of control; *And provided, further,* That this authority shall extend to the power to act in situations where information is submitted on acquisitions arising out of testate or intestate succession, bona fide gifts or foreclosure; to the power to extend notice periods; to the power to determine the informational adequacy of a notice and to the power to determine whether a notice should be filed under the Act by a person acquiring less than 25 per centum of any class of voting securities of an insured state nonmember bank;

(9) Any application by an insured bank pursuant to section 19 of the Federal Deposit Insurance Act for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust; *Provided, however,* That this authority shall extend to the approval but not to the denial of such requests *And provided, further,* That the applicant bank's primary supervisory authority interposes no objection to such application.

§ 303.8 Delegation of authority to the Board of Review to act on certain applications and requests.

The Board of Directors of the Federal Deposit Insurance Corporation has delegated to the Corporation's Board of Review the authority on behalf of the Board of Directors to approve or deny the following applications and requests:

(a) Any application by an insured bank pursuant to section 19 of the

Federal Deposit Insurance Act for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust;

(b) Requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)). In evaluating a request for relief from reimbursement, the Board of Review will take into consideration the following factors: (1) The impact any reimbursement might have on the safety and soundness of the bank; (2) the kind and frequency of any reimbursable violations; (3) the history of any previous violations; and (4) such other matters as equity and justice shall require;

(c) Requests to establish a management official interlock pursuant to § 348.4(b) of the Corporation's regulations;

(d) Applications to establish and operate any new branch or relocate a main office or branch;

(e) Applications to exercise any trust powers;

(f) Applications for deposit insurance filed by state member banks upon withdrawal from membership in the Federal Reserve System;

(g) Notices of acquisition of control of insured state nonember banks;

(h) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures; and

(i) Requests for approval of any deviations from requirements prescribed by prior action of the Board of Review taken under delegated authority.

§ 303.9 Confirmation, limitations, rescissions, and special cases.

(a) The authority delegated in § 303.7 by the Board of Directors to the appropriate regional director is subject, as to each regional director, to written confirmation, limitations, or subsequent rescission of any confirmation, by the Director of the Division of Bank Supervision. Such written confirmation, limitations, or rescissions shall be filed with the Executive Secretary of the Corporation at its offices in Washington, D.C. and at the office of the regional director concerned, and shall be available for public inspection by interested parties.

(b)(1) In special cases, the Director of the Division of Bank Supervision may, in writing, rescind the authority of a regional director to act on an application, request, or notice of acquisition of control, and may himself act on the same. In special cases, a regional director may, in writing, recommend that the authority to act on an application, request, or notice of acquisition of control not be exercised by him; in such cases the authority to act on such application, request, or notice of acquisition of control may be exercised by the Director of the Division of Bank Supervision or, in the case of applications or requests considered pursuant to paragraphs (a)(3), (b)(3), (c)(1), (c)(3), (c)(6), (c)(9), and (c)(10) of § 303.7, the Board of Review. In special cases, the Director of the Division of Bank Supervision may, in writing, recommend that the authority to act on an application, request, or notice of acquisition of control not be exercised by him; in such cases the Board of Directors will act on the application or request or notice of acquisition of control, except that the authority to act on applications or requests considered pursuant to paragraphs (a)(3), (b)(3), (c)(1), (c)(3), (c)(6), (c)(9), and (c)(10) of § 303.7, may be exercised by the Board of Review.

(2) Upon determining not to act upon the application, request, or notice of acquisition of control under delegated authority, the regional director or the Director of the Division of Bank Supervision, as the case may be, shall forward the application, request, or notice of acquisition of control together with his recommendations as to the disposition of such application or request to the appropriate authority as determined by the rules set forth in paragraph (b)(i) of this section.

(c) The delegation of authority to the Board of Review to act on applications and requests pursuant to § 303.8 does not preclude the Board of Directors from acting on any such application or request upon which the Board of Review may not wish to act. Any voting member of the Board of Review attending the meeting at which such application or request is considered may request that the application or request be referred to the Board of Directors for its consideration, and upon receipt of such request, the Board of Review shall forward the application to the Board of Directors together with its recommendations as to the disposition of such application.

§ 303.10 Applications where authority is not delegated.

(a) *Circumstances precluding delegation.* Authority to act on applications listed in §§ 303.7 and 303.8 is not delegated by the Board of Directors where, except for certain standard conditions which may be imposed in approving applications for branches, remote service facilities, and relocations, and in applications for deposit insurance by proposed or newly organized banks, a condition other than a time limitation is to be prescribed in approving the application. As used in this paragraph, the term "standard conditions" includes, with respect to an application for deposit insurance, the following conditions: that a specific amount and a specific allocation of beginning paid-in capital be provided; that any changes in proposed management or proposed ownership to the extent of 5 or more percent of stock, including new acquisitions of or subscriptions to 5 or more percent of stock, be approved by the Corporation prior to the opening of the bank; that an accrual accounting system be adopted for maintaining the books of the bank; that federal deposit insurance not become effective until the applicant has been established as a state bank (not a member of the Federal Reserve System), until it has authority to conduct a banking business, and until its establishment and operation as a bank have been fully approved by the state banking authority; that, where applicable, a registered or proposed bank holding company obtain approval of the Board of Governors of the Federal Reserve System to acquire voting stock control of the proposed bank prior to its opening; that, where applicable, prior to execution, any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters be submitted to the regional director for review and approval; that, where applicable, full disclosure be made to all proposed directors and stockholders of the facts concerning the interest of any insider (one who is or stands to be a director, an officer, or an incorporator of the applicant or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) in any bank transaction being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved; that the person(s) selected to serve as the principal operating officer(s) be acceptable to the regional director; that all necessary and final approvals have been obtained from the appropriate state authority; and that until the conditional commitment of the Corporation becomes effective, the Corporation has the right to alter, suspend, or withdraw its commitment should any interim development be deemed to warrant such action. The last two conditions are also "standard

conditions" with respect to applications for branches (including remote service facilities) and relocations.

(b) *Approving authority.* In all cases where authority to act on applications or requests listed in this part is not delegated to the Board of Review, to the Director of the Division of Bank Supervision (or his delegate), or to a regional director, the authority to act on such applications or requests remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application or request upon which any member of the Board of Directors wishes to act even if the authority to act on such application or request has been delegated.

§ 303.11 Other delegations of authority.

(a) *In general.* Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the Corporation and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the Corporation's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent, or employee of the Corporation by communicating with the Executive Secretary of the Corporation.

(b) *Disclosure law and regulations.* Except as provided in paragraph (c) of this section, the Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director, to the appropriate regional director, the authority on behalf of the Board of Directors to act on disclosure matters under and pursuant to sections 12, 13, 14, 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78) or Parts 335 and 341 of the Corporation's rules and regulations in this chapter.

(c) *Limitations on delegation.* Authority to act on disclosure matters under paragraph (b) of this section is not delegated by the Board of Directors when such matters involve:

(1) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78/(h));

(2) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8));

(3) Authority, pursuant to § 335.703 of the Corporation's regulations in this chapter, to accord confidential treatment to information required to be filed in a disclosure report;

(4) Authority, pursuant to § 335.204(e) of the Corporation's regulations in this chapter, to disclose to departments and agencies of the United States otherwise confidential information submitted in copies of preliminary proxy solicitation material;

(5) Exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-l(c)(1)).

(d) *Security devices and procedures and bank service arrangements.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or where confirmed in writing by the Director, to the appropriate regional director, the authority on behalf of the Board of Directors to administer the provisions of Part 326 of the Corporation's rules and regulations in this chapter.

(e) *In emergencies.* For the purpose of assuring the performance of, and continuity in the management functions and activities of the Corporation, the Board of Directors has delegated, to the extent deemed necessary, authority with respect to the management of the Corporation's affairs to certain designated officers, such authority to be exercised only in the event of an emergency involving an enemy attack on the continental United States or other warlike occurrence which renders the Board of Directors unable to perform the management functions and activities normally performed by it.

(f) *Competitive factor reports on corporate reorganization bank mergers.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director, to the regional director of the region in which the applicant bank [11] is located, the authority on behalf of the Board of Directors to furnish required reports to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency on the competitive factors involved in any "phantom" bank merger [12] and other mergers that are corporate reorganizations (i.e., transactions involving banks controlled by the same holding company or transactions involving banks and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c)).

(g) *Competitive factor reports of "no significant effects on competition."* In addition to the authority delegated in paragraph (f) of this section, the Board of Directors has delegated to the Director of the Division of Bank Supervision the authority on behalf of the Board of Directors to furnish to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency reports on the competitive factors involved in any merger required to be approved by one of those agencies, if all of the appropriate divisions or offices of the Corporation are of the view that the proposed merger would have no significant effects on competition.

(h) *Deposit agreement for pledge of assets by foreign banks.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director, to the appropriate regional director, the authority on behalf of the Board of Directors to enter into deposit agreements with foreign banks and depositories in connection with the pledge of asset requirements of FDIC regulation § 346.19. The Board of Directors has also delegated to the General Counsel, or the General Counsel's designee, the authority to modify the terms of the model deposit agreement used for such deposit agreements.

(i) *Suspension of time deposit withdrawal penalties for disaster areas.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director, to the appropriate regional director, the authority to suspend the penalties contained in § 329.4(d) of the regulations of the FDIC (12 CFR 329.4(d)) and § 1204.103 of the regulations of the Depository Institutions Deregulation Committee (12 CFR 1204.103) and to allow FDIC supervised banks to permit the early withdrawal of time deposits, without penalty, if both of the following conditions are met:

(1) The President of the United States declares an area a major disaster area or an emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order No. 11795 (July 11, 1974).

[11] As used in this paragraph (f), the term "applicant bank" means the bank which is applying for merger approval either to the Board of Governors of the Federal Reserve System or to the Comptroller of the Currency.

[12] The term "'phantom' bank merger" is defined in footnote 8 of this Part 303.

(2) The waiver is limited in effectiveness to depositors suffering disaster- or emergency-related losses in the officially designated disaster or emergency area.

(j) *National Historic Preservation Act.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director, to the appropriate regional director, the authority on behalf of the Board of Directors to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act. The Director of the Division of Bank Supervision may limit his/her delegation of authority to the regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Historic Preservation Act which may be imposed by the regional director.

§ 303.12 Delegation of authority to act on enforcement matters.

(a) *Termination of administrative proceedings against closed banks.* The Board of Directors has delegated to the Director of the Division of Bank Supervision authority to discontinue proceedings to terminate deposit insurance or to cease and desist, including final orders, brought against a bank under subsection (a), (b), or (c) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b), or (c)), which are pending when the bank is closed by a federal or state authority. This rule does not delegate authority to terminate administrative proceedings against a bank when the bank engages in a merger transaction (as defined by 12 U.S.C. 1828(c)(3)).

(b) *Enforcement of Administrative Orders.* The Board of Directors has delegated to the General Counsel, or his designee, authority to initiate and prosecute any action to enforce any effective and outstanding order, or temporary order, issued by the Board under section 8(b) or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (b) or (c)), or any provision thereof, in the appropriate United States District Court.

(c) *Initiation, processing and disposition of administrative enforcement proceedings.* The Board of Directors has delegated authority for the initiation, processing and disposition of enforcement actions, as follows:

(1) *Issuance of notices of charges and of hearing.* The authority to issue notices of charges and of hearing pursuant to section 8(b) of the Federal Deposit Insurance Act (the "Act") (12 U.S.C. 1818(b)) is delegated to the Board of Review.

(2) *Issuance of orders to cease and desist pursuant to written stipulation.* The authority under section 8(b) of the Act to issue orders to cease and desist (hereafter "section 8(b) orders") pursuant to written stipulation, is delegated as follows:

(i) *Stipulated without change.* Where a proposed order to cease and desist which has previously been approved by the Board of Directors or the Board of Review (hereafter "proposed order"), is consented to without change, and an administrative law judge has not been appointed, authority to issue a section 8(b) order in the form consented to, is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and where confirmed in writing by the Director and the Deputy General Counsel, to the appropriate regional director or regional counsel, or both.

(ii) *Stipulated changes within permissible guidelines.* Where changes to a proposed order fall within the guidelines set forth in this paragraph (c)(2)(ii), and an administrative law judge has not been appointed, authority to issue the section 8(b) order is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and where confirmed in writing by the Director and the Deputy General Counsel, to the appropriate regional director or regional counsel, or both. Permissible changes from requirements set forth in proposed orders are limited to the following:

(A) Altering time limits by no more than the lesser of 50% or 90 days;

(B) Extending or reducing percentage and/or dollar requirements (excluding capital provisions), by no more than 10% of the figure specified;

(C) Eliminating typographical, grammatical or technical errors; and

(D) Adding or deleting names of bank directors in order to reflect changes in the composition of a bank's board of directors.

(iii) *Stipulated changes that exceed permissible guidelines.* Where negotiated changes to a proposed order exceed the limitations enumerated in paragraph (c)(2)(ii) of this section, authority to issue the order is delegated to the Board of Review.

(iv) *Issuance of section 8(b) orders resulting from section 8(c) proceedings.* The authority to issue section 8(b) orders in proceedings in which temporary orders to cease and desist pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)) (hereafter "section 8(c) orders") have been issued, is delegated as follows:

(A) *Stipulated without change from original section 8(c) order.* Where the terms and conditions of a section 8(c) order are incorporated into a section 8(b) order without change pursuant to written stipulation, and an administrative law judge has not been appointed, authority to issue the section 8(b) order is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and where confirmed in writing by the Director and the Deputy General Counsel, to the appropriate regional director or regional counsel, or both.

(B) *Stipulated with changes from original section 8(c) order.* Where changes are proposed to be made to the terms and conditions of a section 8(c) order by written stipulation, authority to issue the section 8(b) order is delegated to the Board of Review.

(v) *Stipulated section 8(b) orders when respondent waives right to notice of charges, hearing, defenses, and findings of fact, conclusions of law and recommended decision of hearing officer.* The Director of the Division of Bank Supervision, or where confirmed in writing by the Director, an Associate Director of the Division of Bank Supervision, is delegated authority to execute and issue an order to cease and desist under section 8(b) when the insured bank or other respondent consents to such order prior to the issuance or a notice of charges and waives any right to a notice of charges, a hearing, defenses, and findings of fact, conclusions of law and the recommended decision of an administrative law judge or other hearing officer. *Provided*, that the authority delegated under this paragraph to issue consent orders to cease and desist shall be contingent upon certification by the Deputy General Counsel for Regional and Corporate Affairs or the Assistant General Counsel of the Compliance and Enforcement Section of the Legal Division that, in the opinion of the certifying officer, the provisions of the order are authorized under section 8(b) of the Act and can be enforced under section 8(i) of the Act in the United States District Court. The Board of Review may act on any matter under this paragraph provided it has been referred to the Board of Review by the Director of the Division of Bank Supervision and/or the Deputy General Counsel for Regional and Corporate Affairs.

Any member of the Board of Review may refer any case which is before the Board of Review pursuant to paragraph (c)(2)(v) of this section to the Board of Directors for decision.

(3) *Termination and modification of section 8(b) orders.* The authority to terminate or modify an outstanding section 8(b) order is delegated as follows:

(i) *Full compliance with all provisions of the order.* Where all provisions of a section 8(b) order have been complied with, authority to terminate the order is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and where confirmed in writing by the Director and the Deputy General Counsel, to the appropriate regional director or regional counsel, or both.

(ii) *Less than full compliance, but within permissible guidelines.* In instances where there has been less than full compliance with all terms and conditions of a section 8(b) order, but compliance falls within the guidelines set forth in this paragraph (c)(3)(ii), authority to terminate section 8(b) orders is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs, and where confirmed in writing by the Director and Deputy General Counsel, to the appropriate regional director or regional counsel, or both. At minimum, the following requirements must be met:

(A) At least 75% of each dollar and/or percentage requirement has been met;

(B) There is substantial compliance with the nondollar provisions; and

(C) The bank currently has a composite rating of 1, 2 or 3 under the Uniform Interagency Bank Rating System and a determination is made that further administrative action is unnecessary.

(iii) *All other terminations.* In all other instances, authority to terminate outstanding section 8(b) orders is delegated to the Board of Review.

(iv) *Modification of section 8(b) orders.* The authority to modify outstanding section 8(b) orders issued pursuant to written stipulation, is delegated to the Board of Review, except any section 8(b) order that is issued by the Board of Directors pursuant to written stipulation subsequent to November 30, 1982. The authority to modify outstanding section 8(b) orders issued after an administrative hearing is retained by the Board of Directors.

(4) *Civil money penalty proceedings.* The authority to issue any notice of assessment of civil money penalty which is not expressly delegated in other parts of this subchapter is delegated to the Board of Review. The Board of Review, in its discretion, may compromise, modify, or remit the amount of any penalty assessed pursuant to this paragraph.

(5) *Issuance of orders and decisions in proceedings where an administrative law judge has been appointed.* Where an administrative law judge has been appointed, authority to issue orders pursuant to written stipulation is delegated to the Board of Review. Authority to issue orders and decisions in proceedings in which a recommended decision has been rendered by an administrative law judge is retained by the Board of Directors.

(6) *Other section 8 actions.* Except as noted in paragraph (c)(2)(iv) of this section, this delegation does not affect actions pursuant to sections 8(a), 8(c), 8(e), and 8(g) of the Act (12 U.S.C. 1818 (a), (c), (e), and (g)).

(7) *Action under delegated authority not mandated.* The Director of the Division of Bank Supervision and the Deputy General Counsel for Regional and Corporate Affairs and/or the Board of Review, may act on any matter on which the regional director and/or regional counsel may not wish to act under authority delegated pursuant to this § 303.12(c). Any aggrieved party or person may petition the Board of Directors for review of any action taken under authority of this § 303.12(c).

(8) *Referral of cases to the Board of Directors by members of the Board of Review.* Any member of the Board of Review may refer any case which is before the Board of Review pursuant to authority delegated under this §303.12(c) to the Board of Directors for decision.

(9) *Withdrawal of notice of charges or notice of assessment of civil money penalty issued by the Board of Review under delegated authority.* The Board of Review is hereby delegated authority to withdraw and terminate any notice of assessment of civil money penalty issued by itself under section 7(j)(15) or 8(i) or 18(j) of the Federal Deposit Insurance Act or section 106(b) of the Bank Holding Company Act or section 910(d) of the International Lending Supervision Act of 1983 and any notice of charges issued by itself under section 8(b)(1) of the Federal Deposit Insurance Act pursuant to authority delegated to the Board of Review by the Board of Directors.

(10) *Issuance of directive to achieve and maintain adequate capital.* The Board of Review is hereby delegated authority to issue a directive to a banking institution that fails to maintain capital at or above the minimum capital requirement for insured state-chartered banks that are not members of the Federal Reserve System, as established at §§ 325.3 and 325.4(b) of FDIC's rules and regulations. The Board of Directors expressly retains all authority with respect to any action taken or proposed to be taken by the FDIC pursuant to § 325.4(c) of FDIC's rules and regulations.

(11) *Assessment of civil money penalty for violation of capital maintenance directive.* The Board of Review is hereby delegated authority to issue a notice of assessment of civil money penalty against any insured nonmember bank or its official for any violation of any provision of chapter 40 of title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC.

(12) *Acceptance of written agreements.* The Board of Review is hereby delegated authority to accept or enter into on behalf of the FDIC any written agreement with an insured bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank, pertaining to any matter which may be addressed by the FDIC pursuant to section 8(b) of the Federal Deposit Insurance Act.

(d) *Issuance of order to terminate deposit insurance under 12 U.S.C. 1818(p).* The Executive Secretary is hereby delegated authority to issue a consent order terminating the insured status of an insured banking institution that has ceased to engage in the business of receiving deposits other than trust funds, as defined in section 8(p) of the Federal deposit Insurance Act; provided that any action by the Executive Secretary taken under this paragraph shall be with the concurrence and upon the recommendation of the Director of the Division of Bank Supervision, or his designee, and the Deputy General Counsel for Regional and Corporate Affairs, or his designee.

(e) *Imposition of Civil Penalties.* The Board of Directors has delegated to the General Counsel or his designee the authority for the levying and enforcement of civil penalties under section 7(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(1)) for the late filing of Reports of Condition and Reports of Income, and such other reports as the Board may require under the authority of that section. In the exercise of the delegated authority, the General Counsel shall consult with the Director of the Division of Bank Supervision or his designated representative before imposing any

penalty. At its discretion, the Board may review any action taken under authority of this paragraph.

§ 303.13 OMB control number assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980. [44 U.S.C. 3501–3520). The FDIC intends that this section comply with section 3507(f) of the Paperwork Reduction Act [44 U.S.C. 3507(f)], which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

(b) *Display.*

Section of 12 CFR Part 303 where identified and described	Current OMB control No.
303.1	3064.0001
303.1	3064.0069
303.2	3064.0070
303.3	3064.0016
303.4(b)	3064.0019

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

2. The authority citation for Part 304 continues to read as follows:

Authority: 12 U.S.C. 1819.

§ 304.3 [Amended]

3. Section 304.3 is amended by removing and reserving paragraphs (a) through (e), (i), and (k).

PART 347—FOREIGN ACTIVITIES OF INSURED STATE NONMEMBER BANKS

4. The authority citation for Part 347 continues to read as follows:

Authority: Secs. 3(o), 18(d), and 18(*l*) of the Federal Deposit Insurance Act, as amended by sec. 301, Pub. L. No. 95–630, 92 Stat. 3641 [12 U.S.C. 1813(o), 1828(d), 1828(*l*)].

§ 347.4 [Amended]

5. Section 347.4 is amended by substituting the citation "§ 303.5(c)" for "§ 303.9" in paragraph (d).

6. In order to enable users to check the completeness, accuracy, and reasoning behind revised Part 303, Derivation and Distribution Tables follow:

DERIVATION TABLE

New section	Old section (as revised)
303.0—New	
303.2(c)	303.14(1).
303.3(a)	303.5(c).
303.3(b)	303.5(a).
303.3(c)	303.5(b).
303.3(d)—New.	
303.4	303.15.
303.5	303.9, 303.4, 303.6, 303.7, and 303.8.
303.6(a)	303.14(a).
303.6(b)–(e)	303.10(a)–(d).
303.6(f)–(k)	303.14(b)–(g).
303.6(l)–(n)	303.14(i)–(k).
303.7, introductory paragraph	303.11(a).
303.7(a), Introductory sentence—New	
303.7(a)(1)–(a)(3)	303.11(a)(1)–(a)(3).
303.7(a)(4)	303.11(a)(6).
303.7(a)(5)	303.11(a)(13).
303.7(a)(6)—New	
303.7(b), introductory sentence—New.	
303.7(b)(1)–(b)(2)	303.11(a)–(9)–(a)(10).
303.7(b)(3)	303.11(a)(14).
303.7(c), introductory statement—New.	
303.7(c)(1)	303.11(a)(7), 303.12(c).
303.7(c)(2)	303.11(a)(15), 303.12(d).
303.7(c)(3)	303.11(a)(6).
303.7(c)(4)—New	
303.7(c)(5)	303.11(a)(17), 303.12(e).
303.7(c)(6)	303.11(a)(4).
303.7(c)(7)	303.11(a)(5).
303.7(c)(8)	303.11(a)(12).
303.7(c)(9)	303.11(d)(2).
303.8, introductory sentence—New.	
303.8(a)	303.11(d)(1).
303.8(b)	303.11(e).
303.8(c)	303.11(f).
303.8(d)–(i)—New	
303.9(a)	303.11(b).
303.9(b)	313.11(g)(1).
303.9(c)	313.11(g)(2).
303.10	303.12(a), (b).
303.11(a)–(f)	303.13(a)–(f).
303.11(g)	303.13(h).
303.11(h), (i)	303.13 (j), (k).
303.11 (j)	303.13 (*n*).
303.12 (a), (b)	303.13 (i), (m).
303.12 (c), (d)	303.13 (o), (p).
303.12(e)	303.13(i).
303.13—New	

DISTRIBUTION TABLE

Old section	New section
303.3	Unnecessary.
303.4	Covered by revised 303.5.
303.5	Reorganized and redesignated as 303.3.
303.6	Covered by revised 303.5.
303.7	Covered by revised 303.5.
303.8	Covered by revised 303.5.
303.9	Revised and redesignated as 303.5.
303.10	Redesignated as 303.6(b)–(e).
303.11(a)	Reorganized, revised, and merged into 303.7(a)–(c).
303.11(b)	303.9(a).
303.11(c)	Unnecessary.
303.11(d)(1)	303.8(a).
303.11 (d)(2)	303.7 (c)(10).
303.11 (e), (f)	303.8 (b), (c).
303.11 (g)	303.9 (b), (c).
303.12 (a), (b)	303.10.
303.12(c)	303.7(c)(1).
303.12(d)	303.7(c)(2).
303.12(e)	303.7(c)(5).
303.13(a)–(f)	303.11(a)–(f).
303.13(g)	Obsolete.
303.13(h)	303.11(g).
303.13 (i)	303.12(e).
303.13 (j), (k)	303.11 (h), (i).
303.13 (l), (m)	303.13 (a), (b).
303.13 (n)	303.11(j).
303.13 (o), (p)	303.12 (c), (d).
303.14(a)	303.6(a).
303.14(b)–(g)	303.6(f)–(k).
303.14(h)	Unnecessary.
303.14(i)–(k)	303.6(l)–(n).
303.14(l)	303.2(c).

DISTRIBUTION TABLE—Continued

Old section	New section
303.15	303.4.

By Order of the Board of Directors this 20th day of May 1985.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–12857 Filed 5–29–85; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–16–AD; Amendment 39–5069]

Airworthiness Directives; Piper Model PA–38–112 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Piper Model PA–38–112 (Tomahawk) airplanes, which requires modification of the elevator control travel. It is possible to temporarily jam the elevator in the up position when either control wheel is full aft and when an upward-and-forward pressure is applied. The modification to the up elevator travel will prevent the possibility of jamming the elevator control and possible resultant loss of control of the aircraft.

EFFECTIVE DATE: May 30, 1985.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Aircraft Corporation Service Bulletins (S/B) No. 800, dated November 19, 1984, and S/B No. 661, dated August 22, 1979, may be obtained from Piper Aircraft Corporation, Post Office Box 1328, Vero Beach, Florida 32961; Telephone (305) 567–4361. Copies of the Service Bulletins are contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106, and in the Central File Room, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE–120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road,

College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: An investigation by the Canadian Department of Transportation of a recent accident involving a Piper Model PA-38-112 airplane revealed that a possible factor in the accident may have involved a binding of the control wheel in the full aft position. It was found that whenever either control wheel is full aft and an upward-and-forward pressure is applied, it is possible that the pilot may be unable to move the control yoke out of the full aft position, resulting in loss of control of the airplane. Following additional investigations, the manufacturer issued Piper S/B No. 800 dated November 19, 1984 (refers in part to S/B No. 661, dated August 22, 1979) which specifies a modification of the up elevator travel to preclude jamming of the elevator and loss of contol of the airplane.

The FAA has determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design. Therefore, this AD is being issued requiring a modification to the elevator control travel in accordance with Piper S/B No. 661 and No. 800 as applicable, on Piper Model PA-38-112 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of the Executive Order 12291 with the respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this section is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed may be otained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

Piper Aircraft Corporation: Applies to Model PA-38-11 (TOMAHAWK), (Serial Numbers 38-78A0001 thru 38-82A0122) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-sevice after the effective date of this AD, unless already accomplished.

To prevent the loss of control, accomplish the following:

(a) For Serial Numbers 38-78A0001 through 38-79A1160 airplanes, modify the control wheel shaft bushing in accordance with the instructions in Piper Service Bulletin No. 661, dated August 22, 1979.

(b) For Serial Numbers 38-78A0001 through 38-82A0122 airplanes, modify the elevator control travel in accordance with the instructions in Piper Service Bulletin No. 800, dated November 19, 1984.

(c) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon requests to Piper Aircraft Corporation, Post Office Box 1328, Vero Beach, Florida 32961, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

(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 May 30, 1985.

Issued in Kansas City, Missouri on May 15, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-12893 Filed 5-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-36-AD; Amendment 39-5040]

Airworthiness Directives; Piper Models PA-31/PA-31-300, PA-31-325, PA-31-350, PA-31-350 T-1020, PA-31P, PA-31T, PA-31T1, PA-31T2, and PA-31T3 T-1040 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 85-08-05 Amendment 39-5040 (50 FR 14919), applicable to certain models of Piper PA-31 Series airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.**

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 85-08-05, Amendment 39-5040 (50 FR 14919), applicable to certain models of Piper PA-31 series airplanes, the FAA found that an error had been made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.** Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

In FR Doc. 85-9051, (50 FR 14919), appearing in the **Federal Register** of April 16, 1985, make the following correction:

Correct the applicability statement to read as follows:

Piper: Applies to Models PA-31/PA-31-300 and PA31-325 (S/Ns 31-2 through 31-8312014); PA-31-350 (S/Ns 31-5001 through 31-8352042); PA-31-350 T-1020 (S/Ns 31-8153001 through 31-8353007); PA-31P (S/Ns 31P-1 through 31P-7730012); PA-31T (S/Ns 31T-7400002 through 31T-8120104); PA-31T1 (S/Ns 31T-7804001 through 31T-8304003 and 31T-1104004 through 31T-1104006); PA-31T2 (S/Ns 31T-8166001 through 31T-8166071, 31T-8166073, and 31T-8166076) and PA-31T3 T-1040 (S/Ns 31T-8275001 through 31T-8375003) airplanes certificated in any category.

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

Issued in Kansas City, Missouri, on May 15, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-12895 Filed 5-29-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F-0211]

Indirect Food Additives; Polymers

Correction

In FR Doc. 85-11922 appearing on page 20560 in the issue of Friday, May 17, 1985, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION,** tenth line, "buty-1-" should read "butyl-".

BILLING CODE 1505-01-M

21 CFR Parts 440 and 444

[Docket No. 83N-0378]

Antibiotic Drugs; Deletion of Safety Test

Correction

In FR Doc. 85-11467 beginning on page 19917 in the issue of Monday, May 13, 1985, make the following corrections:

1. On page 19918, third column, under the heading for **Part 440,** in amendatory instruction 6, in the first and second lines, "reserving and revising" should read "removing and reserving".

2. On page 19919, second column, under the heading for **Part 444,** in amendatory instruction 16, fourth line, insert "444" at the beginning of the line.

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

28 CFR Part 33

Criminal Justice Block Grants

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Justice Assistance of the Office of Justice Programs, U.S. Department of Justice, is publishing final regulations to implement the criminal justice block grant program authorized by the Justice Assistance Act of 1984. The regulations describe procedures and requirements for applying for and administering block grant funds.

EFFECTIVE DATE: These regulations are effective May 30, 1985.

SUPPLEMENTARY INFORMATION: The Justice Assistance Act of 1984 establishes within the Office of Justice Programs, a Bureau of Justice Assistance. The Act authorizes the Bureau to award block grants to the states to assist states and local governments in carrying out programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders. The Bureau is publishing regulations to implement this new block grant program. Copies of these regulations, the Application Kit, and each of the 11 Program Briefs cited in the regulations, have been forwarded to each of the State Offices designated to administer the block grant program. The deadline for submitting FY 85 applications is August 1, 1985. States are encouraged to submit their applications earlier, if at all possible.

The regulations provide significant discretion to the states to determine priorities and to carry out their administrative responsibilities. They assure minimum Federal instrusiveness and red tape, while preserving standards of accountability for public funds.

The regulations describe a process by which the Bureau of Justice Assistance will award block grants to the states upon approval of a simplified, two-year application. The states, in turn, make subgrants to state and local agencies for the conduct of specific programs.

States and localities may use block grant funds for programs that fall within one or more of the 18 eligible purposes listed in the Justice Assistance Act, and that meet the statutory program criteria of offering a high probability of improving the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. The final regulations enumerate specific programs which have been certified by the Bureau to meet these criteria. Approval will be given for implementation of any of these programs, if the applicant agrees to include all critical elements in the program design. *Program Briefs* are available from the Bureau describing these programs in greater detail. The *Briefs* are intended to aid states and localities in implementing these activities.

In order to grant flexibility to states and local units of government, the regulations also describe a process under which units of government can propose programs other than those already specified in the regulations. Under this process applicants would demonstrate that the programs they propose fall within one of the 18 eligible purposes and meet the statutory program criteria. Subject to approval by the Bureau, the programs proposed by the applicant may be variations of the programs specified in the regulations or completely different activities.

In addition, states can propose to expend up to 10 percent of their funds for programs of the type which the Bureau establishes as discretionary programs under section 503(a) of the Justice Assistance Act or innovative programs that are likely to prove successful.

The Bureau published proposed block grant regulations in the **Federal Register** on January 24, 1985, for a 60-day public comment period. Written comments were received from 35 national, state and local organizations. In addition, the Bureau conducted four regional meetings to brief interested parties on the program and respond to questions. In preparing these final regulations, the Bureau has considered all comments submitted as well as the questions raised and views expressed at the regional meetings. In addition, the Bureau has included the appropriate citation to statutory requirements in the regulations.

Discussion of Comments

Several persons commented favorably upon the streamlined approach to implementing the block grant program reflected in the regulations. A number of reviewers, however, suggested imposing additional requirements. The Bureau has rejected these suggestions. It is maintaining its policy that state governments should have maximum discretion and flexibility to administer the program as they see fit.

The following summarizes the major issues raised and the Bureau's response:

General Issues

1. *Comment:* The period for obligating grant funds should be the fiscal year of award plus the next two fiscal years, not the fiscal year of award plus one.

Response: The period of obligation for fiscal year 1985 awards will be the fiscal year of award plus two, as urged in the comments. The Bureau recognizes that a shorter obligation period would place undue hardships on state and local governments, and would, as a practical matter, provide in some instances only 6-8 months of project operations. The obligation period is set forth in Guideline Manual 7100.1, "Financial and Administrative Guide for Grants" available from the Office of Justice Programs.

2. *Comment:* The eligibility of Indian tribes for block grant funding should be clarified.

Response: For purposes of the block grant program, Indian tribes are included in the definition of units of local government. (Section 901 of the Justice Assistance Act.) The regulations have been revised to include this definition. Indian tribes, like all units of local government, are eligible to apply to the state for a subgrant award.

3. *Comment:* States and local governments are listed as eligible applicants. Does this mean that non-profit organizations are not eligible?

Response: Only state agencies and units of local governments may receive grants or subgrants. They, in turn, may contract or enter into some other form of legal agreement with a non-profit organization to carry out all or part of an approved program.

4. *Comment:* If a state elects not to participate the first year, may it decide to participate the following year?

Response: Yes.

Match

5. *Comment:* The requirement for a 50 percent cash match will be difficult to meet.

Response: Section 403(b) of the Justice Assistance Act requires that one-half of the costs of a program or project must be provided in cash from non-Federal funds, except in the case of subgrants to Indian tribes which are to be 100 percent. The regulations implement this statutory provision. Detailed guidance on match requirements is contained in OJP Guideline Manual 7100.1, "Financial and Administrative Guide for Grants."

6. *Comment:* Applicants should be able to use block grant funds to enhance existing programs that meet section 403(a) purposes and criteria and to consider funds for these existing programs as match.

Response: Block grant funds may be used to enhance an existing program. Moreover, state or local appropriations that have been supporting these existing efforts can be used as match against the Federal block funds to augment activities of section 403(a) programs and projects. Under this interpretation, Federal block funds will be used to supplement resources for these programs, but will not have be used to supplant or replace state or local funds.

7. *Comment:* The basis for giving perference to project-by-project match should be explained.

Response: The purpose of the requirement for match is to encourage states and localities to build projects into their normal budget processes and to make a significant investment in the project thereby increasing the likelihood that the project will be continued after Federal funding ends. Thus, it is logical that match be on a project-by-project basis. Applicants may propose matching on a program-by-program basis, statewide basis, unit of government basis, or any combination of these approaches.

State and Local Coordination

8. *Comment:* More guidance should be given the states regarding local government input into priority-setting and funding decisions.

Response: The regulations incorporate the statutory provisions of the Justice Assistance Act regarding state and local coordination, but do not impose additional requirements.

Section 405 of the Justice Assistance Act requires states to coordinate with affected agencies, to take into account the needs and requests of local government and to encourage local initiative in the development of programs. The state must certify in its application to the Bureau that it has complied with these requirements. The approaches a state may choose to follow include but are not limited to conducting public hearings, publishing priorities for comment, utilizing a broad-based policy board with state and local representation to make funding recommendations, and issuing requests for proposals.

9. *Comment:* The state should be required to provide written notice to local governments about the state application requirements and process.

Response: There is no such requirement in the regulations. However, section 405(9) of the Act provides that the state must make its application public prior to submission to the Bureau.

10. *Comment:* States are required to make subgrants to urban, rural and suburban units of local government giving priority to those jurisdictions with the greatest need. "Greatest need" should be defined.

Response: The regulations do not define "greatest need." It is up to the individual states to determine what criteria they will use. However, state actions will be subject to review under the state's own procedures and criteria and procedures for decisions should not be arbitrary.

11. *Comment:* States are required to pass-through to local governments a portion of the block grant funds that is equal to the local share of total state and local criminal justice expenditures. The pass-through formula should be more clearly defined. How does a state obtain approval of a different ratio?

Response: Section 33.20(b) of the regulations has been revised to provide this clarification. Although the pass-through ratios for FY 1985 are based on 1979 data (the most current and complete data available), new data should be available to determine the pass-through ratios for 1986. Section 33.20(b) also describes how the state may request approval of the Bureau of Justice Assistance of a different pass-through ratio.

12. *Comment:* Under what circumstances can a subgrant to a state agency be considered as contributing toward the local share of funds?

Response: This issue is addressed in OJP Guideline Manual 7100.1, "Financial and Administrative Guide for Grants." If a local unit of government that receives services under the subgrant to the state agency agrees in writing, then the funds subgranted to the state agency can be counted as part of the local share of funds required under the pass-through formula.

13. *Comment:* If a state refuses to fund a local application, what are the appeal rights of the local unit of government?

Response: The local unit of government may appeal under the state's appeal process, but has no right of appeal to the Federal Government.

Funding Restrictions

14. *Comment:* Hardware or equipment acquisitions are prohibited unless they are an incidental and necessary part of an improvement program. The phrase "incidental and necessary" should be defined.

Response: The regulations do not define what is an incidental and necessary cost. It is the Bureau's position that this determination is best left to the states in conjunction with the BJA review of the eligible programs and the OMB circular governing equipment purchases. (See Guideline Manual 7100.1, "Financial and Administrative Guide for Grants.")

15. *Comment:* The regulations should be clear that funding for automated information systems is allowable, including funding for automated fingerprint identification systems.

Response: The regulations have been revised to make it clear that the certified program "Prosecutor Management Support System" is only one type of information system eligible for funding under purpose 12. In addition, several other purposes and programs could include information system activities as an element (e.g., court delay reduction). Information systems are eligible for funding so long as they meet the statutory criteria, and the equipment or hardware acquisition costs are an incidental and necessary part of a section 403(a) program. It is not clear

that automated fingerprint equipment could be considered an "information system" program.

16. *Comment:* Software costs should be allowable.

Response: Software costs that are part of a section 403(a) program are allowable. However, section 33.32(a)(12)(ii) of the regulations requires that if public domain software is not available, any improvements made to proprietary software must be placed in the public domain.

17. *Comment:* The purchase of electronic equipment should be permitted.

Response: Section 406(c)(1) of the Justice Assistance Act prohibits the acquisition of equipment or hardware unless this is an incidental and necessary part of a section 403(a) program. Section 406 of the Act would not permit a routine equipment purchase. Rather, it is the intent to support overall improvement programs that fall within one of the 18 purposes of section 403(a) and have a high probability of improving the criminal justice system. When such a program exists, any type of equipment which furthers the program purpose might be an allowable cost.

18. *Comment:* Basic law enforcement training should be permitted.

Response: The focus of section 403(a)(10) of the Justice Assistance Act is to provide training or technical assistance to criminal justice personnel for the other 17 purposes listed under section 403(a). The regulations reflect this focus. In addition, the regulations prohibit the use of block grant funds for basic or entry-level training. This is consistent with the philosophy of the block grant to support overall improvement programs, but not routine operating expenses.

19. *Comment:* Minor repairs or remodeling necessary to implement improvement programs under one of the section 403(a) purposes should be allowable. Does the prohibition on construction projects ban such costs?

Response: This issue is now under review and will be resolved in Guideline Manual 7100.1, "Financial and Administrative Guide for Grants."

20. *Comment:* Funds should be available to pay for administrative costs.

Purpose: The purpose for which block grant funds may be used are listed in section 403(a) of the Justice Assistance Act. Administration of the block grant is not included. Therefore, block grant funds may not be used to pay for costs associated with applying for or administering the grant nor may state-absorbed administrative expenses be used as match.

Focus on Violent Crime

21. *Comment:* It is unnecessarily strict to require that all programs emphasize violent crime and serious offenders. This requirement precludes programs related to white collar crime, alternatives to jail, and some other statutory purposes. Must all funds be allocated to programs and projects which focus on violent crime and serious offenders?

Response: The regulations have been revised to clarify that while the Justice Assistance Act requires an overall focus on violent crime and serious offenders, programs under purposes less directly related to violent crime and serious offenders are also eligible for support.

22. *Comment:* The definition of serious offenders should be expanded to include repeat offenders or those with chronic histories of non-violent crimes.

Response: The proposed regulations defined serious offenders as those who commit violent crimes and the final regulations retain this definition. The legislative history of the Justice Assistance Act shows that the term violent crime and serious offenders are used interchangeably, and that it is the Congressional intent that there be a special emphasis on violent crime or serious offenders.

Certified Programs

23. *Comment:* What is the statutory basis for the identification of specific programs as proven successful and the preference given to the specific programs in the regulations?

Response: The legislative history of the Justice Assistance Act clearly supports the view that block grant funds are to be targeted and used for programs that have a track record of success. Section 403(a)(14) authorizes the Bureau to certify programs as having proved successful after consultation with the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention. The 11 specific programs certified by the Bureau and identified in the regulations as successful and eligible for funding are all programs that have been demonstrated and evaluated. They are cited extensively in the legislative history as the types of programs block grant funds should support. However, the Justice Assistance Act and the regulations also provide flexibility to applicants to propose other programs by providing in their application a brief description of the program, and evidence that it meets the statutory criteria.

The 60-day comment period for the proposed regulations provided an opportunity for states and localities to comment on and raise objections to any of the 11 certified programs, and to suggest additional programs. The Bureau anticipates in future years adding to the list of certified programs and doing so in consultation with the states and localities.

In addition, language has been added to emphasize that applicants are not restricted to the 11 certified programs but may propose any program so long as it meets a section 403(a) purpose and the statutory criteria.

24. *Comment:* Must all funds be allocated to those specific, certified programs?

Response: No. Applicants may propose other programs that meet section 403(a) purposes. The application requirements (Section 33.41 of the regulations) ask only for a description of the proposed program (its critical elements and performance indicators) and evidence that it meets the statutory criteria.

25. *Comment:* May a state put all of its funds into one purpose area?

Response: Yes.

26. *Comment:* States and localities should be able to modify the certified programs listed in the regulations and not required to abide by all the critical elements.

Response: Applicants may propose any modifications they wish to the certified programs but must provide a description of the program, as modified, and evidence that it has a high probability of improving the criminal justice system.

27. *Comment:* The *Program Briefs* referred to in regulations should be available to interested parties.

Response: Ten of the 11 *Program Briefs* are now available. Copies have been sent to all designated State Offices. Persons interested in obtaining one or more of the *Briefs* should write the Bureau of Justice Assistance. The *Program Briefs* provide additional description of a certified program, including sources of further information and assistance. They do not impose additional, legally-binding requirements. The 11th *Program Brief*, Restitution by Juvenile Offenders, is being developed.

28. *Comment:* The Court Delay Reduction program should be expanded to include cases other than felonies. The performance indicators for case processing should be derived from goals set by the court; the time segments proposed are too rigid.

Response: Consistent with the statutory purposes of the Justice

Assistance Act, the focus of the Court Delay Reduction Program is on criminal, not civil cases, and on felonies. The performance indicators have been revised to make it clear that the individual project sets the standard for processing cases. The suggested time segments have been eliminated.

29. *Comment:* Burglary and manslaughter should be deleted from the list of violent crimes making an offender ineligible for participation in the TASC program.

Response: It is Bureau's position that persons accused of violent crimes should not be included in the TASC program, as certified by the Bureau.

30. *Comment:* Project New Pride should be included as one of the certified programs under purpose 15.

Response: Although not a certified program in the regulations, applicants may propose in their application to implement a program similar to Project New Pride.

31. *Comment:* The critical elements for the Jail Overcrowding Program should be revised to establish the need for broad-based support and planning, but to eliminate the requirement for a policy board or committee.

Response: Experience and evaluation of the Jail Overcrowding Program has shown it to be more effective to have a specific board or committee as a way to achieve broadbased support and coordinated planning. Applicants may propose variations on the Jail Overcrowding Program, including others means to achieve support and coordination, so long as they describe the program and provide evidence that it meets the staturory criteria as set out in § 33.41 of the regulations.

32. *Comment:* The critical element for the Jail Overcrowding Program requiring implementation of the program by the state should be removed. Does this prohibit funding projects which impact local jails?

Response: As explained in the *Program Briefs*, the state role may vary widely but at minimum exists to provide oversight of local projects and to assure that the planning process is completed (phase I) prior to implementation. It does not prohibit funding of local projects.

33. *Comment:* Successful corrections programs exist which should be included among the eligible programs.

Response: Although the regulations identify 11 specific programs that the Bureau has certified as proven successful and eligible for support, applicants are free to propose any program that falls within one of the section 403(a) purposes and meets the statutory criteria. Purposes (7), (8), (9), (10), (11), (12), (13), (14), and (17) relate either directly or indirectly to corrections.

34. *Comment:* The regulations should state clearly that programs for juveniles may be funded under many purposes, not just the three that specifically mention juveniles.

Response: The definition of criminal justice, which includes juvenile justice and delinquency activities, has been added to § 33.30 of the regulations. Clearly, juvenile justice and delinquency prevention activities fall within most of the section 403(a) programs.

35. *Comment:* The critical elements for the career criminal prosecution program requiring a separate, full-time prosecutorial unit and limiting plea negotiations, should be removed.

Response: The career criminal program has been in operation for over ten years and in more than 150 jurisdictions. Evaluations of the program have consistently shown that these two elements are critical to the achievement of program goals.

Application Requirements

36. *Comment:* It will be difficult for states to identify specific projects in their applications.

Response: Section 405 of the Justice Assistance Act requires that the application identify programs and projects and the implementing state agency or local unit of government. However, due to the lag time in starting a new program, states may opt this first year to submit by the August 1 deadline, and application that contains only the statutory purposes and programs it intends to fund, and the anticipated allocation of funds among these programs with the project specific information to be submitted at a later date (see Application Kit).

37. *Comment:* Will any leeway be given states regarding submission of an annual performance report this first year?

Response: Yes. Since projects will have been operational for a very short time, it makes no sense to require a performance report by December 31 of this year. The first report will not be due until December 31, 1986. The regulations have been revised to this effect.

38. *Comment:* The requirement for a subgrant report should be eliminated.

Response: This requirement has been retained but revised to assure that it does not duplicate information requirements in the application. The subgrant report will provide the name and address of the project director, the project start and end date, the geographic area served by the project, and the target group affected.

39. *Comment:* Program evaluation should not be required as part of the performance report.

Response: The regulations have been revised to make clear the evaluation is not required of the states.

40. *Comment:* The responsibilities for funding evalution (subpart J of the proposed regulations) should be clarified.

Response: This subpart has been eliminated in its entirety. Section 801 of the Justice Assistance Act directs the Bureau of Justice Assistance to evaluate programs and projects. Any evaluation activity carried out under this provision will be the responsibility of the Bureau.

Executive Order 12291

This rule does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This rule will not have significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 33

Grant Programs—Law, Courts, Crime, Law Enforcement, Reporting and Record Keeping Requirements.

For the reasons set forth in the preamble, Title 28 Code of Federal Regulations is amended by adding Part 33 to read as follows:

PART 33—CRIMINAL JUSTICE BLOCK GRANTS

Sec.

Subpart A—General Provisions

Subpart B—Eligible Applicants

Subpart C—Allocation of Funds

Subpart D—Purposes of Block Grant Funds

Authority: Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (the Justice Assistance Act of 1984).

Subpart A—General Provisions

§ 33.1 General.

This part defines eligibility criteria and sets forth requirements for application for and administration of block grants by state and local governments.

§ 33.2 Statutory Authority.

The statutory authority for the regulations is the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (hereinafter referred to as the Justice Assistance Act of 1984 or the Act).

§ 33.3 OMB Approval of Information Collection Requirements.

The information collection requirements in this Part 33 have been approved by the Office of Management and Budget under Control No. 1121–0113.

Subpart B—Eligible Applicants

§ 33.10 State Government.

All states are eligible to apply for and receive block grants. Section 404 of the Act. State, as defined in the statute, means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Section 901(a)(2) of the Act.

§ 33.11 Units of Local Government.

(a) Units of local government are eligible to receive subgrants from a participating state. Unit of local government means any city, county, township, borough, parish, village, or other general purpose political subdivision of a state and includes Indian tribes which perform law enforcement functions as determined by the Secretary of the Interior. Section 901(a)(3) of the Act.

(b) If the Bureau determines, during any fiscal year, that a portion of the funds allocated to a state will not be required, or that a state will be unable to qualify and receive funds, or that a state chooses not to participate in the program, then the Bureau shall award the funds allocated to the state directly to urban, rural, and suburban units of local government or combinations thereof within the state, giving priority to those jurisdictions with the greatest need. Section 407(d) of the Act.

§ 33.12 Establishment of State Office.

(a) Section 408(a) of the Act provides that the chief executive of each participating state shall designate a State Office for the purposes of:

(1) Preparing an application to obtain funds; and

(2) Administering funds received from the Bureau of Justice Assistance, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

(b) An office or agency performing other functions within the state's executive branch may be designated as the State Office. Section 408(b) of the Act.

Subpart C—Allocation of Funds

§ 33.20 Fund Availability.

Section 407(a) of the Justice Assistance Act provides that 80 percent of the total amount appropriated for part D (block grants) and part E (discretionary grants) shall be allocated for block grants.

(a) *Allocation to States.* Each participating state shall receive a base amount of $250,000 with the remaining funds allocated to each state on the basis of the state's relative share of total U.S. population. Section 407(a) of the Act. If a state does not elect to participate in the Act, the states allocation shall be awarded by the Bureau directly to local units of government and combinations of units of local government within the state. Section 407(d) of the Act.

(b) *Allocation of Funds Within the State.* (1) Funds granted to the state are further subgranted by the state to state agencies and units of local government to carry out programs and projects contained in an approved application. Each state shall distribute to its local units of government, in the aggregate, a portion of the state's block grant funds equal to the local government share of total state and local criminal justice expenditures. Section 407(b) of the Act. In determining the portion to be distributed to local units, the most recent and complete data available from the Bureau of Justice Statistics of the U.S. Department of Justice shall be used unless the use of other data has been approved in advance by the Bureau of Justice Assistance.

(2) To request approval of a distribution ratio other than that based on data of the Bureau of Justice Statistics, the head of the State Office must certify in writing to the Bureau of Justice Assistance that the ratio it proposes is a correct reflection of the local share of total state and local criminal justice expenditures and that the state has notified its major local governments of the request and informed them of the opportunity to contact the Bureau within 30 days, if they have any objections. The written request must also cite the expenditure data used to substantiate the proposed change.

(c) *Allocation Based on Greatest Need.* In distributing funds among urban, rural, and suburban units of local government, the state shall give priority to those jurisdictions with the greatest need. Section 407(b)(2) of the Act.

§ 33.21 Match.

(a) Funds may be used to pay up to 50 percent of the cost of a program or project. Section 403(b)(1) of the Act. The remaining non-Federal share shall be in cash. Section 403(b)(2) of the Act. Match will be provided on a project by project basis. However, states may request the Bureau to approve exceptions such as match on a program by program basis, state-wide basis, unit-of-government basis, or a combination of the above. States must include any requests for approval of other than project-by-project match in their applications to the Bureau.

(b) Funds subgranted to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) shall be used to pay 100 percent of the cost of a program or project. Section 403(b)(1) of the Act.

§ 33.22 Title to Personal Property.

Section 808 of the Justice Assistance Act provides that notwithstanding any other provision of law, title to all expendable and nonexpendable personal property purchased with funds

made available under this Title, including property with funds made available under this Title as in effect before the effective date of the Justice Assistance Act of 1984, shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State Office that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State Office, which shall seek to have the property used for criminal justice purposes elsewhere in the state prior to using it or disposing of it in any other manner. If a State Office does not exist, certification will be made directly to the Bureau of Justice Assistance.

§ 33.23 Limitations on Fund Use.

In order to insure the most efficient and effective use of grant funds, the Justice Assistance Act places restrictions on the award of block monies for routine equipment, personnel costs, construction, supplanting of state and local funds, and land acquisition.

(a) *Equipment and Hardware.* The purchase or acquisition of equipment or hardware with grant funds is prohibited unless the purchase or acquisition is an incidental and necessary part of a program. Section 406(c)(1) of the Act.

(b) *General Salaries and Personnel Costs.* Payment of personnel costs with grant funds is prohibited unless the costs are an incidental and necessary part of a program. Section 406(c)(1) of the Act. Programs which have as their primary purpose the payment of usual salaries paid to employees generally, or to specific classes of employees within a jurisdiction, are prohibited. Notwithstanding the above, grant funds may be used to compensate personnel for time engaged in conducting or undergoing training programs or the compensation of personnel engaged in research, development demonstration, or short-term programs. Section 406(c)(2) of the Act.

(c) *Construction.* Construction projects are prohibited. Section 406(c)(3) of the Act.

(d) *Land Acquisition.* Acquisition of land with grant funds is prohibited. Section 406(c)(3) of the Act.

(e) *Ineffective Programs.* The use of grant funds is prohibited for programs or projects which, based upon evaluations by the National Institute of Justice, Bureau of Justice Assistance, Bureau of Justice Statistics, state or local agencies, and other public or private organizations, have been demonstrated to offer a low probability of improving the functioning of the criminal justice system. The Bureau of Justice Assistance will formally identify ineffective programs by notice in the **Federal Register** after opportunity for public comment. Section 406(c)(4) of the Act.

(f) *Administrative Costs.* The use of grant funds to pay for costs incurred in applying for or administering the block grant is prohibited. Block grant funds may only be used to carry out programs that fall within one of the purposes listed in secton 403(a) of the Justice Assistance Act. Section 403(a) of the Act.

(g) *Period of Project Support.* A grant recipient may receive block grant funds for a specific program or project for a period not to exceed four years. The four-year maximum allowable period of funding includes any period prior to the Justice Assistance Act when the program or project was supported by funds made available under Title I of the Omnibus Crime Control and Safe Streets Act. Section 403(c) of the Act.

(h) *Non-Supplantation.* Block grant funds shall not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal aid, be made available for criminal justice activities. Section 405(2) of the Act.

Subpart D—Purposes of Block Grant Funds

§ 33.30 Program Criteria.

The Justice Assistance Act requires that block grant funds assist states and local governments to carry out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders. Section 403(a) of the Act.

(a) *High Probability of Improving the Criminal Justice System.* "High probability of improving the criminal justice system" means that a prudent assessment of the concepts and implementation plans included in a proposed program, project, approach, or practice, together with an assessment of the problem to which it is addressed and of data and information bearing on the problem, concept, and implementation plan, provides strong evidence that the proposed activities would result in identifiable improvements in the criminal justice system if implemented as proposed. Section 901(a)(21) of the Act.

(b) *Special Emphasis on Violent Crime and Serious Offenders.* "Special emphasis on violent crime and serious offenders" means that a relationship exists between the program and violent crime, the victims of violent crime, serious offenders and their acts, and the prevention of violent crime and serious offenses. Violent crime, for the purpose of this program, includes homicide, robbery, assault, arson, residential burglary, child abuse and molestation, sexual assault, kidnapping, and all felonies involving weapons or narcotics trafficking. Serious offenders are those who commit violent crimes.

(c) *Criminal Justice.* "Criminal justice" means activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to proescutorial and defender services, juvenile delinquency agencies, and pretrial service or release agencies), activities of corrections, probation or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency. Section 901(a)(1) of the Act.

§ 33.31 Eligible Purposes and Programs.

(a) *Eligible Purposes.* Block grant funds may be used for the following purposes listed in section 403(a) of the Justice Assistance Act:

(1) Providing community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime;

(2) Disrupting illicit commerce in stolen goods and property;

(3) Combating arson;

(4) Effectively investing and bringing to trial white-collar crime, organized crime, public corruption crimes, and fraud against the Government;

(5) Identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court system management and sentencing practices and procedures in such cases;

(6) Developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(7) Providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community;

(8) Providing programs which identify and meet the needs of drug-dependent offenders;

(9) Providing programs which alleviate prison and jail overcrowding and programs which identify existing state and Federal buildings suitable for prison use;

(10) Providing, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs;

(11) Providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(12) Providing for operational information systems and workload management systems which improve the effectiveness of criminal justice agencies;

(13) Not more than 10 percent of the state's block grant funds for providing programs of the same types as described in section 501(a)(4) of the Act which:

(i) The Bureau establishes under section 503(a) of the Act as discretionary programs for financial assistance; or

(ii) Are innovative and have been deemed by the Bureau as likely to prove successful;

(14) Implementing programs which address critical problems of crime, such as drug trafficking, which have been certified by the Director of the Bureau of Justice Assistance as having proved successful, after a process of consultation coordinated by the Assistant Attorney General of the Office of Justice Programs with the Director of the National Institute of Justice, Director of the Bureau of Justice Statistics, and Administrator of the Office of Juvenile Justice and Delinquency Prevention;

(15) Providing programs which address the problem of serious offenses committed by juveniles;

(16) Addressing the problem of crime committed against the elderly;

(17) Providing training, technical assistance, and programs to assist state and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention; and

(18) Improving the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques.

(b) *Programs.* The Bureau of Justice Assistance has certified that specific programs meet these purposes, conform with the program criteria, and are eligible for block grant support. (See § 33.32 of the regulations, *Certified Programs).* These programs are described in *Program Briefs* that are available from the Bureau of Justice Assistance. The list of certified programs will be expanded in the future based on the statutory criteria to permit a more complete coverage of each of the purposes. This certification will be done in consultation with state and local governments and published in the **Federal Register.** States and localities may use block funds to implement one or more of these certified programs, if they agree to comply with the critical elements set forth in § 33.32 of these regulations, and to provide data on the performance indicators listed. States and localities selecting these programs may identify the certified program in their application by name only, without further description. Programs other than those certified by the Bureau of Justice Assistance may be proposed by the state and/or units of local government and approved for funding by the Bureau. To obtain approval to fund a proposed program, the applicant must provide in its application a description of the program and evidence that it meets the statutory program criteria. The application requirements for program approval are contained in Subpart E—Application Requirements.

§ 33.32 Certified Programs.

(a) The Act encourages the implementation of programs that have been proven successful. Pursuant to section 403(a)(14) of the Act, the Bureau of Justice Assistance, after a process of consultation coordinated by the Assistant Attorney General of the Office of Justice Programs with the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention, certifies that the following programs have been proven successful:

(1)(i) *Purpose:* Providing community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime.

(ii) *Certified Program: Community Crime Prevention.* This program aims to prevent crime and reduce the fear of crime through organized collective citizen action. Community crime prevention programs may be initiated by either law enforcement agencies or existing community groups, but each must have the active support and involvement of the other. Local programs must be designed to meet the needs and problems of specific neighborhoods or communities and particular population groups, including the elderly. They must make extensive use of volunteers. The specific services or activities to be implemented depend on the local situation and crime problem, but usually have, as a core element, neighborhood (block) watch with additional activities optional. Programs to provide training, technical assistance and other support services are also eligible for funding. Program objectives and elements are described in greater detail in the *Program Brief on Community Crime Prevention.*

(A) *Critical Elements:*

(1) Pre-program planning to determine needs and problems of community.

(2) Targeting of activities and services to meet local situation.

(3) Maximum use of volunteers.

(4) Cooperation of community organizations and law enforcement.

(B) *Optional Activities:* Projects must implement one or more of the following:

(1) Neighborhood Watch

(2) Operation ID

(3) Security Surveys

(4) Citizen Patrols

(5) Escort or Special Services for the Elderly

(6) Block Homes or Safe-Houses

(7) Neighborhood Clean-Ups in High Crime Areas

(8) Public Education

(9) Training

(10) Technical Assistance

(C) *Performance Indicators:*

(*1*) Number of staff assigned to project.

(*2*) Types of services provided.

(*3*) Units of service delivered (e.g., number of block watches organized).

(*4*) Number of volunteers participating.

(2)(i) *Purpose:* Disrupting illicit commerce in stolen goods and property.

(ii) *Certified Program: Property Crime (STING) Program.* This program targets the apprehension and prosecution of burglars/thieves as well as those individuals who provide the outlets for receipt of stolen goods and property. The majority of the model programs have established *storefronts* in which law enforcement officers pose as fences who buy stolen goods. In areas where there is a high concentration of organized crime, programs have employed techniques to infiltrate organizations in order to obtain evidence for prosecution of serious crime. Program objectives and elements are described in greater detail in the *Program Brief on Property Crime (STING) Program.*

(A) *Critical Elements:*

(*1*) Program planning, which consists of:

(*i*) Analysis of the stolen property redistribution system in the jurisdiction.

(*ii*) Selection of the target criminal population and/or property at which the program will be directed.

(*iii*) Establishment of policies and procedures governing roles of participants, and program implementation.

(*2*) Establishment of records maintenance and management system; security management procedures; and stolen property/contraband/evidence management.

(*3*) Implementation of operations, including undercover activities and ongoing intelligence gathering and analysis.

(*4*) Coordination with prosecutorial personnel in case development and proper use of undercover techniques; and cooperation with victims to assure return of property.

(B) *Performance Indicators:*

(*1*) Number of arrest and type of offense.

(*2*) Number of convictions.

(*3*) Dollar value of property received.

(*4*) Dollar value of property returned to victims.

(*5*) Number of fencing operations disrupted.

(3)(i) *Purpose:* Combating arson.

(ii) *Certified Program: Arson Prevention and Control Program.* This program employs the task force concept as a strategy to prevent and control the malicious or fraudulent burning of property. It attempts to reduce the incidence of arson and increase arrest, prosecution and conviction rates. The program focuses on arson that is economically motivated. Program objectives and elements are described in greater detail in the *Program Brief on Arson Prevention and Control.*

(A) *Critical Elements:*

(*1*) Program planning to establish:

(*i*) An understanding to the area's specific arson problems.

(*ii*) A selection of program priorities, strategies, and the targeting of the criminal population.

(*iii*) An outline of policies and procedures for program participants and program implementation.

(*iv*) Written agreements indicating participation in the program, acceptance of established criteria and procedures, and commitment of resources.

(*2*) Establishment of a system for collecting and analyzing data to target and identify arson patterns, methods and areas of vulnerability.

(*3*) Establishment of investigative and prosecutorial elements directed at the crime of arson.

(*4*) Involvement of community groups and private industry in support of the program.

(B) *Performance Indicators:*

(*1*) Number of staff assigned to the project.

(*2*) Number of confirmed arson incidents reported during reporting period.

(*3*) Number of confirmed arson incidents reported during equivalent pre-reporting period.

(*4*) Number of incidents resulting in a prosecution during program period.

(*5*) Number of incidents resulting in a prosecution during equivalent pre-reporting period.

(*6*) Number of prosecutions resulting in conviction.

(*7*) Amount of property damage/loss caused by incendiary/suspicious fires during program period.

(*8*) Amount of property damage/loss by incendiary/suspicious fires during equivalent pre-reporting period.

(4)(i) *Purpose:* Effectively investigating and bringing to trial white-collar crime, organized crime, public corruption crime, and fraud against the Government. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.41.)

(5)(i) *Purpose:* Identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court system management and sentencing practices and procedures in such cases.

(ii) *Certificate Program: Career Criminal Prosecution Program.* This program targets the identification and prosecution of violent and repeat offenders. Model efforts include a full time prosecutorial unit devoted to increasing the rate of prosecution of such offenders, special screening criteria, and policies that initiate or enhance vertical prosecution. Program objectives and elements are described in greater detail in the *Program Brief on Career Criminal Prosecution.*

(A) Critical Elements:

(*1*) Screening and prosecution criteria to identify cases involving violent offenses and repeat offenders.

(*2*) A separate, full-time prosecutorial unit for violent and repeat offenders to enable vertical prosecution of assigned cases.

(*3*) Reduction of caseload to enable thorough case preparation/presentation.

(*4*) A policy requiring limited or no plea negotiations.

(*5*) A policy of opposing pre-trial motions for continuances.

(*6*) A policy to maintain effective communications with victims and witnesses.

(B) *Performance Indicators:*

(*1*) Number of full-time prosecutors assigned to unit.

(*2*) Number of cases meeting established criteria.

(*3*) Number of cases prosecuted.

(*4*) Number of and percentage of cases resulting in conviction.

(*5*) Number and percentage of individuals incarcerated.

(ii) *Certified Program: Court Delay Reduction Program.* This program expedites the processing of felony cases in trial courts. It emphasizes reduction of backlogs while maintaining equitable treatment and due process. Model programs result in reduction of case processing time, minimization of court appearances for victims and witnesses, and improvement of the public's perception of the quality of the criminal justice system. This program is available for both metropolitan trial courts and state-level court systems. Program objectives and elements are described in greater detail in the *Program Brief on Court Delay Reduction.*

(A) *Critical Elements:* Both the metropolitan and the state level programs are divided into two phases, planning and implementation.

(*1*) *Planning* (Phase I):

(*i*) Formation of delay reduction advisory committee.

(*ii*) Data collection, analysis, and problem identification.

(*iii*) Adoption of case processing goals for criminal cases.

(*iv*) Development of action plan(s).

(*2*) *Implementation* (Phase II):

(*i*) Education of trial judges and others on objectives, standards and procedures.

(*ii*) Systematic monitoring of all criminal cases filed in participating courts.

(*iii*) System for regular acquisition and assessment of data from each trial court (state level only).

(*iv*) Modification of rules and procedures at all levels of program participation when program results indicate need for changes.

(B) *Performance Indicators.*

(*1*) Time standard established for processing of criminal cases under the project (days from arrest to trial).

(*2*) Percentge of criminal cases prior to project that met standard.

(*3*) Percentage of criminal cases disposed of during the project reporting period that met time disposition standard.

(4) Reduction in the average number of continuances from the equivalent pre-project period.

(6)(i) *Purpose:* Developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes.

(ii) *Certified Program: Victim Assistance.* This program provides services and assistance to victims in order to speed their recovery from the financial loss, physical suffering and emotional trauma of victimization, and to assure proper and sensitive treatment of innocent victims in the criminal justice process. Victim assistance programs usually encompass a wide range of support services. The specific services to be provided, and the specific target group should reflect local needs and priorities. Program objectives and elements are described in greater detail in the *Program Brief on Victim Assistance.*

(A) *Critical Elements:*

(1) Analysis of the community's victim/witness needs and problems.

(2) Targeting of existing and planned activities and services to respond to this community situation.

(3) Formulation of agreements for cooperation between criminal justice system agencies and public and private victim/witness service providers.

(B) *Optional Activities:* Projects must implement a minimum of three (3) or more of the following:

(1) 24 hour crisis intervention and support or emergency services.

(2) Counseling.

(3) Assistance with compensation claims, creditors, community referrals, and restitution.

(4) Police, prosecutor or court-related services.

(5) Safety (including shelter), supportive counseling, social services support and criminal justice advocacy.

(6) Training and education for individuals having direct contact with the victims, i.e., police, medical personnel, prosecutors, judges, etc.

(C) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Types of services provided.

(3) Number of victims/witnesses served (by type of service).

(4) Number of criminal justice personnel and others trained.

(7)(i) *Purpose:* Providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community.

(ii) *Certified Program: Jail Overcrowding/Alternatives to Pretrial Detention.* This program aims to control jail population through improved intake screening which assures that persons who should be in jail are detained, and that alternatives are available for those requiring less than maximum supervision. Particular care must be taken that persons charged with violent crimes be detained and that the impact on victims and witnesses be a factor in screening decisions. The program calls for the development of a jail population management plan as part of a planning phase, followed by implementation of specific activities and services. Among the activities and services that may be funded are central intake and screening, pretrial services, diversion to detoxification centers, citation release, community corrections, sentencing alternatives, and jail management information systems. Program objectives and elements are described in greater detail in the *Program Brief on Jail Overcrowding/Alternatives to Pretrial Detention.*

(A) *Critical Elements:*

(1) Implementation of program by state.

(2) Formation of broad-based jail policy committee.

(3) Program planning that includes data collection, analysis, problem identification, and development of jail population management plan, including the removal of juveniles from adult jails and lockups.

(4) Implementation of plan.

(B) *Optional Activities:* Based on their plans, projects must implement one or more of the following activities or components:

(1) Central Intake and Classification.

(2) Comprehensive Pre-trial Services.

(3) Diversion of Public Inebriates to Detoxification Centers.

(4) Diversion of Juveniles to Secure and Non-secure Alternatives.

(5) Citation Release.

(6) Community Correction Centers.

(7) Sentencing Alternatives (including Restitution and Work Release).

(8) Jail Management Information System.

(C) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Pretrial jail population.

(3) Types of services and alternatives implemented.

(4) Numbers of arrestees served/diverted by type of alternative.

(5) Convicted clients completing alternative punishment successfully.

(6) Re-arrest rate of released defendants.

(7) Estimated jail days saved.

(8)(i) *Purpose:* Providing programs which identify and meet the needs of drug-dependent offenders.

(ii) *Certified Program: Treatment Alternatives to Street Crime Program (TASC).* This program intervenes in the criminal justice process by early identification of substance-abusing offenders, referral to community treatment resources, and monitoring of treatment. Model programs provide the following services: screening arrestees, providing diagnostic/referral services for treatment, and monitoring progress of clients. Persons charged with or convicted of violent crimes including murder, rape, arson, armed robbery, sexual assault, burglary, child molestation, and manslaughter are excluded. Program objectives and elements are described in greater detail in the *Program Brief on Treatment Alternatives to Street Crime.*

(A) *Critical Elements:*

(1) Broad-based support by criminal justice agencies.

(2) Establishment of TASC advisory board.

(3) Establishment of administrative management unit with full-time director.

(4) Development of specific program eligibility criteria.

(5) Establishment of a process for screening potential clients and court liaison.

(6) Development of methods for assessing most appropriate treatment approaches.

(7) Documentation of the availability of community treatment programs and their willingness to accept TASC clients.

(8) Establishment of monitoring/tracking system.

(B) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Number of persons screened.

(3) Number of clients accepted.

(4) Number of clients completing program.

(5) Number of client re-arrests while in the program.

(9) *Purpose:* Providing programs which alleviate prison and jail overcrowding and programs which identify existing state and Federal buildings suitable for prison use. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.41.)

(10)(i) *Purpose:* Provide training, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions in § 33.41. Training, management, and technical assistance

programs must be focused on one of the 17 other statutory purposes and be based on a needs assessment. Entry level or basic training is prohibited.)

(11) *Purpose:* Providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own familes, and for support of themselves in the institution. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.41.)

(12)(i) *Purpose:* Providing for operational information systems and workload management systems which improve the effectiveness of criminal justice agencies. All operational information system programs must be based on a needs assessment and requirements analysis and must include the definition of goals and objectives. In addition, they must assure that if public domain software is not available, any improvements to proprietary software will be placed in the public domain.

(ii) *Certified Program: Prosecution Management Support System (PMSS).* This program is a specific application of the generic planning, implementation, and assessment requirements for effective system development and performance. PMSS uses automated data processing systems to support priority prosecution, improved conviction rates, speedy trial management, and improved efficiency/effectiveness of the prosecutor's office. Model programs result in information systems which support prosecution activities such as identification of violent and career criminals, case and subponena preparation and witness notification. Systems are used to monitor management decisions and prosecutor actions and to reduce case processing time and case preparation time. Program objectives and elements are described in greater detail in the *Program Brief on Prosecution Management Support System.* This Program Brief has been designed to provide guidance for all criminal justice information systems. The critical elements for PMSS are transferable to and are equally critical for other criminal justice information systems.

(*A*) *Critical Elements:*

(*1*) Pre-program needs assessment.

(*2*) Implementation plan for fulfilling information needs and improving management and research capabilities.

(*3*) Process for monitoring management decisions and prosecutor actions.

(B) *Performance Indicators:*

(*1*) Number of staff assigned to project.

(*2*) Case processing time.

(*3*) Conviction rates.

(13) *Purpose:* Providing programs of the same types as programs described in section 501(a)(4) of the Act which:

(i) The Director establishes under section 503(a) of the Justice Assistance Act as discretionary programs for financial assistance; or

(ii) Are innovative and have been deemed by the Director as likely to prove successful.

(14) *Purpose:* Implementing programs which address critical problems of crime, such as drug trafficking, which have been certified by the Director, after a process of consultation coordinated by the Assistant Attorney General, Office of Justice Programs, with the Director of the National Institute of Justice, Director of the Bureau of Justice Statistics, and Administrator of the Office of Juvenile Justice and Delinquency Prevention, as having proved successful.

(15)(i) *Purpose:* Providing programs which address the problem of serious offenses committed by juveniles.

(ii) *Certified Program: Restitution by Juvenile Offenders:* This program promotes the use of restitution by juvenile offenders to make juveniles accountable to the victim and the community and to increase community confidence in the juvenile justice system. Juvenile restitution has been an effective alternative to incarceration in jurisdictions that have used it, reducing recidivism and providing benefits to victims. Assistance in the design and development of Juvenile Restitution Programs funded under this Program is available through the Restitution Education, Training and Technical Assistance (RESTTA) Program funded by the Office of Juvenile Justice and Delinquency Prevention. Program objectives and elements are described in greater detail in the *Program Brief on Restitution by Juvenile Offenders.*

(A) *Critical Elements:*

(*1*) Legal authority to order restitution as a disposition for delinquent offenses.

(*2*) Commitment of the court and juvenile justice personnel.

(*3*) Pre-program planning to establish written policies and procedures, including:

(*i*) The stage of the system at which restitution will be initiated;

(*ii*) Specification of the target population; and

(*iii*) Establishment of procedures for determining the appropriate restitution to be rendered by the juvenile offender, enforcing restitution orders.

(*4*) Program management and administration should describe:

(*i*) Agency roles and responsibilities; and

(*ii*) Case management and tracking system for performance indicators.

(*5*) Community involvement in the program.

(B) *Performance Indicators:*

(*1*) Personnel:

(*i*) Number employed full and part-time in restitution; and

(*ii*) Average restitution caseload per restitution/probation officer.

(*2*) Program participation:

(*i*) Number of juveniles by offense type;

(*ii*) Type and amount of restitution ordered; and

(*iii*) Number of victims (by type and amount of loss/injury) receiving restitution.

(*3*) Number/percent juveniles successfully completing their restitution orders.

(*4*) Total amount of restitution collected/completed.

(*5*) Number obtaining restitution-related employment/job services.

(*6*) Operational costs per case.

(*7*) Number of participants rearrested during the program.

(*8*) Number of participants incarcerated as a result of a rearrest or program failure.

(*9*) Number retaining restitution-related employment following completion.

(*10*) Victim satisfaction with the program.

(16) *Purpose:* Addressing the problem of crime committed against the elderly. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.41. Many of the programs identified under other purposes indirectly address the problem of crime against the elderly. Victim assistance programs and community crime prevention programs in particular often provide services that meet the special needs of the elderly.)

(17) *Purpose:* Provide training, technical assistance, and programs to assist state and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention. (No specific program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.41. Many of the programs identified under other purposes are equally applicable to rural and urban areas.)

(18)(i) *Purpose:* Improve the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques.

(ii) *Certified Program: Integrated Criminal Apprehension Program (ICAP).* This program integrates and directs law enforcement activities relative to the prevention, detection and investigation of serious and violent crime. Components of model programs have included systematic data collection and analysis, crime analysis, structured planning and service delivery. The program emphasizes better use of existing resources and better management of the patrol operation and investigative process. It results in a process which increases arrests for serious crimes. Program objectives and elements are described in greater detail in the *Program Brief on the Integrated Criminal Apprehension Program.*

(A) *Critical Elements:*

(*1*) Commitment of law enforcement agency top management to concept of manpower deployment based on crime analysis.

(*2*) Modification of agency data gathering methods to enhance planning and crime analysis.

(*3*) Establishment of crime analysis and planning function.

(*4*) Implementation of strategies, tactics and processes based on analysis that contribute to better management of criminal investigation and patrol.

(B) *Performance Indicators:*

(*1*) Number of staff assigned to project.

(*2*) Types of strategies implementations e.g., directed patrol, crime analysis.

(*3*) Types of crimes targeted.

(*4*) Clearance rates (by arrest) for targeted crimes.

(*5*) Conviction rates for targeted crimes.

Subpart E—Application Requirements

§ 33.40 General.

This subpart sets forth the required programmatic content of block grant applications.

§ 33.41 Application Content.

(a) *Format.* Applications from the states for criminal justice block grants must be submitted on Standard Form 424, Application for Federal Assistance, at a time specified by the Bureau of Justice Assistance. The Bureau will provide to the states an "Application Kit" that includes SF 424, a list of assurances that the applicant must agree to, a table of fund allocations, and additional guidance on how to prepare and submit an application for criminal justice block grants.

(b) *Programs.* Applications must set forth programs and projects covering a two-year period which meet the purposes and criteria of section 403(a) of the Justice Assistance Act and these regulations. Applications must be amended annually, if new programs or projects are to be added or if the programs or projects contained in the approved application are not implemented. The application must designate which statutory purpose the program or project is intended to achieve, identify the state agency or unit of local government that will implement the program or project, and provide the estimated funding level for the program or project including the amount and source of cash matching funds. Section 405 of the Act.

(1) Section 33.32 of the regulations identifies specific programs which have been certified by the Bureau to meet the requirements of the Act. Approval will be given for implementation of any of these programs, if the applicant agrees to include all the critical elements in the program design. An applicant need only identify the program, which purpose it is intended to achieve, the state agency or unit of local government which will implement it, the funding level (including amount and source of match).

(2) Applicants may request approval of programs other than one of those certified by the Bureau. The application must contain, in addition to the information in § 33.41(b), a description of the program (including its critical elements and performance indicators) and evidence that it meets the criteria of offering a high probability of improving the functions of the criminal justice system. Evidence may include, but is not necessarily limited to, the results of any evaluations of previous tests or demonstrations of the program concept.

(3) Applicants may also request approval to expend up to 10 per centum of their funds for programs which the Director of the Bureau of Justice Assistance has established as priorities for discretionary grants under section 503 of the Act, or which are innovative programs that are deemed by the Director as likely to prove successful. For a program the same as a discretionary program, the applicant may identify it by name only and provide the information required under § 33.41(b)(1) of the regulations. For an innovative program, the applicant must describe the program (including its critical elements and performance indicators) and provide evidence that it is likely to prove successful.

(c) *Confidential Information.* Applications which request funds for the STING Program should not state the location of the project. The application should only include the program designation, the funds involved, and the number of projects. The state agency or unit of local government implementing the project will be made known to the Bureau of Justice Assistance upon request or upon completion of the project.

(d) *Audit Requirement.* Applications from the state must include the date of the State Office's last audit and the anticipated date of the next audit.

(e) *Civil Rights Contact.* Applications from the state must include the name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the Office of Civil Rights Compliance of the Office of Justice Programs.

(f) *Application Assurances.* Applications must include the following assurances:

(1) An assurance that, following the first fiscal year covered by an application and each fiscal year thereafter, the applicant will submit to the Bureau of Justice Assistance, where the applicant is a state or jurisdiction in a non-participating state, a performance report concerning the activities carried out, and an assessment of their impact; Section 405(1) of the Act.

(2) A certification that Federal funds made available under this Title will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for criminal justice activities; Section 405(2) of the Act.

(3) An assurance that funds accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Bureau of Justice Assistance shall prescribe will be provided to assure fiscal control, proper management, and efficient disbursement of funds received under this title; Section 405(3) of the Act.

(4) An assurance that the applicant shall maintain such data and information and submit such reports, in such form, at such times, and containing such information as the Bureau of Justice Assistance may require; Section 405(4) of the Act.

(5) A certification that the programs meet all the requirements, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will

comply with all provisions of the Justice Assistance Act 1984 and all other applicable Federal laws; Section 405(5) of the Act.

(6) If the applicant is a state, an assurance that not more than 10 percent of the aggregate amount of funds received by a State under this part for a fiscal year will be distributed for programs and projects designated as intended to achieve the purpose specified in section 403(a)(13) of the Act; section 405(6) of the Act.

(7) An assurance that the state will take into account the needs and requests of units of general local government in the state and encourage local initiative in the development of programs which meet the purposes of the Act; section 405(7) of the Act.

(8) An assurance that the state application and any amendment to such application, has been submitted for review to the state legislature or its designated body (for purpose of this requirement, an application or amendment shall be deemed to be reviewed if the state legislature or its designated body does not review it within 60 days from the time it was submitted to it); section 405(8) of the Act.

(9) An assurance that the state application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under state law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups; section 405(9) of the Act.

(10) An assurance that the applicant will comply, and all its subgrantees and contractors will comply, with the non-discrimination requirements of the Justice Assistance Act; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G;

(11) An assurance that in the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national orgin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs;

(12) An assurance that the applicant will require that every recipient required to formulate an Equal Employment Opportunity Program (EEOP) in accordance with 28 CFR 42.301 et. seq., submit a certification to the state that it has a current EEOP on file which meets the requirements herein;

(13) An assurance that the applicant will provide an EEOP, if required to maintain one, where the application is for $500,000 or more and provide the EEOP of any subgrantee of $500,000 or more;

(14) An assurance that the applicant will comply with the provisions of the Office of Justice Programs "Financial and Administrative Guide for Grants," M 7100.1;

(15) An assurance that the applicant will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-discrimination Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; and Part 63, Floodplain Management and Wetland Protection Procedures.

(g) *Non-participating state.* If a state notifies the Bureau of Justice Assistance of its intent not to apply for block grant funds or fails to submit an application by the submission date, the Bureau will announce the availability of the block grant funds to local units of government in the non-participating state and will invite them to submit applications directly to the Bureau. A unit of local government receiving a block grant award directly from the Bureau assumes responsibility for all activities which would normally be the responsibility of the State Office.

Subpart F—Additional Requirements

§ 33.50 General Financial Requirements.

Grants funded under the criminal justice block grant program are governed by the provisions of the Office of Mangement and Budget (OMB) Circulars applicable to financial assistance. These Circulars along with additional information and guidance are contained in "Financial and Administrative Guide for Grants," Guideline Manual 7100.1, available from the Office of Justice Programs. This Guideline Manual provides information on cost allowability, methods of payment, audit, accounting systems and financial records.

§ 33.51 Audit.

Pursuant to Office of Management and Budget Circular A-128 "Audits of State and Local Governments," all grantees and subgrantees must provide for an independent audit of their activities on a periodic basis. For additional information on audit requirements, applicants should refer to the "Financial and Administrative Guide for Grants," Guideline Manual 7100.1, Office of Justice Programs.

§ 33.52 Civil Rights.

The Justice Assistance Act provides that "no person in any state shall on the ground of race, color, religion, national orgin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." Section 809(c)(1) of the Act. Recipients of funds under the Act are also subject to the provisions of Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

Subpart G—Submission and Review of Applications

§ 33.60 General.

This subpart describes the process and criteria for Bureau of Justice Assistance review and approval of state applications and amendments.

§ 33.61 Review of State Applications.

(a) *Review Criteria.* The Act provides the basis for review and approval or disapproval of state applications and amendments in whole or in part. These are:

(1) Compliance with the statutory requirements of the Justice Assistance Act and the regulations of the Bureau of Justice Assistance. Section 406(a)(1) of the Act.

(2) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice Implementing regulations 28 CFR Part 30. States must submit block grant applications to the state "Single Point of Contact", if there is a "Single Point of Contact", and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Bureau of Justice Assistance. State processes

have 60 days starting from the application submission date to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them of the prospective application and receive instructions regarding the process.

(b) *Sixty Day Rule.* The Bureau of Justice Assistance shall approve or disapprove applications or amendments within sixty (60) days of official receipt. The application or amendment shall be considered approved unless the Bureau of Justice Assistance informs the applicant in writing of specific reasons for disapproval prior to the expiration of the 60-day period. Applications that are incomplete, as determined by the Bureau of Justice Assistance, shall not be considered officially received for purposes of the 60-day rule. Section 406(a)(2) of the Act.

(c) *Written Notification and Reasons for Disapproval.* The Bureau of Justice Assistance shall notify the applicant in writing of the specific reasons for the disapproval of the application or amendment, in whole or in part. Section 406(a)(2) of the Act.

(d) *Affirmative Finding.* The Bureau of Justice Assistance, prior to approval of the application or amendments, must make an affirmative finding in writing that the program or project has been reviewed in accordance with section 405 of the Act and is likely to contribute effectively to the achievement of the objectives of the Act. Section 406(a)(2) of the Act.

Subpart H—Reports

§ 33.70 Annual Performance Report.

(a) Section 405 of the Justice Assistance Act requires that the state, or a local unit of government in the case of a non-participating state, submit annually to the Bureau of Justice Assistance a performance report (includng an assessment of impact) concerning the activities carried out under the grant. These performance reports will provide the basis for the annual report from the Bureau to the President and the Congress as required by section 810 of the Act.

(b) The performance report will describe the activities undertaken and results achieved of each project funded. It will include the data gathered on the approved performance indicators. The report is due to the Bureau by no later than December 31 and must cover projects for the prior Federal fiscal year that have either been completed or been in operation for 12 months or more. The first performance report shall be due to the Bureau by December 31, 1986.

(c) In order to help states and localities prepare these performance reports, the Bureau will provide data collection forms and instructions that will enable information to be gathered and reported in the most convenient manner possible. These forms and instructions will be developed in consultation with states and localities.

§ 33.71 Initial Project Report.

States are required to provide to the Bureau of Justice Assistance within 30 days after the award of a subgrant, an initial project report which provides information on the subgrant recipient (name, address, contact person), the subgrant period, the type of award (new or renewal), the subgrant funding level, and the general target area (geographic area, population group) to be impacted. The Bureau of Justice Assistance will provide a form to assist the states in reporting this information.

Subpart I—Suspension of Funding

§ 33.80 Suspension of Funding.

The Bureau of Justice Assistance shall, after reasonable notice and opportunity for a hearing on the record, terminate or suspend funding for a state that implements programs or projects which fail to conform to the requirements or statutory objectives of the Act, or that fails to comply substantially with the Justice Assistance Act, these regulations or the terms and conditions of its grant award. Hearing and appeal procedures are set forth in Department of Justice regulations 28 CFR Part 18.

Lois Haight Herrington,

Assistant Attorney General.

[FR Doc. 85-12898 Filed 5-29-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on August 3, 1984, and minor revisions were submitted October 12, 1984. OSM is deferring action on one of the amendments, as discussed below. The amendments pertain to: (1) Procedures for surety cancellation of bond on undisturbed areas for non-contemporaneous reclamation violations; (2) establishment of an abandoned mine enhancement program to supplement operator bonds for remining on abandoned mine areas; (3) payment of permit fees in increments; (4) emergency regulation implementing House Bill 514 implementing House Bill 514 pertaining to deferment of contemporaneous reclamation and the Settlement Agreement for *Sierra Club* v. *Clark, et al.*, Civil Action 83-85, U.S. District Court for the Eastern District of Kentucky; (5) surety responsibility to escrow bond amounts in the case of bond forfeiture; and (6) transfer of surface coal mining permits. The amendments on deferment of contemporaneous reclamation (No. 4 above) are submitted in part to satisfy condition (m) imposed by the Secretary of the Interior on the approval of the Kentucky program. Action on the amendment concerning procedures for surety cancellation of bond (No. 1 above) is being deferred.

After providing for public comment and conducting a thorough review of the program amendments, the Secretary has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving these amendments, with the exception of the amendment pertaining to surety cancellation of bond, on which action is being deferred. The Secretary has also determined that condition (m) has been satisfied and is removing this condition from the Kentucky program approval. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky progam are being amended to implement these actions.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their program with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 30, 1985.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340

Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed 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 Kentucky program can be found in the May 18, 1982 **Federal Register**.

II. Submission of Program Amendments

By letter dated August 3, 1984 (Administrative Record No. KY 592), Kentucky submitted certain revisions to the Kentucky Administrative Regulations (KAR). The modifications are intended (1) To satisfy condition (m) placed on the approval of the Kentucky program, and to implement the Settlement Agreement for *Sierra Club* v. *Clark, et al.*, Civil Action 83-85, U.S. District Court for the Eastern District of Kentucky, and (2) to amend various provisions of the approved Kentucky program. On October 12, 1984, Kentucky submitted minor revisions to the amendments in 405 KAR 10:035 and 405 KAR 16:020.

Condition (m) was placed on the approval of the Kentucky program in the May 13, 1983 **Federal Register** (48 FR 21574). Condition (m) required four specific changes to Kentucky's law and regulations. Changes to the law were to be submitted by May 1, 1984, and changes to the rules were to be submitted by October 31, 1984. The changes must provide: (1) Clarification that at all times the applicant for deferral of contemporaneous reclamation requirements has the burden of proof in establishing the need for the deferral; (2) criteria that operators must meet to obtain such deferrals; (3) a requirement that the applicant demonstrate that reclamation was contemporaneous to the date of deferral request and that backfilling and regrading distance requirements would be met during deferral; and (4) re-evaluation of bonds on deferrals to assure sufficiency.

In a **Federal Register** notice dated August 22, 1984 (49 FR 33244), condition (m) was modified following Kentucky's submission of the required amended statutory provisions, to require that Kentucky submit, by October 31, 1984, required changes to its regulations.

The August 3, 1984 submission, as modified on October 12, 1984, is intended in part to satisfy condition (m). The emergency regulations at 405 KAR 16.020E, implementing House Bill 514 contain the pertinent modifications.

The May 13, 1983, and August 22, 1984, issues of the **Federal Register** (48 FR 21574 and 49 FR 33244) contain a full discussion of condition (m) as originally imposed and subsequently modified.

The remaining amendments are intended to modify the Kentucky program to include modifications contained in: Senate Bill 285 and 405 KAR 10:035 concerning cancellation of surety bonds for undisturbed areas when violations for non-contemporaneous reclamation are received on the permit area; Senate Bill 298 establishing an abandoned mine land enhancement program; Senate Bill 300 allowing permit application fees to be paid in increments corresponding to bond increments; House Bill 868 concerning escrowing of forfeited surety bonds; and House Bill 888 clarifying requirements for transfer of permits.

Kentucky submitted the proposed program amendments on August 3, 1984. OSM published a notice in the **Federal Register** on August 31, 1984 (49 FR 34529) announcing receipt of the amendments and inviting public comment on their adequacy. The public comment period ended October 1, 1984. Since no one requested an opportunity to testify, the public hearing scheduled for September 25, 1984, was not held. However, one party expressed an interest in a public meeting, which was held on September 25, 1984, following public notice. A summary of the meeting can be found in the Administrative Record, Document No. KY-603. Kentucky submitted further revisions to the amendments on October 12, 1984. The January 23, 1985 **Federal Register** announced an extension of the comment period to February 7, 1985, to allow comment on the revisions (50 FR 2996).

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on August 3, 1984, as revised on October 12, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, with the exception of Senate Bill 285 and its implementing regulations at 405 KAR 10:035 on which action is being deferred. The Secretary also finds that condition (m) placed on the Kentucky program approval, is satisfied.

A. Satisfaction of Condition (m)

Condition (m)(1) requires changes to 405 KAR 16:020 Section 4 to clarify that at all times the applicant for a reclamation deferral pursuant to KRS 350.092 section 2 (of the Kentucky Surface Mining Law) has the burden of proof in establishing the need for such a deferral. Kentucky's amended rule 405 KAR 16:020 Section 4 paragraph (3) states that "the applicant has the burden of establishing the need for a deferment." Therefore, the Secretary finds that condition (m)(1) is satisfied.

Condition (m)(2) requires that changes to 405 KAR 16:020 must provide criteria that operators must meet to obtain such deferrals. Kentucky rule 405 KAR 16:020 Section 4, paragraphs (2) (a), (b) and (c) establish criteria for obtaining deferrals for adverse conditions, for combined surface and underground mining, and for coal marketing problems. The rule establishes requirements for applications for deferrals which include demonstration of conditions necessitating a deferral. Therefore, the Secretary finds that condition (m)(2) is satisified.

Condition (m)(3) requires that the amendment provide a requirement that the applicant must demonstrate: (i) That reclamation on the site is contemporaneous as of the date of the request for deferral and (ii) that the distance requirements of 405 KAR 16:020 Section 2, regarding backfilling and grading requirements will be met during the period of deferral. Kentucky's amended rule 405 KAR 16:020 Section 4, paragraph (3) states that "the applicant must demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of deferment." Therefore, the Secretary finds that condition (m)(3) is satisfied.

Condition (m)(4) requires that the amendment provide for a re-evaluation of bond on deferrals to assure sufficiency of the bond. Kentucky rule 405 KAR 16:020 Section 5, paragraph (1)(e) requires that the Natural Resources and Environmental Protection Cabinet (NREPC) examine data and calculations submitted in the application for a deferment, and inspect the area covered by the proposed deferment, to determine whether the existing bond is sufficient to reclaim the disturbed area. If the existing bond is insufficient, the

applicant is required to file additional bond. Therefore, the Secretary finds that condition (m)(4) is satisfied.

B. Other Amendments

1. *Senate Bill 285 and 405 KAR 10:035.* Senate Bill 285 adds a new section to the requirements in statutory sections KRS 350.066 to KRS 350.070 to establish requirements for surety cancellation of bond for undisturbed areas, following receipt of a copy of a notice of operator non-compliance for failure to maintain contemporaneous reclamation. Regulations at 405 KAR 10:035 are added to further clarify requirements for such cancellation. Final action on Senate Bill 285 and 405 KAR 10:035 is being deferred because Kentucky has expressed a desire to further amend these provisions. Upon submission of revised material by Kentucky, OSM will publish a notice in the **Federal Register** seeking public comment prior to taking final action on Senate Bill 285.

2. *Senate Bill 298.* This bill establishes an abandoned mine enhancement program, wherein an applicant who desires to remine property classified as abandoned mine land under KRS 350.560, may apply for a reduction of up to fifty percent on the bond assessment on the property to be remined. The bond reduction would be offset by a designated amount equal to fifty percent of the bond assessment for the property, from funds available in the abandoned mine land enhancement fund. As long as there are undesignated amounts in the fund equal to the fifty percent level requested, the secretary of the NREPC may designate that amount.

The bill also amends KRS 350.990 to provide that monies collected as payments for civil penalties, in excess of $800,000 in any fiscal year, will go into the abandoned mine land enhancement fund.

The Federal statute and regulations do not contain counterparts to the Kentucky Senate Bill 298. However, the Secretary has determined that the bill is consistent with and no less effective than the Federal requirements for bonding at sections 509 and 519 of SMCRA and 30 CFR Part 800. In particular, section 509(c) of SMCRA provides that the Secretary may approve an alternative bonding program that will achieve the objectives and purposes of section 509 bonding requirements. Since the Kentucky bill will not lessen Kentucky's bonding requirements that the bond be sufficient to cover the cost to the NREPC to perform the work required (405 KRS 10:020 section 1), that the liability period shall apply, and that all other applicable bonding provisions apply, the Secretary finds that the program is consistent with section 509(c) and that it achieves the objectives and purposes of the SMCRA bonding program.

3. *Senate Bill 300.* Senate Bill 300 amends KRS 350.060(14) to allow permit application fees to be paid in increments at times corresponding to an incremental bonding plan, if incremental bonding is used. Kentucky also submitted for approval a memorandum explaining procedures to be used to implement provisions of the bill.

Posting of bond for increments which are smaller than the area to be mined within the initial permit term was disapproved by U.S. District Court Judge Thomas Flannery in his October 1, 1984 decision, *In re: Permanent Surface Mining Regulation Litigation II,* D.D.C. 1984. Kentucky has been informed, since submission of this amendment, that rules concerning bonding of increments must be amended to comply with the court's decision. However, since this amendment is consistent with Kentucky's rules as they now appear, and since payment of permit fees over the life of the mine is allowed by section 507(a) of SMCRA and in 30 CFR 777.17, the Secretary finds this amendment consistent with and no less effective than Federal requirements. If it becomes necessary to modify the permit application fee provisions in the future to reflect changes to Kentucky's incremental bonding provisions, Kentucky will be notified of the need to amend.

4. *House Bill 514 and 405 KAR 16:020.* Kentucky submitted emergency regulations, 405 KAR 16:020, intended to implement the reclamation deferment portion of House Bill 514. These regulations are discussed in part in the section of this notice entitled "Satisfaction of Condition (m)."

Section 4, paragraph (2)(a) of these regulations is added to clarify requirements for application for a deferment of contemporaneous reclamation for adverse conditions, and the timeframes for which such deferments may be granted. Paragraph (2)(b) requires that applications for a deferment for combined surface and underground mining be made according to the rules for such combined mining at 405 KAR 8:050, section 7. Paragraph (2)(c) requires applications for deferment for coal marketing problems to be made according to section 5 of the rule, which establishes specific criteria to be followed for this type of deferment.

Paragraph 3 of section 4 is added to clarify that: the applicant has the burden of establishing the need for deferment; the applicant must demonstrate that reclamation on the site is contemporaneous as of the date of the deferment request and that distance requirements will be met; and, the permittee shall comply with contemporaneous reclamation requirements until the deferment is issued.

Section 5 of 405 KAR 16:020 is added to clarify additional requirements for deferments for coal marketing problems. It establishes: time limits for such deferments; application requirements; performance standards including backfilling, regrading and revegetation, for disturbed areas subject to deferment; deferment implementation requirements including compliance with all requirements of regulations and permit conditions which would apply to the operation without a deferment; expiration and renewal of deferments; and enforcement and revocation responsibilities of the NREPC.

The Federal regulations for contemporaneous reclamation at 30 CFR 816.100 and 817.100 were remanded by Judge Flannery in his October 1, 1984 decision because they did not contain specific national standards and guidelines. However, the Federal rules have not been suspended. OSM will be revising the rules to include specific standards, in accordance with the court's decision. When new Federal regulations are promulgated, Kentucky's regulations will again be reviewed to determine whether they are no less effective than the revised Federal regulations. Therefore, the Secretary finds that Kentucky's rules at 405 KAR 16:020 are consistent with Section 515(b)(16) of SMCRA and no less effective than 30 CFR 816.100 and 817.100.

5. *House Bill 868.* This bill amends sections KRS 350.032 and 350.990 to establish surety responsibility to escrow bond amounts where the NREPC has ordered forfeiture of a performance bond, and penalties for failure of the surety to do so.

KRS 350.032 is amended by adding subsection (3) which requires that, where the NREPC has ordered bond forfeiture, the surety must forward to the NREPC a cashier's check for the required amount within 7 days from the effective date of the order. The amount of the forfeiture will be held in an interest-bearing account until completion of judicial review. Subsection (2) of KRS 350.032 is amended to provide that a surety shall not file a petition praying that the order be modified or set aside, until the surety has complied with subsection (3).

KRS 350.990 is amended to add subsection (11) which provides that upon notice by the secretary of the NREPC that any surety has failed to comply with subsection (3) of KRS 350.032, the surety's certificate of authority to conduct business in Kentucky will be revoked.

Although there is no counterpart to these requirements in the Federal law or regulations, the Kentucky provisions do not conflict with Federal requirements. The provisions add a measure of protection to Kentucky in collecting forfeited bond amounts. The Secretary finds these provisions consistent with SMCRA Sections 509 and 519 and no less effective than the requirements in 30 CFR Part 800.

6. *House Bill 888.* House Bill 888 amends KRS 350.135 to clarify requirements for the transfer of surface coal mining permits by sale, assignment, lease or otherwise, and to bring the statutory requirements in line with regulatory requirements for transfers.

Subsection (1) is amended to require that written approval of the NREPC be obtained for such transfer on a joint application submitted by the transferor and the transferee. A fee shall accompany the application, and a bond shall be filed to ensure reclamation. The subsection covers transfer of rights and liabilities, and eligibilty to receive a permit.

Subsection (2) is amended to require that a transferee seeking to change the conditions of mining or reclamation operations, or terms or conditions of the permit, must apply for a new or revised permit.

Subsection (3) is added to cover bond liability under permit transfers and ensure bond coverage on transferred permits and transfer of liability to the transferee.

Subsection (4) remains unchanged and provides that the cabinet may promulgate rules to implement this section.

Subsection (5) is added to establish criteria whereby the NREPC may approve transfer applications.

The Secretary finds that Kentucky's House Bill 888 is consistent with the provisions of SMCRA Section 506(b) and 511(b), and with 30 CFR 774.17 which establishes regulations for the transfer, assignment or sale of permit rights. The bill brings Kentucky's statute in line with its regulations on this topic at 405 KAR 8:010 Section 22 which have been previously approved as part of the Kentucky program.

IV. Disposition of Public Comments

None of the Federal agencies invited to comment on this proposed amendment provided any response. Disclosure of Federal agency comments is made pursuant to SMCRA section 503(b)(1) and (2) and 30 CFR 732.17(h)(10)(i).

Thomas J. FitzGerald, Attorney at law, submitted comments on behalf of the Cumberland Chapter of the Sierra Club, the Kentucky Resources Council, and the Kentucky Conservation Committee. The Surety Association of America submitted comments relating to Senate Bill 285 and Senate Bill 868. The public meeting was attended by two representatives of a surety company which operates in Kentucky. Their comments related to Senate Bill 285 and 405 KAR 10:035, and Senate Bill 868. Since final action is being deferred on Senate Bill 285, the comments relating to this provision will be discussed in the **Federal Register** notice announcing final action on the bill. Other comments are discussed below.

Condition (m)

Thomas FitzGerald supported changes to the contemporaneous reclamation rules "insofar as they go," but stated that condition (m) had not been fully satisfied. He said that the rule did not provide criteria for granting deferrals based on coal marketing problems. He said that without such criteria anyone alleging coal market problems could obtain a deferral regardless of whether the problem is self-imposed or due to the inherent unmarketability of the coal. FitzGerald said that bond forfeiture risk is heightened in these cases. He said that the requirement that the applicant establish a "need" for a deferral is meaningless unless there are criteria established to measure the operator's demonstration of "need". Otherwise, he felt that condition (m) had been satisfied.

The part of condition (m) relevant to the commenter's concern is paragraph (m)(2) which requires that changes to regulations must provide "criteria that operators must meet in order to obtain such deferrals." Kentucky has added 405 KAR 16:020 Section 5 to its rule establishing additional criteria that operators must meet to obtain deferments for coal marketing problems. One of the requirements in the section is that the applicant demonstrate the need for the deferment, including documentation of the coal marketing problem. The condition is not construed by the Secretary as requiring specific criteria which delineate what constitutes a coal marketing problem in every possible case. Establishing such criteria within a set of regulations would be difficult as there are many possibilities in the range of criteria which could establish the existence of a coal marketing problem. Kentucky's rule requires the operator to submit documentation from which Kentucky can determine whether coal marketing problems exist. Thus, Kentucky's rule requires more than mere allegation, and the documentation will permit Kentucky to measure the operator's need for deferment. Moreover, Section 4 allows deferments for only periods reasonably related to the conditions justifying the deferment. Finally, Section 5 provides for public notice and opportunity for interested parties to file objections to a deferment application and establishes detailed criteria that operators must meet to obtain deferrals for coal marketing problems. The criteria and procedures clearly provide for the limited use of this deferral mechanism and assure environmental protection and public participation when such contemporaneous reclamation deferments are necessary. The Secretary has determined that the condition has been met.

Senate Bill 285 and 405 KAR 10:035

Action on this bill is being deferred. Comments will be addressed in the notice of final action.

Senate Bill 298

Thomas FitzGerald stated that he supports the proposal, with one reservation, discussed below. He pointed out that the amounts in the fund cannot be pledged to more than one operation, and this program could encourage increased reclamation of abandoned mine sites. The commenter said that the program was approvable under section 509(c) of SMCRA as an alternative bonding system. The commenter's reservation is that this system should not be construed to jeopardize the eligibility of lands impacted by the remined areas that are not included in the repermitted areas, under section 404 of SMCRA which establishes eligibility of lands and water for Title IV, Abandoned Mine Reclamation, assistance.

Lands remined under the abandoned mine enhancement program would be subject to the surface mining and reclamation provisions of the Kentucky program. Under these provisions the lands would be reclaimed following remining, thereby precluding the necessity for expenditure of funds available to Kentucky under the provisions of Title IV of SMCRA, for those lands. Eligibility of lands adjacent to this remining but not included in the repermitted area would not be affected by bonding policies on these lands. If in

the process of encouraging remining on abandoned areas, the bonding program causes changes in priorities for some adjacent areas for Title IV reclamation, the Secretary believes that the overall cost-effectiveness of expenditure of Title IV monies will be heightened by encouraging remining of abandoned mine areas which the operator will then reclaim.

Senate Bill 300

Mr. FitzGerald commented that he "sees no practical problems" with the bill. The Secretary finds the payment of permit fees in increments acceptable.

House Bill 514 and 405 KAR 16:020E

Mr. FitzGerald submitted comments supporting these provisions in general but asking that part of condition (m) be kept in effect. See discussion under *Condition (m)* of this section.

House Bill 868

Mr. FitzGerald supported approval of this amendment, pointing out that Kentucky does not have a high rate of collection for forfeited surety bonds.

The Surety Association of America representative commented that the timeframes for forfeiture of a bond are very tight and that the penalty for failure to meet the deadline is significant. The commenter said that the provisions are more stringent than the provisions in the Federal program. The commenter stated that feedback from member surety companies indicates that they "would be reluctant to write surface mining bonds in Kentucky" under these provisions. The commenter said that there is the possibility that some operators may have difficulty obtaining bonds, which may present problems.

The attendees of the public meeting were concerned that a surety would be required to place the entire bond amount in escrow while completing the reclamation work, if the surety chooses to do the work to avoid forfeiture payment. The commenters felt that the burden on the surety would be increased and stated that smaller insurance companies should be consulted in developing rules for bonding.

The Secretary has found Kentucky's provisions to be consistent with the Federal law and no less effective than the Federal rules.

House Bill 888

Mr. FitzGerald submitted a comment supporting this amendment which clarifies responsibilities under permit transfers. The Secretary agrees and has approved the amendment.

V. Secretary's Decision

The Secretary, based on the above findings, is approving the August 3, 1984 amendments to the Kentucky program as modified on October 12, 1984, except for Senate Bill 285 and implementing regulations at 405 KAR 10:035, on which action is being deferred. The Secretary is amending Part 917 of 30 CFR Chapter VII to reflect approval of the above State program modifications and removal of condition (m) placed upon the approval of the Kentucky program.

VI. Additional Determinations

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 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 917

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

Dated: May 21, 1985.

Leona A. Power,

Acting Assistant Secretary, Land and Minerals Management.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 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.*).

§ 917.11 [Amended]

2. 30 CFR 917.11 is amended by removing and reserving paragraph (m).

3. 30 CFR 917.15 is amended by adding a new paragraph (l) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(l) The following amendments submitted to OSM on August 3, 1984, are approved effective May 30, 1985: revisions to the Kentucky Revised Statute (KRS) adding a new section of KRS Chapter 350 and amending KRS 350.990 as specified in Senate Bill 298; revisions to KRS 350.060 as specified in State Bill 300; revisions to the Kentucky Administrative Regulations (KAR) at 405 16:020 intended to implement House Bill 514, as modified on October 12, 1984; revisions to KRS 350.032 and 350.990 as specified in House Bill 868; and, revisions to KRS 350.135 as specified in House bill 888.

[FR Doc. 85-12830 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1410; A-7-FRL-2841-8]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 24, 1984, EPA proposed action on a State Implementation Plan (SIP) revision from Nebraska comprised of amendments to various regulations. EPA's action on the revisions that delete the complex or indirect source review requirements is being reproposed elsewhere in today's **Federal Register**. Other revisions in the Nebraska SIP submission are being approved in this rulemaking.

EFFECTIVE DATE: This action is effective July 1, 1985.

ADDRESSES: Copies of the State submission are available for review during normal business hours at the following locations: Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460; The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.; and State of Nebraska, Department of

Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374-3791; FTS 758-3791.

SUPPLEMENTARY INFORMATION: On October 6, 1983, the State of Nebraska submitted a State Implementation Plan (SIP) revison comprised of amendments to various regulations. Supplementary information was received from the State on March 5 and 29, 1984. On September 24, 1984, EPA published proposed action on these amendments (see 49 FR 37427).

The affected Chapters of the Nebraska Air Pollution Control Rules and Regulations are as follows:

Chapter 1—Definitions
Chapter 4—Reporting and Operating Permits for Existing Sources; When Required
Chapter 5—New, Modified, and Reconstructed Sources; Standards of Performance, Application for Permit, When Required
Chapter 10—Incinerators; Emission Standards
Chapter 12—Sulfur Compound Emissions; Emission Standards
Chapter 14—Open Fires, Prohibited; Exceptions
Chapter 20—Emission Sources; Testing; Monitoring

Revisions to Chapters 1, 4, 5 and 20 delete the definitions and review requirements for complex or indirect sources of air pollution. These revisions are discussed further in a separate action published elsewhere in today's **Federal Register**.

The revision to Chapter 14 allows the Nebraska Game Commission, the United States Forest Service, and the University of Nebraska to conduct open burning for the purposes of plant, wildlife, and parks management without permit. The local control agencies in Lincoln and Omaha will still require permits for burning on park or University property within their jurisdiction. Open burning by these three agencies does not take place in particulate nonattainment areas. Prescibed burning is conducted on state and federally owned park land which is usually remote from population centers. The state has reported that the elimination of the permit requirement for open burning by these agencies will not have an impact on maintenance of air quality. Based on the information provided by the state, EPA agrees with the state's conclusion.

The remainder of the revisions included in the submission are of a clerical nature or delete obsolete provisions. The revision to Chapter 10 deletes the requirement that incinerator emission compliance test results be reported on forms (now obsolete) that were, in the past, provided by the state agency. The state reports that the standard test report format adequately provides the information required.

The revision to Chapter 12 deletes the standard and test method for hydrogen sulfide (H_2S). No national ambient air quality standards have been issued for H_2S.

The other revision to Chapter 20 is non-regulatory in that it changes a reference from the **Federal Register** to the Code of Federal Regulations.

The October 6, 1983 submission from Nebraska, which is discussed in this rulemaking, was proposed for approval on September 24, 1984 (49 FR 37427). The reader is referred to the proposal for further discussion. No comments were received regarding the revisions discussed in this action.

Action

EPA accepts the revisions, as discussed in this rulemaking, to Chapters 10, 12, and 14 and the nonregulatory revision to Chapter 20, as revisions to the approved SIP.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

This action is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Dated: May 8, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding a new paragraph (c)(31) to read as follows:

§ 52.1420 Identification of plan.

* * * * * *

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

* * *

(31) Revisions to Chapter 10 "Incinerators: Emission Standards;" Chapter 12 "Sulfur Compound Emissions; Emission Standards;" Chapter 14 "Open Fires, Prohibited; Exceptions;" and Chapter 20 "Emission Sources; Testing; Monitoring" were submitted by the Governor on October 6, 1983.

[FR Doc. 85-12838 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 51; A-2-FRL-2842-2]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces Environmental Protection Agency (EPA) approval of a proposed revision to the New York State Implementation Plan (SIP) to allow Orange and Rockland Utilities, Inc. (ORU) to reconvert two units at its Lovett Generating Station from oil to coal. The revision would allow ORU to burn coal at units 4 and 5 of the Lovett Generating Station in Stony Point, New York for a period of 42 months (unless extended). This action relaxes the current emission limit of 0.4 pounds of sulfur dioxide per million British thermal units (lb/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operating on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated.

EPA's approval of New York's SIP revision request is predicated on ORU meeting certain specific conditions relating to coal burning and the conduct of a study to evaluate three contending air quality dispersion models. These conditions, where are specifically incorporated into today's action, are designed to insure that ambient air quality standards and public health are protected and that a scientifically valid test is conducted.

EFFECTIVE DATE: This action is effective on July 1, 1985.

ADDRESSES: All correspondence, comments and other written submissions pertaining to this action, including documents referenced in this notice, are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Program Branch, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

I. Background

In a **Federal Register** notice published on March 15, 1983 (48 FR 11093) the Environmental Protection Agency (EPA) announced that the State of New York had submitted a request to revise the sulfur dioxide (SO_2) portion of its State Implementation Plan (SIP). The revision sought approval under the Clean Air Act of a State-issued "special limitation" which would allow Orange and Rockland Utilities, Inc. (ORU) to reconvert units 4 and 5 at its Lovett Generating Station in Stony Point, New York from oil to coal provided that either of the following SO_2 emission limitations is met:

1.0 pound SO_2 per million British thermal units (lb/MMBtu) heat input (equivalent to the use of 0.7 percent sulfur content coal) for units 4 and 5 if both are operated on coal; or

1.5 pounds SO_2/MMBtu heat input (1.0 percent sulfur content coal) for one unit if the other unit is operated on fuel oil (at 0.37 percent sulfur content, by weight) or natural gas or is not operated.

The current federally approved SIP contains a 0.4 pounds SO_2/MMBtu sulfur content limitation (equivalent to 0.25 percent suffur content coal) for a coal fired facility in this part of New York State.

The State's submittal was based on an air quality dispersion modeling analysis of the Lovett coal conversion. However, the analysis was not consistent with EPA's *Guideline on Air Quality Models* (ERA–450/2–78–078) and, consequently, in its March 15, 1983 **Federal Register** proposal, EPA solicited comment on whether or not New York's SIP revision met the requirements of section 110 of the Clean Air Act. A complete discussion of this issue and of the proposed revision is contained in EPA's March 15, 1983 **Federal Register** notice and will not be presented here. However, public comments received on that notice are addressed in today's **Federal Register** publication.

On November 21, 1984 (49 FR 45872) EPA published a supplemental **Federal Register** notice which discussed additional information pertinent to New York's proposed SIP revision. This information mainly concerned three documents developed subsequent to EPA's March 15, 1983 proposal and described proposed requirements under which ORU could reconvert to coal. Specifically, these documents describe the conditions under which ORU would be required to monitor the effects on ambient air quality of the reconversion and under which competing air quality dispersion models would be evaluated. Also discussed was an agreement between EPA and ORU regarding the coal reconversion. For a detailed discussion of these documents and other issues surrounding the proposed coal conversion, including the Company's intention to combine and replace the two existing stacks at the Lovett facility with a single 475 foot stack, the reader is referred to the November 21, 1984 **Federal Register** notice.

II. Public Comments

A. Introduction

During the public comment period established by its March 15, 1983 proposal and its November 21, 1984 supplemental notice, EPA received over seven hundred comments. Some individuals commented more than once.

These comments addressed nine principal issues, which are addressed in today's notice. A more detailed discussion of some of these issues, plus a number of other issues which EPA has determined are not relevant to the Administrator's decision, can be found in a Technical Support Document to today's action. This document is available at the locations identified in the **ADDRESSES** section of today's notice.

B. Response to Comments

1. Stack Height

Comment: The raising of the existing stack height is unjustified since no demonstration has been made that downwash exists or that it is a problem.

Response: EPA has predicted using EPA's ISC model that downwash occurs and that ambient standards would be violated with the existing stacks. Also, it should be noted that the Clean Air Act does not prohibit the raising of stacks as long as dispersion credit is not taken for that portion of the stack that exceeds good engineering practice (GEP) height. It is further noted that EPA is currently in the process of revising its stack height rules. The final SO_2 emission limit at the Lovett plant will reflect the provisions of the revised stack regulations, including, but not limited to, those associated with combining and/or raising stacks, dispersion credits, downwash demonstrations, and GEP stack height determinations.

Comment: If there is an air quality problem being caused with the existing stack heights, scrubbers are an alternative to increasing their height.

Response: The SIP revision submitted to EPA by New York does not require the installation of scrubbers. Therefore, this is not a topic which can be considered by EPA in its evaluation of the State's proposal.

Comment: Tall stacks are visually offensive.

Response: Aesthetics is not a criterion which EPA can apply in judging the approvability of a SIP revision.

2. Modeling

Comment: Model validation should be accomplished outside of the SIP revision process.

Response: It must be recognized that the model evaluation work to be performed in relation to the Lovett plant is for the sole purpose of deciding which of three competing models is the best predictor of air quality in the vicinity of that specific plant. This is necessary because of the complex terrain in which the plant is located. There is no intention for the study to result in a general model for use in complex terrain areas. Furthermore, EPA does not believe that the study is capable of producing such broadly applicable results.

EPA has extracted carefully constrained agreements from ORU concerning the protocol under which a model evaluation study will be conducted to resolve the question of selecting an appropriate model specifically for Lovett. As will be discussed in response to a later comment, EPA believes that this evaluation process is consistent with the provisions of the Clean Air Act.

Comment: Acceptance of the New York State Department of Environmental Conservation (NYSDEC) model is not consistent with EPA policy.

Response: EPA is not accepting the NYSDEC model. This is one of the contending models which will be evaluated.

Comment: The modeling plan should be disclosed to the public.

Response: The plan was generally discussed in EPA's November 21, 1984 supplemental notice of proposed rulemaking and is described in detail in the publicly available documents identified in that notice.

3. Section 110 of the Clean Air Act

Comment: EPA's approval of the New York proposal is inconsistent with section 110 of the Clean Air Act in that there are no prior assurances that ambient air quality standards will be attained and maintained. The action poses a risk to citizen's health.

Response: EPA's action is predicated on its belief that the ambient air quality standards will be attained and maintained subsequent to the reconversion, as required by section 110. The standards will be further protected by the terms of the agreement between EPA and ORU under which the utility will be required to take appropriate corrective action in the event that any standard violation is observed.

4. Monitoring

Comment: The monitoring program could set the basis for a possible future emission limit relaxation to allow the use of coal with greater than 0.7 percent sulfur content.

Response: EPA's action only deals with the use of 0.7 percent sulfur content coal (1.0 percent if only one unit is converted). Any future proposals would be subject to an independent review through the SIP revision process.

Comment: EPA does not make a showing that the monitoring network proposed by the State is adequate. Eleven monitors are not sufficient to characterize the impact of the Lovett plant in its complex terrain.

Response: In its November 21, 1984 supplemental notice of proposed rulemaking, EPA has found that the protocol for the model evaluation study is adequate. Also, it should be noted that the size of the monitoring network for the study has been greatly expanded from that originally proposed by the State.

Comment: One year of monitoring data is not sufficient to validate a model properly.

Response: One year of monitoring data is consistent with EPA guidelines for evaluating models. In addition, for purposes of establishing background SO_2 levels, two or more years of data will be collected.

5. Acid Deposition

Comment: EPA's action exacerbates acid deposition and lake acidification, and endangers forests and health.

Response: EPA recognizes that acid deposition is a major source of concern and is supporting a variety of programs which will increase its understanding of this phenomenon. However, the criteria which EPA must use in determining whether the New York SIP revision request is approvable are contained in section 110 and Part C of the Clean Air Act. These criteria concern the extent to which the burning of 0.7 percent sulfur content coal at the Lovett plant will impact on national ambient air quality standards, prevention of significant deterioration increments and visibility. Acid deposition impacts are not among the criteria that EPA can use in deciding whether New York State's request can be approved.

6. Interstate and Regional Impacts

Comment: The impact of the coal conversion on Connecticut will make it more difficult to attain and maintain air quality standards in this state.

Response: A conservative modeling analysis done by EPA looked at Lovett's air quality impact on receptors in Connecticut. This analysis showed that interstate impacts are well below the national standards for SO_2 and do not have a significant impact on SO_2 nonattainment areas. These facts and the fact that Connecticut has not demonstrated that it has any problem in maintaining standards lead EPA to conclude that no impermissible interstate impacts will occur.

Comment: The conversion will have a significant impact on New York City, where the attainment of the SO_2 standards is marginal. This conversion must be reviewed in the context of all other possible coal conversions which are scheduled to take place in the metropolitan area and their cumulative impact on air quality must be assessed.

Response: Under the provisions of the Clean Air Act, each proposal submitted to EPA must be judged in terms of the permitted emissions existing at the time of the proposal. Therefore, it would be inappropriate to consider the possible air quality impact of coal conversions which are only in the planning stage. It should also be noted that SO_2 air quality levels have shown a considerable improvement since 1980 when attainment was marginal. Furthermore, emission increases associated with widespread coal conversion in the metropolitan area are no longer anticipated. For example, the State has ruled that the major coal conversions proposed for two Consolidated Edison plants could only take place with full scrubbing and, thereby, no emission increase.

7. Economics

Comments: It is risky to proceed with a $120 million conversion that may not be approvable.

It is very economically risky to build a tall stack which ultimately may be found to be inconsistent with EPA's final stack height regulation. The conversion poses a potentially large economic burden for ORU customers because, if coal burning proves impractical, the ratepayers will have to pay the conversion cost without the economic benefit from the use of cheaper fuel. The installation of scrubbers would remove the economic risk associated with a potentially flawed conversion.

Response: Under the provisions of the Clean Air Act EPA cannot consider economics in judging the approvability of a proposed SIP revision. The State and the utility are aware of the potential economic risk in such a venture and have decided to accept the risk. For example, ORU has agreed to assure that its plant's emission will conform to EPA's final stack height regulation, no matter what its provisions. This is the only fact that EPA could properly consider in reaching a decision on the matter before it. Also, as mentioned with respect to the installation of scrubbers, EPA's review is limited to the terms proposed by the State.

8. Enforceability

Comment: It is unreasonable for EPA to expect the utility to reconvert to oil if an air quality problem is discovered after the investment in coal conversion has been made.

Response: ORU has agreed to this condition for the study and it is a provision of the State's order. EPA will enforce it, if necessary.

9. Limitation Prior to Final SIP Revision

Comment: EPA should eliminate the 42-month limit on its approval of the proposed emission limit. The proposed limit should continue in effect until such time as EPA takes final action to make the proposed limit or an amended limit a part of the SIP.

Response: EPA believes that the proposed 42-month period allows sufficient time to complete the model evaluation study, to analyze a permanent New York SIP revision request, and for EPA to publish the **Federal Register** notices necessary to establish a permanent limitation. However, EPA is sensitive to the concern that at the end of the 42-month period the Lovett plant could be left in a regulatory dilemma because of delays in processing an approvable state-

submitted permanent SIP revision request. Therefore, in the unlikely event that such delays occur, EPA would extend the period during which the special limitation applies until the processing is completed. Such an extension will be allowed only under the following conditions:

- The final dispersion model report has been submitted on schedule by ORU.
- A permanent SIP revision request for limiting fuel sulfur content at the Lovett plant has been submitted to EPA by New York State.
- This SIP revision request permits the use of 0.7 percent sulfur content coal or coal of a higher sulfur content.
- ORU has agreed to continue the full operation of its air quality monitoring network as established for the study and to abide by the terms of its agreement with EPA concerning corrective action in the event of monitored violations of the national ambient air quality standards.

If such an extension is granted by EPA, notice to this effect will be published in the **Federal Register** at that time.

Comment: The revision to the West Virginia SIP for the Westvaco plant (45 FR 27933; April 25, 1980) establishes a precedent for EPA to allow the continued use of 0.7 percent sulfur content coal until it takes action to revise the SIP permanently.

Response: The earlier Westvaco SIP revision request and the current Lovett revision request must each be evaluated by EPA on their own merits. In the current case, EPA has determined, for the reasons discussed earlier, that it is appropriate to establish a time limit for the conduct of the required model evaluation study. However, EPA believes that it has taken care of the commenter's concerns by providing for the possible extension of this time limit if the situation should so warrant it.

10. Other Comments

Other comments were received concerning aesthetics, noise, solid waste disposal, ORU electric costs and other issues not related to air quality. EPA has not considered these comments in making the decision reflected in today's action. This is because these are not included in the Clean Air Act's criteria for SIP approval.

III. Conclusions

Based on its review of the information submitted by New York State as a part of its SIP revision request, the supplemental information described in EPA's November 21, 1984 **Federal Register** notice and the comments received, EPA finds the terms of the New York SIP revision request approvable. The terms and conditions agreed to by ORU on September 5, 1984, as described in an August 30, 1984 letter from EPA to ORU and in an amended *Protocol for the Evaluation and Comparison of Air Quality Models for the Lovett Generating Station* and in an amended quality assurance plan, are incorporated into this rulemaking action.

As noted in today's notice, based on comments it received, EPA has decided that the proposed 42-month period during which coal burning can take place may be extended under the conditions specified earlier where this issue is discussed. These conditions are likewise incorporated into today's rulemaking.

With respect to the issue of stack heights, it should be noted that any emission limits established after the expiration of today's approval (and any extension thereof) will be predicated upon the stack height requirements in effect at that time. In fact, this is a condition agreed to by ORU.

The revised emission limitation promulgated today will be in addition to, and not in lieu of, the existing SIP limitation. The existing SIP limitation will remain applicable and enforceable until start of the shake-down period for the reconversion, when the facility will become subject to the revised limitation. After completion of the modeling study, the State of New York will re-evaluate the revised limitation and submit it or an alternate limitation for EPA approval. In the event that the 42-month period, and any extension of it, expires prior to EPA approval of the New York submittal, the emission limitation for the facility would revert to the prior federally-approved limit of 0.4 lb/MMBtu, as provided in EPA's continuity policy. That policy, set forth at 44 FR 20372–20374 (April 4, 1979), as applied to this case, requires reversion to the prior federally-approved limit if approval of the revised limitation expired, without any extension or replacement, in order to avoid a situation in which no federally-approved limitation is applicable to the facility.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Sulfur oxides, Incorporation by reference.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7600))

Dated: May 20, 1985.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410 and 7600

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(73) as follows:

§ 52.1670 Identification of Plan.

* * * * *

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

* * * * *

(73) Revision to the New York State Implementation Plan submitted by the New York State Department of Environmental Conservation on June 7 and October 14, 1982 to allow Orange and Rockland Utilities, Inc. to reconvert its Lovett Generating Station in Stony Point from oil to coal. This action grants the utility a "special limitation" under Part 225 to relax the existing emission limit for coal burning from 0.4 pounds of sulfur dioxide per million British thermal units (lb/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas, or is not operated. A letter dated September 5, 1984 from Orange and Rockland Utilities, Inc., committing to meet the terms and conditions of EPA's August 30, 1984 letter.

3. Section 52.1675 is amended by adding a new paragraph (h) as follows:

§ 52.1675 Control strategy and regulations: Sulfur oxides.

* * * * *

(h) The following applies to the Environmental Protection Agency's (EPA's) approval as State Implementation Plan (SIP) revision of a "special limitation" promulgated by the New York State Department of Environmental Conservation on June 7, 1982 and amended on October 14, 1982 permitting the reconversion of Orange

and Rockland Utilities, Inc. Lovett Generating Station in Stony Point from oil to coal. This action relaxes the emission limit applicable to this facility from 0.4 pounds of sulfur dioxide per million British thermal units (lb/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operating on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas, or is not operated.

(1) EPA's approval of the New York SIP revision request is limited to a term of 42 months (unless extended) during which three competing air quality dispersion models will be evaluated to determine which is the best predictor of air quality in the vicinity of the plant. The terms, conditions and schedule under which this evaluation is to be conducted are contained in the State's SIP revision request and in the following documents:

"Quality Assurance Plan for the Lovett Sulfur Dioxide Monitoring Network" Submitted January 1984.

"Quality Assurance Plan for the Lovett Meteorological Monitoring Network" Submitted January 1984.

"Protocol for the Evaluation and Comparison of Air Quality Models for Lovett Generating Station" submitted July 1984.

Agreement by ORU submitted on September 5, 1984 in response to EPA's request dated August 30, 1984.

EPA's approval is predicated on an adherence to these terms, conditions and schedule.

(2) If the following conditions are met, EPA may, upon notice in the **Federal Register**, extend the period during which coal conforming to limits described in paragraph (h) can be burned at Lovett until EPA's processing of a permanent SIP revision is completed:

(i) The final dispersion model report has been submitted on schedule by ORU.

(ii) A permanent SIP revision request for limiting fuel sulfur content at the Lovett Plant has been submitted to EPA by New York State.

(iii) This SIP revision request permits the use of 0.7 percent sulfur content coal or coal of a higher sulfur content.

(iv) ORU has agreed to continue the full operation of its air quality monitoring network as established for the study and to abide by the terms of its agreement with EPA concerning corrective action in the event of monitored violations of the national ambient air quality standards.

[FR Doc. 85-12840 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3118/R748; FRL-2809-5]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

Correction

In FR Doc. 85-7821 beginning on page 13194 in the issue of Wednesday, April 3, 1985, make the following corrections:

1. On page 13194, second column, the **EFFECTIVE DATE** should read "April 3, 1985."

2. On the same page, third column, **SUPPLEMENTARY INFORMATION,** eighth line, "40 CFR 180.318" should read "40 CFR 180.381".

§ 180.381 [Corrected]

3. On page 13195, second column, in the section heading, "§ 180.38" should read "§ 180.381".

BILLING CODE 1505-01-M

40 CFR Part 271

[SW-3-FRL-2843-6]

District of Columbia; Final Authorization of State Hazardous Waste Management Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction to notice on the final determination on the District of Columbia's application for final authorization.

SUMMARY: The Environmental Protection Agency is today correcting a notice for the final determination on the District of Columbia's application for final authorization. That notice, as published in the **Federal Register** on March 8, 1985 (50 FR 9427-9428) inadvertently omitted a portion of the Regional Administrator's discussion on his decision to authorize the District's hazardous waste program. This notice corrects the "Decision" section of the March 8 authorization notice so that it reads as originally envisioned.

FOR FURTHER INFORMATION CONTACT: Wayne S. Naylor, Program Manager, MD/DE/DC Section (3HW32), Waste Management Branch, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 (215) 597-3884.

SUPPLEMENTARY INFORMATION: The following correction is made to Vol. 50, No. 46 **Federal Register** appearing on page 9427 in the issue of March 8, 1985. Insert the following two paragraphs immediately after the first full paragraph (that is, after line 36) in the third column of page 9427:

"In contrast, under newly enacted section 3006(g) of RCRA, 40 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

"As a result of the HSWA, there will be a dual State/Federal regulatory program in the District. To the extent the authorized District program is unaffected by the HSWA, the District program will operate in lieu of the Federal program. If the HSWA-related requirements are more stringent than those of the District, EPA will administer and enforce these portions of the HSWA in the District until the District receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the District is not yet authorized. Once the District is authorized to implement a HSWA requirement or prohibition, the District program in that area will operate in lieu of the Federal provision. Until that time, the District will assist EPA's implementation of the HSWA under a Cooperative Agreement."

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: May 13, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 12968 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 447

[BERC-509-F]

Medicaid Program; Imposition of Cost Sharing Charges Under Medicaid

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Rule.

SUMMARY: This final rule responds to the comments we received on a final rule with comment period published on February 8, 1983 (48 FR 5730). That rule set forth revised requirements concerning the imposition of cost sharing charges on Medicaid recipients when they receive medical services covered by Medicaid.

EFFECTIVE DATE: July 1, 1985. However, see section IV, paragraph C. of this preamble regarding the effective date of the new State plan specifications in § 447.53(d) of the regulations.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos (301) 594-9051.

I. Background

Under the Medicaid program as first enacted, recipients receiving covered inpatient hospital services could not be required to pay any amount for those services. In 1967, amendments to the Social Security Act (the Act) permitted States to impose cost sharing (for example, copayments, premiums, deductibles, coinsurance, and enrollment fees) on medically needy recipients for any services. All cost sharing for services furnished to the categorically needy was prohibited. In 1972 the Act was further amended, by permitting States also to impose cost sharing on categorically needy recipients but only for optional services. The 1972 amendments also required that any cost sharing amounts imposed on either categorically or medically needy recipients be nominal.

Generally categorically needy persons are those eligible for Medicaid because they receive certain cash assistance—Aid to Families with Dependent Children (AFDC) (title IV-A of the Act) or Supplemental Security Income (SSI) (title XVI of the Act). States may also cover as categorically needy certain individuals who would be eligible to receive cash benefits and recipients of certain State Supplementary Payments.

Medically needy persons are, in general, those who would have been categorically needy, except that their income or resources exceeded the financial eligibility requirements for the categorically needy, but were within limits set by the State.

In 1982, a new section 1916 was added to the Act by section 131 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This latest change removed the previous restrictions on cost sharing for the required services received by categorically needy recipients. Further, the requirement that any cost sharing amounts be nominal (for either categorical or medically needy recipients) was retained and certain recipients and types of services were excluded from cost sharing. TEFRA provided that the requirement that cost sharing amounts be nominal can be waived, and that the State can charge up to twice the maximum nominal amount, for nonemergency services furnished by a hospital emergency room, if nonemergency outpatient facilities are also available and accessible. Section 131 of TEFRA also added an exception to the comparability provision in section 1902(a)(10) of the Act. (The comparability provision requires that services to all individuals within an eligibility group be equal in amount, duration, and scope.) This exception, in clause (IV) following section 1902(a)(10)(D), states that imposition of cost sharing charges on a recipient who is not excluded by one of the conditions in section 1916(a)(2) or (b)(2) of the Act will not require the imposition of cost sharing on a recipient who is eligible for exclusion.

Under section 1916 of the Act, States may impose cost sharing on most services to both categorically and medically needy recipients. However, States are prohibited from imposing cost sharing on—

- Individuals who are under 18;
- Institutionalized individuals;
- Pregnant women for services related to the pregnancy;
- Recipients for emergency and family planning services; and
- Categorically needy individuals receiving services from an HMO.

II. Analysis and Response to Comments

On February 8, 1983 we published a final rule with comment period to implement the new legislation (48 FR 5730). We received comments on this rule from 21 commenters: 16 providers, two States, and three legal aid groups. Below we discuss the comments and provide our responses.

1. § 431.55(g): Cost sharing requirement.

a. *Comment:* Two commenters had difficulty with the definitions of "available" and "accessible" nonemergency outpatient services. One commenter thought that both terms should be more adequately defined and that "available" should be "actually available". The other commenter thought that "accessible" should include the providers that the recipients normally utilize.

Response: We do not see a need to define these terms. The regulations require States to assure to our satisfaction that these requirements are met. In their waiver requests, States must document the availability and accessibility of alternative sources. We believe that this approach is preferable to a detailed set of Federal requirements in the regulations. This system provides flexibility to recognize a wide variety of circumstances while assuring recipients access to services.

b. *Comment:* One commenter stated that the Secretary cannot grant waivers of the nominal charges for nonemergency services furnished in a hospital emergency room without taking into account the grant levels because the statute forbids a change of the definition of nominality without taking the grant levels into consideration.

Response: We disagree. The statute (section 1916(a)(3) of the Act) clearly permits a waiver of the current definition of nominality for hospital emergency room services without consideration of grant levels. The current definition of nominal cost sharing levels does not take grant levels into account. Section 1916(a)(3) of the Act provides that grant levels must be taken into account if the definition of nominal is changed from the definition that was in effect on July 1, 1982 in the regulations. We have not changed the definition of nominal from that in effect on July 1, 1982.

c. *Comment:* One commenter stated that the regulations should clarify that waivers cannot apply to services furnished before the waiver was granted (or before the effective date of the statute, October 1, 1982).

Response: We agree and have revised § 431.55(g) accordingly.

d. *Comment:* One commenter stated that the limit of twice the nominal amount (for nonemergency services furnished in a hospital emergency room) should be removed since it is not great enough to deter unnecessary utilization.

Response: The limit of twice the nominal amount for nonemergency services furnished in a hospital emergency room was set by statute (section 1916(a)(3) of the Act). Therefore, we are unable to increase the limit through regulations.

2. § 440.250: Comparability of services.

Comment: Two commenters thought the preamble discussion concerning the comparability of services was misleading. They commented that although the preamble states that the only exclusions are those permitted by law, it appears to imply that if a State chooses to impose cost sharing on one service, the State must impose cost sharing on all other services.

Response: We did not intend to imply that a State must apply a cost sharing charge to all services. Cost sharing charges are not mandatory on any services or recipients; they are strictly a matter of State prerogative. These regulations do not require States to impose cost sharing. Rather, they provide that if States do impose cost sharing charges, those charges cannot be imposed on individuals or services exempted under section 1916 of the Act.

Also, States that choose to impose cost sharing cannot exempt any groups other than those specified in the law. However, if a State elects to impose cost sharing on a particular service, it does not have to impose cost sharing on any other services.

3. Acceptance of State payment as payment in full.

a. *Comment:* One commenter stated that § 447.15 fails to require States to prohibit providers from denying services to a recipient when that recipient is unable to pay a cost sharing charge imposed in accordance with § 431.55(g).

Response: We agree and have added the appropriate cross-reference in §447.15.

b. *Comment:* One commenter stated that the recipient's liability for cost sharing should be addressed in the rules.

Response: We agree and have revised § 447.15 to correct the oversight.

c. *Comment:* One commenter suggested that the States reduce recipient cash assistance checks by the amount of cost sharing owed rather than having the provider collect the cost sharing charges.

Response: The Medicaid law and regulations do not govern the amount of cash assistance an individual is eligible to receive. This comment would be better addressed to the State or Federal agencies administering the cash assistance programs.

d. *Comment:* One commenter stated that we should require States to pay providers for uncollected cost sharing charges.

Response: Section 447.59 of the regulations provides that no FFP is available for cost sharing amounts owed by recipients, except for amounts the State agency pays as bad debts to those providers reimbursed under Medicare's reasonable cost principles. Since FFP is unavailable, we cannot require States to reimburse providers for uncollected cost sharing charges (except for those providers that are paid based on Medicare's reasonable cost principles).

e. *Comment:* Fifteen commenters objected to the regulations because of the impact on providers. Because providers cannot refuse services to someone unable to pay the cost sharing and because the State agency would reduce Medicaid payment by the amount of the cost sharing, the commenters reasoned that providers will make less profit and frequently will have to furnish services at a loss. They stated it will be difficult, if not impossible, to collect the cost sharing at a later time, and may not be worth attempts to collect a small cost sharing charge.

Response: As enacted by Congress, section 1916(c) of the Act *mandates* that no Medicaid recipient be refused services when the recipient cannot afford the cost sharing; we had no choice but to revise our regulations to include the statutory requirements. However, we did not clarify in the regulations that the provision guaranteeing services to a recipient does not remove from the recipient the responsibility to share in the cost. We are adding such a clarification to § 447.15. We are also amending that section to show that this service assurance does not apply to those recipients who are able to pay.

f. *Comment:* One commenter thought it unrealistic to expect the recipient or the provider to determine whether the recipient is unable to pay.

Response: We recognize that section 1961(c) of the Act poses problems in its implementation and enforcement. We have considered developing a set of Federal guidelines for implementing this provision but have decided against it in the interest of State flexibility. We believe that this is a matter States can best deal with in the context of their own programs and circumstances. However, we are revising § 447.53(d) by adding a new requirement that the State plan set forth procedures on how it would be determined that a recipient is unable to pay and how these recipients would be identified to providers.

g. *Comment:* One commenter stated that there must be a regulation and a plan for informing clients about the required cost sharing.

Response: Current regulations at § 435.905 require State agencies to furnish information to all applicants regarding available Medicaid services. Additionally, regulations at § 435.919 require agencies to give recipients timely and adequate notice of proposed actions that would reduce services they may receive under Medicaid. This would include notice regarding the imposition of cost sharing charges and the imposition of additional cost sharing charges.

4. § 447.53(b): Exclusions from cost sharing.

a. *Comment:* One commenter recommended that all exemptions be at the State's option in order to avoid operational difficulties.

Response: The statute clearly mandates the exemptions in section 1916 of the Act.

b. *Comment:* One commenter stated that our regulations are deficient because they do not require States to assure that procedures are in place to effectuate the exclusions fully; thereby ensuring that excluded recipients are not charged cost sharing amounts. Another commenter stated that providers would have the added responsibility of identifying excluded children by date of birth.

Response: We have added a new State plan requirement in § 447.53(d) whereby States must specify their procedures for implementing and enforcing the exclusions from cost sharing. We agree that identifying excluded recipients could be an added responsibility if States require providers to collect cost sharing charges. States may wish to color code identification cards or in some other way identify whether a given recipient is excluded.

We do not agree that the regulations are deficient. Section 435.905 ensures that the cost sharing regulations are properly administered. This section requires agencies to furnish the rights and responsibilties of Medicaid applicants and recipients, in writing, to all applicants and to any other individuals who request it.

c. *Comment:* Five commenters had difficulty with our permitting an exclusion based on pregnancy only when the submitted claim indicates that the woman was pregnant. They believe that the exclusion should be determined based on the diagnosis or States should have to provide a claims mechanism that permits proper identification of pregnancy-related services.

Response: In reexamining this matter, we believe that States should be allowed greater flexibility in determining how to enforce this exclusion. Therefore, we have deleted the claims form requirement and added

a provision in § 447.53(d) that requires States to specify in their State plan, the procedures for implementing and enforcing the exclusion for pregnant women found in § 447.53(b)(2).

d. *Comment:* One commenter stated that our examples of pregnancy-related diagnoses should not be in the regulations because they might be read as all-inclusive.

Response: The examples were not intended to be all-inclusive. We believe that the use of the term "such as" in § 447.53(b)(2) makes it clear that the conditions noted are merely examples.

e. *Comment:* One commenter stated that the pregnancy exclusion should extend to conditions during the postpartum phase that relate to, or were complicated by, the pregnancy, the delivery, or both.

Response: We agree and have revised § 447.53(b)(2) accordingly. Both routine postpartum care and postpartum complications can be reasonably interpreted to fall within the meaning of the statute as services related to the pregnancy. However, since the statute also specifies that the exclusion is for services furnished to *pregnant* women, we believe the postpartum period should be limited to the maternity cycle specified in § 440.165(c). The maternity cycle is a period limited to——

(1) Pregnancy;

(2) Labor;

(3) Birth; and

(4) The immediate postpartum period, not to exceed six weeks.

Therefore, § 447.53(b)(2), as revised, states that the pregnancy exclusion applies to services furnished during the postpartum period, for conditions or complications that are related to the pregnancy, and that the postpartum period is the immediate postpartum period not to exceed six weeks.

f. *Comment:* One commenter stated that § 447.53(b)(3) fails to cross-refer to § 435.725 (Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care), and may imply that the exclusion for institutionalized individuals does not apply to categorically needy individuals institutionalized in non-209(b) States (those States covering all individuals receiving supplemental security income).

Response: We agree and for clarification, we are adding to § 447.53(b)(3) a cross-reference to § 435.725 to remedy the problem.

g. *Comment:* Four commenters thought the definition of "emergency", which was developed before the passage of the legislation governing these regulations, is too limited for these regulations.

Response: We agree with the commenters. We have revised the definition of emergency services in § 447.53(b)(4) to include emergency services provided in settings other than the hospital.

5. § 447.54 Maximum allowable charges.

a. *Comment:* One commenter believed that charges based on payment levels are cumbersome and impossible to administer; flat rates should be used.

Response: In accordance with § 447.54(a)(2), States have the option of setting a flat rate, not to exceed five percent of the agency payment. The States may also use a standard payment or fixed amount based on the average or typical payment for the service in accordance with § 447.55. We recognize the administrative advantages that flat rates offer and will consider flat rates in connection with the evaluation we are undertaking on revising the definition of nominal amounts. Under section 1916(a)(3) of the Act, any revisions that we make to the definition of nominality must take into consideration cash assistance levels and other guidelines the Secretary determines to be appropriate. Administrative ease will certainly be a factor taken into account in our evaluation.

b. *Comment:* One commenter stated that the cumulative maximum cost sharing charge that a recipient or family may be required to pay under § 447.54(d) should be mandatory.

Response: This comment raises an issue related to the definition of nominal cost sharing charges. We are reviewing the need to revise this definition and will consider this comment as part of that review. If a decision is made to revise the definition, we will publish the proposal in the **Federal Register** to solicit public comments.

c. *Comment:* One commenter had difficulty with our revision of the chart of maximum copayments, which filled in the gaps between $10 and $11, $25 and $26, and $50 and $51. He stated that our revision affected the recipients adversely since the maximum copayment for a service with a charge of $10.50, for example, is $1.00, rather than $.50, which previous regulations would have allowed.

Response: The revisions to the maximum copayment chart were made to clarify, rather than change the schedule previously published in regulations. In response to inquiries about the gaps in the schedule, we issued on March 17, 1981, a memorandum to all States, informing them that the maximum copayment for service charges between $10 and $11, $25 and $26, and $50 and $51 would be $1.00, $2.00, and $3.00, respectively. The revision we published February 8, 1983 codified the clarification.

The following comments were not directed at specific sections of the regulations:

1. *Comment:* One commenter stated that the regulations do not reflect the Senate Finance Committee's expectation that we will review a State's proposed cost sharing charges to determine whether they are nominal.

Response: §447.53(d) requires the State plan to specify any cost sharing charges to be imposed. In approving these State plan provisions, we assure that the specified amounts are nominal.

2. *Comment:* One commenter questioned why we issued no rules to implement the statutory provision that limits our ability to conduct cost sharing experiments under section 1916 of the Act.

Response: It is not necessary to issue regulations for the research and demonstration authority granted to us by statute. Since the projects are varied, experimental, nonrecurring, and limited to a specific period of time, regulations would not always be the necessary vehicle for authorizing projects. The public notice requirements of our Grants Administration Manual are satisfied by the notice that we publish in the **Federal Register** for each project. These notices solicit applications, explain applicable requirements and conditions, and provide any other necessary information concerning the particular project.

3. *Comment:* Two commenters expressed their opinion that the revisions should have been published as a notice of proposed rulemaking (NPRM) first, or at least as an "interim final" rule, because of the impact of nominality regulations and need for public input.

Response: As we stated in our February 1983 final rule, we published final rules as close as possible to the effective date of the statutory provisions so that there would be no unnecessary delay in the implementation of those provisions. We also wanted to publish final regulations as soon as possible so that States wishing to request waivers of nominal copayments for nonemergency services in hospital emergency rooms would have some guidance. The February 1983 preamble also explained that the final regulations merely revised existing regulations to conform with the statute as amended, or restated statutory provisions that are self-implementing.

A final rule with comment period is the same as an "interim final" rule. With both, any further changes to the regulations, based on public comments, are made after the implementation of a final rule, rather than before publication of a final rule (which happens when we publish an NPRM).

In the final rule with comment period, we solicited comments on the current definition of nominality for consideration at a later date. Although we received some comments on this issue, we have not yet decided whether to amend the definition. We will continue to consider the comments and will issue any proposed revisions as a proposed rule.

III. Summary of Regulations Changes

The following changes to the previous final rule with comment period (48 FR 5730) have been made in these final regulations:

- Section 431.55—A new paragraph (g)(4) was added to clarify that waivers cannot apply to services furnished before the wavier was granted (or before October 1, 1982, the effective date of the statute).
- Section 447.15—This section was revised to clarify that providers may not deny services to a recipient when that recipient is unable to pay a cost sharing charge imposed in accordance with § 431.55(g). This section is also revised to address the recipient's liability for cost sharing.
- Section 447.53(b)(2) was revised to specify that the pregnancy exclusion applies to services furnished during the postpartum period for conditions or complications that are related to the pregnancy, and that the postpartum period is the immediate postpartum period not to exceed six weeks.
- Section 447.53(b)(3)—A cross-reference to § 435.725 was added to clarify that the exclusion from cost sharing applies to categorically needy individuals institutionalized in non-209(b) States.
- Section 447.53(b)(4)—We revised the definition of emergency services to include emergency services provided in settings other than a hospital.
- Section 447.53(d)—This section of the regulations was revised to require that the State plan specify certain additional information regarding cost sharing charges.

IV. Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96-354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective. This final rule responds to comments received on the previous final rule with comment period (FC) published on February 8, 1983. We are also making several changes to the regulations that respond to comments received on the FC that are discussed in the preamble. Aside from several technical clarifications, the changes we are making focus primarily on the implementation and enforcement of these provisions. Specifically, we refer to § 447.53(d) that requires the State to: (1) Set forth procedures on how it would determine that a recipient is unable to pay and how these recipients would be identified to providers; and (2) specify in its State plan, the procedures for implementing and enforcing the exclusions from cost sharing found in § 447.53(b).

A. Executive Order 12291

We believe that compliance with the requirements in § 447.53(d) would generate some administrative costs to those States that choose to impose cost sharing on services to both categorically and medically needy recipients. However, we do not believe that these costs would be significant for two reasons. First, there has been a net decrease in the number of services on which cost sharing requirements are now imposed; and second, the addition of these administrative requirements does not represent a significant incremental increase in workload because the affected recipient groups are not large and because States already require other similar efforts in the operation of their Medicaid programs.

A second budget consideration regarding these final regulations is the economic impact resulting from the cost sharing requirements. In the FC, we stated that we anticipated Federal program savings of $90 million in FY 1984 and $103 million in FY 1985. These savings assumed that States would revise their State plans to add cost sharing initiatives as permitted by section 131 of Pub. L. 97-248 (TEFRA). However, based on several recent examinations of State cost sharing programs, it is clear that many States have decided not to implement these cost sharing initiatives. In fact, of the 27 jurisdictions that had cost sharing prior to the passage of TEFRA, 6 States have dropped their programs. Further, we know that at least three of these eliminations are due directly to the TEFRA provisions regarding cost sharing. Four other States dropped previously planned cost sharing initiatives primarily as a result of the technical/administrative problems caused by section 131's exclusions (for example, institutionalized individuals and pregnant women).

Therefore, based on the reexamination of our original assumptions concerning States' behavior, we now estimate that these final regulations will result in no significant changes in the Federal and State Medicaid expenditures. The lack of changes means that the $100 million threshold criterion is not met. Because no other criteria of section 1(b) of the Executive Order are met by these provisions, we have determined that this final rule is not a major rule as defined by the Executive Order.

B. Regulatory Flexibility Act

As noted above, we now believe that the net economic impact of these final regulations will be negligible. Since States will be requiring cost sharing for a lesser number of services, we believe that fewer providers, physicians, and beneficiaries will be subject to the impact of cost sharing programs. We also believe that since the aggregate impact is negligible (less than $1 million), the impact on affected providers and physicians is not significant. In general, because of recent State decisions to either eliminate or not initiate cost sharing programs, most providers and physicians will not experience reductions in the use of their services by recipients as was anticipated. Further, providers will not be burdened by the technical/administrative difficulties inherent in the implementation of the provisions. This does not preclude the possibility of an individual provider or physician being affected by a cost sharing program. We believe, however, that any impact experienced by these providers and physicians would result from the statute which mandates these cost sharing requirements and from decisions made by States in implementing the statute.

Therefore, for the reasons stated above, the Secretary certifies under 5

U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that these final regulations will not result in a significant impact on a substantial number of small entities.

C. Reporting and Recordkeeping Requirements

Section 447.53(d) of these regulations contains information collection requirements. The public is not required to comply with these information collection requirements until the Office of Management and Budget (OMB) approves the requirements under Section 3507 of the Paperwork Reduction Act. A notice will be published in the **Federal Register** when approval is obtained. A State will not be held out of compliance with the requirements of § 447.53(d) if it submits the necessary preprint material within 90 days after the publication of that notice.

V. List of Subjects

42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting requirement.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: General, Payments: timely claims, Reimbursement, Rural areas.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

42 CFR 431.55 is amended by adding a new paragraph (g)(4) as follows:

§ 431.55 Waiver of other Medicaid requirements.

* * * * *

(g) *Cost sharing requirement.* * * *

(4) A waiver approved under this provision cannot apply to services furnished before the waiver was granted or to services furnished before October 1, 1982.

* * * * *

PART 447—PAYMENT FOR SERVICES

The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

42 CFR Part 447 is amended as set forth below:

1. Section 447.15 is revised to read as follows:

§ 447.15 Acceptance of State payment as payment in full.

A State plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual. However, the provider may not deny services to any eligible individual on account of the individual's inability to pay the cost sharing amount imposed by the plan in accordance with § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.

2. Section 447.53 is amended by revising paragraphs (b)(2), (3) and (4), and paragraph (d) to read as follows:

§ 447.53 Applicability; specification; multiple charges.

* * * * *

(b) *Exclusions from cost sharing.*

* * *

(2) *Pregnant women.* Services furnished to pregnant women if such services relate to the pregnancy, or to any other medical condition which may complicate the pregnancy are excluded from cost sharing obligations. These services include routine prenatal care, labor and delivery, routine post-partum care, and complications of pregnancy or delivery likely to affect the pregnancy, such as hypertension, diabetes, urinary tract infection, and services furnished during the postpartum period for conditions or complications related to the pregnancy. The postpartum period is the immediate postpartum period not to exceed six weeks. States may further exclude from cost sharing all services furnished to pregnant women if they desire.

(3) *Institutionalized individuals.* Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution if the individual is required (pursuant to § 435.725, 435.733, 435.832, or 436.832), as a condition of receiving services in the institution, to spend all but a minimal amount of his income required for personal needs, for medical care costs are excluded from cost sharing.

(4) *Emergency services.* Services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in—

(i) Placing the patient's health in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

* * * * *

(d) *State plan specifications.* For each charge imposed under this section, the plan must specify—

(1) The service for which the charge is made;

(2) The amount of the charge;

(3) The basis for determining the charge;

(4) The basis for determining whether an individual is unable to pay the charge and the means by which such an individual will be identified to providers; and

(5) The procedures for implementing and enforcing the exclusions from cost sharing found in paragraph (b) of this section.

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program)

Dated: February 28, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: November 15, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-12854 Filed 5-29-85; 8:45 am]

BILLING CODE 4120-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1245

[No. 37025 (Sub-1)]

Revision to the Annual Report of Railroad Employees, Service and Compensation

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; Notice of effective date.

SUMMARY: The purpose of this Notice is to specify the effective date of the final

rules published at 50 FR 946, January 8, 1985. The effective date has been pending due to review and approval by the Office of Management and Budget. The effective date is January 30, 1985.

The objective of the original order was to review and revise the Annual Report of Railroad Employees, Service and Compensation (Form ARSC). The new form is identical to the Quarterly Report of Railroad Employees, Service and Compensation (Form QRSC). By adopting the new form, the Commission eliminates annual reporting of 112 individual job classifications and, in lieu thereof, requires reporting for only six summary classifications.

The Office of Management and Budget approved Form ARSC for use through June 30, 1987.

EFFECTIVE DATE: January 30, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 275–7448.

List of Subjects in 49 CFR Part 1245

Classification of railroad employees, Reports of service and compensation.

Authority: 49 U.S.C. 10321 and 11145 and 5 U.S.C. 553.

By the Commission.

James H. Bayne,

Secretary.

[FR Doc. 85–12899 Filed 5–29–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575–5075]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Emergency interim rule and request for comment.

SUMMARY: NOAA issues and requests comment on an emergency interim rule amending the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. This rule: (1) Divides the current New England Area into a new Georges Bank Area and the Nantucket Shoals Area; (2) establishes the maximum annual quota for the Georges Bank Area at 300,000 bushels; (3) specifies a quarterly allocation system for Georges Bank; (4) sets the annual surf clam quota for the Nantucket Shoals Area at 200,000 bushels; (5) incorporates the minimum size limit for surf clams adopted under Amendment 5, and (6) includes a notification provision to enable NMFS to accurately assign surf clam harvests to the appropriate area quota. This action is intended to reduce the probability of a lengthly closure of the New England Area surf clam fishery.

EFFECTIVE DATES: 50 CFR 652.7(i), 652.21(b) and 652.22(b) are suspended from May 24, 1985, until August 21, 1985. All other amendments made by this emergency interim rule are effective from May 24, 1985, until August 21, 1985. Comments on this rule and supporting documents will be accepted until June 24, 1985.

ADDRESSES: Comments on the emergency interim rule or supporting documents should be sent to Monique Rutledge, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts, 01930. Clearly mark "New England Surf Clam Comments" on the envelope.

Copies of Amendment 6 (Amendment) and the environmental assessment supporting the Amendment, are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware, 19901.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, Plan Coordinator, 617–281–3600, ext. 351.

SUPPLEMENTARY INFORMATION: The portions of the Amendment pertaining to the Georges Bank fishery were prepared by the Mid-Atlantic Fishery Management Council (Council). The portions of the Amendment pertaining to the Nantucket Shoals fishery were prepared by the New England Fishery Management Council, and were formerly contained in Amendment 4. Upon receipt of Amendment 4 from the New England Council in February 1985, the Mid-Atlantic Council merged the provisions of Amendment 4 into Amendment 6 to combine the management systems for the New England area in a single document for purposes of Secretarial review.

The Amendment was proposed to respond to two major developments in the New England fishery. During 1983, the New England fishery was closed for half the year, after increased effort in that area resulted in the harvest of the annual quota in a matter of a few months. Amendment 4 was prepared in response to this situation. In June 1984, significant beds of surf clams were discovered on Georges Bank by commercial operators. Subsequent research resulted in a stock assessment by the Northeast Fisheries Center supporting an optimum yield (OY) range of 25,000–300,000 bushels. Partitioning of the areas became necessary in order to prevent overfishing in the Nantucket Shoals Area. Amendment 6 was prepared in response to the discovery of the Georges Bank resource.

Final approval of Amendment 6 is not expected until autumn of 1985, while the peak season for surf clams is generally during the second and third quarters of the fishing year (April through September). This interim rule implements those portions of Amendment 6 on an immediate basis which are necessary to provide quotas and allow adequate monitoring during the busiest part of the fishing season.

The interim rule establishes Georges Bank and Nantucket Shoals as separate areas. On Georges Bank, the annual quota of 300,000 bushels is divided unequally by quarter: 10 percent of the quota is allocated to the first quarter, 40 percent to the second quarter, 40 percent to the third quarter, and 10 percent to the fourth. The quarterly allocation for the duration of this action will be selected according to the quarter(s) this rule is in effect. The Director, Northeast Region, NMFS (Regional Director), will monitor harvests, and will impose no restrictions until the quarterly allocation is harvested, at which time the fishery will close. An unused portion of a quarterly allocation will be added to the next quarter.

This rule increases the maximum annual quota for surf clams on Nantucket Shoals to 200,000 bushels. Effort restrictions remain based on the current FMP, which specifies unrestricted fishing until 50 percent of the annual quota is taken, at which time the Regional Director may impose effort limitations.

The imposition of a minimum size limit for surf clams on Georges Bank and Nantucket Shoals is supported by both the New England and Mid-Atlantic Councils. In May 1984, both Councils voted to extend the size limit to New England, consistent with the size limit in the Mid-Atlantic Area. In June 1984, the Mid-Atlantic Council adopted Amendment 5 to the FMP which contains a size limit provision without geographic limitation. While the size limit is important to ensure that small clams can spawn a number of times before they are harvested, its explicit inclusion in this action is also important for enforcement purposes. If size limits between the areas are not consistent, undersized clams harvested in the Mid-Atlantic Area might be landed in New England. This measure prevents such a loophole from occurring.

Notification requirements are established for participants in all areas. Vessel owners must notify NMFS in writing 15 days in advance if they intend to fish in an area in which they are authorized to fish, but is other than the area of their home port. A vessel's home port is the port listed on the permit issued to the vessel by NMFS. Areas in which vessels are authorized to fish other than the vessels' home port areas are "Notification Zones." If an operator gives proper notice of intent to fish in a notification zone, and then chooses to fish in another notification zone, 15 days' advance notice must be given. If an operator gives proper notice, and then decides to fish in the home port area instead, 24 hours' advance notice must be given. This notification will be used to allow the Regional Director to accurately assign harvests to the appropriate quotas, provide him with a list of vessels to be notified when adjustments of the management measures are made, and enable him to keep track of vessels for enforcement purposes.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator also finds that, due to the imminent possibility of closures of the New England and Mid-Atlantic Fisheries and the potential for adverse economic impact as a result, the reasons justifying promulgation of these rules on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provision of Section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in Section 8(l)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Council at the address listed above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act. The fishing vessel operator letter of intent falls within an exception to OMB's definition of "information" found at 50 CFR 1320.7(k)(1).

As provided by section 608 of the Regulatory Flexibility Act, this emergency rule is being promulgated in response to an emergency which makes preparation of an initial regulatory flexibility analysis under section 603 and timely compliance with the section 604 requirements for a final regulatory flexibility analysis impracticable.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: May 23, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 652 as set forth below:

PART 652—[AMENDED]

1. The authority citation for Part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 652.2, remove the alphabetical designations used for reference preceding all defined terms and replace current numerical designations with appropriate alphabetical letters and amend internal cross references accordingly; add the new definitions *"Georges Bank Area", "Home Port Area", "Home Port", "Mid-Atlantic States", "Nantucket Shoals Area", "New England States",* and *"Notification Zone"* in alphabetical order; and insert a new last sentence in the definition *"New England Area"* to read as follows:

§ 652.2 Definitions.

* * * * *

Georges Bank Area means that portion of the New England Area east of 69 °W. longitude.

Home Port Area, for vessels whose home port is in one of the Mid-Atlantic States, means the Mid-Atlantic Area; for vessels whose home port is in one of the New England States, means the Nantucket Shoals Area.

Home Port means that port listed on a vessel permit issued by MNFS.

* * * * *

Mid-Atlantic States means the States of New York, New Jersey, Pennsylvania, Delaware, Maryland or Virginia.

Nantucket Shoals Area means that portion of the New England Area west of 69 °W. longitude.

New England Area * * * This includes the fishing areas designated as the Nantucket Shoals Area and the Georges Bank Area.

New England States means the States of Connecticut, Rhode Island, Massachusetts, New Hampshire or Maine.

Notification Zone means an area in which a vessel holds a permit to fish that is other than its home port area.

* * * * *

3. In § 652.5, a new paragraph (b)(7) is added to read as follows:

§ 652.5 Recordkeeping and reporting requirements.

* * * * *

(b) *Owners and Operators.*

* * * * *

(7) *Notification of intention to fish.* (i) Vessel owners or operators who intend to fish in a notification zone must inform the Regional Director of their intention, in writing, not less than 15 days before fishing is to begin. The Regional Director will issue a letter to the vessel owner or operator specifying the date, 15 days afte receipt of notification, on which fishing in a notification zone may begin.

(ii) Vessel owners or operators who must give notice in order to fish in a notification zone include:

(A) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic States who intend to fish in the Nantucket Shoals or Georges Bank Areas;

(B) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the New England States who intend to fish in the Mid-Atlantic or Georges Bank Areas, and

(C) Owners or operators of vessels with permits to fish only in the New England Area who intend to fish in the Georges Bank Area.

(iii) If the owner or operator intends to change the vessel's area of fishing from one notification zone to another notification zone, the Regional Director must be notified of such intention, in writing, not less than 15 days before fishing is to begin.

(iv) If a vessel owner gives proper notice and intends to delay the date on which fishing in the notification zone was to begin, the Regional Director must be notified of the delay no less than 24 hours before fishing was originally scheduled to begin.

(v) If the vessel owner or operator gives proper notice and intends to leave the notification zone to return to the home port area, the Regional Director must be notified of such intention not less than 24 hours before fishing in the home port area is to resume.

4. Section 652.7 is amended by adding a new paragraph (a)(4); suspending paragraph (i) from May 24, 1985, until August 21, 1985; and adding new paragraphs (m) and (n), effective from May 24, 1985, until August 21, 1985, to read as follows:

§ 652.7 Prohibitions.

(a) * * *

(4) No permit holder may fish for any surf clams or ocean quahogs without having provided the notice required by § 652.5(b)(7).

* * * * *

(m) No person may possess surf clams taken in violation of the size limit prescribed in § 652.25.

(n) A vessel may not fish for surf clams in a notification zone prior to the vessel's owner or operator notifying the Regional Director as specified by these regulations.

* * * * *

5. In § 652.21, paragraph (b) is suspended from May 24, 1985, until August 21, 1985. New paragraphs (d) and (e) are added, effective from May 24, 1985, until August 21, 1985, to read as follows:

§ 652.21 Catch quotas.

* * * * *

(d) *Surf clams: Nantucket Shoals Area.* The maximum annual quota for surf clams in the Nantucket Shoals Area is specified at 200,000 bushels.

(e) *Surf clams: Georges Bank Area.* The maximum annual quota for surf clams in the Georges Bank Area is specified at 300,000 bushels. This quota is divided into quarterly allocations, the quarters and proportion of the quota being January 1–March 31, 10 percent; April 1–June 30, 40 percent; July 1–September 30, 40 percent; and October 1–December 31, 10 percent. An unused portion of a quarterly allocation will be added to the next quarter. Each fishing quarter will begin on the first Sunday of the new calendar quarter. The quarterly allocations for the duration of this action will be selected according to the quarter(s) that this action is in effect.

* * * * *

6. In § 652.22, paragraph (b) is suspended from May 24, 1985, until August 21, 1985. New paragraphs (g) and (h) are added, effective from May 24, 1985, until August 21, 1985, to read as follows:

§ 652.22 Effort restrictions.

* * * * *

(g) *Surf clams: Nantucket Shoals Area.*—(1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. This fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday, local time.

(2) *Management measure adjustments.* When 50 percent of the quota of surf clams established under § 652.21(d) for the Nantucket Shoals Area has been caught, the Regional Director will, after review of available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Secretary may reduce the number of days per weeks, or establish authorized periods, during which fishing for surf clams is allowed.

(h) *Surf clams: Georges Bank Area*—(1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. The fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday, local time.

(2) *Management measure adjustments.* If the Regional Director determines, based on logbook reports, processor's reports, vessel inspections, or other information, that the quarterly allocation for surf clams will be exceeded, the Secretary will publish a notice in the **Federal Register** stating the determination and stating a date and time for closure of the fishery.

* * * * *

7. In § 652.25, a new paragraph (c) is added to read as follows:

§ 652.25 Size restrictions.

* * * * *

(c) *Clarification.* Paragraphs (a) (1) and (2) and (b) of this section include the Nantucket Shoals Area and the Georges Bank Area.

[FR Doc. 85–12938 Filed 5–24–85; 2:34 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 104
Thursday, May 30, 1985

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Docket No. 1968S]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply after planting; (3) adding a provision to insure acreage cut for seed by written agreement; (4) adding a provision to insure by written agreement acreage grown for a third or succeeding year from stubble; (5) changing the method of computing indemnities when acreage, share, or practice is underreported; (6) providing continuous protection for stubble cane; (7) changing the notice of loss provision to make it more applicable to seed cane; (8) changing the unit of measure for sugarcane; (9) clarifying the method of appraising stubble acreage; (10) adding a definition of "Loss ratio"; and (11) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 1, 1985, to be sure of consideration.

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

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

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

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

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

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

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

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

Other than minor changes in language and format, the principal changes in the sugarcane policy are:

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

2. *Section 2.d.*—Specify that insurance will apply on seed cane cut for seed in Louisiana, if FCIC agrees, in writing, to insure such acreage.

3. *Section 2.f.*—Add a provision that acreage grown in Louisiana for a third or succeeding year from stubble is not insured unless FCIC agrees in writing.

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

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. *Section 7.a.(2)*—Add a provision to provide continuous protection for stubble cane in Louisiana.

6. *Section 8.a.(2)*—Change the "notice of probable loss" provision to make it more applicable to seed cane.

7. *Section 9.d.*—Allow the guarantee only on the acreage, share or practice reported but credit production on the acreage, share or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

8. *Section 9.e.*—Change the unit of measure from "tons" to "pounds" to more closely conform to industry practice.

9. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the

cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

10. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

11. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. The FCIC service offices will be able to advise a producer if sugarcane insurance is offered in a county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1986 and succeeding crop years, to read as follows:

PART 417—SUGARCANE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 417.1 Availability of sugarcane crop insurance.

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

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

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

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

§ 417.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 417) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 417.4 Creditors.

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

§ 417.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugarcane insurance contract, whenever:

(a) an insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) is indebted to the Corporation for additional premiums; or

(2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) said insured relied thereon in good faith; and

(3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 417.6 The contract.

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

§ 417.7 The application and policy.

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

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

(c) In accordance with the provisions govering changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugarcane contract issued under such

prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugarcane Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane—Crop Insurance Policy

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

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

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

Terms and Conditions

1. Causes of loss.

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

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

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

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

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

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

2. Crop, acreage, and share insured.

a. The crop insured will be sugarcane grown for processing for sugar which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

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

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

d. We do not insure any acreage:

(1) Cut for seed unless we agree, in writing, to insure such acreage;

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

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

(4) Which is destroyed, it is practical to replant to sugarcane, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Planted to a type or variety of sugarcane not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop.

e. If insurance is provided for an irrigated practice:

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

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

f. Acreage which is planted for the development or production of hybrid seed; for experimental purposes; or which in Louisiana only, is grown for a third or succeeding year from stubble; is not insured unless we agree, in writing, to insure such acreage.

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

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sugarcane in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

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

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

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

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

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

5. Annual premium.

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

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

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

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

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

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

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

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches on:

(1) Plant cane at the time of planting; and

(2) Stubble cane for:

(a) Louisiana on the first day following harvest for the first or second year cane from stubble except when stubble has been damaged by conditions occurring before harvest in the previous crop year and you are notified in writing by us by January 31 following harvest; or

(b) All other states on the later of the April 15 following normal harvest or 30 days after harvest.

b. Insurance ends at the earliest of:

(1) Total destruction of the sugarcane;

(2) Harvest;

(3) Final adjustment of a loss; or

(4) The following dates immediately following the normal starting of harvest.

(a) Louisiana..... January 31;

(b) all other states.....April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

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

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

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

Insured acreage may not be put to another use until we have appraised the sugarcane

and given written consent. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest:

(a) If you anticipate a loss on any unit; and

(b) For any acreage which is insured as seed cane.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested sugarcane (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sugarcane on the unit;

(b) Harvest of the unit; or

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

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

c. If an indemnity is to be claimed on any unit, you must leave intact the stalks on unharvested acreage and the stubble on harvested acreage until inspected by us.

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

9. Claim for indemnity.

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

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

(2) Harvest of the unit; or

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

b. We will not pay any indemnity unless you:

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

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

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

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

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

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

(4) Multiplying this result by your share.

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

e. The total production (pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period which adversely effects boiling house operation and cannot be processed for sugar will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of sugar.

The applicable price for sugar will be the local market price on the earlier of:

(a) The day the loss is adjusted; or

(b) The day such sugar is sold.

(2) Appraised production to be counted will include:

(a) Any appraisal under subsection 9.e.(3) and 9.e.(4);

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

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

(d) Any appraised production on unharvested acreage. Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We may make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) Except in Louisiana for acreage on which insurance attached the first day following harvest of the previous crop, an appraisal for inadequate stand will be made on any stubble acreage, at the time of inspection, if the product of the number of plants per acre multiplied by 2, multiplied by the factor (percentage of sugar) shown on the actuarial table does not equal the per acre guarantee. The per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

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

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

(b) Harvested; or

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

(6) The amount of production of any unharvested sugarcane may be determined on the basis of field appraisals conducted after the end of the insurance period.

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

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

f. You must not abandon any acreage to us.

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

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

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

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

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

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

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

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

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

14. Records and access to farm.

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

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for the crop year prior to the previous crop year. The Field Actuarial Office may assign a yield for a year if, prior to the cancellation date you show, to our satisfaction that the records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster. The assigned yield will not exceed the 10-year average yield computed from records for the 10 years immediately preceding the current crop year.

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

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

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

e. The cancellation and termination dates are September 30.

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

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

16. Contract changes.

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

17. Meaning of terms.

For the purposes of sugarcane crop insurance:

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

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

c. "Crop year" means the period from planting for plant cane and from the later of April 15 or 30 days after harvest for stubble cane until the end of the insurance period and will be designated by the calendar year in which the sugarcane harvest normally begins in the county.

d. "Harvest" means the cutting and removing of sugarcane from the field.

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

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Plant cane" (see definition of sugarcane).

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Stubble cane" (see definition of sugarcane).

l. "Sugarcane" means either:

(1) sugarcane the initial year planted (plant cane);

(2) sugarcane growing from the stubble left to produce another crop from previously harvested sugarcane (stubble cane).

m. "Tenant" means a person who rents land from another person for a share of the sugarcane or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of sugarcane in the county on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugarcane on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bonda fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C. on February 21, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: May 23, 1985

[FR Doc. 85-12921 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

[Docket Nos. AO-366-A25, et al.]

Milk in the Georgia and Certain Other Marketing Areas: Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A25
1006	Upper Florida	AO-356-A23
1011	Tennessee Valley	AO-251-A28
1012	Tampa Bay	AO-347-A26

7 CFR parts	Marketing area	Docket Nos.
1013	Southeastern Florida	AO-286-A33
1046	Louisville-Lexington-Evansville	AO-123-A54
1093	Alabama-West Florida	AO-366-A4
1094	New Orleans-Mississippi	AO-103-A46
1096	Greater Louisiana	AO-257-A33
1097	Memphis, Tennessee	AO-219-A41
1098	Nashville, Tennessee	AO-184-A48
1099	Paducah, Kentucky	AO-183-A40

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by Dairymen, Inc., to amend 12 southeastern Federal milk marketing orders.

The proposals would amend the pricing provisions of the 12 orders to reflect increases in the costs of hauling milk. The Class I differentials in 11 of the 12 orders would be increased in varying amounts ranging from 13 cents per hundredweight in Greater Louisiana to 75 cents per hundredweight in Southeastern Florida. The location adjustment provisions in each of the 12 orders would also be amended to reflect the more current costs of hauling milk.

The proponent cooperative has requested that these provisions be adopted on an expedited basis. The cooperative indicates that the proposed Class I differentials are needed to help cover the cost of moving milk from areas of excess supplies to deficit areas of the Southeast.

DATE: The hearing will convene at 9:30 a.m., local time, on June 25, 1985.

ADDRESS: The hearing will be held at the Ramada Hotel, Capitol Plaza, 450 Capitol Avenue, S.E., Atlanta, Georgia 30312 (404/688-1900).

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

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

Notice is hereby given of a public hearing to be held at the Ramada Hotel, Capitol Plaza, 450 Capitol Avenue, SE., Atlanta, Georgia 30312, (404) 688-1900, beginning at 9:30 a.m., on June 25, 1985, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.

Proposal No. 1—Louisville-Lexington-Evansville, F.O. No. 1046:

A. Revise § 1046.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

B. Revise § 1046.52(a)(1) to read as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Jackson, Lincoln, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne and Whitley, the Class I price shall be increased by a location adjustment of 25 cents;

C. Revise § 1046.52(a)(2) by renumbering such subparagraph to (3) and revising the introductory text to read as follows:

(3) Except as provided in paragraphs (a)(1) or (2) of this section, no location adjustment shall apply at a plant located:

* * * * *

D. Add a new § 1046.52(a)(2) to read as follows:

(2) For such milk that is physically received at plants located with the defined marketing area of the Paducah, Kentucky Federal Milk Marketing Order Number 1099, or within the Kentucky counties of Allen, Barren, Butler, Caldwell, Christian, Crittenden, Hopkins, Logan, Lyons, Metcalfe, Monroe, Muhlenberg, Todd, Trigg, Simpson, and Warren, the Class I price shall be increased by a location adjustment of 15 cents; and

E. Revise § 1046.13(c) by adding the following new paragraph:

(4) During each month the total quantity of milk diverted by a handler shall not exceed 35 percent of the producer milk that such handler caused that month to be delivered to or diverted from pool plants.

Proposal No. 2—Paducah, Kentucky, Federal Order No. 1099:

A. Revise § 1099.50(a) Class I price to read as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.85.

B. Revise § 1099.52(a) to read as follows:

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the State of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and

disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to Section 1099.50(a) shall be reduced by 22.5 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles. Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant.

Proposal No. 3—Nashville, Tennessee, Federal Order No. 1098:

A. Revise § 1098.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.10.

B. Revise paragraph 1098.52(a) by replacing the words "10 cents plus 1.5" with the words "20 cents plus 3.0" where they appear in the paragraph and adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant.

Proposal No. 4—Memphis, Tennessee, Federal Order No. 1097:

A. Revise § 1097.50(a) to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.10.

B. Revise § 1097.52 by adding the following proviso just before the chart which appears in the Section:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

C. Revise the chart contained in Section 1097.52 Plant location adjustments for handlers to read as follows:

Location of plant	Rate per cwt.
In the Arkansas counties specified above.	Subtract 16 cents.
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 10 cents.
For each additional 10 miles in excess of 50 miles.	Add an additional 3.0 cents.
Outside the States of Tennessee and Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 10 cents.
For each additional 10 miles in excess of 50 miles.	Subtract an additional 3.0 cents.

Proposal No. 5—Tennessee Valley, Federal Order No. 1011:

A. Revise § 1011.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

B. Revise § 1011.52(a) Plant location adjustments for handlers to read as follows:

(a) For milk received from producers or from a handler described in Section 1011.9 (c) or (d) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows. Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

(1) For such milk which is physically received at a plant located within the State of North Carolina, or south of the southern boundary of the States of North Carolina and Tennessee, the Class I price shall be increased by 15 cents;

(2) No adjustment shall be applicable on such milk which is physically received at a plant located within the marketing area, or in the State of Virginia;

(3) For such milk which is physically received at a plant located within the Kentucky counties of Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Jackson, Lincoln, Harlan, Knott, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne and Whitley, the Class I price shall be decreased by 35 cents; and

(4) For such milk which is physically received at a plant located more than 90 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the nearest of the city halls of Bristol, Chattanooga, and Knoxville, Tennessee, and outside the area specified in subparagraph (1), (2), or (3) of this paragraph, the Class I price applicable at the nearer of the city halls in Bristol, Chattanooga, or Knoxville, Tennessee shall be reduced by 3.0 cents of each 10 miles or fraction thereof that such plant is from the nearest of the city halls in Bristol, Chattanooga, and Knoxville, Tennessee.

Proposal No. 6—Georgia, Federal Order No. 1007:

A. Revise § 1007.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.60.

B. Revise § 1007.52(a)(1) to read as follows:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon, Habersham, Hall, Lumpkin, Pickens, Towns, Union, and White.

C. Revise § 1007.52(a)(2) to read as follows:

(2) "North Central Zone" means all the territory in the following Georgia counties:

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinnett, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Oglethorpe, Paulding, Pike, Polk, Putnam, Rockdale, Spalding, Stephens, Taliferro, Troup, Walton, and Wilkes.

D. Add new paragraphs (3) and (4) to § 1007.52(a) to read as follows:

(3) "South Central Zone" means all the territory in the following Georgia Counties:

Baldwin, Bibb, Bleckley, Burke, Chattahoochee, Columbia, Crawford, Crisp, Dodge, Dooly, Emanuel, Glascock, Hancock, Harris, Houston, Jefferson, Jenkins, Johnson, Jones, Laurens, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Pulaski, Richmond, Schley, Steward, Sumter, Talbot, Taylor, Treutlen, Twiggs, Upson, Warren, Washington, Webster, Wilcox, and Wilkinson.

(4) "Southern Zone" means all the territory within the marketing area not specified in paragraph (1), (2), or (3) of this paragraph.

E. Revise § 1007.52(b) to read as follows:

(b) The Class I price for producer milk at a plant located outside the North Central Zone shall be adjusted as follows. Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

(1) For producer milk at a plant located in the "Northern Zone" or in the State of North Carolina the Class I price shall be reduced by 15 cents;

(2) For producer milk at a plant located in the "South Central Zone" the

Class I price shall be increased by 15 cents:

(3) For producer milk at a plant located in the "Southern Zone" the Class I price shall be increased by 30 cents:

(4) For producer milk at a plant located outside the marketing area and south of the southern boundary of the States of Tennessee and North Carolina the Class I price shall be the Class I price applicable at the nearer of the city halls in Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta, and Rome, Georgia; and

(5) For producer milk at plant located outside the areas specified in paragraph (1), (2), (3), or (4) of this paragraph the Class I price shall be reduced 15 cents and an additional 3.0 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall in Altanta, Georgia.

Proposal No. 7—Alabama-West Florida, Federal Order No. 1093:

A. Revise § 1093.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.60.

B. Revise § 1093.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

C. Revise the table is § 1093.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 25 cents.
Zone 4	Plus 50 cents.
Zone 4a	Plus 35 cents.

D. Revise the introductory text of subparagraph 1093.52(a)(2) to read as follows:

(2) For a plant located in any of the Tennessee and Georgia counties listed below, the adjustment shall be minus 25 cents:

* * * * *

E. Revise the introductory text of § 1093.52(a)(3) to read as follows:

(3) For a plant located in any of the Tennessee and Kentucky counties listed below or in the Fort Campbell military reservation, the adjustment shall be minus 50 cents:

* * * * *

F. In § 1093.52(a)(4) replace the words "20 cents. Such minus adjustment shall be increased 1.5" with the words "25 cents. Such minus adjustment shall be increased 3.0".

G. Revise subparagrpah 1093.52(a)(6) to read as follows:

(6) For a plant located outside the marketing area and in the State of Florida, the adjustment shall be a plus 70 cents.

Proposal No. 8—New Orleans-Mississippi, Federal Order No. 1094:

A. Revise § 1094.2 New Orleans-Mississippi marketing area by creating a new Zone 2A and redefining Zone 3 as follows:

Zone 2A

Mississippi Counties

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

Zone 3

Mississippi Counties

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

B. Revise § 1094.50(a) Class I price to read as follow:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $3.10.

C. Revise § 1094.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

D. Revise the table in § 1094.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Minus 20 cents.
Zone 2A	Minus 30 cents.
Zone 3	Minus 40 cents.
Zone 4	Minus 60 cents.
Zone 5	Minus 70 cents.
Zone 6	Minus 80 cents.

E. Revise § 1094.52(a)(2) to read as follows:

(2) For a plant located in any of the following Louisiana parishes, the adjustment shall be as follows:

(i) No adjustment.

Ascension, Assumption, East Baton Rouge, Iberville, St. James, St. John the Baptist, West Baton Rouge.

(ii) Minus 10 cents.

Acadia, Calcasieu, Cameron, East Feliciana, Iberia, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martia, St. Mary, Vermilion, West Feliciana.

(iii) Minus 30 cents.

Allen, Avoyelles, Beauregard, Evangeline, Rapides, Vernon.

(iv) Minus 50 cents.

Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Winn.

F. Revise § 1094.52(a)(3) to read as follows:

(3) For a plant located in the State of Mississippi outside the marketing area the adjustment shall be minus 90 cents.

G. Revise § 1094.52(a)(5) by replacing the word "1.5" with the word "3.0".

Proposal No. 9—Greater Louisiana, Federal Order No. 1096:

A. Revise § 1096.2 Greater Louisiana marketing area by redefining Zone II and Zone III and adding a new Zone IV as follows:

Zone II

Allen, Avoyelles, Beauregard, Evangeline, Rapides, Vernon.

Zone III

Acadia, Calcasieu, Cameron, East Feliciana, Iberia, Jefferson Davis, Lafayette, Livingstone, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Mary, Vermilion, West Feliciana.

Zone IV

Ascension, Assumption, East Baton Rouge, Iberville, St. James, St. John the Baptist, West Baton Rouge.

B. Revise § 1096.50(a) Class I price to read as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $2.60.

C. Revise § 1096.52(a) by adding the following proviso:

Provide, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

D. Revise the table contained in subparagraph 1096.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Plus 20 cents.
Zone 3	Plus 40 cents.
Zone 4	Plus 50 cents.

E. Revise § 1096.52(a)(2)(i) by replacing the word "38" with the word "50".

F. Revise § 1096.52(a)(2)(ii) by replacing the word "19" with the word "30".

G. Revise § 1096.52(a)(3)(i) to read as follows:

(i) Plus 30 cents.

George, Hancock, Harrison, Jackson, Pearl River, and Stone.

H. Revise § 1096.52(a)(3)(ii) to read as follows:

(ii) Plus 20 cents.

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

I. Add a new § 1096.52(a)(3)(iii) to read as follows:

(iii) Plus 10 cents.

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

J. Revise § 1096.52(a)(4)(i) by replacing the word "38" with the word "25".

K. Revise § 1096.52(a)(4)(ii) by replacing the word "19" with the word "6".

L. Revise § 1096.52(a)(4)(iii) by replacing the words "No adjustment" with the words "Minus 13 cents."

M. Revise § 1096.52(a)(5) by replacing the word "1.5" with the word "3.0".

Proposal No. 10—Upper Florida, Federal Order No. 1006:

A. Revise § 1006.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.30.

B. Revise the table contained in § 1006.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
In excess of 70 but not more than 85 miles.	Subtract 20 cents.
For each additional 10 miles or fraction thereof.	Subtract 3.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	Add 30 cents.
In the defined marketing area of Part 1013.	Add 60 cents.
The remaining area within the State of Florida.	No adjustment.

Proposal No.11—Tampa Bay, Federal Order No. 1012:

A. Revise § 1012.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.60.

B. Revise the table contained in § 1012.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the city hall in Tampa, Fla.	Subtract 3.0 cents.
Inside the State of Florida:	
In the defined marketing area of Part 1013.	Add 30 cents.
South of a line forming the southern boundary of the countries of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	No adjustment.
The remaining area within the State of Florida.	Minus 30 cents.

Proposal No. 12—Southeastern Florida, Federal Order No. 1013:

A. Revise § 1013.50(a) Class I price to read as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.90.

B. Revise the table contained in paragraph 1013.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, Fla.	Subtract 3.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of this order.	Subtract 30 cents.
The remaining area within the State of Florida.	Subtract 60 cents.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 13

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and unitl the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington Office only)

Office of the Market Administrator of each of the 12 orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C. on May 24, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-12919 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 51, 70, and 72

Decommissioning Criteria for Nuclear Facilities; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On February 11, 1985, (50 FR 5600), the Nuclear Regulatory Commission published for public comment a proposed rule setting forth technical and financial criteria for decommissioning licensed facilities. The proposed amendments addressed decommissioning planning needs, alternatives, timing, funding methods, and environmental review requirements. The Department of the Army, the Department of Energy of the State of Oregon and other interested parties have requested an extension in order to fully evaluate the issues raised and develop comments on the proposed rule. In view of the importance of the proposed rule, the amount of time suggested by the requestors to complete their review and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional 60 days. The original comment period for this proposed rule expired on May 13, 1985.

DATE: The extended comment period expires July 12, 1985. Comments received after the date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith G. Steyer or Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7910.

Dated at Washington, DC, this 24th day of May, 1985.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-12997 Filed 5-29-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-15-AD]

Airworthiness Directives; Dornier Models 228-100, 228-101, 228-200 and 228-201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Dornier Models 228-100, 228-101, 228-200 and 228-201 airplanes which would require modification of the connections of the 4CC and 9CC relays in the horizontal stabilizer electric trim system and mandatory replacement of those relays if they have more than 200 hours time-in-service at the time of modification. Dornier has reported that during trimming, peak currents could occur on these relays which are greater than the design values which reduces the life of the relays and the reliability of the system. A failed relay can contribute to an uncommanded trim motion and possible loss of control of the airplane. The modification required by the proposed AD will preclude reliability reductions and assure integrity of the electric trim system.

DATES: Comments must be received on or before July 15, 1985.

ADDRESSES: Dornier 228 Alert Service Bulletin ASB-228-019, dated January 30, 1985, applicable to this AD may be obtained from Dornier GmbH, Postfach 317, D-7990 Friedrichshafen-Bodensee, Germany; Telephone 075-458-2351 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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. Bob Sexton, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The Dornier Model 228 airplane's electric trim system certification was based in part on the high reliability of the electric trim system. Trim relays 4CC and 9CC are critical in the overall trim system reliability and in substantiating that an uncommended trim system runaway is highly improbable. Such a trim runaway under certain airplane configurations and certain flight regimes could result in loss of control of the airplane. Dornier has determined that during trimming operations, peak currents could exceed the design values in trim relays 4CC and 9CC, thereby reducing the reliability of these relays and the trim system. As a result, Dornier has issued Alert Service Bulletin ASB-228-019, dated January 30, 1985, which requires modification of the connection of relays 4CC and 9CC and the replacement of 4CC and 9CC relays having greater than 200 hours time-in-service at the time of modification. The modification of the relay connections and relay replacement will preclude reduction of the reliability of the trim system, failure of which could contribute to possible uncommanded trim motion and possible loss of control of the airplane. The Luftfahrt-Bundesamt (LBA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under the Federal Republic of Germany registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA 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 conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Alert Service Bulletin ASB-228-019, dated January 30, 1985 and the mandatory classification of this Alert Service bulletin by the LBA. Based on the foregoing, the FAA believes that the condition addressed by ASB-228-019 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD, applicable to Dornier Models 228-100,

228–101, 228–200 and 228–201 airplanes, would require modification of the connections of relays 4CC and 9CC in accordance with the aforementioned service bulletin and the replacement of these 4CC and 9CC relays having greater than 200 hours time-in-service at the time of modification.

The FAA has determined there are approximately eleven airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $5,912.50 to the private sector.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations [14 CFR 39.13] by adding the following new AD:

Dornier: Applies to Models 228–100, 228–200, 228–101 and 228–201 (Serial Nos. 7001, 7003, 7004, 7005, 7011, 7014, 7015, 7018, 7020, 7022, 7024, 7027, 7028, 7029, 7039, 8002, 8006, 8007, 8008, 8009, 8010, 8012, 8013, 8016, 8017, 8019, 8021, 8025, 8026, 8030, 8034, and 8035) airplanes certificated in any category.

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

To retain the reliability of the horizontal stabilizer electric trim system accomplish the following:

(a) For relays 4CC and 9CC having greater than 200 hours time-in-service, remove and replace existing relays with new relays of the same part number.

(b) Modify the relay connections for relays 4CC and 9CC in accordance with paragraph 2, Accomplishment Instructions, of Dornier Alert Bulletin ASB–228–019 dated January 30, 1985.

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

(d) 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.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier GmbH, Postfach 317, D–7990 Friedrichshafen-Bodensee, Germany, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

(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); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on May 15, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–12894 Filed 5–29–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization (Winston-Salem, NC)

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to change the Customs field organization by extending the geographical limits of the port of Winston-Salem, North Carolina. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before July 29, 1985.

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of Winston-Salem, North Carolina.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), the port of Winston-Salem, North Carolina, is listed in the Wilmington, North Carolina, Customs district in the Southeast Region. It has been proposed to move the Customs office from downtown Winston-Salem to the Greensboro/High Point/Winston-Salem Regional Airport, where most of the inspectional activities are actually being performed. Relocation of the office to the airport, which is outside the current port limits, will reduce employee travel time and provide better service to the public.

The port of entry of Winston-Salem was created by E.O. 2366, dated April 24, 1916, and the existing geographical port limits coincide with the city limits of Winston-Salem. It is proposed to extend the current port limits to include Guilford and Forsyth Counties. These extended port limits will include the Greensboro/High Point/Winston-Salem Regional Airport.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Winston-Salem area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the organization of Customs, pursuant to section 1(a)(3) of E.O. 12291 this proposal is not subject to that E.O.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs Offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: May 13, 1985.

Edward T. Stevenson,

Assistant Secretary of the Treasury.

[FR Doc. 85-12943 Filed 5-29-85; 8:45 am]

BILLING CODE 4820-02-M

PANAMA CANAL COMMISSION

35 CFR Part 256

Collection by Salary Offset From Federal Employees Indebted to the United States

Correction

In FR Doc. 85-11208, beginning on page 19539, in the issue of Thursday, May 9, 1985, make the following corrections:

1. On page 19541, first column, third line from the bottom of the second complete paragraph, "property" should read "propriety".

2. On page 19542, first column in the ninth line, the first "the" should read "than".

3. On page 19542, second column in the heading of § 256.4, "on" should read "of".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 8

[Docket No. 85-12029]

Labor Standards Applicable to Employees of National Park Service Concessioners; Correction

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on the Labor Standards Applicable to Employees of National Park Service Concessioners that appeared at page 19548 in the **Federal Register** of Thursday, May 9, 1985, and which also appeared as a correction at page 20803 in the **Federal Register** of Monday, May 20, 1985. This action is necessary to correct the typographical error in the telephone number under "**FOR FURTHER INFORMATION CONTACT:**" it should have read: as set forth below.

FOR FURTHER INFORMATION CONTACT: James Owen, Concessions Analyst, Concessions Division, National Park Service, Washington, D.C. 20240, telephone: (202) 343-1564.

Russell K. Olsen,

Federal Register Liaison Officer

[FR Doc. 85-12954 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-2844-1]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: Today's action announces USEPA's proposed rulemaking for the State of Michigan's revised Rule 336.1371, existing rule 336.1372, and new rule 336.1373 related to the control of fugitive dust emissions.

On April 25, 1985, the State of Michigan submitted rules for the control of industrial particulate fugitive emissions from sources located in total suspended particulate (TSP) attainment and nonattainment areas. On December 2, 1983 (48 FR 54377), USEPA proposed to withdraw its approval of and disapprove the existing Rules 336.1371 and 336.1372 as not satisfying the requirements of Part D of the Clean Air Act (CAA). In response to USEPA's December 2, 1983, proposal Michigan revised Rule 336.1371 and created new Rule 336.1373. As revised and resubmitted, Rule 336.1371 and 336.1372 apply only in TSP attainment areas. New Rule 336.1373 applies only in TSP non-attainment areas.

This notice proposes to approve and incorporate into the Michigan State Implementation plan (SIP) revised Rules 336.1371, 336.1372 and newly promulgated Rule 336.1373, because they provide a framework for the development of fugitive dust control programs. However, USEPA does not believe that Rule 336.1373 assures the application of Reasonable Available Control Technology (RACT) for fugitive dust sources located in nonattainment areas. In addition, this notice also reaffirms USEPA's proposed finding of December 2, 1983, that existing SIP Rules 336.1371 and 336.1372 do not satisfy Part D requirements. Therefore, USEPA is proposing to disapprove Michigan's TSP SIP because it does not meet the RACT requirements of section 172(b)(3) of Part D of the CAA. Final disapproval of the TSP SIP would reinstitute a construction ban under section 110(a)(2)(I) in TSP primary nonattainment areas.

DATE: USEPA must receive comments on or before July 1, 1985. Because USEPA is under court order to take final action on this proposal by August 1, 1985, it will not extend this 30-day comment period except in the most extraordinary circumstances.

ADDRESSES: Written comments should be sent to: (Please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, (312) 886-6037.

Copies of the State's submittal and USEPA's evaluation are available for inspection during normal business hours at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office):

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch

(5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604
Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

SUPPLEMENTARY INFORMATION:

Background

USEPA conditionally approved Michigan's TSP SIP for nonattainment areas required by Part D of the Clean Air Act on May 6, 1980, (45 FR 29790) and May 22, 1981, (46 FR 27923). One of the conditions for final approval was that the State adopt and submit regulations requiring the application of Reasonably Available Control Technology (RACT) for the control of all traditional sources of fugitive particulate emissions for at least the Wayne County primary TSP nonattainment area. On March 6, 1981, Michigan submitted existing Rules 336.1371 and 336.1372 to satisfy this condition. In addition, the Michigan Department of Natural Resources (MDNR) submitted three letters to USEPA containing clarifications and commitments as to how Rules 336.1371 and 336.1372 would be implemented to obtain control programs from sources of fugitive emissions in the primary TSP nonattainment area.

On November 15, 1982 (47 FR 51398), USEPA approved Rules 336.1371 and 336.1372, based on and including the additional commitments contained in the three letters, as revisions to the Michigan SIP. Rule 336.1371 established a discretionary procedure by which the Michigan Air Pollution Commission (Commission) was authorized, but not required, to request sources in attainment or nonattainment areas to develop and submit fugitive dust control programs to be incorporated in enforceable permits or administrative orders. The elements of such program were set forth in Rule 336.1372. These rules were approved as representing RACT, as mandated by section 172(b)(3) of the CAA.

Court Actions

USEPA's approval was challenged by the Natural Resources Defense Council (NRDC) in January 1983; *NRDC* v. *USEPA*, No. 83-3027 (6th Circuit). USEPA was granted a voluntary remand to reconsider its approval and USEPA re-evaluated its approval of Rules 336.1371 and 336.1372 in light of issues raised by NRDC in its petition for review.

On December 2, 1983, (48 FR 54377) USEPA proposed to withdraw its approval of and also disapprove Rules 336.1371 and 336.1372. Defects in the rules' enforceability and the failure of the State of Michigan to cure these defects by obtaining enforceable RACT-based programs for the appropriate fugitive dust sources in the primary nonattainment area were the primary reasons for this proposed disapproval. During the comment period, USEPA received comments from the MDNR, Wayne County Division of Air Pollution Control (WCDAPC), Detroit Water and Sewage Department, Detroit Edison, National Steel Corporation, and NRDC.

On October 1, 1984, the U.S. Court of Appeals for the Sixth Circuit directed Michigan to submit final fugitive dust rules by April 30, 1985. The State's submittal of April 25, 1985, was intended to satisfy this requirement. The Court also directed USEPA to propose action on the new rules and to take final action on that proposal, as well as the December 1983 proposal, by August 1, 1985.

Description of Michigan's Fugitive Dust Rules

Michigan's newly proposed industrial fugitive dust SIP consists of three rules: Revised Rule 336.1371, existing Rule 336.137, and new Rule 336.1373. Revised Rules 336.1371 and 336.1373 were submitted to USEPA on April 25, 1985. The State did not modify Rule 336.1372, except to make it applicable only in TSP attainment area. On April 25, 1985, the State of Michigan submitted the final version of their industrial fugitive dust SIP. Below is a summary of the rules. USEPA's technical support document (TSD) of April 25, 1985, contains a detailed analysis of these rules.

Rule 336.1371

Michigan's Proposed Rule 336.1371 addresses the procedures and requirements for the development of fugitive dust control programs for facilities located in attainment areas. Such programs, according to this rule, may be requested by the Commission on the basis of ambient air quality measurements or substantive complaints. Any facility which processes, uses, stores, transports, or conveys bulk material may be subject to this rule. Table 36 has been included in Rule 336.1371. This table lists areas of Michigan exempted from Rule 336.1371. These areas are federally designated primary and secondary TSP nonattainment areas.

A facility that has been notified of its need for a control plan has 3 months to demonstrate, to the Commission's satisfaction, that any part of the facility is not subject to the provisions of Rule 336.1371. A control program must be submitted for all affected parts of a facility within 6 months of notification. The Commission must review and approve each control program only as part of a legally enforceable order or permit to operate. If the Commission finds a plan unacceptable, it may disapprove the program and require its revision. If the revised program is unacceptable or no program is submitted, the Commission may approve a program of its own choosing for the facility. Any approved program must be implemented pursuant to its schedule. Finally, programs may be revised to adjust for changing conditions.

Rule 336.1372

Rule 336.1372 remains unchanged from the State's original submittal which was approved by USEPA on November 15, 1982 (47 FR 51398). However, pursuant to revised Rule 336.1371, both rules are now limited in applicability to attainment areas. All fugitive dust control programs issued pursuant to Rule 336.1371 are required to incorporate one or more of the control approaches specified in Rule 336.1372, taking into account the individual characteristics of each bulk material emission source. Recordkeeping requirements must be specified in each control program. A compliance schedule, with enforceable milestones, must accompany each control measure specified in the program.

Rule 336.1373

Michigan's new Rule 36.1373 presents general fugitive dust control requirements for sources located in nonattainable areas. These areas are listed in Table 36 of Rule 336.1371. The provisions of Rule 336.1373 apply to virtually all fugitive emissions sources/operations except for operations involving grain handling and drying. No such source operation may generate emissions having an opacity greater than or equal to 5 percent when an observer is looking toward the zenith at a point beyond the property line of the source. In addition to this opacity limit, the rule requires owners and operators of facilities with "potential sources of fugitive dust" in nonattainment areas to prepare and submit an operating program to the Commission within 90 days of the effective date of the rule. Rule 336.1373(3) defines "potential particulate emissions" as the particulate emissions expected to occur from an uncontrolled source at maximum annual-rated source capacity.

The rule lists control methods to be incorporated into the operating programs with respect to storage piles,

conveyor loading operations to storage piles, roads and parking lots within industrial facilities, unloading and transporting of materials collected by pollution control equipment, crushing and grinding operations and transportation of bulk materials.

USEPA's Evaluation and Proposed Action

Rules 336.1371 and 336.1372—Requirements for Attainment Areas

Revised Rules 336.1371 and 336.1372 establish a framework for the issuance of fugitive dust control programs in attainment areas. These rules, therefore, supplement the existing SIP to the extent that they provide a framework for the submission, review, and State approval of individual control programs to assure maintenance of the TSP NAAQS. For these reasons, USEPA is proposing to approve and incorporate these rules into the SIP as a structure for the establishment of specific control requirements. In approving this structure, however, USEPA does not intend to approve in advance any of the control programs that the structure may produce in the future. To obtain approval of such a program, the State must submit each program as a SIP revision. If a program would alter existing SIP requirements, those existing requirements would remain effective as part of the SIP, unless and until USEPA approves the program's change.

Rule 336.1373—Requirements for Nonattainment Areas

Like Rule 336.1371 and Rule 336.1372, Rule 336.1373 creates a framework for the establishment of TSP control programs, without establishsing definite requirements for any sources. For example, paragraph (vi) of Rule 336.1373(2)(a) provides that sources "shall be operated to comply with the provisions of an operating program prepared by the owner or operator . . ."; paragraph (i) requires that storage piles be controlled by a coer, or ". . . in accordance with the operating program . . ."; paragraph (iii) requires that traffic areas be paved or treated "in accordance with the operating program"; paragraph (iv) requires that control device dust be controlled by certain methods "or other equivalent methods"; paragraph (v) requires that various operations be sprayed "or be treated by an equivalent method in accordance with an operating program." Thus, the specific requirements for any subject source depend on the terms of the operating program prepared by the owner or operator. The content of that program initially is within the discretion of the owner or operator and ultimately within the discretion of the Commission which approves or disapproves the programs. Since the specific contents of the programs and, thus, the requirements of the rule are unknow, USEPA cannot conclude that they represent RACT. For that reason, USEPA cannot propose to approve Rule 336.1373, which is applicable to nonattainment areas, as meeting the section 172(b)(3) RACT requirement of the CAA.

Rule 336.1373 incorporates language that requires operating programs to be designed to "significantly reduce the fugitive dust emissions to a level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility." However, this is substantively undefined within the rule. Indeed, no clear substantive criteria are established to define a level of performance necessary to satisfy this design goal (e.g., a visible emission limitation); alternatively neither are any detailed work practice specifications established to enable the State and USEPA to clearly determine what control program would be applied to a source subject to these rules.

For example, frequency and intensity of dust suppressant application are key factors in determining whether or not a control program represents RACT for unpaved roads. Since the rule allows this to be a discretionary decision by the Commission on the basis of only vague regulatory guidance, this rule does not assure the application of RACT. USEPA cannot, therefore, determine that these rules would, in fact, control sources to the RACT level required under section 172(b)(3) of the CAA.

USEPA is proposing to incorporate this rule into Michigan's SIP because, like R336.1371 and R336.1372, the rule provides a structure for the issuance of individual source control programs. However, in order for USEPA to determine that the rule results in the imposition of enforceable RACT requirements on fugitive dust sources, the Agency would have to review and rulemake on the individual source control programs as site-specific SIP revisions.

Conclusion

As discussed above, USEPA is taking the following actions:

- USEPA reaffirms its proposed disapproval of Michigan's currently federally approved SIP for Part D purposes, (i.e., currently federally approved Rules 336.1371 and 336.1372 insofar as they apply to nonattainment areas as discused in the December 2, 1983, rulemaking (48 FR 54377)).
- USEPA proposes to incorporate into the Michigan SIP the amended R336.1371 to replace the existing R336.1371 provisions. Amended R336.1371 provides a framework for the development of fugitive dust control programs in attainment areas. For the same reason, USEPA would leave R336.1372 incorporated into the State's TSP SIP.
- USEPA proposes to incorporate, into the Michigan SIP, new Rule 336.1373. The new Rule 336.1373 provides a framework for the development of fugitive dust control programs in nonattainment areas.
- Because USEPA believes Rule 336.1373 is not adequate to meet the requirements of section 172(b) of Part D of the CAA, USEPA is proposing to disapprove the overall Michigan TSP Part D SIP. If USEPA takes action to finally withdraw approval of the State of Michigan's current federally approved SIP with respect to the CAA's Part D requirements and, at the same time, finally disapproves the newly submitted fugitive dust control plan because Rule 336.1373 fails to satisfy the Part D requirements, then USEPA will issue a final notice of SIP deficiency, pursuant to section 110(a)(2)(H) of the CAA. This notice will advise the State of Michigan that its SIP is substantially inadequate to comply with the requirements of the CAA. In addition, should USEPA's final rulemaking action find Michigan's TSP SIP deficient with respect to the CAA's Part D requirements, the ban on new construction permits for major sources of section 110(a)(2)(I) of the CAA would apply in Michigan's primary TSP nonattainment areas.

A 30-day public comment period is being provided on this notice of proposed rulemaking. Public comments received on or before July 1, 1985 will be considered in USEPA's final rulemaking. When possible, comments should be provided in triplicate. All comments will be available for inspection during normal business hours at the Region V office listed at the beginning of this notice. Please call the contact person listed at the beginning of this notice, before visiting the Region V office.

Today's action is not "Major", for purposes of Executive Order 12291. It has, however, been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), USEPA must assess the impact of proposed or final rules on small entities. If USEPA takes final action as proposed today, a moratorium on the construction and modification of

major stationary sources of TSP will go into effect in the primary TSP nonattainment areas of the State affected. USEPA does not have sufficient information to determine the impacts of such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the CAA, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the CAA.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: May 6, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-13002 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 42

[EPA Action NE 1732; A-7-FRL-2841-7]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On September 24, 1984, EPA proposed action on a State Implementation Plan (SIP) revision from Nebraska comprised of amendments to various regulations. Revisions to four regulations delete the review requirements for complex sources of air pollution. In the September 24, 1984 action, EPA proposed to retain the State's review requirements for complex sources. Because of adverse comments from the State, EPA has reconsidered its position on this matter and is thus reproposing to approve the State's deletion of the review requirements in all areas of the State, except the carbon monoxide (CO) nonattainment areas of Lincoln and Omaha, where the complex source review program will be retained until the State can demonstrate whether it is necessary for attaining and maintaining the CO standards in these two areas.

In the September 24, 1984 action, EPA proposed approval of other revisions to Nebraska regulations. Final action on those revisions can be found in a separate action published elsewhere in today's **Federal Register.**

DATE: Comments must be received on or before July 1, 1985.

ADDRESSES: Comments should be addressed to May C. Carter, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the States submission are available for inspection during normal business hours at the above address and at the following locations: Nebraska Department of Environmental Control, Air Pollution Control Division, Box 94877, Statehouse Station, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374-3791, FTS 758-3791.

SUPPLEMENTARY INFORMATION: On October 6, 1983, the State of Nebraska submitted a SIP revision comprised of amendments to various regulations. On September 24, 1984, EPA published proposed action on these amendments in the **Federal Register** (49 FR 37427).

The affected Chapters of the Nebraska Air Pollution Control Rules and Regulations are as follows:

- Chapter 1—Definitions
- Chapter 4—Reporting and Operating Permits for Existing Sources; When Required
- Chapter 5—New, Modified, and Reconstructed Sources; Standards of Performance, Application for Permit, When Required
- Chapter 10—Incinerators; Emission Standards
- Chapter 12—Sulfur Compound Emissions; Emission Standards
- Chapter 14—Open Fires, Prohibited; Exceptions
- Chapter 20—Emission Sources; Testing; Monitoring

Revisions to Chapters 1, 4, 5 and 20 delete the definitions and review requirements for complex sources of air pollution. These revisions will be discussed further in this rulemaking, while revisions to the remaining regulations will be discussed in a separate action published elsewhere in today's **Federal Register.**

The State has reported that the complex source review requirements are ineffective and unnecessary in that only two applications have been reviewed since 1974, both of which were for new highway construction.

A complex or indirect source is a facility which attracts or may attract mobile sources of pollution. Carbon monoxide (CO) is one of the pollutants emitted by mobile sources. There are two areas in Nebraska currently designated as nonattainment for CO. These two areas are Lincoln and Omaha.

In the September 24, 1984 action, EPA proposed to retain the State's complex source review program as part of the approved SIP until the State could determine whether the indirect source review program is a necessary element of the control strategy for attaining and maintaining the CO standards in Lincoln and Omaha.

On January 15 and 21, 1985, the State submitted draft plan revisions for the Lincoln and Omaha CO nonattainment areas. Consequently, EPA will act on the indirect source review program as it pertains to Lincoln and Omaha when action is taken on the Lincoln and Omaha CO SIP revisions.

Secton 110(a)(5)(A)(iii) of the Clean Air Act provides that a state may revise its approved SIP to suspend or revoke an indirect source review program included in it, provided that the SIP meets all the substantive and procedural requirements of section 110, including the requirement that the plan demonstrate attainment and maintenance of the primary National Ambient Air Quality Standards (NAAQS)

The Nebraska SIP (exluding the CO nonattainment plans for Lincoln and Omaha which will be discussed in a future rulemaking) meets the substantive and procedural requirements of section 110 of the Act. Further, with the exception of the Lincoln and Omaha CO nonattainment areas, all other areas of Nebraska are considered to be in attainment of the NAAQS for CO.

In the September 24, 1984 **Federal Register,** EPA proposed to retain the State's complex source review requirements for the entire State. In a letter dated October 17, 1984, the State objected to EPA's position and restated that the best indication of the minimal impact of deleting the review requirements was that in ten years only two projects had required review under the indirect source review program. After reviewing the State's objections, EPA reevaluated the hearing record and found that the two projects which were reviewed were located in Omaha, which is nonattainment for CO. The review program has not been used in attainment areas of Nebraska, because there have been no projects of sufficient size to be subject to review in such areas. The State's letter also stated that the indirect source review requirement

was deleted from State Rules because it was demonstrated by experience to be of no benefit to air quality.

EPA has reconsidered its position on the indirect source review requirements and is reproposing to approve the State's deletion of the review requirements in all areas of the State except the Lincoln and Omaha CO nonattainment areas, where the indirect source review program will be retained until the State can demonstrate whether it should be part of the control strategy for attaining and maintaining the CO standards in these two areas of the State.

Action

EPA approves the State's deletion of the indirect source review requirements, except as they pertain to the Lincoln and Omaha CO nonattainment areas.

EPA is solicitng comments on the State's submission, and on the actions proposed in this document. The Administrator will consider comments received from the public in deciding to approve or disapprove this submission.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Pursuant to the provisions of 5 U.S.C. 605(b), the Regional Adminstrator has certified that this action will not have a significant economic impact on a substantial number of small entities because it does not create any new requirements which are not currently part of the state regulations or the approved SIP.

This action is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: March 25, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-12837 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRC-2843-9]

Ventura County Air Pollution Control District, Air Pollution Control Regulations; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Ventura County Air Pollution Control District (VCAPCD) adopted revisions to its permitting regulations on January 10, 1984. Those amended regulations constitute Regulation I, Rules, 2, 25, 26, 26.1–26.3, 26.5, 26.6, and 29, which contain provisions comparable to EPA's requirements for New Source Review and Prevention of Significant Deterioration, and regulate the construction and operation of new and modified major sources of both nonattainment and attainment pollutants.

The VCAPCD adopted these revisions to satisfy conditions on the approval of a previous version of Regulation I. That rule was submitted to EPA as a revision to the SIP on April 27, 1984. In this notice, EPA is proposing to approve the Ventura NSR/PSD provisions of Regulation I.

EPA is also proposing disapproval of the exemptions for cogeneration and resource recovery—Sections A.2 and A.3—of PSD Rule 26.3.

DATE: Comments may be submitted up to July 1, 1985.

ADDRESSEES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105.

Copies of the revisions and EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

California Air Resources Board, 1102 Q Street, Sacramento, CA

Ventura County Air Pollution Control District, Government Center, Administration Building, 800 South Victoria Avenue, Ventura, CA 93009.

FOR FURTHER INFORMATION CONTACT:

NSR: Nancy Harney/Richard Grow, Air Management Division, New Source Section, Environmental Protection Agency, Region 9, (415) 974–7658, FTS 454–7658, (415) 974–8207, FTS 454–8207.

PSD: Willard Chin, (415) 974–7043, FTS 454–7043.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act (sections 172 and 173) requires that States incorporate in their State Implementation Plans an acceptable permitting program for the preconstruction review of new or modified major stationary sources in nonattainment areas. EPA's requirements are contained at 40 CFR 51.18, as amended on May 13, 1980; August 7, 1980; and June 25, 1982.

Part C of the Clean Air Act (section 160 to 169) requires each State Implementation Plan to include a program for preconstruction review of new and modified major stationary sources in attainment areas which are designated either attainment or unclassified for any of the criteria (section 109) pollutants. The PSD requirements apply to these attainment pollutants and also regulate the non-criteria pollutants covered under Sections 111 and 112 of the Act. EPA's detailed regulations for PSD programs are contained in 40 CFR 51.24. Presently, EPA is administering the PSD program in the VCAPCD under the federal PSD permitting regulations, 40 CFR 52.21. When PSD regulations for Ventura County are approved, the PSD program will be administered by the local District; however, in response to a court decision on EPA's stack height definition, EPA will retain permitting authority on certain PSD sources as described in the TSD.

The District has requested to assume the authority to enforce, amend or modify EPA-issued NSR and PSD permits once final rulemaking is completed.

On July 1, 1982 (47 FR 28617), EPA conditionally approved portions of Ventura's Regulation I. The approval was made contingent on revision of the NSR rules to conform to EPA's regulations as amended on August 7, 1980 (40 CFR 51.18). Revised Rules 2, 26.1–26.3, and 29 are intended to satisfy this condition. The revisions alter each of the various rules which comprise the Regulation, and substantially modify the entire implementation of New Source Review in the Ventura County Air Basin. The revisions also contain, for the first time, a PSD rule. Ventura County is divided into a North and South Zone. The South Zone is designated nonattainment for ozone and particulate matter. The county is designated attainment for all criteria pollutants in the areas north of the Los Padres National Forest boundary, and for SO_2, CO and NO_2 in the area south of the southern Los Padres National Forest boundary.

NSR—The most important aspects of an NSR program are that the local NSR rules require applicants for major new or modified sources:

(a) To meet the Lowest Achievable Emission Rate (LAER).

(b) To provide reductions in emissions at least equal to the increased

emissions, sufficient to provide for reasonable further progress (RFP), and

(c) To certify that all major sources they own in the same State comply with all applicable emission limitations and standards.

The VCAPCD currently administers the NSR program under its conditionally approved Regulation I.

PSD—To be approved by EPA a PSD program must require:

(a) The application of "Best Available Control Technology" (BACT) to new or modified major stationary sources;

(b) A demonstration by the applicant that the increased emissions in the area affected by the new or modified source will not violate any National Ambient Air Quality Standard (NAAQS) or the applicable air quality increments; and

(c) Protection of any Class I areas, where less air quality deterioration is allowed.

Description of Regulations

In response to the NSR/PSD requirements, the District adopted revisions to Regulation I on January 10, 1984. These revisions were submitted to the EPA on April 27, 1984. The changes adopted on those dates substantially revise the previously adopted versions of the NSR rule. The District did not have PSD permitting authority prior to this rule.

The Regulation includes the following rules;

- Rule 2—Definitions.
- Rule 25—Action on Applications.
- Rule 26.1—New Source Review for All New or Modified Major Stationary Sources.
- Rule 26.2—New Source Review for New or Modified Non-Major Sources.
- Rule 26.3—PSD for New or Modified Stationary Sources.
- Rule 26.5—Power Plants.
- Rule 26.6—Air Quality Impact Analysis and Notification.
- Rule 29—Conditions for Permits.

Evaluation

EPA has evaluated the submitted rules and has determined that they meet EPA regulations and satisfy almost all of the criteria for an NSR/PSD program. In general, the Ventura NSR rule will (1) require preconstruction review of the sources which would be subject under the federal guidelines, and (2) require application of LAER and offsets in a manner consistent with EPA's NSR requirements (40 CFR 51.18). The Ventura regulations also contain adequate guidelines and procedures for the administration and enforcement of the NSR program. EPA believes that Ventura's revisions significantly strengthen the existing NSR regulations.

The District rules contain some ambiguity regarding the definition of source and the role of actual emissions (versus allowable emissions) in emissions baseline calculations and in applicability determinations. The rule might be read to authorize use of changes in potential (allowable) emissions to determine the magnitude of emissions increases associated with a modification and to allow aggregation of permit units within a source for determination of the overall "permitted emissions" level for the source. This appears to allow "bubbling" out of NSR applicability. EPA believes that the proposed rules do, in fact, apply the dual source definition for all applicability determinations, that the rules comply with EPA's lowest de minimus level of 25 TPY, and the rules require actual and potential emissions calculations in conformity with EPA's regulations. A detailed discussion of how Ventura's rules conform to EPA's regulations is provided in the Evaluation Report included with this Notice. EPA also has received a formal commitment from the District confirming EPA's interpretation and understanding of the role of actual emissions in the NSR rule's calculation procedures (letter dated 10/10/84 from R. Baldwin to D. Howekamp).

The Ventura NSR rule requires permitting of both major and non-major new or modified sources and thereby requires offsets for all new sources of emissions. These requirements were incorporated in Ventura's previously approved (July 1, 1982) NSR rules. The District's emission allocation system (or growth allowance) is designed to provide offsets for smaller sources. Once the growth allowance has been exhausted, however, the minor source NSR rule 26.2 requires these small sources to obtain offsets on their own. While 40 CFR 51.18 does not specifically require minor source offsetting, EPA on November 2, 1983 issued a Policy for the correction of Part D SIPs which fail to show attainment by the statutory deadlines (48 FR 50686). On January 27, 1984, EPA issued guidance for implementing that Policy, and the guidance made clear that NSR rules for such areas must require offsets "sufficient to accommodate uncontrolled area and minor sources," unless the State can show that such a measure is infeasible for technical or financial reasons. Thus the approach prescribed in Rule 26.2, or an equivalent approach, is required in post-1987 attainment areas such as Ventura County.

EPA also has concerns regarding Rule 26.1.F.6, which allows alternative emissions calculation methods for NSR. This provision appears to make the existing SIP less stringent. Unless these concerns are resolved prior to final rulemaking, EPA will disapprove this section.

The most serious problem is the potential requirement, under State law but not under the District rule, that the District issue New Source Review permits for cogeneration or resource recovery sources, regardless of whether they have met the offset requirement. The District rule proposed for inclusion in the SIP today requires that the District deny the application for such a permit, and thus there is a potential conflict between the state and federal requirements but not between federal and local regulations. This Notice proposes approval of the District provisions since they impose the federal requirement for denial of such permits. However, if the District felt obligated, under State law, to issue a local NSR permit to a cogeneration or resource recovery project, such issuance would be inconsistent with federal requirements, would be seen as failure to implement the applicable SIP, and might also result in issuance of EPA orders prohibiting construction of these sources unless a sufficient growth allowance exists in the approved SIP.

Rules 26.3. A.2. and A.3. exempt cogeneration and resource recovery projects from most PSD requirements in violation of federal regulations. EPA proposes to disapprove this exemption.

In response to the PSD requirements, VCAPCD adopted Rule 26.3 which, with the exception of the items described below and in the Evaluation Report, meets federal requirements for approvability. In general, the PSD rule (1) requires the necessary preconstruction review of sources which would be subject to the federal guidelines; and (2) requires BACT and air quality protection in a manner consistent with EPA's PSD criteria (40 CFR 51.24).

EPA has identified the following deficiencies in Rule 26.3 that will require rule revisions prior to EPA final rulemaking: (1) A requirement for BACT for hydrogen sulfide; (2) a change in the BACT threshold level for carbon monoxide to meet EPA's 100 tons per year applicability level; and (3) the addition of language to the Innovative Control Technology Exemption to conform with 51.24(s).

The public notification requirements in the District's existing Rule 26.6 have been changed to apply only to major sources of particulate matter. This change makes the existing SIP less stringent. EPA, therefore, proposes to disapprove "of particulate matter" in the

first sentence of 26.6 paragraph A. The paragraph will be approved in its entirety if the rule is revised to apply to all nonattainment pollutants prior to final rulemaking. (See the detailed discussion of 26.6 in the attached Evaluation Report).

EPA has requested and will receive from the Ventura County APCD prior to final rulemaking, a letter of commitment and clarification regarding the following issues: Stack heights; BACT definition; public health and welfare protection; intermittent source definition; exemptions; Class I Impact Area definition; and PSD baseline date.

The VCAPCD regulations including an explanation of the necessary commitments are discussed in detail in EPA's Technical Support Document, which provides the basis for today's proposal (available at the locations listed in the ADDRESSES section of this notice).

Proposed Action

EPA proposes to approve, under sections 110 and Part D of the Clean Air Act, the VCAPCD NSR rules (2, 25, 26, 26.1, 26.2, 26.5, 26.6, and 29) which were submitted on April 27, 1984. EPA proposes to disapprove the relaxations in Rule 26.1.F.6. (quarterly profiles) and Rule 26.6.A (public notification) if the problems described above and in the Technical Support Document are not resolved prior to final rulemaking. Failure to include the appropriate public notification requirements will result in the disapproval of the NSR program in Ventura County.

EPA proposes to approve the PSD Rule 26.3, with the exception of sections A.2. and A.3., if the problems described in the Evaluation Report are remedied or resolved prior to final rulemaking. The Rule would be approved under both section 110 and Subpart 1 of Part C (PSD) of the Clean Air Act. EPA is proposing disapproval of sections A.2 and A.3. (exemptions for cogeneration and resource recovery sources) of Rule 26.3.

The disapproval portion of today's action will not have a significant economic impact on a substantial number of small entities since no new requirements will be imposed on the District. PSD permitting authority for cogeneration and resource recovery sources will remain with EPA.

The final rulemaking assumes resolution of other issues raised in the Notice and Technical Support Document.

EPA is proposing to rescind the existing conditionally-approved NSR rule in its entirety (which includes rules 26, 29 and the NSR definitions in rule 2) and replace it with the revised rules proposed today for approval.

EPA also proposes to rescind 40 CFR 52.232(a)(11)(i)(A) if all the problems are resolved, thereby eliminating the conditions promulgated in EPA's previous rulemaking of July 1, 1982 (see "Background," above).

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the locations listed in the ADDRESSES section of this notice. Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

(Sec. 110, 129, 160 to 169, 171 to 173, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7470 to 7479, 7501 to 7503 and 7601(a)).

Dated: September 28, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-13004 Filed 5-29-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8200

Fossil Forest Research Natural Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish regulations relating to the management of the area in New Mexico known as the "Fossil Forest" in accordance with the San Juan Basin Wilderness Protection Act of 1984. These regulations are designed to protect the natural, educational and scientific research values of the area, including paleontological study, excavation, and interpretation. They are also designed to permit the exercise of valid existing rights to mineral resources consistent with protection of the land surface and the aforementioned special values of the area.

DATE: Comment period expires July 29, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Ed Heffern, (505) 988-6109

or

Carl Barna (202) 343-9353.

SUPPLEMENTARY INFORMATION: The San Juan Basin Wilderness Protection Act (the Act) of 1984 (Pub. L. 98-603, 98 Stat. 3155) was enacted on October 30, 1984. Section 103 thereof withdraws an area of approximately 2,720 acres in T. 23 N., R. 12 W., New Mexico Principal Meridian, San Juan County, New Mexico, known as the "Fossil Forest", from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing, subject to valid existing rights. That section further directs the Secretary of the Interior to administer the area in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and to ensure that no activities are permitted that would significantly disturb the land surface of the area or impair its existing natural, educational, and scientific research values, including paleontological study, excavation, and interpretation. The Act also requires the Secretary to promulgate regulations for the administration of the area within one year of its enactment, and to file them with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Act further directs the Bureau of Land Management (the Bureau) to conduct a long range study to determine the best management of the area, and to submit the results of the study to Congress within 8 years.

The regulations proposed in this rulemaking are intended to meet the requirements of the Act and to govern conduct in the Fossil Forest area pending completion of the long range study. The proposed rulemaking would establish a new Subpart 8224 in title 43 of the Code of Federal Regulations to govern use of the area.

The Bureau of Land Management will prepare an Interim Management Plan for Fossil Forest that will remain in effect during the study period until Congress determines otherwise. The Interim Management Plan will prescribe protective measures which may include systematic surveillance and patrol, appropriate physical barriers and controls, and the posting of signs. The Bureau will also provide visitor

information and assistance for educational purposes.

The principal author of this proposed rulemaking is Ed Heffern, Division of Mineral Resources, New Mexico State Office, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certifies that it 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 does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* It is anticipated that there will be fewer than 10 applicants annually for permits to collect, excavate, or remove fossils from the Fossil Forest.

List of Subjects in 43 CFR Part 8200

Environmental protection, Natural resources, Public lands, Research.

Under the provisions of the San Juan Basin Wilderness Protection Act of October 30, 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and 18 U.S.C. 641, it is proposed to amend Part 8200, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations, as set forth below:

1. Group 8200 is amended by adding a new Subpart 8224 as follows:

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

* * * * *

Subpart 8224—Fossil Forest Research Natural Area

Sec.
8224.0–1 Purpose.
8224.0–2 Objectives.
8224.0–3 Authority.
8224.0–5 Definitions.
8224.0–6 Policy.
8224.1 Use of Fossil Forest Research Natural Area.
8224.2 Penalties.

Authority: Sec. 103 of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and 18 U.S.C. 641.

* * * * *

Subpart 8224—Fossil Forest Research Natural Area

§ 8224.0–1 Purpose.

The purpose of this subpart is to provide procedures for the management and use of the public lands in the Fossil Forest of New Mexico.

§ 8224.0–2 Objectives.

The objectives are management in accordance with the Federal Land Policy and Management Act of 1976 and for protection of the aesthetic, natural, educational, and scientific research values of the Fossil Forest, including paleontological study, excavation and interpretation projects within the Fossil Forest, until Congress determines otherwise.

§ 8223.0–3 Authority.

This subpart is issued under the authority of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and 18 U.S.C. 641.

§ 8224.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management designated to perform the duties described in this subpart;

(b) "Fossil" means the remains or trace(s) of an organism or assemblage of organisms which have been preserved by natural processes in the earth's crust. The term does not mean energy minerals, such as coal, oil and gas, oil shale, bitumen, lignite, asphaltum and tar sands, even though they are of biologic origin;

(c) "Fossil Forest" or "Fossil Forest Research Natural Area" means those public lands as described in section 103(a) of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155).

§ 8224.0–6 Policy.

No activities will be permitted within the Fossil Forest that would significantly disturb the land surface or impair the existing natural, educational, and scientific research values of the area.

§ 8224.1 Use of the Fossil Forest Research Natural Area.

(a) Fossils may be collected, excavated, or removed only under a permit issued under § 2920.5 of this title by the Director, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504–1449. Permits shall be issued only to institutions and individuals engaged in research, museum, or educational projects that are approved by the authorized officer and that provide for detailed recordation, reporting, care of specimens, and availability of specimens to other scientists and museums.

(b) Petrified wood shall not be collected and removed from the Fossil Forest either for free use as permitted under § 3622.3 of this title or for commercial sale as permitted under § 3610.1.

(c) The Fossil Forest is closed to motorized use, except as permitted by the authorized officer.

(d) Except as otherwise provided in paragraphs (a), (b), and (c) of this section, the provisions of Part 8360 of this title apply to recreational use in the Fossil Forest.

(e) Rights-of-way may be approved only for temporary projects which do not significantly disturb the surface of the land or impair the existing values of the area.

(f) The grazing of livestock where such use was established before October 30, 1984, shall be allowed to continue under the regulations on the grazing of livestock on public lands in Part 4100 of this title, so long as it does not disturb the natural, educational, and scientific research values of the Fossil Forest. Grazing permits or leases may be modified under § 4130.6–3 of this title, if necessary to protect these resources.

(g) The lands in Fossil Forest shall not be sold or exchanged except as authorized by section 105(b) of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3157).

(h) The Fossil Forest is closed to the operation of the mining laws and to disposition under the mineral leasing laws and geothermal leasing laws, as of October 30, 1984, subject to valid existing rights.

(i) Operations on oil and gas leases issued before October 30, 1984, are subject to the applicable provisions of Group 3100 of this title, including those set forth in § 3162.5–1, and such other terms, stipulations, and conditions as the authorized officer deems necessary to avoid significant disturbance of the land surface or impairment of the area's existing natural, educational, and scientific research values, including paleontological study, excavation, and interpretation.

(j) The regulations in 43 CFR Part 7 apply to the management and protection of archaeological resources in Fossil Forest.

(k) The paleontological resources of the Fossil Forest shall not be willfully destroyed, defaced, damaged, vandalized, or otherwise altered.

§ 8224.2 Penalties.

(a) Any person who willfully violates any prohibition under either § 8224.1 (b), (c) or (k) of this title shall be subject to a fine not to exceed $1,000 or imprisonment of not to exceed 12 months, or both.

(b) Any person who willfully and without authorization collects or removes paleontological resources whose value is greater than $100, for which a permit is required under § 8224.1 (a) or (b) of this title, shall be subject to a fine not to exceed $10,000, or imprisonment not to exceed 10 years, or both (18 U.S.C. 641).

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

May 14, 1985.

[FR Doc. 85-12975 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6649]

Revision of Proposed Flood Elevation Determinations; Tennessee, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Waverly, Humphreys County, Tennessee.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 50 FR 10262 on March 14, 1985, and hence would supersede those previously published proposed rules.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 103 East Main Street, Waverly, Tennessee.

Send comments to the Honorable Ray Bell, Mayor, City of Waverly, City Hall, P.O. Box 71, Waverly, Tennessee 37185.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Waverly, Humphreys County, Tennessee, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations are:

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TENNESSEE	
Waverly (City), Humphreys County, (FEM.-Docket No. 6648)	
Trace Creek:	
About 1.7 miles downstream of Brown Town Road	*441
About 1.8 miles upstream of U.S. Highway 70	*615
Tributary A:	
Mouth at Trace Creek	*506
Just upstream of the Louisville and Nashville Railroad	*515
About 3,400 feet upstream of Louisville and Nashville Railroad	*556
Tributary B:	
Mouth at Trace Creek	*519
Just downstream of the upstream Little Richland Road crossing	*566
Tributary C:	
Mouth at Trace Creek	*531
About 0.8 mile upstream of North Railroad Street	*587
Tributary D:	
Mouth at Trace Creek	*572
About 1.6 mile upstream of the Louisville and Nashville Railroad	*60

Maps available for inspection at City Hall, 103 East Main Street, Waverly, Tennessee. Send Comments to Honorable Roy Bell, Mayor, City of Waverly, City Hall, P.O. Box 71, Waverly, Tennessee 37185.

Issued: May 17, 1985.

Jeffrey S. Bragg,

Administrotor, Federal Insurance Administration.

[FR Doc. 85-12910 Filed 5-29-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-188B, Notice No. 85-2]

Transportation of Hazardous Materials Between Canada and the United States

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: The MTB proposes to amend the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials, with certain conditions and limitations, in accordance with the recently published Canadian regulations most of which are scheduled to become effective on July 1, 1985. This action is necessary in order to facilitate the movement of hazardous materials between Canada and the United States. The MTB believes that this action will result in the HMR being amended to recognize, to the maximum extent consistent with safety, the new Canadian regulations.

Because of the anticipated wide level of interest in this proposal, the MTB has scheduled a public hearing at which oral comments will be received. It is requested that persons desiring to provide oral comments at the hearing should notify the Dockets Branch in writing at least five days in advance of the hearing date.

DATE: The hearing will be held June 27, 1985, beginning at 9:30 a.m. Comments must be received by July 11, 1985.

ADDRESS: The hearing will be held in room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street SW., Washington, D.C. 20590. Submit written comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket, and be submitted in five copies if possible. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Telephone: (202) 426–0656.

SUPPLEMENTARY INFORMATION: On February 6, 1985, Transport Canada published new multi-modal regulations for the transport of dangerous goods (hazardous materials) in Part II of the Canada Gazette. The regulations are officially titled "Regulations respecting the handling, offering for transport and transporting of dangerous goods" or simply the "Transportation of Dangerous Goods Regulations", issued pursuant to the provisions of the Transportation of Dangerous Goods Act of July 17, 1980. For the purpose of this notice, these regulations are referred to as the "TDG Regulations". Certain parts of these regulations were effective at the time of publication, other parts became effective on April 8, 1985, but the majority of the regulations, and particularly those dealing with specific transport requirements as opposed to administrative matters, are scheduled to enter into force on July 1, 1985. Copies of the TDG Regulations may be obtained from the Canadian Government Publications Center, Supply Services Canada, Ottawa, K1A 0S9, Canada, at a cost of $18 (Canadian) per copy.

On March 27, 1985, the Embassy of Canada delivered a note to the Department of State which formally requested that the United States take steps to amend the DOT HMR to grant reciprocal recognition to the TDG Regulations in order to facilitate the transport of hazardous materials between the United States and Canada. A specific proposed text for a revised 49 CFR 173.8 was attached to this note. Because the note summarizes certain aspects of the TDG Regulations, as well as underscoring the need to facilitate hazardous materials movements between Canada and the United States, the note, and the attached suggested text of § 173.8 are reproduced here for information.

The Embassy of Canada presents its compliments to the Department of State and is pleased to advise the Department that final regulations, issued under the authority of the Transportation of Dangerous Goods Act of 1980, were published in the Canada Gazette, Part II, on February 6, 1985. These regulations facilitate the northbound movement of dangerous goods between Canada and the United States and the Canadian authorities hereby request that the corresponding U.S. regulations be modified to facilitate the southbound movement of equivalent goods.

The Canadian Regulations parallel closely provisions in Title 49 of the United States Code of Federal Regulations, the International Maritime Code for Dangerous Goods (IMDG), and UN Recommendations for the Transport of Dangerous Goods.

Included in these regulations, all of which will be in force by July 1, 1985, are provisions to facilitate trade entering Canada from the United States. The new regulations on bilateral trade (called "transborder shipments" in the regulations) cover transportation by road, rail and water if in home voyage Class II, and stipulate that, with limited exceptions, shipments complying with 49 CFR shall be acceptable in Canada. Under Parts IV and V of the new Canadian regulations, goods in all nine United Nations Classes, except Class 1 or Divisions 3 or 4 of Class 2, are regulated in a manner that facilitates compliance with both the Canadian and U.S. Regulations. Thus, trade from the U.S.A. to Canada is facilitated without undue delay and without the additional cost of repackaging, relabelling, replacarding and redocumenting at the border. Equivalent acceptance of Canadian Regulations to the first destination in the U.S.A. by appropriate amendment of 49 CFR would allow the current extensive and mutally beneficial hazardous goods trade between Canada and the United States to continue.

The Canadian authorities therefore request that the appropriate United States authorities proceed expeditiously with pertinent amendments to the hazardous materials provisions of 49 CFR which currently recognize conformity with the Canadian Transport Commission's Dangerous Commodity Regulations for rail transport as being equivalent to compliance with 49 CFR. The amendments would recognize conformity with the Transportation of Dangerous Goods Regulations for all modes of transport as being equivalent to conformity with 49 CFR.

Should the required amendments to 49 CFR not be in place by July 1, 1985, there is a distinct risk of disruption in the significant dangerous goods trade between our two countries. Once implemented, however, the amendments would permit the flow of transborder trade involving dangerous goods to proceed safely under adquately controlled conditions.

The Embassy wishes to emphasize that Canadian Regulations provide for the same level of safety as U.S. Regulations, and are almost identical with Regulations under the IMDG Code, which is presently recognized as acceptable for goods in transit to first destination in the United States. Furthermore, Canadian Regulations are closer to international (U.N.) Recommendations than are United States Regulations, and over the past few years the United States has altered its own Regulations to meet U.N. standards more closely.

The Embassy understands that the Office of Hazardous Materials Regulation of the United States Department of Transportation agrees in principle that 49 CFR should be amended as suggested above. The Embassy therefore requests that the State Department bring to the attention of the Department of Transportation the urgency of proceeding with a rulemaking proceding [sic] to institute such amendments. To facilitate this process, the Canadian authorities have prepared the attached draft of a proposed amendment. (It should be noted that the reference in this text to both the Transportation of Dangerous Goods Regulations and to Canadian Transport Commission Regulations provides for those regulatory requirements which are not addressed at this time in the Transportation of Dangerous Good [sic] Regulations but which are required for rail shipments.) The Embassy would appreciate the State Department's providing to the appropriate USA authorities a copy of this text on which they may wish to draw in drafting the pertinent amendments to 49 CFR.

Text of Proposed Amendment to Section 173.8 of 49 CFR

Section 173.8 Canadian shipments and packagings.

(a) For all dangerous goods other than those classified as Class 1 or Divisions 3 or 4 of Class 2 under the Transportation of Dangerous Goods Regulations made pursuant to the Transportation of Dangerous Goods Act, 1980:

(1) Shipments of hazardous materials entering the United States from Canada or empty rail cars which contain residues of hazardous materials, that are being returned to Canada, which conform with the Regulations of the Government of Canada pursuant to the Transportation of Dangerous Goods Regulations and in addition, in the case of rail shipments, conform with the Canada Transport Commission Regulations for the Transportation of Dangerous Commodities by Rail for those requirements of the Canadian Transport Commission not addressed by the Transportation of the point of entry in the United States to their destination in the United States or through the United States en route to a destination in Canada; or, in the case of empty rail cars containing a residue of hazardous material, from their point of unloading in the United States to a destination in Canada.

(b) For dangerous goods classified Class 1 or Division 3 or 4 of Class 2 under the Transportation of Dangerous Goods Regulations:

(1) Shipments of hazardous materials which conform in Safety Marks and in Shipping Name to the Regulations of the Government of Canada pursuant to the Transportation of Dangerous Goods Regulations (under the Transportation of Dangerous Goods Act) and in all other requirements to either 49 CFR or the Transportation of Dangerous Goods Regulations and the Canadian Transport Commissioin Regulations for the Transportation of Dangerous Commodities by Rail, may be transported from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada. Empty rail tank cars may be transported in conformity with the Transportation of Dangerous Goods Regulations and with Canadian Transport Commission Regulations from point of origin in the United States to point of entry in Canada.

(c) Except as specified in 173.301(i) specification packagings made and maintained in full compliance with the corresponding specifications prescribed by the Railway Transport Committee of the Canadian Transport Commission (formerly the Board of Transport Commissioners for Canada), in its Regulations for the Transportation of Dangerous Commodities by Rail, and marked in accordance therewith (e.g. BTC, CTC, etc.) may be used for the shipment of hazardous materials within the United States.

While issue could be taken with a number of statements in this note, particularly with regard to the extent that the reciprocity provisions contained in the TDG Regulations will facilitate shipments entering Canada from the United States, it must be emphasized that this is not the purpose of this notice. The MTB believes that achieving the maximum level of reciprocity between the TDG Regulations and the HMR is *both* necessary and beneficial to *both* the United States and Canada for a number of reasons. However, it must be borne in mind that the purpose of these regulations is to insure safety in the transport of hazardous materials and, in the event of an incident or accident, to permit the nature of the hazards of the materials involved to be readily identified to emergency response personnel. The latter purpose can only be realized through extensive training efforts of personnel involved in the handling of hazardous materials and in response to hazardous materials incidents. In order for such training to be effective, it is essential that the salient points of the hazardous materials regulations (e.g. labeling, placarding and shipping paper description requirements) remain relatively stable, and that, when significant changes to these fundamental requirements are introduced, their introduction is a gradual process allowing sufficient time for retraining. Therefore, the MTB considers that the purpose of this notice is to explore and solicit comment on the extent to which recognition can be accorded to the TDG Regulations without seriously jeopardizing the hazard warning and emergency response systems based on the existing HMR.

Analysis of the TDG Regulations

In order to adequately assess the potential safety implications associated with recognition of the TDG Regulations, it is first necesary to examine the differences between them and the HMR. While a complete analysis and description of these differences in this notice is impracticable, it is possible to highlight some of the fundamental differences to facilitate the development of comments. Undoubtedly, many commenters will desire to conduct a far more extensive comparison individually. The following brief description of the evolution of the TDG Regulations, as well as some of the more significant differences between those regulations and the HMR, is provided to help stimulate comment.

Until the mid-1970's the regulations of the CTC (formerly the Board of Transport Commisioners for Canada) were, with few exceptions, identical to those found in the HMR. It was due to this regulatory compatibility that transborder shipments of hazardous materials moved without confusion on the part of shippers and carriers as to the applicability of regulatory requirements of each country, and that broad "reciprocal" recognition was accorded to the CTC Regulations in § 173.8. However, several years ago changes were made to the CTC Regulations that caused them to differ significantly in many respects from the HMR.

At that time, in recognition of the increasing number of "land bridge" shipments and import shipments arriving in Canada in conformance with the provisions of the International Maritime Organization's (IMO) International Maritime Dangerous Goods Code (IMDG Code), the CTC Regulations were substantially revised to replace the then existing proper shipping names, and the classification, labeling and placarding systems with those provided in the IMDG Code, which, in turn, differ only in minor respects from those in the Recommendations of the United Nations Committee of experts on the transport of Dangerous Goods (U.N. Recommendations).

To assess the potential safety implications of these newly introduced differences between the CTC Regulations and the HMR in order to determine if the broad reciprocal recognition accorded the CTC Regulations through § 173.8 was still appropriate, the MTB published an advance notice of proposed rulemaking on May 5, 1983, under Docket No. HM-188 (48 FR 20255) and also conducted a public hearing on the matter on June 2, 1983. Numerous comments were received which, for the most part, stressed the importance of maintaining reciprocal regulatory recognition of the Canadian regulations and supported the fact that, although the new description, classification, labeling and placarding requirements of the CTC Regulations differed in many respects from the corresponding provisions of the HMR, there was not an adverse effect on safety by continuing to permit shipments to enter the United States from Canada when in conformance with CTC Regulations. One of the principle reasons for this belief was the commonality to both systems of the UN number as a means for specific hazardous materials identification. As a result of this action, it was finally concluded that there was no need from the point of view of transport safety to rescind the broad recognition of the CTC Regulations in § 173.8, and the section has remained with only one relatively minor amendment until this time. In this context, it is important to note that the reciprocity in regulation exists at the present time only in regard to transportation of hazardous materials (dangerous commodities) by railroad and only to materials that are subject to both CTC and DOT regulations (e.g., there is no CTC regulation presently applicable to combustible liquids; therefore, the provisions of § 173.8 do not apply and combustible liquids must be transported in conformance with the HMR).

Unlike the CTC Regulations, the new TDG Regulations apply to all modes of transport. On the other hand, the new regulations are similar to the CTC Regulations in that both employ the basic description, classification, labeling and placarding requirements that are provided in the U.N. Recommendations and IMDG Code. Since the CTC requirements have been permitted for several years under § 173.8, from the point of view of safety, it would not appear to be a radical departure to extend recognition of this method of description, classification, labeling and placarding to all modes of transport through recognition of the TDG Regulations. This would particularly appear to be true since the UN system is already widely employed in the marine

and air modes in the United States through regulatory recognition of the IMDG Code and the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air, respectively. It should also be noted that this system of hazardous materials description, classification, labeling and placarding has been included in the Optional Hazardous Materials Table (§ 172.102) of the HMR since 1980, and, with certain exceptions has been permitted for the rail and highway movement of hazardous materials that are in the course of being imported or exported by vessel. Nevertheless, it would appear appropriate to highlight some of the more fundamental differences between the TDG Regulations and the HMR. Once again, it must be emphasized that the following discussions do not constitute a comprehensive analysis of the TDG Regulations. They are provided only to illustrate some of the differences between the TDG Regulations and the HMR.

1. The list of dangerous goods in the TDG regulations most closely aligns with the list of the U.N. Recommendations, ICAO Technical Instructions and the IMDG Code and differs in many respects from the list in § 172.101. For example, numerous descriptions not given in § 172.101 are listed in the TDG Regulations. This list is similar to DOT's optional hazardous materials table in § 172.102.

2. A number of materials are classed differently in the TDG Regulations than they are in § 172.101. Also, the international class numbering system is used in the TDG Regulations rather than the class words as in § 172.101.

3. In addition to classifying a number of materials differently, the TDG Regulations include a new class of "Corrosive Gases" (Division 4 of Class 2) which does not exist in the DOT classification system. Included in this new class are a total of nine gases including such gases as Anhydrous Ammonia and Chlorine which are classified as Non-flammable gases under the HMR. The Corrosive gas class is not included in the U.N. Recommendations, IMDG Code of ICAO Technical Instructions and these gases would be required to be labeled with a label consisting of a white square on point with a black gas cylinder in the upper half. The corrosive gas placard is simply an enlarged version of the label.

4. Under the TDG Regulations, the class number of a material is used rather than a class word(s) required by § 172.202 in referencing § 172.101. Use of class numbers alone is not generally permitted by the HMR for imported shipments moving by rail or highway; therefore, for basic descriptions of hazardous materials on shipping papers appearing in the United States, only shipments by rail coming from Canada are presently permitted (by § 173.8) to have classes identified on shipping papers by numbers in place of class words.

5. Except for placards for Explosives and Poison Gas, placards specified in the TDG Regulations are wordless enlarged UN labels bearing class numbers in the bottom corner. For example, the only distinction between a Flammable Gas and a Flammable Liquid label in class number 2 or 3, respectively, in the bottom corner. Except in cases where the indentification numbers are permitted on placards, DOT requires that the class words be displayed.

There is one additional general point regarding the TDG Regulations that is important to note. While it is envisioned that eventually the TDG Regulations will address all aspects of the transport of dangerous goods by all modes, they are not at this time complete. While they do apply to all modes of transport, they do not currently address all aspects of dangerous goods transport. For example, the TDG Regulations contain provisions applicable to all modes for classification, labeling, placarding, marking of packages and preparation of shipping papers, but they do not, at this time, contain regulations on packaging. To fill in these "gaps", the existing modal regulations (e.g. the CTC Regulations) will remain in place. However, the TDG Regulations will, to the extent that they address a particular aspect of the transport of dangerous goods, supersede the existing modal regulations. For example, the classification, labeling, placarding, package marking and preparation of shipping papers for a rail shipment in Canada will be governed by the TDG Regulations while the other aspects of transport such as packaging and car placement, not addressed in the TDG Regulations, will continue to be governed by the CTC Regulations.

Amendments to the HMR

In light of the publication of the TDG Regulations, and of the Note transmitted by the Canadian Embassy, the MTB is proposing to add a new § 171.12a to the HMR which would allow, with certain exceptions and limitations, hazardous materials to be transported into the United States from Canada in conformance with the TDG Regulations. The MTB carefully studied the text suggested by the Canadian government in the Embassy Note, but concluded that the broadly worded text did not fully take into account some of the safety consequences of recognizing the TDG Regulations, nor certain special controls the MTB must exercise, e.g., with respect to the transport of hazardous subtances and hazardous wastes. Therefore, the MTB is proposing a text which it considers more appropriately reflects the degree of recognition that should be given the TDG Regulations.

It is proposed that the revised regulations for Canadian shipments be included in a new § 171.12a rather than in § 173.8 where the existing reciprocity provisions appear. The MTB believes that Part 171 is a more appropriate location for this provision because the proposed section deals with transport requirements in general, rather than just packaging or shipper requirements. As a consequence, the existing § 173.8 would removed and reserved.

It will be noted that the proposed § 171.12a only addresses transport by rail and highway. This is due to the fact that the MTB believes it unnecessary to include reciprocity provisions for the air and marine modes since the HMR already incorporates by reference the ICAO Technical Instructions and the IMDG Code. Under the TDG Regulations, air transport in Canada is governed by the ICAO Technical Instructions. Since § 171.11 of the HMR already permits compliance with the Technical Instructions, the MTB believes there is no need to address shipments arriving from Canada by air in the proposed § 171.12a. Similarly, in the marine mode, the TDG Regulations, as supported by the Canadian Coast Guard regulations issued pursuant to the Canada Shipping Act, require, with the exception of a home-trade voyage Class II, compliance with the IMDG Code. Since §§ 171.12, 172.102 and 176.11 already generally permit compliance with the IMDG Code, the MTB considers it unnecessary to address marine mode transport in the proposed § 171.12a.

Paragraph (a) of the proposed § 171.12a contains general permission for shipments entering the United States from Canada by rail and highway to be classified, labeled, placarded, marked and described and certified on a shipping paper in accordance with the TDG Regulations. Certain exceptions to this general authorization are contained in paragraph (b) of § 171.12a.

For some hazardous materials allowed to be transported in conformance with the TDG Regulations, paragraph (a) would require certain additional information to appear on shipping papers and package markings.

For instance, the letters "RQ" would have to appear on shipping papers and in package markings, when appropriate, in order to trigger the necessary reporting requirements in the event of the release of a hazardous substance.

The exceptions to the general authorization to comply with the TDG Regulations, as set forth in paragraph (b), would be forbidden materials and packagings, explosives and materials classified as "Corrosive gases" under the TDG Regulations. The reason for excluding forbidden materials and packages from the provisions of paragraph (a) is considered self-evident. Explosives have been excluded, with the exception of allowing the use of the labels and placards required by the TDG Regulations which would contain the phrase "explosive A, B or C", as appropriate, because of the substantial differences in the classification systems and because of the heavy reliance of thousands of local ordinances on the present DOT classifications for explosives. The gases classified as "Corrosive gases" under the TDG Regulations have been excepted from the provisions of paragraph (a) because of the anticipated difficulties in the emergency response area of introducing, in a short time frame, classifications, labels and placards not heretofore known to emergency response personnel. On the basis of comments received in response to this notice, the MTB would be prepared to recognize the Corrosive gas classification, label and placard if it appears that this would not adversely affect the ability of emergency response organizations to respond to transport emergencies.

Paragraph (c) of the proposed § 171.12a is identical to the existing paragraph 173.8(b). Since the CTC specifications for packagings will be retained in effect for the time being, the MTB believes that the provisions currently contained in § 173.8(b) should be retained.

Paragraph (d) proposes to continue to give recognition to the CTC Regulations to the extent that they will still apply to rail shipments in Canada (i.e., to the extent they are not superseded by the TDG Regulations). Since there exists at this time no national regulations in Canada governing the transport of hazardous materials by road, the proposed paragraph (e) would require that shipments entering the United States from Canada by highway under the provisions of § 171.12a(a) be otherwise transported in accordance with the HMR.

Commenters are invited to address any potential safety impacts contemplated as a result of the proposed "reciprocal" regulatory provisions of § 171.12a. Of particular concern to MTB are those potential safety impacts that may be related to emergency response actions because of several fundamental differences in communications requirements. This concern may be offset by the fact that both regulatory systems use identification numbers assigned to materials based on the worldwide U.N. system. It is these identification numbers which provide rapid access to emergency response information in the U.S. Emergency Response Guidebook and Canada's Emergency Response Guide for Dangerous Goods. Commenters are encourgaged to discuss the value of this materials identification numbering commonality in offsetting other differences in light of the wide dissemination of the Guidebook and its growing use by fire, police, and other emergency response entities in the United States.

MTB again wishes to emphasize that the purpose of this Notice of Proposed Rulemaking is to solicit comments concerning safety impacts due to differences in regulations pertaining to the safe transportation of hazardous materials. It is not intended to address the merits of the TDG Regulations nor is it intended to serve as a forum for such a purpose.

Administrative Notices

A. Executive Order 12291

The MTB has determined that the effect of this regulatory proposal would not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et. seq.) A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely affected, I certify that this Notice will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Imports.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 171 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 (e), unless otherwise noted.

2. Section 171.12a would be added to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) Notwithstanding the requirements of Part 172 of this subchapter, and except as provided in paragraph (b) of this section, a hazardous material that is classified, marked, labeled, placarded and described and certified on a shipping paper in accordance with the Regulations Respecting the Handling, Offering for Transport and Transporting of Dangerous Goods (the Transportation of Dangerous Goods Regulations or TDG Regulations), issued by the Government of Canada pursuant to the Transportation of Dangerous Goods Act may be transported by rail or highway from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada, provided that it fulfills the following additional requirements as applicable:

(1) When a hazardous material is not subject to the requirements of the TDG Regulations, it must be transported as required by this subchapter.

(2) When a hazardous material, that is regulated by this subchapter for transportation by rail or highway, is transported under the provisions of this section, the shipping paper must include the following:

(i) The letters "ORM–E" in association with the basic description for a material classified in Division 1 of Class 6, Packing Group III or in Class 9 of the TDG Regulations, that is also a hazardous substance;

(ii) The words "Dangerous When Wet" in association with the basic description when the Class 4, Division 4.3 label is required to be applied by the TDG Regulations.

(3) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or by a class entry, an indication that the material is a

poison shall be made by entering the word "Poison" on the shipping paper in association with the basic description.

(4) When a hazardous material, which is subject to the requirements of the TDG Regulations, is also a hazardous substance as defined in this subchapter, the shipping paper must include the following:

(i) The name of the hazardous substance shall be entered on shipping papers in association with the basic description, and in association with the proper shipping name required to be marked on the package, unless the proper shipping name required by the TDG Regulations already includes the name of the hazardous substance; and

(ii) The letters "RQ" shall be entered on the shipping paper either before or after the basic description required by the TDG Regulations and in association with the proper shipping name required to be marked on the package.

(5) When a hazardous material, which is subject to the requirements of the TDG Regulations, is also a hazardous waste as defined in this subchapter:

(i) The word "Waste" must precede the proper shipping name on shipping papers and package markings; and

(ii) It must be accompanied by a hazardous waste manifest as required by § 172.205 of this subchapter.

(6) Required shipping paper entries and package markings must be in English. Abbreviations may not be used in shipping paper entries or package markings unless they are specifically authorized by this subchapter. TDG Regulations class or division numbers are not considered to be abbreviations.

(b) This section does not apply to—

(1) A material which is a forbidden material: either packaged according to § 173.21 or as indicated in Column (3) of the Table to § 172.101 of this subchapter;

(2) A material or article meeting the definition of a Class A, B or C explosive according to this Subchapter, except that the package may be labeled and the freight container, motor vehicle or rail car placarded, with the label and placard required by the TDG Regulations provided that label or placard also indicates the appropriate DOT hazard class in accordance with Schedule V of the TDG Regulations;

(3) Materials classified by the TDG Regulations in Division 4 of Class 2.

(c) Except as specified in 173.301(i), specification packagings made and maintained in full compliance with the corresponding specifications prescribed by the Railway Transport Committee of the Canadian Transport Commission (formerly the Board of Transport Commissioners for Canada), in its Regulations for the Transportation of Dangerous Commodities by Rail, and marked in accordance therewith (e.g., BTC, CTC, etc.) may be used for the shipment of hazardous materials within the United States.

(d) For transportation by rail, hazardous materials transported in accordance with paragraphs (a) and (b) of this section may, in addition, be packaged and otherwise transported in conformance with the regulations of the Canadian Transport Commission from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada. Subject to the conditions and limitations of paragraphs (a) and (b) of this section, empty rail tank cars may be transported in conformity with Canadian Transport Commission regulations from point of origin in the United States to point of entry into Canada.

(e) Except as provided in paragraph (c) of this section, hazardous materials transported by highway in accordance with this section must be packaged and otherwise transported as required by this subchapter.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e) unless otherwise noted.

§ 173.8 [Removed]

4. Section 173.8 would be removed and reserved.

Issued in Washington, D.C., on May 24, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-12985 Filed 5-29-85; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-08; Notice 1]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Standard No. 208, *Occupant Crash Protection*, to upgrade the safety belt requirements for new trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of more than 10,000 pounds. The proposed rule would standardize the buckle release used in safety belts in those vehicles. In addition it would require the use of emergency locking retractors on the safety belt systems in those vehicles. These proposed changes should make the safety belt systems in heavy vehicles more convenient to use and thus promote the use of those systems. In addition, this rulemaking will assist drivers in complying with the Bureau of Motor Carrier Safety's regulation requiring safety belt use in trucks and buses engaged in interstate commerce and with the mandatory safety belt use laws being adopted by the states.

DATES: Comments must be received by July 15, 1985. If adopted, the proposed amendments would become effective September 1, 1986.

ADDRESS: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. (Docket Room hours are 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: Since January 1, 1972, Safety Standard No. 208, *Occupant Crash Protection*, has required manufacturers to install safety belt systems in heavy vehicles (i.e., trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of more than 10,000 pounds). The safety belts required in those vehicles have had to meet all of the strength requirements set for belt systems in passenger cars and light trucks, buses and MPV's. They have not, however, had to meet several requirements set for lighter vehicle safety belt systems which make safety belts easier to use. This notice proposes to upgrade heavy vehicle safety belt systems in two ways. First, it would require heavy vehicle safety belt systems to have the same push button buckle release that is found in lighter vehicles. In addition, it would require safety belt systems in heavy vehicles to be equipped with emergency locking retractors. Those retractors will mean that the belts will be more comfortable to wear and can be easily stored after they are used.

Safety Need

There is substantial data showing that occupants of heavy vehicles, particularly heavy trucks, face a significant risk of death and injury in vehicle crashes. In 1982, the last year for which complete statistics are available, there were approximately 1,500 deaths in heavy vehicle crashes.

Total or partial ejections which could be substantially reduced by increased safety belt usage, accounted for approximately 30 percent of all the heavy vehicle fatalities. Insufficient data exist to determine the exact number of injuries whose severity could be reduced by increased safety belt usage in heavy vehicles; however, the agency estimates that 10,000–18,000 injuries occurred in heavy vehicles in 1982.

A study, "Heavy Truck Occupant Protection" (DOT–HS–806–368), based on work by Arthur D. Little, Inc., Calspan Corporation and the Department's Transportation System Center, has found that impacts with the steering wheel assembly, as well as ejection and entrapment, are the primary sources of injuries and fatalities to drivers of heavy trucks. Based on an analysis of those crashes, the study concluded that safety belts could have reduced the severity of injuries in as many as 40 to 60 percent of the crashes. Other research studies of heavy vehicle crashes, such as a "Study of Heavy Truck Occupant Protection: Accident Data Analyses" (DOT–HS–806–426), have also recommended developing ways of improving safety belt usage to improve heavy vehicle occupant safety.

Surveys of current safety belt usage among heavy truck drivers have found usage to be as low as 6.2 percent, which is substantially below the 15 percent national average for passenger car drivers. The agency does not have driver safety belt usage data for large buses and MPV's.

Surveys of heavy vehicle drivers, including the one reported in a NHTSA staff report "Heavy Duty Occupant Restraint Systems: Recent Research Findings," have noted several key behavioral and vehicle design related reasons for low belt use among heavy truck drivers. Results of an analysis by the Transportation System Center in 1983 of surveys conducted by the Private Truck Council of America and the International Brotherhood of Teamsters revealed that drivers were concerned about the cleanliness of safety belts as well as the design of the belt system. Approximately 25 percent of those who reported non-use of the belts cited dirty belts as the most important reason for non-use. Belts are often too dirty to wear because they dangle from the seat or end up on the floor of the vehicle. Belts hanging free in this manner can also become tangled in the structure of the seat. Properly working retractors could eliminate these problems.

Work done by the agency and concerned private sector companies has shown that strengthened company policies and practices on belt usage combined with improved safety belt systems can significantly increase usage. For example, a recent survey by ADTECH (Contract DTNH 22–81–C–07075) found that of the United Parcel Service drivers observed, 75 percent wore their safety belts. The UPS safety program includes a company policy requiring drivers to wear their belts, under penalty of company imposed sanctions for failure to do so. UPS also equips their trucks with an upgraded safety belt system that includes retractors mounted on the seat pan and stand-up buckles for easy one hand operation. Thus, the combination of company policy and improved belt systems resulted in high belt usage.

Require Retractors

This notice addresses the best known method of assuring that belts are clean and therefore easy to use. The proposed rule would require emergency locking retractors (ELR's) at each outboard seating position in heavy trucks and MPV's and at the driver's seat in heavy buses. The agency is specifying the use of ELR's for the same reason they were required in passenger cars (see 46 FR 2064, January 8, 1981), i.e., to provide more freedom of movement than would automatic locking retractors (ALR's). This requirement for ELR's would avoid the typical problem of ALR's, ie., the safety belt cinches down (becomes progressively tighter) around an occupant as the vehicle goes over potholes or other jarring surfaces in the road. This cinching down discourages continued belt use. To provide the maximum benefit, ELR's would have be mounted to the seat frame above any air suspension mechanism used in the vehicle's seat. Ensuring the availability of clean usable safety belts should materially aid companies in carrying out motivational programs designed to increase belt usage by their drivers.

Standardization of Buckle Release

At present, safety belts used in heavy vehicles are not required to have the standardized push button release which is required for all safety belt systems in light vehicles. Many heavy vehicles currently have flap-type releases such as are found on airplanes.

The agency believes that use of a standardized push button buckle release is important for several reasons. Unlike a push button release, the flap-type release is more susceptible to accidental opening during a crash or rollover; for example, by being caught in a sleeve, causing the belt to separate. In addition, if there is a need to extricate a safety belted driver from a vehicle after a crash, having a standardized release mechanism would ultimately eliminate confusion about how to operate the safety belt release, conceivably saving precious seconds in unbuckling the belt in an emergency, thus increasing safety. Although there are insufficient data to show that push button release buckles have a marked safety advantage over flap-type release buckles, the agency believes that standardization of all buckles is in the interest of all parties. The agency encourages comments on the need for, desirability of, and potential costs of requiring push button releases.

Safety Belt Loads

At present, safety belt anchorages in heavy vehicles are required to withstand 5,000 pound load. Recently the European Economic Community has amended its safety belt anchorage requirements for heavy trucks to lower them to a 1517 pound load for lap-shoulder belts and 2495 for lap belts. However, the agency lacks data on the effects of such a change in the U.S. driving environment and thus requests data from all interested parties on this issue, particularly data on design and cost impacts of these loads, and on deceleration levels in heavy vehicle crashes and safety belt and anchorage loads in crashes. Based on the data received and possible subsequent agency testing or analysis, the agency will make a determination of what changes, if any, would be appropriate in Standards Nos. 207, *Seating Systems*, 209, *Seat Belt Assemblies*, and 210, *Seat Belt Assembly Anchorages*, for heavy vehicles anchorages.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other effects of this rulemaking action are so minimal that a full regulatory evaluation is not required.

Most heavy vehicles are currently equipped with simple belt buckles

without any retractor. Based on a study of belt system costs in a 1980 Citation (Report No. DOT-HS-806-295), the addition of ELR's to a heavy vehicle belt system would cost the customer about $14, in 1982 dollars, for each seating position. The agency believes that the citation costs can be applied to large trucks since retractors are likely to be similar in both passenger cars and heavy vehicles. Since most heavy trucks have two seating positions in the cab, the incremental customer cost would be approximately $30 for two ELR's. For other vehicles, such as buses, requiring driver only protection, the cost would be $15. The $30 figure represents .03 to .06 percent of the $50,000 to $100,000 estimated retail cost of a heavy truck. The total estimated annual cost would be between $6 million and $7 million. The incremental customer cost for the push button release is expected to add less than ten cents per vehicle and the total estimated annual cost is expected to be about $30,000. Comments on these assumptions and estimates are requested.

Based on the experience of the United Parcel Service, the agency believes the use of ELR's and push button release buckles could raise safety belt usage among drivers of heavy trucks from the current 6 percent to perhaps as much as 15-20 percent. Most safety belts in heavy trucks on the road today do not have retractors, which means that the belts can dangle from the seat, become tangled in the seat structure and become soiled with grease and dirt on the vehicle's floor, all of which contributes to non-use. It stands to reason that clean safety belts that can be readily donned without having to "fish" the belts from the seat structure or from the floor should result in increased belt usage. The agency believes such an increase would result in usage near the 15 percent value currently measured nationally for passenger car drivers. The agency believes that it is possible for the usage rate to approach 20 percent with active company safety belt use programs and enforcement of the Bureau of Motor Carrier Safety requirement for mandatory belt use in vehicles engaged in interstate commerce. An increase to the 15-20 percent usage range could eliminate approximately 40-60 fatalities annually and reduce the severity of from 8,000 to 12,000 injuries. Since the current usage rate among drivers of heavy MPV's and buses is unknown, the agency cannot quantify the potential fatality and injury reduction for those vehicles.

Regulatory Flexibility Act

NHTSA has also considered the effects on this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Few, if any, of the manufacturers of these vehicles are small business entities and the costs associated with the proposal are minimal. Likewise, the agency does not expect that small organizations or governmental units would be significantly affected. The potential price increases associated with this proposal should not affect purchasing of new heavy vehicles by small organizations or governmental units.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Submission of Comments

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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR 571.208 be amended as follows:

1. The authority citation for Part 571 would continue to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. In § 571.208, S4.3.2 would be revised to read as follows:

* * * * *

S4.3.2 *Second option—belt system.* The vehicle shall, at each designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to Standard No. 209 (49 CFR 571.209) of this Part and S7.2 of this standard. The belt assembly at each front outboard seating position shall include an emergency locking retractor. If used on an air-suspension seat, the retractor shall be mounted on the seat assembly and above any adjustment or air-suspension mechanism.

* * * * *

3. S4.4.2 would be revised to read as follows:

* * * * *

S4.4.2 *Second option—belt system—driver only.* The vehicle shall, at the driver's designated seating position, have either a Type 1 or a Type 2 seat belt assembly, with an emergency locking retractor, that conforms to Standard No. 209 (49 CFR 571.209) of this Part and S7.2 of this standard. If used on an air-suspension seat, the retractor shall be mounted on the seat

assembly and above any adjustment on air-suspension mechanism.

* * * * *

4. The first sentence of S7.2 would be revised by removing the words "a passenger car" and inserting in their place the words "any vehicle."

Issued on May 24, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-12937 Filed 5-24-85: 1:49 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 104
Thursday, May 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Regulation, Judicial Review, Administration, and Governmental Tort Claims; Public Meetings

Committee on Regulation

Date: Tuesday, June 13, 1985.
Time: 9:30 am.
Location: Steptoe & Johnson, 1330 Connecticut Avenue NW., 9th Floor, Washington, D.C.
Agenda: Introductory presentations will be made for three research projects: (1) "regulatory budget" (Thomas D. Morgan, consultant), a concept in which Congress establishes, on an annual basis, ceilings for the economic impacts of agency regulatory actions; (2) "joint federal/state enforcement" (Colin S. Diver, consultant), includes federal regulatory programs that are administered on local levels by state governments acting under a plan approved by the responsible federal agency; (3) "non-lawyer representation" (Zona F. Hostetler, consultant), involves counseling and representation by persons other than lawyers in proceedings to claim benefits or entitlements, or in other "mass justice" settings.
Contact: William C. Bush, 202–254–7065.

Committee on Judicial Review

Date: Thursday, June 13, 1985.
Time: 9:30 am.
Location: Cadwalader, Wickersham & Taft, 1333 New Hampshire Avenue NW., Suite 700, Washington, D.C.
Agenda: Introductory presentations will be made for three research projects: (1) administrative and judicial review in immigration proceedings (Stephen H. Legomsky, consultant); (2) specialized courts for review of administrative action (Leland E. Beck, consultant); (3) use of an administrative tribunal to resolve Fredom of Information Act disputes (Mark H. Grunewald, consultant).
Contact: Mary Candace Fowler, 202–254–7065.

Committee on Administration

Date: Thursday, June 13, 1985.
Time: 10:00 am.
Location: 400 Maryland Avenue SW., Room 7002, Washington, D.C.
Agenda: (1) Philip J. Harter's study of mediation, arbitration and other alternatives to agency trial-type hearings; (2) Professor Richard B. Cappalli's study on adjudicative techniques employed by the Departmental Grant Appeals Board at the Department of Health and Human Services; and (3) Professor Luize E. Zubrow's study on agency implementation of the Debt Collection Act of 1982.
Contact: Charles Pou, Jr., 202–254–7065.

Committee on Governmental Tort Claims

Date: Friday, June 14, 1985.
Time: Approximately 1:00 pm, or immediately folowing conclusion of the Plenary Session of the Administrative Conference.
Location: Interstate Commerce Commission Hearing Room "B", Twelfth Street and Constitution Avenue NW., Washington, D.C.
Agenda: Implementation of prior Administrative Conference recommendations in the area and development of recommendations for further Conference research, statutory change, agency reform, or other action leading to a rationalization of the current system.
Contact: Charles Pou, Jr., 202–254–7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a writen statement with a committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.
May 24, 1985.

[FR Doc. 85–12939 Filed 5–29–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 24, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Extension Service
Evaluation of the Expanded Food and Nutrition Education Program
On occasion, Annually
Individuals or households; 160,132 responses; 26,688 hours; not applicable under 3504(h)
Nancy B. Leidenfrost (202) 447–7151

New

• Extension Service
Application for Authorization to Use the 4–H Club Name or Emblem
On occasion
Individuals or households; Businesses or other for-profit; Non-profit Institutions; Small businesses or organizations; 15 responses; 8 hours; not applicable under 3504(h)
V. Milton Boyce (202) 447–5853
• Foreign Agricultural Service

Emergency Relief from Perishable Products Imports from Israel
On occasion
Farms; Businesses or other for-profit; 7 responses; 126 hours; not applicable under 3504(h)
Abraham Avidor (202) 382-9060
• Human Nutrition Information Service
Field Test of Computer-Aided Collection of Household Food Consumption Data
Unnumbered questionnaires
On occasion
Individuals or households; 150 responses; 400 hours; not applicable under 3504(h)
Robert L. Rizek (301) 436-8457
• Office of Transportation
The Impact of Railroad Deregulation Upon Agricultural Shippers
One time survey
Farms; Businesses or other for-profit; 1,560 responses; 530 hours; not applicable under 3504(h)
Nicholas Marathon (202) 447-6235

Reinstatement

• Food and Nutrition Service
Optional Workfare Program
SF-270
Quarterly, Annually
Individuals or households; State or local governments; 228,100 responses; 24,110 hours; not applicable under 3504(h)
Susan McAndrew (703 756-3429

Revision

• Animal and Plant Health Inspection Service
Application for Veterinary Accreditation and Veterinary Accreditation Examination
VS Form 1-36A
On occasion
Individuals or households; 2,500 responses; 5,208 hours; not applicable under 3504(h)
N.E. Bedessem (301) 436-5533

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 85-12983 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Linville Creek Subwatershed, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Linville Creek Subwatershed, Rockingham County, Virginia.

FOR FURTHER INFORMATION CONTACT: Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Federal Building, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection to protect the soil resource base for sustained productivity. The recommended plan includes soil conservation practices on 8,256 acres of cropland, pastureland, and woodland and twenty-five animal waste systems. Primary effects of the plan include decreased erosion and sedimentation on agricultural lands, improved economic and social aspects, and improved surface and ground water quality.

A public meeting will be held at the Linville-Edom Elementary School, Linville, Virginia, on June 3 at 8 p.m.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gerald P. Bowie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 85-12936 Filed 5-29-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be sumitted not later than June 19, 1985, to Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-00009."

Applicant: Wrangell Forest Products, Ltd., Box 621, Wrangell, Alaska 99929
Application No.: 8500009
Date Deemed Submitted: May 16, 1985
Members In Addition to Applicant:
None

Summary of the Application

A. Export Trade Export and Export Trade Services.

The Applicant expects to export round logs, lumber, wood chips, sawdust, shavings, cants, flitches, milled timber, pulp and pulpwood. These products will come from timber species found in Alaska.

To further the export of the foregoing products, the Applicant intends to provide the following Export Trade Services: Purchase, harvest, and manufacture of sawlogs; consulting; international market research; advertising; marketing; product research and design for export markets; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

B. Export Markets

The Export Markets include all parts of the world with a particular emphasis on the Pacific Rim.

C. Export Trade Activities and Methods of Operation

The Applicant intends to purchase logs from other mill owners, including holders of long term Forest Service timber sale contracts in Alaska as well as private forest land owners and operators of National Forest Service independent timber sales, who may compete with Applicant, or with one another, or both.

In addition, the Applicant intends to enter into and enforce exclusive contracts with both distributors and suppliers ("clients") of Export Trade, on an individual and/or multiple basis, including becoming an exclusive agent for domestic manufacturers and other Suppliers of the products and providing Export Trade Services and also becoming an exclusive supplier to other distributors or purchasers of the products, including foreign distributors, purchasers, or agents. The Applicant also seeks certification to respond to overseas bids, either individually or by joint bidding with domestic competitors, other trading companies and other suppliers engaged in Export Trade and in so responding, meet and negotiate with suppliers to determine prices, quantities, territories, and customers for export sales. The Applicant will receive some information from clients as to the client's costs, production levels, deliverability, etc. The Applicant seeks Certificate of Review protection for any information incidentally transferred during its Export Trade Activities.

Dated: May 24, 1985.

Douglas A. Riggs,

General Counsel.

[FR Doc. 85-13005 Filed 5-29-85; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 50445-5045]

Approval of Federal Information Processing Standard 113, Computer Data Authentication

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 113.

SUMMARY: On August 10, 1982, notice as published in the Federal Register (47 FR 34613) that a Federal Information Processing Standard for Computer Data Authentication was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT:

Mr. Miles E. Smid, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3427.

Dated: May 23, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 113

(Date)

Announcing the Standard for Computer Data Authentication

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111 (f)((2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of the Title 15 Code of Federal Regulations (CFR).

Name of Standard: Standard on Computer Data Authentication (FIPS PUB 113).

Category of Standard: ADP Operations, Computer Security.

Explanation: This standard specifies a Data Authenticiation Algorithm (DAA) which may be used to detect unauthorized modifications, both international and accidental, of data. The standard is based on the algorithm specified in the Data Encryption Standard (DES), Federal Informatin Processing Standards Publications (FIPS PUB) 46, and is compatible with both the Department of the Treasury's Electronic Funds and Security transfer Policy and the American National Standards Institute (ANSI) Standard for Financial Institution Message Authentication (see cross index). The Message Authentication Code (MAC) as specified in ANSI X9.9 is computed in the same manner as the Data Authentication Code (DAC) specified in this standard. Similarly, the Data Identifier (DID) specified in this standard is sometimes referred to as a Message Identifier (MID) in standards related to message communications. The example given in Appendix 2 may be used when validating implementations of this standard.

Approving Authority: Secretary of Commerce.

Maintenance Agency: U.S. Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

Cross Index

ANSI X9.9–1982, "American National Standard for Financial Institution Message Authentication," April 13, 1982.

ANSI X9.17–198__, "American National Standard for Financial Institution Key Management (Wholesale)," October 9, 1984 (Draft).

Department of the Treasury Directives Manual, "Electronic Funds and Securities Transfer Policy," Chapter TD 81, Section 80, August 16, 1984.

FIPS PUB 1–2, "Code for Information Interchange, Its Representations, Subsets, and Extensions," November 14, 1984.

FIPS PUB 46, "Data Encryption Standard" January 15, 1977.

FIPS PUB 74, "Guidelines for Implementing and Using the NBS Data Encryption Standard," April 1, 1981.

FIPS PUB 81, "DES Modes of Operation," December 2, 1980.

Federal Standard 1026, "Telecommunications: Interoperability and Security Requirements for use of the Data Encryption Standard in the Physical and Data Link Layers of Data Communications," August 3, 1983.

Federal Standard 1027, "Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard," April 14, 1982.

Applicability: This standard shall be used by Federal organizations whenever the person responsible for the security of any computer system or data determines that cryptographic authentication is needed for the detection of intentional modifications of data, unless the data is classified according the the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended. Equipments approved for the cryptographic authentication of classified data may be used in lieu of equipments meeting this standard. In all cases, the authorized agency official shall determine that any alternative cryptographic authentication system performs at least as well as those specified in this standard. Use of this standard is also encouraged in private sector applications of cryptographic authentication for data integrity.

Implementation: The DAA may be implemented in hardware, firmware, software, or any combination thereof.

Implementation Schedule: This standard becomes effective six months after publication in the **Federal Register** of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce.

Export Control: Cryptographic devices and technical data regarding them are subject to Federal government export controls either as specified in Title 22, Code of Federal Regulations, Parts 121 through 128, or in Title 15, Code of Federal Regulations, Parts 368 through 399, as applicable. Any exports of cryptographic devices implementing this standard and technical data regarding them must comply with these Federal regulations.

Patents: Cryptographic equipment implementing this standard may be covered by the U.S. and foreign patents.

Specifications: Federal Information Processing Standard 113 (FIPS 113), Computer Data Authentication (affixed).

Waivers: Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and when the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must specify anticipated performance and cost advantages in the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, DC 20230, and labeled as a Request for a Waiver to Federal Information Processing Standard Publication 113. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 113 (FIPSPUB113), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 85–12904 Filed 5–29–85; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 50341–5041]

Approval of Federal Information Processing Standard 112, Password Usage

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 112.

SUMMARY: On July 29, 1981, notice was published in the **Federal Register** (46 FR 38564–38566) that a Federal Information Processing Standard for Password Usage was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis K. Branstad, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (303) 921–3427.

Dated: May 23, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 112

(Date)

Announcing the Standard for Password Usage

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Password Usage.

2. *Category of Standard.* Operations, computer security.

3. *Explanation.* A password is a sequence of characters that can be used for several authentication purposes. Passwords are often used to authenticate the identity of an automated data processing (ADP) system user and, in some instances, to grant or deny access to private or shared data. This Standard recognizes that passwords are not the only method of personal authentication, nor does it endorse the use of passwords as the best method; however, it recognizes that passwords are widely used in computer systems and networks for these purposes. In these systems and networks, compliance with this Standard will ensure that the passwords are used in accordance with accepted practices.

This Standard specifies basic security criteria for two different uses of passwords in an ADP system: (1) Personal identity authentication and (2) data access authorization. A password used for personal identity authentication will be called a personal password; a password used for authorizing access will be called an access password. A personal password should not also be used as an access password. This Standard does not require the use of passwords in an ADP system for either purpose, but establishes the basic criteria for the design, implementation and use of a password system in those systems where passwords are used.

This Standard identifies fundamental ADP management functions pertaining to passwords and specifies some user actions required to satisfy these functions. In addition, it specifies several technical features which may be implemented in an ADP system in order to support a password system. Those technical features desired by the ADP management should be specified in all procurement documents when acquiring new systems, and provisions should be made to ensure that they are included when upgrading existing systems. Technical features which are recommended for an ADP system are marked with an asterisk (*). In order to facilitate use of this Standard, this document includes explanatory and guideline appendices.

Some of the requirements of the Standard may be satisfied either through management functions or through technical features. For example, if the Security Officer specifies that each personal password is to be changed at least every 6 months, the ADP manager can issue a directive to this effect or the ADP system can be programmed to automatically change a password 6 months after entry of its last change. This Standard does not specify how the criteria shall be met, but only what criteria shall be met. The technical features specified in the Standard are generally recommended, but cost considerations (costs to modify existing systems or additional operational costs) may require that management functions be utilized temporarily in satisfying the specified criteria.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.*

a. Federal Information Processing Standards Publication (FIPS PUB) 1-2, Code for Information Interchange, Its Representations, Subsets, and Extensions.

b. Federal Information Processing Standards Publication (FIPS PUB) 31, Guidelines for Automatic Data Processing Physical Security and Risk Management.

c. Federal Information Processing Standards Publication (FIPS PUB) 39, Glossary for Computer Systems Security.

d. Federal Information Processing Standards Publication (FIPS PUB) 41, Computer Security Guidelines for Implementing the Privacy Act of 1974.

e. Federal Information Processing Standards Publication (FIPS PUB) 46, Data Encryption Standard (DES).

f. Federal Information Processing Standards Publication (FIPS PUB) 48, Guidelines on Evaluation of Techniques for Automated Personal Identification.

g. Federal Information Processing Standards Publication (FIPS PUB) 65, Guideline for Automatic Data Processing Risk Analysis.

h. Federal Information Processing Standards Publication (FIPS PUB) 73, Guidelines for Security of Computer Applications.

i. Federal Information Processing Standards Publication (FIPS PUB) 74, Guidelines for Implementing and Using the NBS Data Encryption Standard.

j. Federal Information Processing Standards Publication (FIPS PUB) 81, DES Modes of Operation.k. Federal Information Processing Standards Publication (FIPS PUB) 83, Guideline on User Authentication Techniques for Computer Network Access Control

l. Federal Information Processing Standards Publication (FIPS PUB) 87, Guidelines for ADP Contingency Planning.

m. NBS Special Publication 500-9, The Use of Passwords for Controlled Access to Computer Resources.

7. *Applicability.* This Standard applies to all Federal departments and agencies using passwords for authenticating users of an ADP system, or for authorizing access to data in the system.

When passwords are used, they should be used in accordance with this Standard. Sections indicated with an asterisk (*) apply to computer hardware/software products related to password protection and should be incorporated into procurement specifications. Remaining sections provide system management and operation requirements related to password generation and use. Password system design, operation and management specifications exceeding those of this Standard may be used based on the results of the risk analysis. This Standard may be adopted and used by any other organization desiring to use passwords.

8. *Specifications.* Federal Information Processing Standard 112 (FIPS 112), Password Usage (affixed).

9. *Qualifications.* This Standard is intended to provide a common foundation for password systems and to specify basic security criteria for the use of such systems, but should not be interpreted as satisfying all security requirements in all applications. This Standard specifies 10 factors to be considered in the design, implementation and use of password systems. It also specifies the basic security criteria which shall be satisfied for each of these 10 factors. The management official (herein called the Security Officer), designated in accordance with OMB Circular A-71, Transmittal Memorandum Number 1 (July 27, 1978) as responsible for the security of a computer system, shall specify any additional security criteria for a password system deemed necessary over and above the basic criteria of this Standard.

For each computer system which uses a password system the Security Officer shall prepare a Password Usage Compliance Document which specifies all the criteria (including the basic

criteria) which must be met for all the factors (including the 10 specified in this Standard) for that system. This document should include the rationale used in selecting the criteria. If only the basic criteria of the Standard are used, the rationale should state that the security requirements of the system have been analyzed and the basic criteria satisfy all the security requirements.

The terms "secret" and "compromise" are used in this document in accordance with their dictionary definitions and do not imply National Security (Defense) related definitions. Use of cryptography to generate or transmit passwords for access to, or authentication of, classified information requires prior review and approval of the National Security Agency.

Export Control: Password systems incorporating cryptography and technical data regarding them are subject to Federal Government export control as specified in Title 22, Code of Federal Regulations, Parts 122 through 128. Software, firmware, and hardware incorporating cryptography and technical data regarding them must comply with these regulations.

10. *Implementation Schedule.* This Standard becomes effective upon publication in the **Federal Register** of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce. Management functions should be implemented as soon as possible but no later than 6 months following publication. Technical features should be implemented in existing password systems within 12 months and should be integrated into all new password systems and those undergoing significant modifications.

11. *Waivers.* Heads of agencies may request that the requirements of this Standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and when the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must specify anticipated performance and cost advantages in the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, DC 20230, and labeled as a Request for a Waiver to Federal Information Processing Standards Publication 112. No agency shall take any action to deviate from this Standard prior to the receipt of a waiver approval from the Secretary of Commerce.

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 112 (FIPSPUB112), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, or deposit account.

[FR Doc. 85-12905 Filed 5-29-85; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

U.S. Court of Military Appeals Code Committee; Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on June 10, 1985, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, D.C. 20442-0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, telephone (202) 272-1448.

May 24, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-12977 Filed 5-29-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages (Critical Foreign Languages Program); Application Notice for Transmittal of Applications for New Grant Awards for Fiscal Year 1985

Applications are invited for critical foreign languages grants under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning and Critical Foreign Languages (Critical Foreign Languages Program) for Fiscal Year 1985, to improve and expand instruction in critical foreign languages. A grant competition for nationally significant project grants will be announced in a separate notice published in the **Federal Register.**

Authority for this program is contained in section 212 of Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377 (20 U.S.C. 3972).

Closing Date for Transmittal of Applications: An application for a grant award must be mailed or hand delivered by July 12, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.168F (Critical Foreign Languages Program), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible Applicants: Public and private institutions of higher education are eligible to apply for critical foreign language grants.

Program Information: Section 212 of Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377 (20 U.S.C. 3972), authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning and Critical Foreign Languages. The EESA was enacted to help meet the needs identified in "A Nation At Risk: The Imperative for Educational Reform," the report of the National Commission on Excellence in Education, and other national reports. Mathematics, science, computer technology and foreign languages have a special importance in this country because continued development in these areas is vital to the economic security of the United States. Section 212(c) of the EESA addresses specifically the importance of foreign language competency by authorizing grants to institutions of higher education for the purpose of improving or expanding instruction in critical foreign languages.

Selection Criteria: Applications for awards will be evaluated in accordance with the selection criteria contained in proposed 34 CFR 755.32 and the special considerations in proposed 34 CFR 755.33. In addition to the points awarded for the selection criteria listed in proposed 34 CFR 755.32, the Secretary, in accordance with proposed 34 CFR 755.30, will distribute 15 additional points as follows: 5 points for *Plan of operation;* 5 points for *Budget and cost effectiveness;* and 5 points for *Improvement or expansion of instruction in critical foreign languages.* Projects may be proposed for a period of one year.

Funding Priorities: The proposed regulations for the Critical Foreign Languages Program (published in the Federal Register on November 28, 1984, 49 FR 46761), provide for the establishment of funding priorities by the Secretary in any given year. For Fiscal Year 1985, the Secretary reserves absolutely funds under this program for activities designed to improve and expand instruction in critical foreign languages during the one-year grant period and which have the greatest likelihood of meeting the purposes of the Act. Only applications meeting the priorities established below will be considered for funding.

Priority will be given to:

(a) Activities listed under proposed 34 CFR 755.12(b) (1) and (2) designed to improve instruction through teacher training limited to the following languages: Arabic, Bahasa Indonesia, Chinese, Czech, French, German, Hausa, Hindi, Italian, Japanese, Korean, Polish, Portuguese, Russian, Spanish, Swahili and Urdu. In developing teacher training programs, applicants are encouraged to work cooperatively with State and local education agencies to ensure that opportunities are provided for teachers in local elementary and secondary schools to participate fully in such programs.

(b) Activities listed under proposed 34 CFR 755.12(c) (1) and (2) designed to expand instruction by—

(1) Adding to the curriculum languages not currently offered; and

(2) Adding to the curriculum advanced language courses.

Activities under priority (b) are limited to the following languages: Arabic, Bahasa Indonesia, Chinese, Czech, Hausa, Hindi, Japanese, Korean, Polish, Portuguese, Russian, Spanish, Swahili and Urdu. Applicants already offering one or more of these languages are strongly urged to add advanced level courses in these languages before adding a new language.

Available Funds: The Department of Education Appropriations Act, 1985, Pub. L. 98-619, appropriated $100,000,000 for carrying out the provisions of Title II of the Education for Economic Security Act, of which $2,475,000 is available for critical foreign language grants.

No average award or range of award amount is specified for the program. Applicants are asked to keep in mind both the modest amount of the Fiscal Year 1985 appropriation and the intense interest expressed in the program by institutions of higher education. Because awards will only be for one year's duration, applicants are encouraged to design activities which will have the greatest potential for support from other sources after the grant year.

Application Forms: Application forms and program information packages will be available for mailing by *June 5, 1985.* They may be obtained by writing to the Center for International Education, Office of Postsecondary Education, U.S. Department of Education, (Room 3923, ROB-3), Mail Stop 3308, 400 Maryland Avenue SW., Washington, D.C. 20202.

(Approved under Office of Management and Budget Control Number 1800-0002)

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary urges applicants to limit the narrative portion of the application to 20 pages and not to submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

(b) When published in final form, the regulations governing the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, proposed to be codified in 34 CFR Part 755. The proposed regulations were published on November 28, 1984, at 49 FR 46761.

A notice of proposed critical foreign languages was published in the **Federal Register** on April 15, 1985, at 50 FR 14743.

Applicants should prepare their applications based on the proposed rules and the priorities set forth in this notice. If any substantive changes are made in the final regulations or priorities that would affect the content of applications, applicants will be given an opportunity to amend or resubmit their applications.

Further Information: For further information contact Steven G. Pappas, Critical Foreign Language Program, Center for International Education, (Room 3923, ROB-3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-2146 or (202) 245-2356.

(20 U.S.C. 3972)

(Catalog of Federal Domestic Assistance No. 84.168F, Secretary's Discretionary Program for Mathematics, Science, Computer Learning and Critical Foreign Languages)

Dated: May 23, 1985.

[FR Doc. 85-12912 Filed 5-29-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA Program; and Civil Rights Committees. The agenda will include the election of a new Council Chairman and Vice-Chairman, budget review, annual report review and up-

dates on future forums, "Opportunities for Women in Transportation" and "Women at Home". This notice also describes the function of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES:

June 12, 1985: 7:00 p.m. to 9:30 p.m. (Committee Meetings).

June 13, 1985: 8:30 a.m. to 12:00 noon (Full Council Meeting) 1:00 p.m. to 3:00 p.m. (continuation of Full Council Meeting).

ADDRESS: The meetings will be held at the Hyatt-Regency Hotel, Crystal City, 2799 Jefferson Davis Highway, Alexandria, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 L Street NW., Suite 500, Washington, D.C. 20036, (202) 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council

The Executive Committee will meet on Wednesday, June 12, 1985 from 7:00 p.m. to 9:30 p.m. The agenda will include discussion of the FY 1985 budget and annual report.

The meetings of the Federal Policies, Practices and Programs; Civil Rights; and WEEA Program Committees, will take place on Wednesday, June 12, 1985, from 7:00 p.m. to 9:30 p.m. The agenda will include general discussions.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street NW., Suite 500, Washington, D.C. 20036.

Signed at Washington, D.C., on May 20, 1985.

Sally A. Todd,

Executive Director.

[FR Doc. 85-12896 Filed 5-29-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1986 Noncompeting Continuation Applications.

Applications are invited for noncompeting continuation projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act.

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other appropriate nonprofit agencies or organizations.

Organization of Notice

This notice contains two parts. Part I includes the list of all closing dates for noncompeting continuation awards covered by this notice. Part II contains individual application announcements for each priority. These announcements are in the same order as the closing dates listed in Part I.

Transmittal of Applications: To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

If an application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds: Since fiscal year 1986 appropriation levels have not been determined yet, accurate estimates of funding under each priority are not available. It is expected that funding will be available to award noncompeting continuation grants at originally projected funding levels. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulation.

Part I—List of Closing Dates for the Transmittal of Noncompeting Grant Applications Published in This Notice

CFDA	Program	Closing date
84.029A	Preparation of Special Educators	08-30-85
84.029C	Preparation of Leadership Personnel	08-30-85
84.029E	Preparation of Related Services Personnel	08-30-85
84.029R	Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Handicapped Children	08-30-85

CFDA	Program	Closing date
84.029G	State Education Agency Programs.	01-31-86
84.029J	Special Projects	01-31-86
84.029L	Preparation of Regular Educators	01-31-86
84.029N	Parent Organization Projects	01-31-86
84.029U	Transition of Handicapped Youth to Adult and Working Life.	01-31-86
84.029V	Preparation of Personnel to Work in Rural Areas.	01-31-86

Part II—Application Notices

84.029A—Preparation of Special Educators

Closing Date: August 30, 1985

Program Information: This priority supports the continued second or third budget period funding for preparation of special educator grants that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029C—Preparation of Leadership Personnel

Closing Date: August 30, 1985

Program Information: This priority supports the continued second or third budget period funding for doctoral and post-doctoral personnel preparation grants that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029E—Preparation of Related Services Personnel

Closing Date: August 30, 1985

Program Information: This priority supports the continued second or third budget period funding for the preparation of related services personnel grants that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029R—Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Handicapped Children

Closing Date: August 30, 1985

Program Information: This Priority supports the continued second budget period funding, for preparation of infant/related service personnel grants that were awarded initially in 1985, for two or more budget periods.

84.029G—State Education Agency Programs

Closing Date: January 31, 1986

Program Information: This priority supports the continued second or third budget period funding for State educational agency grants that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029J—Special Projects

Closing Date: January 31, 1986

Program Information: This priority supports the continued second or third budget period funding, for special projects that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029L—Preparation of Regular Educators

Closing Date: **JANUARY 31, 1986**

Program Information: This priority supports the continued second or third budget period funding, for preparation of regular educators grants that were awarded initially in 1984 or 1985, for two or more budget periods.

84.029N—Parent Organization Projects

Closing Date: January 31, 1986

Program Information: This priority supports the continued second budget period funding for parent organization projects grants that were awarded initially in 1985, for two or more budget periods.

94.029U—Transition of Handicapped Youth to Adult and Working Life

Closing Date: January 31, 1986

Program Information: This priority supports the continued third budget period funding for transition of handicapped youth to adult and working life grants that were awarded initially in 1984, for three budget periods.

84.029V—Preparation of Personnel To Work in Rural Areas

Closing Date: January 31, 1986

Program Information: This priority supports the continued second budget period funding, for preparation or rural special project grants that were awarded initially in 1985, for two or three budget periods.

Application Forms: Application forms and program information packages for noncompeting continuation applications will be mailed July 1, 1985, to grantees that are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732-1070.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped.

Dated: May 24, 1985.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85-12911, Filed 5-29-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Supplemental Funds Program for Cooperative Education; Application Notice for New Awards for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Supplemental Funds Program for Cooperative Education; Application Notice for New Awards for Fiscal Year 1985.

Applications are invited for the award of certain unused College Work-Study Program funds for the support of programs of Cooperative Education.

Authority for this program is contained in section 442(d) of the Higher Education Act of 1965, as amended.

(42 U.S.C. 2752(d))

Closing Date for Transmittal of Applications: Applications for supplemental funds for the support of programs of Cooperative Education must be mailed or hand delivered by August 9, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.055E, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, inovice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Application Control Center, (Room 5673, ROB-3), 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 442(d) of the Higher Education Act of 1965 directs the Secretary to give preference in reallotting the first 50 percent of unused College Work-Study Program funds to eligible institutions of higher education for use in initiating, improving, or expanding programs of cooperative education administered in accordance with the Cooperative Education Program authorized by Title VIII of the Act.

Each eligible institution of higher education submitting an application will receive a proportionate share of the available funds, based on the ratio of the number of full-time and full-time-equivalent students assisted under its program of cooperative education between the period July 1, 1984, through June 30, 1985, to the number of those types of students assisted in programs of cooperative education in all eligible institutions applying for the available funds, except that no award will be made to an institution if the award amount is less than $500.

Eligible applications must provide the application information required in 34 CFR 636.20 of the regulations for the Supplemental Funds Program for Cooperative Education

The funds under the Supplemental Funds Program for Cooperative Education must be used to initiate, improve, or expand a program of cooperative education administered in accordance with the regulations implementing Title VIII of the Act.

In identifying programs of cooperative education, applicant can consider those programs that offer students alternating or parallel periods of academic study and public or private employment that—

(1) Afford students the opportunity to earn funds necessary for continuing and completing their education; and

(2) As far as practicable, give students work experience related to their academic occupational objectives.

Before calculating the number of students, applicants should review the definitions found in 34 CFR 636.4, for the terms "assisted" and "full-time-equivalent students".

Before applying for the supplemental funds for programs of cooperative education, applicants should review the definitions for "expand," "improve," and "initiate," found in 34 CFR 636.4, and the definition for "Cooperative Education," found in 34 CFR 631.3.

Available Funds: The Secretary will not have the report of the unused College Work-Study Program funds available for reallotment until mid-August.

These funds must, however, be reallotted on or before September 30, 1985. Any estimates in this Notice do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be mailed to institutions of higher education by June 21, 1985. They may be obtained after that date from the Division of Higher Education Incentive Programs (Cooperative Education), U.S. Department of Education (Room 3022, ROB-3), 7th and D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 245-3253.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary urges applicants not to submit information that is not requested.

(This application form is approved under OMB Control No. 1840-0504.)

Applicable Regulations: The following regulations apply to projects supported with supplemental funds:

(a) Regulations governing the Supplemental Funds Program for Cooperative Education (34 CFR Part 636);

(b) Regulations governing the Cooperative Education Program (34 CFR Parts 631 and 632);

(c) Regulations governing the College Work-Study Program (34 CFR Part 675); and

(d) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: For further information contact the Division of Higher Education Incentive Programs (Cooperative Education), Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 302, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-3253.

(20 U.S.C. 1133, 42 U.S.C. 2752(d))

(Catalog of Federal Domestic Assistance Number 84.055E, Supplemental Funds Program for Cooperative Education)

Dated: May 23, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85-12913 Filed 5-29-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Date Change for Meeting

The date of the May 17, 1985 sixth meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been changed. The New date should read: Thursday, June 13, 1985, starting a 9:00 a.m. in the Dogwood B Room of the Hyatt Regency Houston Hotel, 1200 Louisiana Street, Houston, Texas. Notice of this meeting appeared in 50 FR 18549, Wednesday, May 1, 1985 (FR DOC 85-10614 filed 4/30/85

Issued at Washington, D.C., May 16, 1985.
William A. Vaughan,
Assistant Secretary Fossil Energy.
[FR Doc. 85-12998 Filed 5-29-85; 8:45 a.m]
BILLING CODE 6453 01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-487-001 et al.]

Distrigas of Massachusetts Corp.; Filing

May 23, 1985.

Take notice that on May 17, 1985, Distrigas of Massachusetts Corporation ("DOMAC"), tendered for filing Original Sheet Nos. 33, 72A, 72B, and 72C to its FERC Gas Tariff, First Revised Volume No. 1.

DOMAC states that the filing is made in compliance with the sales service authorized by the temporary certificates issued by Commission letter order dated May 9, 1985, in Docket Nos. CP85-487-000, *et al.* Original Sheet No. 33 is DOMAC's Rate Schedule I-1 for interruptible sales by DOMAC. Original Sheet Nos. 72A, 72B, and 72C is the form of service agreement for service under DOMAC's I-1 Rate Schedule.

DOMAC requests that waiver be granted to permit such tariff sheets to become effective on May 9, 1985, which was the date DOMAC's temporary certificates in this proceeding were issued.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-12961 Filed 5-29-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 3779-001]

Great Northern Nekoosa Corp.; Tour of Project Facilities

May 24, 1985.

A one-day field trip of the proposed Big "A" project will take place commencing on June 4, 1985, at 9:00 a.m., at the Great Northern Project facility, for a representative of the formal parties and intervenors in the proceeding.

Any representative of the formal party, intervenor, or their counsel, who wishes to participate in the tour, should promptly notify Alan Mitchnick, Project coordinator for the Federal Energy Regulatory Commission, 400 First Street, NW., Washington, D.C. 20426 (telephone number (202) 357-9061), so appropriate arrangements can be made to accommodate all persons going on the tour.

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-12962 Filed 5-29-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP72-149-02 et al.]

Mississippi River Transmission Corp. et al.; Filing of Pipeline Refund Reports and Refund Plans

May 24, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 4, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
5/6/85	Mississippi River Transmission Corp.	RP72-149-021	Report.
5/8/85	Transcontinental Gas Pipe Line Co.	RP84-146-001	Do.
5/10/85	Arkla Energy Resources.	RP82-75-007	Do.
5/13/85	Lone Star Gas Co.	RP85-76-001	Btu [1]
5/15/85	Transwestern Pipeline Co.	RP87-8-001	Report.

[1] Btu Measurement Refund.—Each Company will retain the same assigned Docket No. and future related filings will receive new Sub-Docket Nos.

[FR Doc. 85-12963 Filed 5-29-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP79-84-012]

Panhandle Eastern Pipe Line Co.; Proposed Change in FERC Gas Tariff

May 24, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 17, 1985 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Fifth Revised Sheet No. 1712
Thirteenth Revised Sheet No. 1733
Thirteenth Revised Sheet No. 1741
Thirteenth Revised Sheet No. 1749
Thirteenth Revised Sheet No. 1759
Tenth Revised Sheet No. 1760.5
Fourth Revised Sheet No. 1812
Fourth Revised Sheet No. 1813
Thirteenth Revised Sheet No. 1834
Thirteenth Revised Sheet No. 1842

Panhandle proposes that these tariff sheets become effective April 21, 1984.

Panhandle states that such changes are made to amend Rate Schedules TS-4 and TS-5 for the transportation and storage of natural gas on behalf of various Panhandle customers, with ANR Storage Company (ANR Storage). Specifically, such changes are made to incorporate Michigan Consolidated Gas Company, Interstate Storage Division's (ISD) current settlement transportation charges in Docket No. RP84-13-000 pursuant to the Commission's Orders issued January 11, 1985 and March 27, 1985, respectively.

A copy of this filing has been served on the various Panhandle customers involved in the service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. PLumb,

Secretary.

[FR Doc. 85-12964 Filed 5-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-253-019]

Panhandle Eastern Pipe Line Co.; Proposed Change in FERC Gas Tariff

May 24, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 3, 1985, tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Fourth Revised Sheet No. 986.1
Fifth Revised Sheet No. 987
Ninth Revised Sheet No. 1005
Fifth Revised Sheet No. 1014
Fifth Revised Sheet No. 1022
Ninth Revised Sheet No. 1029
Ninth Revised Sheet No. 1037
Fifth Revised Sheet No. 1045
Fifth Revised Sheet No. 1046
Tenth Revised Sheet No. 1053
Sixth Revised Sheet No. 1054
Tenth Revised Sheet No. 1061
Sixth Revised Sheet No. 1062
Fifth Revised Sheet No. 1069
Fifth Revised Sheet No. 1070
Tenth Revised Sheet No. 1077
Sixth Revised Sheet No. 1078
Eighth Revised Sheet No. 1081.5
Seventh Revised Sheet No. 1090
Fifth Revised Sheet No. 1091
Fifth Revised Sheet No. 1111
Fifth Revised Sheet No. 1119
Fifth Revised Sheet No. 1127
Fifth Revised Sheet No. 1135
Fifth Revised Sheet No. 1143
Fifth Revised Sheet No. 1151
Fifth Revised Sheet No. 1159
Fifth Revised Sheet No. 1167
Fifth Revised Sheet No. 1175
Fifth Revised Sheet No. 1183

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 15, 1985.

Panhandle proposes that these tariff sheets become effective April 21, 1984.

Panhandle states that such changes are made to amend Rate Schedules TS-2 and TS-3 for the 1ransportation and storage of natural gas on behalf of various Panhandle customers, with Michigan Consolidated Gas Company (Mich. Con). Specifically, such changes are made to incorporate Mich Con's current settlement storage charges in Docket No. RP84-13-000 pursuant to the Commission's Orders issued January 11, 1985 and March 27, 1985, respectively.

A copy of this filing has been served on the various Panhandle customers involved in the service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12965 Filed 5-29-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds of $2,807,671 and $65,000 obtained from Arkansas Louisiana Gas Company and Arkla Chemical Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by August 28, 1985, should conspicuously display a reference to case numbers HEF-00030 and HEF-0201, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of two consent orders between Arkansas Louisiana Gas Company and Arkla Chemical Company (Arkla) and the DOE. The consent orders settled certain disputes between DOE and Arkla concerning possible violations of DOE price regulations with respect to the firm's sales of covered petroleum products during the period September 1973 through December 1975.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by August 28, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 17, 1985.

Name of Firm: Arkansas Louisiana Gas Company, Arkla Chemical Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0030, HEF-0201.

This decision involves two Petitions for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations of the Department of Energy (DOE), ERA may request that the OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. In this case ERA filed Petitions for the Implementation of Special Refund Procedures in connection with two consent orders that it entered into with Arkansas Louisiana Gas Company and Arkla Chemical Company, refiners and marketers of petroleum products located in Shreveport, Louisiana (together referred to hereinafter as Arkla). These corporations were treated for purposes of DOE regulations as one firm.

Arkla sold petroleum products to resellers and end-users during the

period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. A DOE audit covering only Arkla Chemical's pricing of motor gasoline, diesel fuel, naphtha, and kerosene revealed possible regulatory violations with respect to the firm's sales of those products during the period November 1, 1973 through January 31, 1974. In order to settle this dispute, Arkla entered into the first consent order on September 25, 1980. Under the terms of the consent order Arkla agreed to remit $65,000 to the DOE. As of April 30, 1985, this fund (hereinafter referred to as Arkla I) has earned $45,975 in interest. We have issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by alleged violations settled in the first Arkla consent order. *See* 50 F.R. 14423–7 (April 12, 1985) (Case No. HEF–0030).

A separate, more extensive DOE audit of both Arkansas Louisiana Gas and Arkla Chemical revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products during the period September 1, 1973 through December 31, 1975 (hereinafter referred to as the Consent Order period). In order to settle certain claims and disputes arising from this audit reguarding the firm's sales of covered products, Arkla and DOE entered into a second consent order on January 31, 1981. *See* 46 F.R. 20587 (April 6, 1981). Under the terms of the second consent order Arkla agreed to remit $2,807,671 to the DOE. Arkla has paid in full, and the funds were deposited into an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of April 30, 1985, this Arkla escrow account (hereinafter referred to as Arkla II) has earned $1,529,815 in interest. We have also issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by alleged vioaltions covered by the second Arla consent order. 50 F.R. 4739–4742 (February 1, 1985) (Case No. HEF–0201; Arkla II).

In each of the proposed decisions we described a two-stage process for the distribution of the funds made available by the Arkla consent orders. In the first stage, we will refund money to identifiable purchasers of covered products who may have been injured by Arkla's pricing practices during the periods covered by the respective consent orders.

This decision describes the information that a purchaser of Arkla petroleum products should submit in order to demonstrate eligibility to receive a portion of the escrowed funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85, 048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed). Several states have filed comments arguing that state governments are the proper recipients of any remaining money. Because our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund, it is premature for us to address this issue.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Arkla consent order funds. In our proposed decisions and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Arkla consent order funds.

II. Refunds to Identifiable Purchasers

The Arkla consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Arkla's alleged violations. The information available to us at this time regarding Arkla's operations during the consent order period provides the namas and addresses of many of the firm's customers. In order to receive a refund from Arkla II, each claimant will be required to submit a schedule of its monthly purchases of Arkla covered products for the period September 1973 through December 1975. In order to receive a refund from Arkla I, each claimant listed in the appendix to this decision must certify that it was a purchaser of Arkla products between November 1973 and January 1974. If the products were not purchased directly from Arkla the claimant must include a statement setting forth its reasons for maintaining the product originated with Arkla. In addition, a reseller or retailer of Arkla petroleum products that files a claim generally will be required to establish that it was unable to pass the alleged overcharges on to its customers. To make this showing, a reseller or retailer claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to submit some other showing that it was injured by the alleged overcharges. *Id.*

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispered equally in all sales of products made by Arkla during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regualtions. Section 205. 282(e) of those regulations states that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case facilitate the process of making restitution. They are used to permit claimants to participate in the refund process without incurring dispropriationate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. We shall make this assumption only for purposes of distribution the Arkla II fund.[1] In the

[1] The audit file relating to the Arkla I consent order indentified both injured parties and the dollar amount of alleged overcharges attributed to each. Therefore, it is not necessary to make the volumetric assumption in the case. *See* 50 F.R. 14423–14427 (April 12, 1985) (Proposed Decision in Case No HEF–0030).

absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs of a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Arkla consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisons, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to provide 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, it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from and administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Arkla and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.[2]

In addition to the presumptions we are adopting , we are making a finding that end-users or ultimate consumers whose buinesss is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Arkla petroleum products need only document their purchase volumes from Arkla to make a sufficient showing that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases from Arkla, however, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaseer that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Arkla petroleum products. *See Amoco* at 88,200.

A successful refund applicant from the Arkla I pool will receive a refund of the amount listed in the appendix to this decision, as well as a pro rata portion of the interest accrued in the fund. A successful refund applicant from the Arkla II pool will recieve a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by our best estimate of the total gallonage of products covered by the consent order. In the Arkla II case, the volumetric refund amount is $.02437 per gallon, exclusive of interest.[3] As of January 31, 1985, accumulated interest increased the volumetric refund to $.03764.

It is likely that some applicants will be eligible to receive refunds from both funds. Applicants will not be awarded two redunds for purchases of products covered by Arkla I during the Arkla I consent order period; however, they will be allowed to choose the higher of the two available refunds. An applicant listed in the Appendix to this decision could choose to receive a refund from the Arkla I pool for the November 1973 to January 1974 period, and from the Arkla II pool for the remainder of September 1973 to December 1975 period.[4]

[2] Resellers whose monthly purchases during the period for which a refund is claimed exceed $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396.

[3] According to information available to us, Arkla sold 115,221,212 gallons of covered petroleum products during the consent order period. The volumetric figure is obtained by dividing the money remitted by Arkla by this volume amount ($2,807,671 divided by 115,221,212 gallons = $0.02347 per gallon.

[4] An applicant who purchased several covered products from Arkla during the Arkla I period, including some that were not covered by the Arkla I consent order, would be eligible for refunds from both funds for the same time period.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweight the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

III. Application for Refund

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our February 1, 1985, and April 12, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Arkla petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Arkansas Louisiana Gas Company Consent Order Funds, Case Numbers HEF-0030 and HEF-0201.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Arkla, it should also indicate the basis for its belief that the petroleum product purchased originated from Arkla. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges.[5] Applicants listed in the Appendix of this decision should specify whether they wish to apply for refunds from the Arkla I or Arkla II fund for the November 1973 to January 1974 period; all other applicants will be presumed to be applying for refunds from the Arkla II fund. Each applicant should specify how it used the Arkla petroleum product, such as whether it was a reseller or ultimate consumer. If the applicant is a reseller claiming a refund of more than $5,000, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Arkansas Louisiana Gas Company Consent Order Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. Applications for refund of a portion of the Arkla consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

IV. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Arkansas Louisiana Gas Company and Arkla Chemical Company pursuant to the consent orders executed on September 25, 1980 and January 31, 1981 may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: May 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Arkla Chemical Corporation, P.O. Box 21734, Shreveport, Louisiana

Consent Order Period: 11/1/73-1/31/74.

Products Covered: Motor gasoline, diesel fuel, naphtha, kerosene.

Consent Order Amount: $67,500.

Identified customers	Potential refund [1]
Aerobic System of Arkansas, P.O. Box 6, Gravel Ridge, AR 72706	$122
ARCO Building Materials, P.O. Box 232, Little Rock, AR 72203	41
ARCO Metals, P.O. Box 6716, Shreveport, LA 71106	598
Albers Feed & Farm Supply (Carnation Country Store), 1100 Wheeler Ave., Fort Smith, AR 72901	80
Albert Harper, 8701 Mize Road, Little Rock, AR 72206	117
A.L.K. Moore Trucking, P.O. Box 5006, Bossier City, LA 71111	39
Anchor Paint Mfg. Co., 2317 Cantrell Road, Little Rock, AR 72206	49
Arkansas Cement Corp., P.O. Box 21734, Shreveport, LA 71151	3,222
Arkansas Foundry, P.O. Box 231, Little Rock, AR 72203	834
Arkansas Oklahoma, 115 North 12th Street, Fort Smith, AR 72901	1,202
Arkansas Petroleum Sales, P.O. Box 5237, Little Rock, AR 72205	1,316
Armstrong Tool & Supply, P.O. Box 1468, McAlester, OK 74501	316
A. Tenenbaum Co., P.O. Box 15138 GMF, Little Rock, AR 72231	26
Fall City Co., P.O. Box 39, Nashville, AR 71852	3,266
Earling Construction Co., Route 1, Box 348-A, Lavaca, AR 72941	26
Barnwell Shingle Tab, P.O. Box 7881, Shreveport, LA 71107	19
Bigelow Robinson Co., 1115 Pine St., North Little Rock, AR 72114	47
Big K Development, 13700 Beckenham, Little Rock, AR 72207	48
Bob Guthrie Contractor, 3615 Dixon Road, Little Rock, AR 72206	30
Bob's Trailer Villa, 3816 N. 43 Street, Fort Smith, AR 72901	72
Bowles & Eden Equipment, Route 2, Box 33 B, North Little Rock, AR 72118	31
Brandon Van & Storage, P.O. Box 9828, Little Rock, AR 72219	43
Braswell Motor Freight, P.O. Box 7007, Shreveport, LA 71107	465
Brown Janitor Service, P.O. Box 4581, Little Rock, AR 72204	30
Eugene Oil Co., P.O. Box 147, Monroe, LA 71201	616
Byers Oil Co., P.O. Box 725, Hope, AR 71801	1,816

[5] An applicant named in the Appendix to this decision applying for a refund only from the Arkla I fund may instead submit a statement verifying that it purchased Arkla products, and is willing to rely on the data in the audit file. *Richards Oil Company*, 12 DOE ¶ 85,150 (1984).

Identified customers	Potential refund [1]
C & C Electric, P.O. Box 686, Little Rock, AR 72203	40
Caddo Parish School Board, P.O. Box 37000, Shreveport, LA 71130	1,060
Calumet Refining Co., Star Route, Box 128, Princeton, LA 71067	140
Capital Welding Supply, P.O. Box 3015, Little Rock, AR 72203	56
Capital Chemical, 2326 Cantrell Road, Little Rock, AR 72202	61
Car Care, 6015 Mitchell Dr., Little Rock, AR 72209	284
Carl Staggs Plumbing, 15300 Bauch Lane, Little Rock, AR 72206	72
Cassy Grocrery & Station, Cecil, AR 72930	265
Chandeler Trailer Convey P.O. Box 9410 Little Rock, AR 72219	231
City of Shreveport, P.O. Box 31109, Shreveport, LA 71130	20
C.J. Michau, 1821 Parker, North Little Rock, AR 72114	24
Clark Equipment Co., P.O. Box 2619, Cantrell Booker Road, Little Rock, AR 72203	83
Coca-Cola Bottling Co., P.O. Box 1114 Shreveport, LA 711673	316
Curtis Barker Oil Co., P.O. Box 6981, Shreveport, LA 71106	690
Cunningham-Nelson Chevrolet, P.O. Box 167, Ozark AR 72949	117
D & S Self Service, 3838 North Market St., Shreveport, LA 71107	311
Dan Golver Trucking Co., 3820 Mabelvale Pike, Little Rock, AR 72204	1,147
Daniels Moving & Storage, P.O. Box 427, North Little Rock, AR 72115	40
D. D. McCowen, 8301 West 36th St., Little Rock, AR 72204	16
Deaton Oil Co., P.O. Box D., Murfreesboro, AR 71958	916
Deecoteau Heating & Air, 3803 Jacksonville Hwy., North Little Rock, AR 72117	39
Dillaha Fruit Co., P.O. Box 546 Little Rock, AR 72203	54
Ditch Witch Trencher of La., 3815 East Texas, Bossier City, LA 71111	64
D. J. Pipe & Steel, Co., 1220 South Zero, Fort Smith, AR 72901	107
DLM Inc., P.O. Box 37 Malvern, AR 72104	75
D. N. Marshall & Son, Rt. 4, Booneville, AR 72927	280
Donald Kirk Plastering, 319 Gill Little Rock, AR 72205	49
Duggan Machine Co., Inc., P.O. Box 7333, Shreveport, LA 71107	18
East Texas Motor Freight, P.O. Box 7176, Shreveport, LA 71107	77
Economy Oil Co., P.O. Box 8117, Shreveport, LA 71108	2,134
E.E. Stillman, 48 Stillman Loop-Route, Benton, AR 72015	40
Enterprise Products Co., 3418 Barksdale Blvd., Bossier City, LA 71112	3,012
Enterprise Tool, Inc., Mail Route Road, Little Rock, AR 72205	64
Erection Service, P.O. Box 231, Little Rock, AR 72203	99
Esquire Marble Co., 15104 Sardis Road Mabelvale, AR 72103	25
Fagan Electric Co., Inc., 3401 West 65th St., Little Rock, AR 72206	300
Fort Smith Plating Co., 4302 Wheeler Ave. Fort Smith AR 72901	80
Fred Stewart Co., 429 South Zero, Fort Smith, AR 72901	204
Frost-Whitsd Co., Inc., P.O. Box 37150, Shreveport, LA 71103	16
Goodwin Plumbing Co., 8009 Texas Road, Fort Smith, AR 72903	31
Greene Valley Farms, P.O. Box 4517 Asher Station, Little Rock, AR 72214	48
Griffin-Liegett Funeral, 5800 West 12th St., Little Rock, AR 72204	35
H & R Oil Co., 204 N. Walcott St., Jefferson, TX 75657	345
Halliburton Co., P.O. Box 5335, Bossier City, LA 71111	485
Highway Dumphaulers, P.O. Box 3164, Little Rock, AR 72203	430
Holco Oil Co., 1010 Horton Street, Minder, LA 71055	86
Hurns Superior, 1011 East 30th St., Little Rock, AR 72206	30
Hyde Naphtha Co., P.O. Box 837, Marshall, TX 75670	65
Industrial Supply Inc., 1509 Rebsamen Park Rd., Little Rock, AR 72203	34
Industrial Towal, P.O. Box 1650, Little Rock, AR 72203	94
Inglis Construction Co., Rt. 3 Box 327-A, Little Rock, AR 72205	172
Irish Pipe Coatings Co., P.O. Box 18000, Shreveport, LA 71136	44
James A. Culberson, Rt. 2 Box 195-FF, Alexander, AR 72202	58
James C. Thompson, Rt. 2 Box 266 E. Alexander, AR 72292	24
J.O. Goff Plumbing, 4228 East 43rd St., North Little Rock, AR 72117	152
J.C. Penney Co., P.O. Box 2405, 9th Floor, Dallas, TX 75221	800
J.K. Hill, P.O. Box 398, Ringgold, LA 71068	29
Jones Rigging, P.O. Box 3289, North Little Rock, AR 72103	270
J.S. Robinson, P.O. Box 59, Bethany, LA 71007	509
Kennedy Sheet Metal, P.O. Box 6070 Sherwood Sta., North Little Rock, AR 72116	46
King & Pilgrim, P.O. Box 679, Pittsburg, TX	317
La. Dept. of Highways, P.O. Box 38, Shreveport, LA 71161	27
L.O. Culverhouse, Route 1 Box 5, Sibley, LA 71073	436
Leser Burst Nursey, 7820 Cantrell Road, Little Rock, AR 72207	18
Libbey Glass Co., P.O. Box 30012, Shreveport, LA 71130	112
Lipton Oil Co., 200 South Martin, Warren, AR 71671	126
Little Rock Asphalt, 3821 Mablevale Pike, Little Rock, AR 72202	425
Little Rock Crate & Basket, 1623 East 14th St., Little Rock, AR 72202	15
L-L-L-L Construction Co., 1057 Kent Rd., Shreveport, LA 71107	48
Loy S. Hathaway, Boles Route, Waldron, AR 72958	96
Luekers Wholesale Oil, P.O. Box 384, Waskom, TX 75692	738
Lund Oxygen Co., P.O. Box 3725, Shreveport, LA 71103	17
M & M Motor Co. Auto Service, 4731 N. Lakeshore Drive, Shreveport, LA 71103	24
M & S Lumber Co., 208 S. Bell, Ozark, AR 72949	270
Machen Construction, P.O. Box 6118, South Station, Little Rock, AR 72206	678
Marion Young Rental, 6 Holly Hill, Little Rock, AR 72204	57
Martin & Son, P.O. Box 42, Winnsboro, TX 75494	738
Matson Construction Co., P.O. Box 2557, Little Rock, AR 72203	182
Matthews Oil Co., Inc., P.O. Box 4045, Shreveport, LA 71104	117
May Oil Co., Route 1 Box 84, North Little Rock, AR 72217	231
Mechanical Services, Route 3 Box 1510, Plain Dealing, LA 71064	393
Mediock Produce Co., Route 1, Van Buren, AR 72956	708
M. E. Easley, Route 2, Plain Dealing, LA 71064	24
Methodist Children's Home, P.O. Box 4125, Little Rock, AR 72214	22
Metro Waste Co., P.O. Box 9156, Little Rock, AR 72219	151
Midwest Casting Corp., P.O. Box 206, Mabelvale, AR 72103	30
Miller Drilling Co., Route 5 Box 450, Fort Smith, AR 72901	102
Mitchell Machinery, P.O. Box 15248, Little Rock, AR 72231	38
Mobil Oil Corp., P.O. Box W, Ada, OK 74820	40
Moody Equipment Co., P.O. Box 334, Little Rock, AR 72203	192
Murphy Oil USA, Inc., 200 Peach Street, Eldorado, AR 71730	309
NLR Soft Water Inc., 131 Military Road, North Little Rock, AR 72115	84
North Little Rock Water Dept., P.O. Box 796, North Little Rock, AR 72115	35
Norwell Equipment, P.O. Box 37210, Shreveport, LA 71103	33
Parker Solvents Co., P.O. Box 271, Fort Smith AR 72902	75
P.E. Burton, Route 3 Box 994, Minden, LA 71055	23
Pentzien, Inc., Frazier Pke., Little Rock, AR	430
Percy Mingo, 4109 Hollywood Ave., Shreveport, LA 71109	399
Perkins Automatic Sprinkler Co., 1021 Jessie Rd., Little Rock, AR	136
Petroleum Distributing Co., P.O. Box 203, Houston, TX 77001	493
Petroleum Sales Co., Inc., 817 West First St., Bossier City, LA 71010	783
Pickens-Bond Construction, Gazette Building, Little Rock, AR 72201	144
P.M. Oil Co., P.O. Box 639, Prescott, AR 71857	639
Porky Davis General Tire, P.O. Box 1147, Little Rock, AR 72203	94
Pulaski Academy, 12701 Hinson Road, Little Rock, AR 72207	80
Pulaski Country Arkansas, Thirty Second & Brown St., Little Rock, AR 72205	36
Ralph A. Hill, 200 Hill Road, Bryant, AR 72022	33
Razorback Ready Mix, 6421 New Benton Hwy., Little Rock, AR 72204	391
Richards Cycle Shop, 6600 South University, Little Rock, AR 72204	37
Richards Machinery & Supply Co., 5400 Interstate, Shreveport, LA 71103	23
Rushing & Mason Equipment Co., Inc., 7675 West 70th St., Shreveport, LA 71129	33
SAIA Motor Freight Line, Inc., P.O. Box 7643, Shreveport, LA 71137-7643	534
Saunders Leasing Systems, Inc., 1860 King's Hwy., Shreveport, LA 71103	5,789
Savacool & Roberts, Rt. 4 Box 134, Minden, LA 71055	265
Scott Plumbing Co., 1604 Splawn, North Little Rock, AR 72118	58
Sebastian County Road Dept., P.O. Box 368, Greenwood, AR 72936	463
Service Truck Lines, Inc., P.O. Box 3904, Shreveport, LA 71103	36
Shreveport Oil Co., P.O. Box 8432, Shreveport, LA 71108	2,071
Shreveport Packing Co., 1801 Kings Hwy., Shreveport, LA 71103	16
Smith Chevrolet-Cadillac, P.O. Box 3089, Fort Smith, AR 72913	215
Smith Oil & Tire Co., P.O. Box 7905, Shreveport, LA 71107	935
Southland Corp., P.O. Box 4008, Shreveport, LA 71104	206
Springer Painting Co., P.O. Box 4128, Little Rock, AR 72214	35
Stephens, Inc., P.O. Box 5911, Shreveport, LA 71105	18
Stephen's Production Co., Box 2407, Fort Smith, AR 72903	1,601
T.A.W., Inc., P.O. Box 761, Lindsay OK 73052	71
T.B. Mercer Trucking Co., P.O. Box 1809, Fort Worth, TX 76101	27
The Texas & Pacific Ry. Co., 712 Missouri Pacific Bldg., St. Louis, Missouri 63103	21
Thompson-Hayward Chemical Co., 3100 West 65th, Little Rock, AR 72206	93
Tiger Mart, Inc., P.O. Box 76, Keithville, LA 71047	549
T.J. Myers Excavating, 16301 Raines Road, Little Rock, AR 72210	81
T.J. Smith Box Co., P.O. Box 1643, Fort Smith, AR 72902	25
Toll Manufacturing, 7400 West 12th St. Lower Level, Little Rock, AR 72204	146
Tom Jones Construction, #1 Circle Drive, Benton, AR 72015	39
TPI City Construction, 3001 East 63rd St., Kansas City, MO 64132	692
Twin City Ready Mix, P.O. Box 9829, Little Rock, AR 72219	233
United Fence Co., P.O. Box 4161, Fort Smith, AR 72901	106
Waskom Oil Co., P.O. Box 146, Waskom, TX 75692	1,463
Welders Supply Co., 800 E. Roosevelt Rd., Little Rock, AR	221
Wheeling Pipeline, Inc., Industrial Loop, Shreveport LA 71107	126
Wilbanks Co. Inc., P.O. Box 5417, Bossier City, LA 71111	41
Wilkerson Diesel Service, P.O. Box 219, North Little Rock, AR 72115	115
Woodline, Inc., P.O. Box 1047, Russellville, AR 72801	46
W.R. Stephens Farm, 114 East Capitol, Little Rock, AR 72201	89
W.R. Wrape Stone Co., P.O. Box 182, Little Rock, AR 72203	29
Bill Adamson	22
Brooks Oil Co.	141
Calley's Fina Service	51

Identified customers	Potential refund [1]
C.L. Brixie	25
Crop Service Co.	30
Felton Oil Co.	1,272
Fleetline, Inc.	59
Foster Oil Co.	319
Gass Service Co.	201
Glen Valt	59
Hazen Oil Co., Inc.	19
Herman Douglas	176
J.I. Spainhour	324
Lee Phillips	34
Leo Mathis Co.	24
Little Rock Airmative, Inc.	37
Mc Farlands Welding Service	148
Mid. South Utility Contractor	72
M.L. Parsons	231
Monard Harrison	2,828
Ozark Material Co.	194
Page Oil Co.	96
Pic-Walsh Freight Co.	188
Pilgrim Inc.	62
Rison Butane Co.	207
R.L. Johnson	250
Roberds & Merrill	60
Robert M Goff Co.	28
Surface Combustion	66
TGW Developers	179
Tom Burgess	29
Troy Burns	47
U.S. Plywood Co.	56
W.D. Sanscoot	84
Customers with Potential Refund Claims of less than $15 (146)	[2]532
Unidentified Customers of Company-Owned Service Stations	371

[1] All dollar amounts are exclusive of interest, and are rounded to the nearest dollar.
[2] In the absence of other evidence, these customers would not be eligible for refunds under the procedures proposed in the attached Proposed Decision because their potential refund claims are below the minimum refund amount of $15.

[FR Doc. 85-13000 Filed 5-29-85; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of April 15 Through April 26, 1985

During the period of April 15 through April 26, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order 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.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 20, 1985.

Proposed Decision and Order

Application for Exception

Department of the Interior/Navajo, Washington, D.C.; HEE-0083

The Department of the Interior filed an Application for Exception which sought retroactive relief from certain provisions of 10 CFR 212.131 and related regulations governing the timing and form of crude oil certifications in connection with Interior's sales of federal royalty oil to Navajo Refinery, Inc. On April 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

[FR Doc. 85-12999 Filed 5-29-85; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2843-7]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1984

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1984. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the seventh EPA subject index and lists only the decisions for the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086-95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812-18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770-74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476-80 (June 8, 1981) the index of 1981 and 1982 determinations published at 49 FR 36004 (September 13, 1984) and the index of 1983 decisions published at 50 FR 4148 (January 29, 1985).

The index lists 57 appeal determinations and 8 reconsideration request determinations issued by the EPA Regional Administrators in 1984.

The determinations are cited informally with the names of the assistance recipients and protestors shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for that year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region ____, date of determination) (Protest of _____).

The index is organized differently than those previously published. Rather than digesting all issues under one alphabetical listing, the issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals"; substantive procurement issues are listed by subject under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

FOR FURTHER INFORMATION CONTACT: J. Kent Holland Jr., Esquire; Grants, Contracts, and General Law Division (LE-132-G), Office of General Counsel, United States Environmental Protection Agency, Washington, D.C. 20460; (202) 382-5313.

Dated: May 21, 1985.

Gerald H. Yamada,

Acting General Counsel (LE-130).

Protest Appeals

Burden of proof

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Cons. Co.*) (grantee burden where proposes to award to other than low bidder).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84)

(*Premier Electrical Const. Co.*) (protester's burden where award to apparent low bidder).

84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (protester must show specification unduly restricted it from competition).

84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (protester's burden to prove his competitor's equipment was not equal to brand name salient requirements).

84:37 Lewistown, MT (VIII, 9-27-84) (*Process Equipment Co.*) (protester's burden where challenges application of specification).

84:47 Reelfoot Lake, TN (IV, 11-6-84) (*Carlon, Inc.*) (shifting burden where unduly restrictive specifications alleged).

Exhaustion of Administrative Remedy

84:29 City of New York, NY (II, 8-15-84) (*Terminal Const. Corp., and Fairfield Service Company*) (appeal dismissed where letter to grantee did not invoke protest procedures).

84:38 Town of Westborough, MA (10-2-84) (*Lynch, et al.*) (letter advising grantee of contemplated legal action does not constitute valid protest).

Jurisdiction

84:02 City of Bemidji, MN (V, 1-18-84) (*Fiber-Dyne, Inc.*) (supplier substitution by contractor is not protestable as a grantee procurement action).

84:08 Western Carolina Regional Sewer Authority, Greenvill, SC [Reconsideration] (IV, 6-18-85) (*Ashbrook-Simon-Hartley*) (bid protest not proper forum for disputing eligibility of costs).

84:09 City of Los Cruches, NM (VI, 2-27-84) (*Mass Transfer, Inc.*) (equipment exclusion by basic design decision, not protestable).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (allegation that bidder cannot satisfy specification is responsiblity/contract administration matter and not protestable).

84:38 Town of Westborough, MA (I, 10-2-84) (*Lynch, et al.*) (refusal of grantee to require subcontractor substitution is not protestable by subcontractor).

Procedure

84:09 City of Los Cruches, NM [Reconsideration] (VI, 2-27-84) (*Mass Transfer, Inc.*) (accepting evidence on appeal unnecessary where facts not relevant to issues in bid protest).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL [Reconsideration] (V, 4-12-84) (*Premier Electrical Const. Co.*) (if protester challenges specifications, it must submit copy with appeal).

84:22 Mercer County, NW (II, 5-7-84) (*RDP Company*) (protest determination by consulting engineer appropriate where acting as grantee's agent) (appeal defective for failure to include copy of grantee's determination).

84:24 City of Leominster, MA (I, 6-11-84) (*P. Gioioso & Sons, Inc.*) (additional grantee rationale for rejecting all bids cannot be relied upon on appeal).

84:26 Riverton, WY (VIII, 7-13-84) (*Martel Const. Co., Inc.*) (appeal filed before improper EPA official may be considered).

84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (under Part 33 regulations grantee not required to afford protester a conference hearing).

84:38 Town of Westborough, MA (I, 10-2-84) (*Lynch, et al.*) (appeal dismissed for failure to file initial protest).

84:39 Town of Thompson WTF Kiamesha Lake Sewer Dist. [Reconsideration] (II, 11-1-84) (*Ultraviolet Purification System, Inc.*) (appeal dismissed for failure to include copy of grantee decision and state what regulations were violated).

84:49 Richgrove, CA (IX, 11-8-84) (*El Camino Const. Co.*) (filing appeal with State agency does not constitute valid appeal to EPA).

84:52 Possum Valley, PA (III, 11-9-84) (*U-Max Engineering & Const. Corp.*) (appeal dismissed for failure of bidder to file proper initial protest).

84:55 City of Fort Lauderdale, FL (IV, 12-27-84) (*Gray Engineering Group, Inc.*) (where appeal dismissed on purely procedural grounds, briefs and arguments on the substance need not be permitted).

Rational Basis Test

84:02 City of Bemidji, NM (VV, 1-18-84) (*Fiber-Dyne, Inc.*) (grantee determination not reversed unless clear error or lacks reasonable basis).

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Moggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (EPA review of appeal not limited to arguments presented to grantee).

84:30 County of Erie, NY (II, 8-16-84) (*Amodori Const. Co.*) (rigid enforcement of words over numerals reconciliation clause lacked rational basis).

84:31 Trumbull County, OH (V, 8-24-84) (*R & K Constructors, Inc.,*) (deference to grantee determination that bidder is not responsible based on poor past performance).

84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (deference to affirmative determination of responsibility based on technical evaluation).

84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (deference to technical decisions of grantee).

84:40 City of Lancaster, PA (III, 10-16-84) (*Parkson Corp.*) (bid rejected for performance reasons).

Reconsideration

84:08 Western Carolina Regional Sewer Authority, Greenville, SC [Reconsideration] (IV, 2-17-84) (*Ashbrook-Simon-Hartley*) (*summarily dismissed for lack of evidence of EPA mistake*).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL [Reconsideration] (V, 1-3-84) (*Premier Electrical Const. Co.*) (EPA discretion—will review only where determination clearly erroneous) (determination affirmed on merits).

84:11 City of New York, NY [Reconsideration] (II, 3-5-84) (*Bristol Babcock, Inc.*) (determination affirmed after reconsideration granted to consider merits).

84:26 Riverton, WY [Reconsideration] (VIII, 7-13-84) (*Martel Const. Co., Inc.*) (discretionary review to be exercised in limited situations) (time limitation for filing appeal applies to filing reconsideration requests. Request denied because filed 21 days after decision issued).

84:32 Bayshore Regional Sewerage Authority, NJ [Reconsideration] (II, 11-1-84) (*RAM Engineering, Inc.*) (affirmed for difference reasons).

84:39 Town of Thompson WTF Kiamesha Lake Sewer Dist. [Reconsideration] (II, 10-16-85) (*Ultraviolet Purification System Inc.*) (denied reconsideration of merits because of other procedural deficiencies in protest).

84:54 Summit County, OH [Reconsideration] (V, 12-26-84) (*Manitech, Inc.*) (request denied when beyond 7 days after receipt of appeal determination).

84:55 City of Fort Lauderdale, FL [Reconsideration] (IV, 12–27–84) (*Gray Engineering Group, Inc.*) (summarily dismissed where no clear error of fact or law demonstrated and protester's chief complaint was that EPA did not permit him to argue the substance of this complaint where it was untimely).

Regulations

84:09 City of Los Cruches, NM (VI, 2–27–84) (*Mass Transfer, Inc.*) (Part 33 not substantive change from Part 35).

84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3–28–84) (*Catamount Const., Inc.*) (Part 35 procurement principles apply in Part 33 regulations and determinations under Part 35 may be relied upon as precedent).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4–12–84) (*Peabody N.E., Inc.*) (regulation on listing requirement changed but basic principles of Part 35 apply in Part 33).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Ecosystems, Inc.*) (where prequalification information package and rejection letter erroneously cited Part 35 instead of proper Part 33, no prejudice caused by deciding protest under Part 33).

84:27 Metropolitan Sewer Dist., Cinncinnati, OH (V, 7–16–84) (*Parkson Corp.*) (Part 35 improperly relied upon in a Part 33 protest involving a specific regulation).

84:28 Libby, MT (VIII, 8–9–84) (*Transamerican Contractors, Inc.*) (Part 33 regulations incorporated in specifications—grantee decided protest under Part 35—EPA decided appeal using Part 33 reaching some result).

Remand to Grantee

84:28 Libby, MT (VIII, 8–9–84) (*Transamerican Contractors, Inc.*) (on remand grantee given option of awarding contract to low responsive bidder or due to seasonal delay and need for additional grant funds City may consider rejecting all bids).

Standing

84:02 City of Bemidji, MN (V, 1–18–84) (*Fiber-Dyne, Inc.*) (supplier lacks standing to protest his substitution by contractor).

84:11 City of New York, NY (II, 3–5–84) (*Bristol Babcock, Inc.*) (supplier has no standing to protest improper bid evaluation).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Ecosystems, Inc.*) (because supplier did not dispute A/E's technical reasons for rejecting equipment, EPA relied on A/E judgment).

84:20 City of Decorah, IA (VII, 5–1–84) (*Humboldt Wedag*) (supplier lacks standing to challenge evaluation of prequalification submittal).

84:29 City of New York, NY (II, 8–15–84) (*Terminal Const. Corp., and Fairfield Service Co.*) (prime contractor lacks standing to protest grantee rejection of specific equipment offered after contract award) (subcontractor may protest City's negative responsibility determination) (experience and bonding requirement also at issue).

84:32 Bayshore Regional Sewerage Authority, NJ (II, 8–30–84) (*RAM Engineering, Inc.*) (subcontractor cannot protest rejection by prime contractors caused by their inability to evaluate his last minute proposals).

84:32 Bayshore Regional Sewerage Authority, NJ [Reconsideration] (II, 11–1–84) (*RAM Engineering, Inc.*) (supplier has standing to protest bonding requirements but lacks standing here because he did not submit bid to prime early enough to be considered by prime).

84:38 Town of Westborough, MA (I, 10–2–84) (*Lynch, et al.*) (subcontractor lacks standing to protest grantee's refusal to substitute).

84:41 City of Lancaster, PA (III, 10–16–84) (*Wyatt Const. Inc.*) (subconstractor was permitted to protest MBE compliance of a prime bidder).

84:44 Pepper's Ferry, VA (III, 10–29–84) (*RDP Co.*) (supplier protest of bonding requirement dismissed as untimely).

Sua Sponte Review

84:14 City of Texarkana, TX (VI, 4–5–84) (*Euramca Ecosystems, Inc.*) (sua sponte review denied where no threshold level of showing abuse in procurement).

84:26 Riverton, WY (VIII, 7–13–84) (*Martel Const. Co., Inc.*) (appeal filed before improper EPA official considered because of nature of issues raised).

84:27 Metropolitan Sewer Dist., Cincinnatic, OH (V, 7–16–84) (*Parkson Corp.*) (restricted to protests containing clear evidence that competition unduly impaired) (not available to protester upon request).

Summary Disposition

84:22 Mercer County, NW (II, 5–7–84) (*RDP Co.*) (untimely appeal).

84:24 City of Leominister, MA (I, 6–11–84) (*P. Gioloso & Sons, Inc.*) (untimely appeal).

84:29 City of New York, NY (II, 8–15–84) (*Terminal Const. Corp., and Fairfield Service Co.*) (failure to exhaust administrative remedy and lack of merit).

84:33 Muncie, IN (V, 8–30–84) (*Shambaugh & Son, Inc.*) (failure to submit anything after initial telegraphic notice).

84:37 Lewistown, MT (VII, 9–27–84) (*Process Equipment Co.*) (failure to file initial protest).

84:52 Possum Valley, PA (III, 11–9–84) (*U-Max Engineering & Const. Corp.*) (failure to file initial protest).

84:55 City of Fort Lauderdale, FL (IV, 12–27–84) (*Gray Engineering Group, Ind.*) (request for reconsideration).

Time Limitations

84:14 City of Texarkana, TX (VI, 4–5–84) (*Euramca Ecosystems, Inc.*) (appeal dismissed as untimely).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Ecosystems, Inc.*) (protest dismissed because received one day late. Copy received by A/E did not constitute grantee receipt).

84:19 Clinton County, NY (II, 4–30–84) (*Compost Systems Co.*) (specifications restrictive on their face must be protested before bid opening).

84:22 Mercer County, NW (II, 5–7–84) (*RDP Co.*) (appeal received on eighth day dismissed as untimely).

84:25 City of Revere, MA (I, 6–13–84) (*Polymer Chemicals, Inc.*) (appeal received on eleventh day is untimely).

84:26 Riverton, WY (VIII, 7–13–84) (*Martel Const. Co., Inc.*) (protest appeal alleging impropriety in solicitation dismissed where not filed before bid opening).

84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7–16–84) (*Parkson Corp.*) (dismissal where protest of restrictive specifications filed after bid opening).

84:31 Trumbull County, OH (V, 8–24–84) (*R & K Constructors, Inc.*) (dismissed appeal filed 10 days after receipt of granted decision).

84:33 Muncie, IN (V, 8–30–85) (*Shambaugh & Son, Inc.*) (failure to submit anything after initial telegraphic notice).

84:34 Glens Falls, NY (II, 8–30–84) (*Dorr-Oliver, Inc.*) (dismissed

appeal received 11 days after receipt of grantee decision).

84:37 Lewistown, MT (VIII, 9–27–84) (*Process Equipment Co.*) (must protest prequalification rejection prior to bid opening).

84:39 Town if Thompson WTF Kiamesha Lake Sewer Dist. (II, 10–16–84) (*Ultraviolet Purification System Inc.*) (dismissed appeal receive 11 days after receipt of grantee decision).

84:41 City of Lancaster, PA (III, 10–16–84) (*Wyatt Const. Inc.*) (initial protest filed untimely).

84:44 Pepper's Ferry, VA (III, 10–29–84) (*RDP Co.*) (must protest specifications containing alleged unduly restrictive experience and bonding requirements before bid opening).

84:48 Indianapolis, IN (V, 11–7–84) (*Bechtel Const. Corp.*) (protest of specification that required contract clause inconsistent with EPA model clause dismissed because protest was after bid was rejected).

84:49 Richgrove, CA (IX, 11–8–84) (*El Camino Const. Co.*) (dismissed appeal filed with State agency and not received by EPA until 18 days after receipt of grantee decision).

84:51 City of New York, NY (II, 11–8–84) (*Williams & Lane Energy Systems Corp.*) (dismissed where mailgram not supplemented within 7 days).

Procurement

Bids

A. Alternate

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2–6–84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (unsolicited responsive alternate bid must be accepted where bidder is bound upon its acceptance).

84:09 City of Los Cruches, NM (VI, 2–27–84) (*Mass Transfer, Inc.*) (alternative requiring substantial redesign of project is nonresponsive).

84:17 Fresno County, CA (IX, 4–20–84) (*Valley Engineers, Inc. and McGuire & Hester*) (IFB forbade bidders having an interest in more than one bid for same work—protester filed one bid as individual and one as part of joint venture).

84:35 Portage Sanitary Bd., Portage, IN (V, 8–31–84) (*Gariup Const. Con. Inc.*) (unsolicited voluntary alternate does not affect responsiveness of bid).

B. *Ambiguity*

84:27 Metropolitan Sewer Dist., Cinicnnati, OH (V, 7–16–84) (*Parkson Corp.*) (ambiguity as to whether price is unit or total requires rejection of bid).

84:43 Chippewa Township, PA (III, 10–24–84) (*Modany Bros., Inc.*) (unresolved discrepancy in bid amount due to mistake caused bid to be nonresponsive).

C. Evaluation

84:03 Town of Williston, VT (I, 1–25–84) (*Cooely Corp.*) (reasonableness of responsive bid evaluated using non-responsive bids).

84:12 Town of Grantsville, MD (III, 3–20–84) (*Mattingly Const., Inc.*) (cannot ignore price limitation established by specification but not contained in IFB).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4–12–84) (*Peabody N.E., Inc.*) (energy consumption figures provided in bid do not justify grantee inferring that bidder selected a specific supplier) (material ambiguities required cancelling solicitation).

84:17 Fresno County, CA (IX, 4–20–84) (*Valley Engineers, Inc. and McGuire & Hester*) (grantee could consider bid on combined work of collection system and treatment plant as severable bids on separate parts) (cannot accept bid from bidder who contrary to IFB had an interest in more than one bid).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Escosystems, Inc.*) (because supplier did not dispute A/E's equipment evaluation, EPA relied on A/E judgment).

84:20 City of Decorah, IA (VII, 5–1–84) (*Humboldt Wedog*) (supplier lacks standing to protest engineer's evaluation of prequalification submittal).

84:21 Ardmore, OK (VI, 5–4–84) (*LYCO and Walker Process Corp.*) (must not enforce specifications selectively on different bidders).

84:17 City of Leonminister, MA (I, 6–11–84) (*R. Gioioso & Sons, Inc.*) (nonresponsive bids may be used in evaluating reasonableness of the only responsive bid).

84:34 Glens Falls, NY (II, 8–30–84) (*Dorr-Oliver, Inc.*) (communications between grantee and bidder after bid opening relating to responsibility are permissible).

84:36 Austin, TX (VI, 9–6–84) (*Olson Const., Inc.*) (base bid evaluation with adjustments for equipment substitutions).

84:40 City of Lancaster, PA (III, 10–16–84) (*Parkson Corp.*) (engineer had rational performance reasons for rejecting equipment offered).

D. Irregularities

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2–6–84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (minor irregularities must be waived).

E. Late

84:57 Neenah-Menasha Sewerage Commission (V, 12–31–84) (*Flour Bros. Const. Co.*) (time for submitting bids may not be extended after deadline has passed) (failure to submit bid on time may not be waived by grantee).

F. Mistake

84:26 Riverton, WY (VIII, 7–13–84) (*Martel Construction Co., Inc.*) (where numerical bid differed from words, grantee properly permitted correction to intended bid without regard to reconciliation clause) (bid remained low even after correction).

84:26 Riverton, WY [Reconsideration] (VIII, 7–13–84) (*Martel Construction Co., Inc.*) (because there was no bid displacement, information outside the bid could be considered).

84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7–16–84) (*Parkson Corp.*) (extension price listed in unit price space causes ambiguity in bid price requires rejection rather than correction).

84:30 County of Erie, NY (II, 8–16–84) (*Amadori Const. Co.*) (words over numerals reconciliation clause cannot be applied to conflict with bidders clear intent).

84:43 Chippewa Township, PA (III, 10–24–84) (*Modany Bros., Inc.*) (where bid contained discrepancy in lump sum and unit price and bidder requested his bid be withdrawn or that he be awarded the contract at the higher amount, the bid was nonresponsive due to ambiguity).

84:56 City of Fort Lauderdale, FL (IV, 12–27–84) (*Gray Engineering Group, Inc.*) (where difference between unit lump sum price and bidder acknowledges he intended the higher lump sum amount he cannot elect to take the contract at the lower mistaken amount).

G. Qualified

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2–6–84) (*A.J. Maggio Co.; Dresser Ind., and Klein Const. Co.*) (bid calling itself

"voluntary alternate if acceptable" is not qualified or ambiguous).

H. Seal

84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractor, Inc.*) (defects, seal and attestation relate to authority of agent which may be established after bid opening).

I. Severable

84:17 Fresno County, CA (IX, 4-20-84) (*Valley Engineers, Inc. and McGuire & Hester*) (bid on combined collection system/ treatment plant severable into bids on separate parts).

J. Signature

84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (defects in signature, seal and attestation relate to authority of agent which may be established after bid opening).

Bonds

84:03 Town of Williston, VT (I, 1-25-84) (*Cooley Corp.*) (failure to include bid bond with bid is nonresponsive) (bid bond with no stated penal sum is nonresponsive).

84:06 City of Toronto, OH (IV, 2-2-84) (*J.L. Cavanaugh Co., Inc.*) (subcontractor's warranty may be furnished post-bid opening absent subcontractor listing requirement).

84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc., H.A. Harris Co.*) (bid guarantee not furnished with bid in proper form and amount renders bid nonresponsive).

84:19 Clinton County, NY (II, 4-30-84) (*Compost Systems Co.*) (requiring performance guarantee for liquidated damages in amount of bid price is not undue restriction on competition).

84:32 Bayshore Regional Sewerage Authority, NJ (II, 8-30-84) (*RAM Engineering, Inc.*) (five year performance bond in lieu of five year experience is not unduly restrictive where such bond is available at reasonable price).

82:44 Pepper's Ferry, VA (III, 10-29-84) (*RDP Co.*) (subcontractor protest of bonding requirement dismissed as untimely).

Competition

84:21 Ardmore, OK (VI, 5-4-84) (*LYCO and Walker Process Corp.*) (to obtain maximum open free competition specification must be performance based when possible).

Engineering Judgment

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (technical feasibility of equipment offered).

84:08 Western Carolina Regional Sewer Authority, Greenville, SC (IV, 2-17-84) (*Ashbrook-Simon-Hartley*) (EPA compares engineer's minimum performance requirements with his reasons for rejecting supplier).

84:18 Town of Milford, MA (I, 4-20-84) (*Euramca Ecosystems, Inc.*) (rational basis for denying prequalification of a proposal not meeting specifications).

Experience Requirements

84:29 City of New York, NY (II, 8-15-84) (*Terminal Const. Corp., and Fairfield Service Co.*) (bond permits flexibility in accepting manufacturer with less experience but does not require grantee to accept unproven designs and untested equipment).

84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (matter of responsibility not responsiveness) (affirmative determination that bidder has sufficient experience based on its principal officer's experience from former working with a competitor).

Invitation for Bid (IFB)

A. Ambiguity

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (non prejudicial ambiguity in specification as to how post-bid opening submittal considered in determining responsibility).

84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (IFB not clear and unequivocal as to equipment listing requirement) (two prong test considers all bid documents).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (material ambiguities as to bid evaluation and what constitute responsiveness potentially affected competition and required cancelling solicitation).

84:24 City of Leominister, MA (I, 6-11-84) (*P. Gioioso & Sons, Inc.*) (potential ambiguity not shown to have affected competition does not justify rejecting all bids).

84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (listing requirement was responsibility matter due to ambiguity inspite of grantee intent).

License

84:53 MSD of Greater Chicago, IL (V, 12-13-84) (*Moretrench American Corp.*) (obtaining license is responsibility matter permitting award of contract before license obtained).

Listing Requirement

84:01 Gwynns Falls, MD (III, 1-13-84) (*Joseph L. Cardinale & Sons, Inc.*) (bid responsive where MBE goal not satisfied by subcontractor).

84:06 City of Toronto, OH (IV, 2-2-84) (*J.L. Cavanaugh Co., Inc.*) (not responsiveness matter where specification not intended to prevent bid shopping).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (failure to submit letter of intent to MBE subcontractor is not responsiveness matter absent clear IFB).

84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (equipment listing not matter of responsiveness absent clear IFB).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (listing supplier is responsibility matter absent clear IFB).

84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (listing of manufacturers is responsibility matter where IFB is ambiguous).

Minority and Women's Business Enterprise (MBE/WBE)

84:01 Gwynns Falls, MD (III, 1-13-84) (*Joseph L. Cardinale & Sons, Inc.*) (bid responsible though failed to meet MBE requirements within 10 days as required by IFB).

84:06 City of Toronto, OH (IV, 2-2-84) (*J.L. Cavanaugh Co., Inc.*) (ambiguity in specifications as to time for meeting MBE goal renders listing requirement matter of responsibility) (unconditional certification to comply with MBE subcontracting makes bid responsive even though all MBE forms not completed).

84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc, H.A. Harris Co.*) (where bidder required to list and use certified MBEs bid was responsive though MBE's not certified until after bid opening).

84:41 City of Lancaster, PA (III, 10-16-84) (*Wyatt Const. Inc.*) (grantee correctly determined bidder made

good faith efforts) (good faith effort does not require bidder to negotiate with subcontract offer or).

84:42 St. Paul MWCC, MN (V, 10–18–84) (*Hoffman Electric Co.*) (grantee may make compliance with MBE requirements a matter of responsiveness but did not do so).

84:45 Arvin County, CA (IX, 11–2–84) (*Blois Const., Inc.*) (not matter of responsiveness where IFB did not clearly so state).

84:49 Richgrove, CA (IX, 11–8–84) (*El Camino Const. Co.*) (matters of responsibility where although IFB though attempted to make it responsiveness requirement did not clearly do so).

84:50 Richgrove, CA (IX, 11–8–84) (*W.M. Lyles Co.*) (matters of responsibility where although IFB attempted to make it responsiveness requirement did not clearly do so).

Prequalification

84:04 Livingston Parish, LA (VI, 1–27–84) (*Parson & Sanderson, Inc.*) (must result in final evaluation of equipment before bid opening).

84:16 Back River Waste Water Treatment Plant, MD (III, 4–17–84) (*James A. Federline, Inc., H.A. Harris Co.*) (financial prequalification is responsibility matter grantee must consider all available information up until contract award).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Ecosystems, Inc.*) (proposal rationally rejected where its specifications did not comply with prequalification information package).

84:36 Austin, TX (VI, 9–6–84) (*Olson Const., Inc.*) (failure to list pre-approved manufacturer did not render bid non-responsive where manufacturer satisfied specifications) (lengthly discussion of theory of prequalification).

84:37 Lewistown, MT (VIII, 9–27–84) (*Process Equipment Co.*) (to successfully challenge rejection protester burden to show specification unduly restrictive or that equipment satisfied the specifications and rejection is unreasonable).

Rejection of All Bids

84:03 Town of Williston, VT (I, 1–25–84) (*Cooley Corp.*) (where only one bid was responsive grantee may reject all bids if price unreasonable).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4–12–84) (*Peabody N.E., Inc.*) (ambiguity in bid evaluation method and responsiveness affected competition).

84:24 City of Leominister, MA (I, 6–11–84) (*P. Gioioso & Sons, Inc.*) (grantee lacked good cause and was reversed by EPA) (potential ambiguity in specifications did not affect competition) (not *per se* justified because only one of several bidders was responsive).

Responsibility

84:01 Gwynns Falls, MD (III, 1–13–84) (*Joseph L. Cardinale & Sons, Inc.*) (MBE requirements).

84:06 City of Toronto, OH (IV, 2–2–84) (*J.L. Cavanaugh Co., Inc.*) (MBE requirements).

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2–6–84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (grantee broad discretion in making affirmative finding) (submittal of forms including percent of work force are responsibility matter absent clear IFB).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3–1–84) (*Premier Electrical Const. Co.*) (allegation that bidder cannot meet specification is responsibility/contract administration matter).

84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3–28–84) (*Catamount Const., Inc.*) (*Catamount Const., Inc.*) (where language in different parts of IFB/bid documents gives different meaning to listing requirement, it is responsibility matter).

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4–12–84) (*Peabody N.E., Inc.*) (where language requiring listing is clear in one part of IFB but different in another, it is matter of responsibility).

84:16 Back River Waste Water Treatment Plant, MD (III, 4–17–84) (*James A. Federline, Inc., H.A. Harris Co.*) (financial prequalification).

84:26 Riverton, WY (VIII, 7–13–84) (*Martel Const. Co., Inc.*) (where IFB did not make manufacturer's letter of approval a responsiveness matter, engineer may evaluate whether item offered meets projects needs) (descriptive literature requirement).

84:28 Libby, MT (VIII, 8–9–84) (*Transamerican Contractors, Inc.*) (proof of authority of agent submitting bid) (listing of manufacturers).

84:31 Trumbull County, OH (V, 8–24–84) (*R & K Constructors, Inc.*) (poor past performance is rational basis for grantee finding bidder nonresponsible) (grantee in best position to determine responsibility).

84:34 Glens Falls, NY (II, 8–30–84) (*Dorr-Oliver, Inc.*) (deference to affirmative finding of responsibility based on technical evaluation) (communications between grantee and bidder after bid opening concerning responsibility are permissible).

84:36 Austin, TX (VI, 9–6–84) (*Olson Const., Inc.*) (prime contractors rather than grantees usually determine subcontractor responsibility and in this IFB grantee did not reserve right to make determination).

84:42 St. Paul MWCC, MN (V, 10–18–84) (*Hoffman Electric Co.*) (deference to grantee determination that bidder was responsible based on good faith MBE effects).

84:45 Arvin County, CA (IX, 11–2–84) (*Blois Const., Inc*) (failure of bidder to submit MBE information within 10 days after bid opening did not cause it to be nonresponsible because responsibility can be demonstrated anytime before award).

84:49 Richgrove, CA (IX, 11–8–84) (*El Camino Const. Co.*) (MBE requirements not made responsiveness matters even though IFB attempted to do so).

84:50 Richgrove, CA (IX 11–8–84) (*W.M. Lyles Co.*) (MBE requirements not made responsiveness matter even though IFB attempted to do so).

Responsiveness

84:09 City of Los Cruches, NM (VI, 2–27–84) (*Mass Transfer, Inc.*) (bid offering item requiring substantial redesign of project is nonresponsive).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3–1–84) (*Premier Electrical Const. Co.*) (forms and certifications not affecting PQQD are not responsiveness matters absent clear IFB).

84:12 Town of Grantsville, MD (III, 3–20–84) (*Mattingly Const., Inc.*) (responsiveness must be determined at bid opening and cannot be waived by grantee permitting adjustment to comply with specifications).

84:16 Back River Waste Water Treatment Plant, MD (III, 4–17–84) (*James A. Federline, Inc., H.A. Harris Co.*) (bid promising to meet

grantee MBE goal is responsive though listed MBEs were not certified until after bid opening).

84:17 Fresno County, CA (IX, 4–20–84) (*Valley Engineers, Inc. and McGuire & Hester*) (where contrary to IFB, bidder submitted more than one bid for same work, sids were nonresponsive).

84:26 Riverton, WY (VIII, 7–13–84) (*Martel Const. Co., Inc.*) (where IFB did not clearly make manufacturer's approval letter a responsiveness item, engineer may evaluate whether proposal item meets needs).

84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7–16–84) (*Parkson Corp.*) (must satisfy not only performance specifications but all terms that could affect price, quantity, quality or delivery) (ambiguity as to whether price is unit or total requires rejection of bid).

84:34 Glens Falls, NY (II, 8–30–84) (*Dorr-Oliver, Inc.*) experience requirements related to responsibility rather than responsiveness).

84:35 Portage Sanitary Bd., Portage, IN (V, 8–31–84) (*Gariup Const. Co., Inc.*) (unsolicited voluntary alternate was not material irregularity).

84:42 St. Paul MWCC, MN (V, 10–18–84) (*Hoffman Electric Co.*) (failure to submit MBE data sheets did not make bid nonresponsive where IFB did not so specifically require).

84:43 Chippewa Township, PA (III, 10–24–84) (*Modany Bros., Inc.*) (bid with unresolved discrepancy in dollar amount is nonresponsive).

84:45 Arvin County, CA (IX, 11–2–84) (*Blois Const., Inc.*) (IFB requiring MBE info with bid did not make that requirement a responsiveness matter because it did not clearly state failure would cause rejection).

84:49 Richgrove, CA (IX, 11–8–84) (*El Camino Const. Co.*) (MBE requirements were not responsiveness matter where although IFB attempted to make it so, was not clear).

Specifications

A. Brand Name or Equal

84:04 Livingston Parish, LA (VI, 1–27–84) (*Parson & Sanderson, Inc.*) (specification defective because salient feature not present in named brand) (superior equipment differing in design from named features in nonresponsive—EPA required new specifications conforming to mininum needs).

84:35 Portage Sanitary Bd., Portage, IN (V, 8–31–84) (*Gariup Const. Co., Inc.*) (evaluation of "or equal" occurs after bid opening) (rejection of equipment on "or equal" basis must be for performance reasons not physical differences).

B. Competition

84:19 Clinton County, NY (II, 4–30–84) (*Compost Systems Co.*) (no undue restriction where supplier obligated by specifications for performance guarantee in amount of total bid price).

C. Design

84:21 Ardmore, OK (VI, 5–4–84) (*LYCO and Walker Process Corp.*) (in procuring off-the-shelf equipment, design specifications can only be used where specific features required for particular application) (design catalog specifications must be avoided if possible).

D. Local Preference

84:05 City of New York, NY (II, 2–2–84) (*Schiavone Const. Co. & Worth Engineering, Inc., A Joint Venture*) (requirement that corporation be 51% owned by licensed plumbers unduly restrictive).

E. Minimum Need

84:04 Livingston Parish, LA (VI, 1–27–84) (*Parson & Sanderson, Inc.*) (where equipment superior to design specifications satisfies minimum needs, specifications must be revised).

F. Nonrestrictive

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3–1–84) (*Premier Electrical Const. Co.*) (where protester alleges he can meet the specifications, he cannot challenge restrictions).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL [Reconsideration] (V, 3–1–84) (*Premier Electrical Const. Co.*) (if protester wants specifications reviewed by EPA it must submit them with appeal).

84:18 Town of Milford, MA (I, 4–20–84) (*Euramca Ecosystems, Inc.*) (performance based specifications not unduly restrictive where equipment offered would not fit in building).

84:19 Clinton County, NY (II, 4–30–84) (*Compost Systems Co.*) (requiring performance quarantee from supplier for liquidated damages in amount of its bid price is not unduly restrictive).

84:20 City of Decorah, IA (VII, 5–1–84) (*Humboldt Wedag*) (supplier cannot challenge specifications when he claims he can meet them) (high standard of proof where asserting restrictive application of specifications).

84:21 Ardmore, OK (VI, 5–4–84) (*LYCO and Walker Process Corp.*) (catalog design specification unduly restrictive) (performance specifications required).

84:23 Erie County, NY (II, 5–10–84) (*Vianini Pipe Inc.*) (where specifications using national standard for concrete pipe eliminated protester's method of processing it was not unduly restrictive because sufficient competition of suppliers meeting specifications).

84:46 Athens, AL (IV, 11–6–84) (*Polymer Chemical Corp.*) (sole source grout unduly restricted competition beyond the minimum needs of project).

84:47 Reelfoot Lake, TN (IV, 11–6–84) (*Carlon, Inc.*) (requiring specific PVC pipe exceeding minimum needs of project is unduly restrictive).

G. Performance Based

84:04 Livingston Parish, LA (VI, 1–27–84) (*Parson & Sanderson, Inc.*) (specification must be revised to remove unnecessary specified features of brand name).

84:08 Western Carolina Regional Sewer Authority, Greenville, SC (IV, 2–17–84) (*Ashbrook-Simon-Hartley*) (engineer to establish minimum performance specifications for equipment—purpose is to compare machine capability and not necessarily configuration).

84:21 Ardmore, OK (VI, 5–4–84) (*LYCO and Walker Process Corp.*) (equipment specifications must be performance based using qualitative terms rather than design specifications).

84:35 Portage Sanitary Bd., Portage, IN (V, 8–31–84) (*Gariup Const. Co., Inc.*) (rejection of equipment on "or equal" basis must be for performance reasons and not physical differences).

84:47 Reelfoot Lake, TN (IV, 11–6–84) (*Carlon, Inc.*) (engineer to establish minimum performance needs and write performance specifications to reflect minimum needs) (purpose of performance specifications is to compare operational levels of various equipment that may have different physical configurations).

H. Salient Requirements

84:27 Metropolitan Sewer Dist., Cincinncati, OH (V, 7–16–84) (*Parkson Corp.*) (where specification includes only technical and performance requirements and is not brand name or equal specification, all specifications are meaningful terms that must be met).

I. Sole Source

84:20 City of Decorah, IA (VII, 5–1–84) (*Humboldt Wedag*) (fact that only one source prequalified does not prove sole source violation).

84:46 Athens, AL (IV, 11–6–84) (*Polymer Chemical Corp.*) (specification describing grout made by sole source manufacturer is unduly restrictive even if it could be supplied by more than one supplier).

State and Local Law

84:05 City of New York, NY (II, 2–2–84) (*Schiavone Const. Co. & Worth Engineering, Inc., A Joint Venture*) (local law unduly restricting competition by creating local preference is unenforceable on EPA project).

84:30 County of Erie, NY (II, 8–16–84) (*Amadori Const. Co.*) (state law did not give grantee unlimited discretion in determining low bidder).

84:53 MSD of Greater Chicago, IL (V, 12–13–84) (*Moretrench American Corp.*) (deference to grantee interpretation of State licensing law).

Subcontract Award

84:02 City of Bemidji, MN (V, 1–18–84) (*Fiber-Dyne, Inc.*) (supplier substitution by contractor not protestable).

84:32 Bayshore Regional Sewerage Authority, NJ (II, 8–30–84) (*RAM Engineering, Inc.*) (subcontractor may not protest his rejection by prime contractors where proposal submitted too late to be evaluated).

84:36 Austin, TX (VI, 9–6–84) (*Olson Const., Inc.*) (subcontractor responsibility normally determined by prime contractor unless grantee reserves right to do so in IFB).

Waiver

84:01 Gwynns Falls, MD (III, 1–13–84) (*Joseph L. Cardinale & Sons, Inc.*) (bid in amount less than required) (late submittal of payment and performance bond).

84:03 Town of Williston, VT (I, 1–25–84) (*Cooley Corp.*) (failure to submit bid bond with bid is nonwaivable).

84:07 Metropolitan Sanitary Dist. of Greater Chicgo, IL (V, 2–6–84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (minor irregularities must be waived).

84:36 Austin, TX (VI, 9–6–84) (*Olson Const., Inc.*) (failure to bid on an alternate that was unnecessary for bid evaluation was minor informality).

84:56 City of Fort Lauderdale, FL (VI, 12–27–84) (*Gray Engineering Group, Inc.*) (bidder cannot waive right to have bid withdrawn where he admits mistake).

84:57 Neenah-Menasha Sewerage Commission (V, 12–31–84) (*Flour Bros. Const. Co.*) (failure to file bid on time may not be waived as minor irregularity).

[FR Doc. 85–12967 Filed 5–29–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP-50634; FRL 2806–7]

American Cyanamid Co. et al.; Issuance of Experimental Use Permits

Correction

In FR Doc. 85–7338 beginning on page 13281 in the issue of Wednesday, April 3, 1985, make the following corrections on page 13281 in the third column under **SUPPLEMENTARY INFORMATION:**

1. In the second paragraph, in the third line, "98540" should read "08540".

2. In the third paragraph, the fifth line should read: "2-[4-[(3-chloro-".

3. In the third paragraph, the telephone number in the last line should read "557–1830".

4. In the fourth paragraph, in the seventh line, "carious" should read "various".

BILLING CODE 1505-01-M

[OPTS-59711; FRL-2820-7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 85–9345 beginning on page 15632 in the issue of Friday, April 19, 1985, make the following corrections on page 15633:

1. In the first column, under **"Y 85–44 * * * *Chemical.*,** "polymaines" should read "polyamines".

2. In the second column, under the following headings: **Y 85–47, Y 85–48, Y 85–49, and Y 85–50 * * * *Chemical.***, "ranom" should read "random".

BILLING CODE 1505-01-M

[OPP-30000/46; FRL-2813-5]

Special Review of Certain Pesticide Products; Cyanazine

Correction

In FR Doc. 85–8335 beginning on page 14151 in the issue of Wednesday April 10, 1985, make the following corrections: On page 14151, in the second column under DATE, in the fifth and sixth line delete the words, **"Federal Register"**, as well as the period after 1985.

BILLING CODE 1505-01-M

[PF-406; FRL-2808-1]

Certain Companies; Pesticide Tolerance Petitions

Correction

In FR Doc. 85–7661 beginning on page 12868 in the issue of Monday, April 1, 1985, make the following correction:

On page 12869, first column, remove the fourth, fifth and sixth lines from the bottom, and insert: "methylethyl 2-[(ethoxy[(1-methylethyl)amino) phosphinoyl]oxy]benzoate, 1-methylethyl 2-[(ethoxy(1-amino) phosphinothioyl]oxy)benzoate".

BILLING CODE 1505-01-M

[OPTS-53070; FRL-2807-1]

Premanufacture Notices; Monthly Status Report for January 1985

Correction

In FR Doc. 85–7539 beginning on page 12631 in the issue of Friday, March 29, 1985, make the following corrections:

1. On page 12632, Table I, PMN No. P 85–406, fourth column, the "Expiration date" should read "April 16, 1985.".

2. On the same page, PMN Nos. P 85-419, P 85–420, P 85–421, and P 85–422, second column, "Acrylic" should read "Alkyd".

3. On the same page, PMN No. P 85–432, second column, "Polyster" should read "Polyester".

4. On the same page, PMN No. P 85–433, "3-mercapto" should read "3-mercapto-".

5. On the same page, PMN No. P 85–6, second column, "anhyfride" should read "anhydride".

6. On page 12634, Table III, PMN No. P 84–358, fourth column, the "Expiration date" should read "January 14, 1985.".

7. On the same page PMN No. P 84–1129, second column, "C_9–C_{11} should read "C_9–C_{11}".

8. On the same page, PMN No. P 84–1130, second column, "C_9–rich" should read "C_9–rich".

9. On the same page, PMN Nos. P 84–1189 and P 84–1190, third column, "(9–38–84)" should read "(9–28–84)".

10. On the same page, PMN Nos. P 85–34 and P 85–35, second column, "lactum" should read "lactam".

11. On page 12635, Table III, PMN No. P 85–62, second column, "Polyaikylene" should read "Polyalkylene".

12. On the same page, PMN No. P 85–85, second column, "C_{8-11}" should read "C_{9-11}".

13. On the same page, PMN Nos. P 85–99, P 85–100, P 85–101, and P 85–102, fourth column, the "Expiration date" should read "January 28, 1985".

14. On page 12636, Table IV, PMN No. P 84–741, second column, "dianhydrice" should read "dianhydride".

15. On the same page, Table V, PMN No. P 83–875, second column, "[N-2-cyanoethyl)" should read "[N-(2-cyanoethyl)".

16. On page 12637, Table V, PMN No. P 84–900, second column, "(2-3-dibromopropyl)" should read "(2,3-dibromopropyl)-".

17. On the same page, PMN No. P 84–1184, second column, "Polyehlorofluoro" should read "Polychlorofluoro".

18. On the same page, PMN No. P 85–85, second column, "C_{8-11}" should read "C_{9-11}".

BILLING CODE 1505-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Productivity Review List and Schedule; Correction

SUMMARY: This document corrects the Equal Employment Opportunity Commission's productivity review list and schedule (OMB Circular A–76) review start dates published April 5, 1985 (50 FR 13656) as follows:

Function	Original date	Correction date
• Personal Property, Office Supplies, Directives, Forms, and Publications Stockage and Distribution.	May 1985	August 1985.
• Mail Room Operations	Fiscal year 1986.	June 1985.
• Real Property Plans, Designs, and Acquisitions.	May 1985	Fiscal year 1986.
• Duplicating Centers	N/A	July 1985.
• Less than 10 FTEs		

This correction announcement is *not* a solicitation for bid but rather is an advance notification to alert interested persons and businesses of our plans. More specific information relating to this announcement will *not* be furnished until the solicitation for bid is synopsized in the Commercial Business Daily.

FOR FURTHER INFORMATION CONTACT: Robert P. Hill (202) 634–6971 or Natalie Werber (202) 634–7661, Equal Employment Opportunity Commission, Office of Management, Performance Management Division, Room 210, 2401 E Street, NW., Washington, D.C. 20507.

John Seal,

Management Director.

[FR Doc. 85–12933 Filed 5–29–85; 8:45 am]

BILLING CODE 5000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0100
Title: Field T&E Quarterly Report
Abstract: The attached Field T&E Quarterly Report (FEMA Form 95–5) is used to collect program activity data (participant, Instructor, Materials and travel cost).
Type of respondents: State or Local Governments
Number of respondents: 58
Burden hours: 145

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–12909 Filed 5–29–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85–15]

American Plant Food Corp. v. Port of Harlingen Authority; Filing of Complaint and Assisgnment

Notice is given that a complaint filed by American Plant Food Corporation against the Port of Harlingen Authority was served May 22, 1985. Complainant alleges that respondent has violated sections 16 and 17 of the Shipping Act, 1916, by raising complainant's wharfage fee to a level significantly higher than that charged other parties using the port facilities.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 23, 1986, and the final decision of the Commission shall be issued by September 23, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–12897 Filed 5–29–85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–000014–058.

Title: Trans Pacific Freight Conference (Hong Kong).

Parties:

American President Lines, Ltd.
Barber Blue Sea Line
Hapag-Lloyd AG

A.P. Moller-Maersk Line
Sea-Land Service, Inc.
United States Line, Inc.

Synopsis: The proposed amendment would modify the rules and regulations provisions of the agreement by deleting a reference to the assessment and payment of Conference expenses. It would add a new article providing that members shall be liable for the payment of Conference expenses not to exceed $120,000, provided the period of liability does not exceed one year from the effective date of a member's withdrawal or termination. The parties have requested a waiver of the Commission's regulations and a shortened review period.

Agreement No. 224-004009-001.
Title: Oakland Terminal Agreement.
Parties:

The Port of Oakland (Port)
Hapag Lloyd (Hapag)
Marine Terminals Corporation (MTC).

Synopsis: Agreement No. 224-004009-001 modifies the basic agreement whereby the Port assigns facilities in the Port's 7th Street Public Container Terminal to Hapag. The amendment provides for the suspension of the operation of Agreement No. T-4009 during the period in which Hapag transfers its operations to the facility preferentially assigned by the Port to Sea-Land Service, Inc. (Sea-Land) and uses said Sea-Land facility as its published regularly scheduled Northern California port of call. It also provides for the extension of the term of Agreement No. T-4009 by a period equal to the period in which Hapag uses the Sea-Land premises in lieu of the premises assigned by Agreement No. 4009. Agreement No. 224-004009-001 deletes MTC as a party to Agreement No. T-4009.

Agreement No. 202-005700-043.
Title: New York Freight Bureau.
Parties:

Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Line
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the rules and regulations provisions of the agreement by deleting a reference to the assessment and payment of the Bureau's expenses. It would add a new article providing that members shall be liable for the payment of Bureau expenses not to exceed $120,000, provided the period of liability does not exceed one year from the effective date of a member's withdrawal or termination. The parties have requested a waiver of the Commission's regulations and a shortened review period.

Agreement No. 202-010676-005.
Title: Mediterranean/U.S.A. Freight Conference.
Parties:

Atlanttrafik Express Service, Ltd.
Achille Lauro
C.I.A. Venezolana de Navigacion
Compania Transatlantica Espanola, S.A.
Constellation Lines, S.A.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolumbiana S.A.
"Italia" Societa Per Azioni di Navigazione
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Nordana Line/Danneborg Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment modifies the scope of the agreement by clarifying the ports covered in the Portuguese Range including the island of Madeira and excluding the Azores Islands.

Agreement No. 224-010757.
Title: Oakland Terminal Agreement.
Parties:

The Port of Oakland (Port)
Kawasaki Kisen Kaisha, Ltd. (K Line)

Synopsis: Agreement No. 224-010757 provides that K Line shall have the nonexclusive right to certain premises at the Port's 7th Street Container Terminal or Outer Harbor Terminal, Berth 6, for the berthing, loading and discharging of its vessels and related operations in its transpacific container service, with certain rights by K Line to transfer its rights and obligations under the agreement to other of the Port's public container terminals. K Line shall notify the Port, prior to its initial use of the premises, of the specific terminal it will use. K Line agrees that the assigned premises shall be the published, regularly scheduled Northern California port of call. As a consideration for its regular use of the Port, K Line will pay to the Port 90 percent of dockage and wharfage revenues, instead of 100 percent. If K Line's usage generates in excess of 31,000 revenue tons per acre in a contract year, wharfage payments for such tonnage in excess of that amount will be refunded to K Line. In the event that K Line, for operational reasons, berths its vessels at the Mitsui O.S.K. Lines, Ltd. premises, the discounted wharfage and dockage payments nonetheless, will be observed. The term of the agreement commences upon the first of the month following the Commission's determination of its effectiveness and terminates on April 30, 1990.

Agreement No. 224-010758.
Title: Portland Terminal Agreement.
Parties:

The Port of Portland (Port)
Hyundai Merchant Marine Company, Limited (Hyundai)

Synopsis: This agreement provides that Hyundai will have preferential use of eight acres of container yard area at the Port's Terminal 6 for a term of two years commencing the first day of the month following the date the Commission designates as the effective date of the agreement. The Port will perform all terminal stevedoring services on Hyundai vessels. Hyundai agrees to use the Port as its published, regularly scheduled, direct port of call for the Pacific Northwest sailings of their Far East liner service. In consideration for this promise, dockage and wharfage charges billed to Hyundai from the Port's marine terminal tariff will be discounted to levels specified in the agreement.

Agreement No. 207-010761.
Title: Somers Isles Shipping Agreement.
Parties:

Somers Isles Shipping Limited
Bermuda Container Line Ltd.
Bermuda International Shipping Limited

Synopsis: The proposed agreement would establish a joint service arrangement between the parties in the trade between Jacksonville and inland and coastal points in the United States and Canada, and ports and inland and coastal points in Bermuda.

Dated: May 24, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-12966 Filed 5-29-85; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on the Evaluation of Pain; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: This notice announces the schedule and proposed agenda of the forthcoming meeting of the Commission on the Evaluation of Pain (the Commission). This notice also describes the purpose, structure, and termination date of the Commission.

Date:
General session—June 13, 1985, 8:30 a.m. to 5:00 p.m.
Specific issues—June 13, 1985, 7:30 p.m. to 10:00 p.m.
Date: June 14, 1985, 8:30 a.m. to 12:00 p.m.
Address: Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Dapper, Executive Director, Commission on the Evaluation of Pain, Room 118, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–1597.

SUPPLEMENTARY INFORMATION: The Commission is established and governed by the provision of section 3(b) (1) through (6) of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98–460). The purpose of the Commission is to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. The study is to be conducted in consultation with the National Academy of Sciences.

The study will consist of expert testimony and a review of research data regarding how pain should be considered in making disability determination under titles II and XVI. The Commission may engage technical assistance in order to carry out its function.

The Commission is to submit a report, consisting of the findings of the study and any recommendations, to the Secretary of Health and Human Services (the Secretary) who in turn is to submit the report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

The statute provides that the Commission terminate on December 31, 1985. This is also the deadline for the Secretary to submit the report.

The Secretary has appointed the members of the Commission in accordance with the provisions of the statute. This notice announces the first working meeting of the Commission. The Commission is chaired by Kathleen M. Foley, M.D., and has a total of 20 members.

This meeting is open to the public. Anyone wishing to submit his or her views for consideration by the Commission should send them to the Executive Director of the Commission at the address shown above.

A transcript of the Commission meeting will be made available to the public on and at cost of duplication basis. The transcript can be ordered from the Executive Director of the Commission.

Agenda

June 13, 1985

8:30 a.m.—General session of expert testimony and research data presentations.
5:00 p.m.—Adjourn general session.
7:30 p.m.—Specific issues session.
10:00 p.m.—Adjourn specific issues session.

June 14, 1985

8:30 a.m.—General session of (1) continued expert testimony and research data presentations, (2) discussion on the agenda, priorities, and date of the next meeting, and (3) writing assignments.
12:00 p.m.—Adjourn the meeting.

Dated: May 23, 1985.

Nancy J. Dapper,

Executive Director, Commission on the Evaluation of Pain.

[FR Doc. 85–12958 Filed 5–29–85; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

[FDA–225–85–6000]

Memorandum of Understanding With the National Cancer Institute

Correction

In FR Doc. 85–11921 beginning on page 20624 in the issue of Friday, May 17, 1985, make the following correction:

On page 20625, first column, last line, "Land" should read "Lane".

BILLING CODE 1505–01–M

[Docket No. 85M–0195]

DePuy®, Inc., Premarket Approval of the Rotating Platform of the New Jersey Total Knee System

Correction

In FR Doc. 85–12032 appearing on page 20855 in the issue of Monday, May 20, 1985, make the following correction:

In the fist column, under **SUPPLEMENTARY INFORMATION,** eleventh line, "osteorthritis" should read "osteoarthritis" and "rheunmatoid" should read "rheumatoid".

BILLING CODE 1505–01–M

[Docket No. 85M–0196]

Allergan Pharmaceuticals, Inc.; Premarket Approval of Allergan Heat Disinfection Unit, Model No. ALS–IV

Correction

In FR Doc. 85–12033 appearing on page 20854 in the issue of Monday, May 20, 1985, make the following correction:

In the third column, last paragraph, fourth line, "360(d)" should read "360e(d)".

BILLING CODE 1505–01–M

Health Care Financing Administration

[BERC–278–PN]

Medicare Program; Schedule of Limits or Home Health Agency Costs Per visit for Cost Reporting Periods Beginning on or After July 1, 1985

Correction

In Fr Doc. 85–11736 beginning on page 20178 in the issue of Tuesday, May 14, 1985, make the following correction:

On page 20183, first column, first table, the last figure under "Limit" should read "34.28".

BILLING CODE 1505–01–M

Social Security Administration

Demonstration Projects To Demonstrate Methods for Assisting Social Security Disability Insurance Beneficiaries To Obtain Employment; Announcement of the Availability of Grant Funds

The Acting Commissioner of Social Security announces that applications will be accepted for grants authorized under sections 1110 and 702 of the Social Security Act (The Act). This announcement describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1985 funds in support of the proposed activities.

The closing date for the receipt of grant applications in response to this announcement will be July 29, 1985.

Program purpose

The demonstration activities are intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of Social Security Administration (SSA) programs.

Program Goals and Objectives

In general, SSA will support activities which demonstrate methods of helping

Social Security Disability Insurance (SSDI) beneficiaries return to work. These activities are expected to include a study of the nature of impairments, functional capacity for work, and rehabilitation; and to explore in a natural setting various employment placement alternatives for the disabled person. These activities can be used to improve existing vocational rehabilitation programs, including better methods of assessing a beneficiary's rehabilitation potential and employability, and more effective and efficient service delivery approaches and placement arrangements.

Projects

There is a concern that there are many SSDI beneficiaries who are capable of and willing to obtain employment but, for various reasons, do not return to work. Disabled persons, who might make excellent and dependable employees, often have to depend on disability benefits because they are not always provided with the right opportunities for a job, the needed placement and training, job and worksite accommodation, etc. The 1978 SSA Disability Survey indicated that approximately 53 percent of the men and 39 percent of the women on the SSDI benefit rolls would return to work if they were provided assistance in finding suitable work. For those who want to work, a meaningful job is necessary.

Projects should be designed to expand and improve administration of vocational rehabilitation and to identify job placement activities and methods and current incentives which assist in returning SSDI beneficiaries to gainful employment. The projects should help SSDI beneficiaries obtain employment that meets SSA's definition of substantial gainful activity (SGA). Generally, SGA is employment producing earnings in excess of $300 per month for the disabled and $610 per month for the statutorily blind.

The Disability Insurance Program is governed by the Act which provides disability standards and procedures for the program. At this time, there is no authority to begin testing new work incentives; however, there are now many work incentives in the law to encourage disabled persons to attempt gainful employment.

Prior to 1980, there were few work incentives for SSDI beneficiaries. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) added some new incentives. Many of the work incentives contained in the Act are apparently unknown to the public, or if known, are apparently underutilized. Those work incentives, which apply to SSDI beneficiaries who work despite their continuing disability, are as follows:

- Ordinarily, SSDI benefit payments and Medicare coverage continue during the first 12 months of work regardless of the amount of the beneficiary's earnings (i.e., for the 9 months of the trial work period (TWP) plus a 3-month grace period).
- During the next 12 months, i.e., during an extended period of eligibility (EPE), the beneficiary who continues to have a disabling impairment will retain disability entitlement and Medicare coverage. SSA will suspend SSDI benefit payments for months in which the beneficiary's earnings constitute substantial gainful activity (SGA), but will reinstate them if the work effort fails.
- In determining whether the worker is performing SGA, SSA subtracts from the worker's earnings both impairment related work expenses (i.e., out-of-pocket costs to the worker) and any express or implied employer subsidy.
- If the beneficiary is still performing SGA when the EPE ends, his or her disability entitlement will terminate, but Medicare coverage will continue another 2 years, so long as the individual continues to have a disabling impairment.
- If a former beneficiary stops work because of his or her condition within 5 years after his or her entitlement to SSDI benefits have ceased, he or she may become entitled to SSDI benefits and Medicare coverage without serving a new waiting period. (After the fifth year, a disabled individual would have to serve a new 5-month waiting period to regain disability benefits and a 24-month waiting period to regain Medicare coverage).

There are many different approaches to helping SSDI beneficiaries that might be tested under this announcement using existing work incentives in the law. This could include projects involving only employers and projects involving employers in association with others such as foundations, trade associations, insurers, unions, advocacy groups, public or private vocational rehabilitation (VR) providers, and various public agencies.

All project models should include: some form of system for selecting and contracting potential beneficiary participants who might be identified from a variety of possible sources (e.g., SSA records or the records of other organizations such as advocacy groups), and some form of placement system and method of informing participating beneficiaries about work incentives (e.g., special message or SSA interview).

Projects might include various employer accomodations (e.g., job modification, worksite modification, on-the-job training) and some form of arrangement for vocational or prevocational training (e.g., through a State VR Agency).

Availability and Duration of Funding

Federal grant funds may be requested for reimbursement of allowable costs incurred by applicants in conducting the demonstration. These funds, however, are not intended to cover costs that are reimbursable under an existing public or private program. SSA anticipates allocating $250,000 to fund approximately 7–15 grants under this announcement.

Applications will be accepted for multi-year grant projects. The initial grant award will be issued for a 12 month period but may be continued on a noncompetitive basis for more than one year if the grantee demonstrates acceptable progress, fiscal funds are available, and the activity has continuing relevance. Applicants requesting Federal grant funds for support of these activities must submit a grant application within the deadline prescribed by this announcement.

Eligible applicants (including employers and employer-led groups) who do not intend to apply for Federal grant funds are encouraged to initiate activities which demonstrate effective and efficient methods to assist SSDI beneficiaries obtain employment. SSA will provide technical assistance in the development and implementation of these activities upon request. Requests for technical assistance should be directed to: Thomas Rush, PH.D., telephone (301) 597–6042.

The Application Process for Proposals Requesting Grant Funds

1. *Availability of application forms.* Application kits which contain the prescribed application forms for grant funds are available from the Grant Management Branch, Division of Contracts and Grants Management, OMBP, Social Security Administration, 1–C–1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207, telephone (301) 594–0284, Mr. Lawrence H. Pullen, Chief, Grants Management Branch.

When requesting an application kit, the applicant should refer to the subject matter and date of this announcement to insure receipt of the proper application kit.

2. *Additional information.* For additional information concerning project development, please contact

Thomas Rush, PH.D, Demonstration Projects Staff, Office of Disability, SSA, 3-A-7 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 597-6042.

3. *Application submission.* All applications requesting Federal grant funds must be submitted on the standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA-96, item 7) the applicant must clearly indicate the application submitted is in response to this announcement and must show the following project identifier (i.e., EBI-001).

4. *Grantee share of the job placement costs.* Grant recipients receiving grant funds to conduct projects are expected to contribute towards the project costs. No grant will be awarded that covers 100 percent of the project's costs. Grant recipients are expected to contribute at least 5 percent of these costs.

5. *Application consideration.* Applications are initially screened for their relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Relevant applications are reviewed and evaluated by a review panel of not less than three persons. A written assessment of each application is made.

Eligible Applicants

Any State or local government and public or private organization or agency may apply for a grant under this announcement. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered any amount in excess of the allowable costs of the grant recipient.

Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. These grant awards will be issued in September 1985. The official award document is the Notice of Grant Award. It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, and the total grantee participation.

Criteria for Review and Evaluation of Application

Proposals for which Federal grant funds are requested will be reviewed and evaluated against the following criteria:

1. *Qualifications of project personnel.* Do the qualifications of the project personnel indicate that they are capable of competently performing their assigned tasks? (15 points)

2. *Adequacy of facilities and resources.* Does the applicant organization have adequate facilities and resouces to plan, conduct, and complete the project? (15 points)

3. *Adequacy of the proposed plan.* Is the design of the project plan adequate and feasible for the proposed activity? Does the plan appear appropriate to accomplish the desired purpose? (30 points)

4. *Cost-effectiveness of the project.* Are the costs of the proposed effort reasonable and adequate with sufficient detail and explanation provided? (30 points)

5. *Applicability of the project.* Does the project fit within the goals and objectives of this announcement? (10 points)

Closing Dates

The closing date for receipt of grant applications for Federal funds in response to this announcement will be July 29, 1985.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Branch, Division of Contracts and Grants Management, Social Security Administration, OMBP, Room 1-C-1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the above closing date to be considered. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday on or prior to the established closing date. An application will be considered to be received on time if personally delivered to SSA or mailed through the U.S. Postal Service or sent by commercial carrier on or before the closing date (as evidenced by a legible U.S. Postal Service postmark or legibly dated receipt from a commercial carrier). Private metered postmarks will not be considered acceptable as proof of timely mailing.

Executive Order 12372—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Programs No. 13.812—Assistance Payments—Research and Demonstrations)

Dated: May 23, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 85-12960 Filed 5-29-85; 8:45 am]

BILLING CODE 4190-11-M

Research Grants; Announcement of the Availability of Grants Funds

SUMMARY: The Acting Commissioner of Social Security announces that competing applications will be accepted for new research grants authorized under section 702 of the Social Security Act. This announcement describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1985 funds in support of the proposed activities.

The closing date for the receipt of grant applications in response to this announcement will be July 29, 1985.

Program Purpose

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of Social Security Administration (SSA) programs.

Program Goals and Objectives

In general, SSA will fund the following types of projects:

1. Those which examine the feasibility of evaluating the reliability of estimates generated by dynamic microsimulation models and the methods for such an evaluation.

2. Those which examine the determinants of fringe benefit growth.

Projects

This announcement is for the following priority research areas:

Priority Research Areas

Evaluation of the Reliability of Estimates Generated by Microsimulation Models–SSA–85–01

This project is intended to encourage research on the feasbility of evaluating the reliability of estimates generated by dynamic microsimulation models and to

encourage the development of rigorous methods for such an evaluation.

SSA currently uses a Microsim model, which is a variant of the Dynasim model, to estimate the distributional effects of changes in the Social Security Act that might take effect 20 to 50 years in the future. For example, Microsim was used to estimate the numbers and types of persons who would be affected by various earnings sharing proposals in the years 2010 and 2030. Because fundamental decisions about the future course of the Social Security system may be influenced by the model's results, it is important for those results to be as accurate as possible and that all weaknesses in the model and its results be understood.

To date, the primary evaluators of the Microsim model and others of its genre have been the model builders and primary users of the data. Two methods have been used to examine crudely microsimulation results. One method is to compare the model's projections to projections made by other methods—by social security actuaries, demographers, and economists. A second method is to compare the model's accuracy in "projecting" the past by running it for a period that has been completed and comparing its results to known facts. Such comparisons have generally not used statistical inference.

Economists, demographers, other social scientists, mathematicians, and statisticians are encouraged to investigate more systematic and rigorous methods for evaluating microsimulation projects. An example is whether the classical or Bayesian statistical inference approach (significance tests, confidence intervals) can be applied to the results of microsimulation.

Grant applicants will be required to design a strategy and/or methodology to make such an evaluation. The grantee will not be required to evaluate the SSA microsimulation model; however, the proposal may include a pilot study of model evaluation.

Determinants of Fringe Benefit Growth—SSA–85–02

The relatively rapid growth of nonwage compensation (employer paid fringe benefits) is the post-war period has resulted in a declining fraction of labor compensation being in the form of cash wages. To the extent that workers are paid a larger part of their earnings in fringe benefits, payroll tax receipts are lower. The accuracy of current projections of the growth in fringe benefits was an issue of debate and concern for the recent National Commission on Social Security Reform. In addition, the tax treatment (both payroll and income) of fringes is under reevaluation as the form of fringe benefits developed in the private sector becomes more complex. The advent of "cafeteria" plans, deferred compensation plans and more in-kind benefits has brought added scrutiny by tax legislators as they attempt to prevent further erosion of the tax base.

Grant proposals should focus on the determinants of fringe benefit growth such as: factors which have caused workers to demand more of their compensation in this form; factors which have induced firms to offer more in nonwage compensation packages; what ultimately pays for employer funded benefits; and the potential future behavior of nonwage compensation and the resulting effect on the financial status of the social security trust funds.

Availability and Duration of Funding

These grant projects will be funded under the authority of section 702 of the Social Security Act. SSA anticipates allocating $100,000 to fund 2–4 projects in priority areas SSA–85–01 (microsimulation projects) and a total of $60,000 to fund 1–2 in priority area SSA–85–2 (fringe benefits project). Grants will be awarded for a period not to exceed one year in duration.

The Application Process

1. *Availability of application forms.* Application kits which contain the prescribed application forms are available for Social Security Administration, Division of Contracts and Grants Management, Grants Management Branch, OMBP, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone (301) 594–0284, Lawrence H. Pullen, Chief, Grants Management Branch. When requesting an application kit, the applicant should specify section 702 of the Social Security Act and refer to this announcement to insure receipt of the proper application.

2. *Additional information.* For additional information concerning project development, please contact Mr. Daniel A. Graham, Office of Research, Statistics, and International Policy, SSA, OP, Room 138, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 597–2927.

3. *Application submission.* In order to be considered for these section 702 grants, all applications must be submitted on the standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for an applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award. As part of the project title (page 1 of the application form SSA–96, item 7) the applicant organization must clearly indicate that the application submitted is in response to this announcement and must reference the unique project identifier (i.e., SSA–85–01, etc.).

4. *Grantee share of the project costs.* Grant recipients receiving assistance to conduct these projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

5. *Application consideration.* Applications are initially screened for their relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Relevant applications are reviewed and evaluated by a review panel of not less than three persons. A written assessment of each application is made.

Eligible Applicants

Any State of local government or public or private organization or agency (including an educatioal institution) may apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable indirect and direct costs of the grant recipient.

Application Approval

Following the approval of the applications selected for funding, grant awards will be issued within the limits of Federal funds available. The grant awards will be issued in September 1985. The official award document is the Notice of Grant Award. It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, and the total grantee participation.

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated against the following criteria:

1. Do the qualifications of the project personnel indicate that they are capable of competently performing their assigned tasks? Is the project's organization, i.e., who will be responsible for what portions of the project and the lines of authority within

the organization, appropriate for the proposed research? (20 points)

2. Does the applicant organization have adequate facilities and resources to plan, conduct, and complete the project? (20 points)

3. Is the design of the project adequate and feasible for the proposed research as indicated by the appropriateness of the work statement and the technical approach to the area of inquiry, which includes clarity of goals, use of scientifically valid methods and data, and the scheduling of tasks and milestones? (30 points)

4. Is the budget detailed with justifications and explanations of the requested amounts? Are the costs reasonable and adequately described? Is the project planned in an effective manner (in a cost-benefit sense)? (10 points)

5. How closely do the project objectives fit those of the announcement? Is the schedule of times for completing the various phases of the project appropriate? (20 points)

Closing Dates

The closing date for receipt of applications in response to this announcement will be July 29, 1985.

Applications may be mailed or personally delivered to: Social Security Administration, Division of Contracts and Grants Management, Grants Management Branch, OMBP, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the above closing date, to be considered. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date. An application will be considered to be received on time if mailed through the U.S. Postal Service or sent by commercial carrier on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any other means other than through the U.S. Postal Service or commerical carrier shall be considered as acceptable only if physically received at the above address before the close of business on or before the deadline date. Applications which are not received on time will not be considered for funding.

Executive Order 12372—Intergovernmental Review of Federal Programs

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payment Research)

Dated: May 23, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 85-12959 Filed 5-29-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Garrison Unit Joint Tribal Advisory Committee; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Service Administration, notice is hereby given that the Secretary of the Interior is establishing the Garrison Unit Joint Tribal Advisory Committee. The purpose of the committee shall be to study and report its recommendations to the Secretary on the following aspects of the Garrison Unit insofar as they apply to the Fort Berthold and Standing Rock Reservations:

a. Full potential for irrigation;

b. Financial assistance for on-farm development costs;

c. Development of shoreline recreation potential;

d. Return of excess lands;

e. Protection of reserved water rights; and

f. Funding of all items above from the Garrison Diversion Unit funds, if authorized.

The Committee is to provide its report to the Secretary within nine months from the date of its establishment.

Further information regarding the committee may be obtained from the Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, 18th & C Streets NW., Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby certify that the Garrison Unit Joint Tribal Advisory Committee is in the public interest in connection with implementing the recommendations of the Garrison Diversion Unit Commission.

Dated: May 10, 1985.

Donald Paul Hodel,

Secretary of the Interior.

Note.—This notice must be published in the **Federal Register** at least fifteen days prior to the filing of the committee charter with the appropriate committees of Congress. The committee may not meet or take action prior to the time the charter is filed.

[FR Doc. 85-12920 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Receipt of Application for Permit; Oregon University of Visual Arts Resources Center

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements for the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Name: Oregon University of Visual Arts Resources, Center. Address: 1802 Moss Street, Eugene, OR 97403. File No. PRT 693357.

Type of Permit: Import for Public Display.

Name of Animals: Walrus (*Odobenus rosmarus*) and unidentified pinnipeds.

Summary of Activity to be Authorized: The applicant proposes to re-import from Canada 40 Eskimo dolls (Alaskan native handicrafts) some of which are partially constructed from walrus ivory and various seal and walrus parts. The exhibit is currently on tour in Canada and the U.S. It will be return to the Alaska State Council of the Arts which owns the exhibit at the end of the tour.

Source of Marine Mammals for Display: Alaska—wild

Period of Activity: Two importations—approximately October 1985 and January 1988.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and

the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: May 15, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

Dated: May 23, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-12992 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-55, 3510-09-M

Bureau of Land Management

Buffalo Resource Area, Casper District, WY; Availability of Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice that the proposed Resource Management Plan and final Environmental Impact Statement for the Buffalo Resource Area, Casper District, Wyoming will be available for public review on or before June 1, 1985.

SUMMARY: The proposed Resource Management Plan (RMP) and final Environmental Impact Statement (EIS) presents a management plan and the consequences of implementing the plan for .8 million acres of public surface and 4.7 million acres of mineral estate in the Buffalo Resource Area.

Location of Documents and Contact

Additional information or requests to be placed on the mailing list should be addressed to: Glenn Bessinger, Area Manager, Buffalo Resource Area, Bureau of Land Management, 300 Spruce Street, Buffalo, WY 82834, Phone: (307) 684-5586.

Public Participation

There will be a 30-day protest period on the proposed RMP and final EIS. Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval of the proposed plan may protest the approval. A protest may raise only those issues which were submitted for the record during the planning process.

Protests should be sent to the Director (202), Bureau of Land Management, 1800 C Street, NW, Washington, D.C., 20240 no later than 30 days following the filing of the documents with the Environmental Protection Agency. A protest must contain:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the plan being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
5. A concise statement explaining why the proposed management plan is believed to be wrong.

At the end of the 30-day protest period noted above, the proposed management plan, excluding any portion under protest, will be finalized in a Record of Decision. Approval will be withheld on any portion of the plan under protest until a final action has been completed.

SUPPLEMENTARY INFORMATION: The Resource Management Plan will guide management actions on the public lands within the Buffalo Resource Area which includes Johnson, Campbell, and Sheridan counties. Within these three counties, BLM manages 11% of the surface, approximately .8 million acres, and about 64% of the mineral estate, approximately 4.7 million acres.

The major purpose in preparing the RMP was to provide a comprehensive framework for managing and allocating resources in the resource area for the next ten years or more. The planning process included the identification of issues, the development of planning criteria, inventory and data collection, an analysis of the management situation, the formulation of alternatives, and an analysis of the alternatives.

The four alternatives in the draft EIS included the continuation of present management, an alternative favoring economic production, one favoring environmental resource protection, and an alternative falling between the latter two. The consequences of implementing each alternative was presented in the draft environmental statement. A preferred management plan was presented in the draft that best addressed each of the issues.

The proposed plan presented in the final environmental statement is essentially the same as the preferred alternative in the draft. In some cases, it has been revised as a result of public comments received during the 90-day comment period. The consequences of implementing the proposed management plan is presented in the final environmental statement.

The Buffalo Resource Area RMP/EIS was prepared by an interdisciplinary team of specialists from the Buffalo Resource Area and the Casper District Office. Disciplines included cultural, energy and minerals, fire, forestry, grazing (range), lands, recreation, soil, water, air, wildlife, and socioeconomics. Reviews for consistency were provided by both the district office and state office staffs. Consultation, coordination, and public involvement have occurred throughout the process through public meetings, informal meetings, individual contacts, newsletters, and **Federal Register** notices.

Issues were identified in the following nine program areas: cultural resource management, fire management, forest management, grazing management, lands and realty, minerals management, recreation management, wilderness, and wildlife habitat management.

The wilderness portion of the RMP along with the alternatives for the three wilderness study areas (Fortification Creek, North Fork and Gardner Mountain) will be issued as a separate final wilderness EIS at a later date. A summary of the changes made is included in this proposed RMP/final EIS.

David J. Walter,

Acting State Director.

[FR Doc. 85-12988 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-22-M

Realty Action; Recreation and Public Purposes Classification; Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Puproses, Blue Earth County, ES-28675.

SUMMARY: The following public island has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act

of June 14, 1926, as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

ES-28675, Blue Earth County, T. 105 N., R. 27 W. Sec. 25 (one island #001-13 acs. in Lura Lake)

Blue Earth County has applied for this island so that it can be added to Daly County Park to be used for recreational purposes.

The island is physically suited to the proposed use and is not of national significance. Since the island is valuable for a local program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land will revert to the United States.

The classification of this island will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18 months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this ntoice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information conerning this application is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53201-0631, or by calling Paulette Francis at (414) 291-4415.

Chuck Steele,

District Manager.

[FR Doc. 85-12934 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-84-M

[M62087 (ND)]

Application for Disclaimer of Interest to Lands in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Montana State Office of the BLM has received an application for a recordable disclaimer under the provisions of Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1982) from the First National Bank and Trust Company of Bismarck, North Dakota, for all interest in the following described property to wit:

5th Principal Meridian

T. 138 N., R. 80 W.,

Sec. 32, lot 3 less the E½NE¼SE¼ Sec. 32.

The area described contains approximately 37.80 acres in Morton County.

Details: The BLM has reviewed the official records and determined the United States has no claim to the above-described lands because those lands as identified by the survey plat approved January 9, 1875, were eroded away in their entirety by the gradual movement of the Missouri River. The lands that reappeared in the same location are accretion to lands on the left bank of the River and belong to the riparian owner who is the applicant and record owner of these lands. Issuance of a recordable disclaimer will help remove a cloud on the title to the lands.

Comments: Any person wishing to submit a protest or comment on the proposed recordable disclaimer should do so in writing before the expiration of 90 days from publication of this notice in the **Federal Register.** Absent protests, the disclaimer will be issued after the 90 days have lapsed.

ADDRESS: Inquiries about the proposed disclaimer and protests or comments should be directed to the State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

May 20, 1985.

Eugene D. Russell,

Acting State Director.

[FR Doc. 85-12925 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-DN-M

Request for Public Comment on Environmental Analysis, Fair Market Value and Maximum Economic Recovery; Emergency Coal Lease Application M 63202, Peabody Coal Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The lands included in Coal Lease Application M 63202 are located in south-central Rosebud County, Montana, approximately 4.5 miles south of the town of Colstrip and adjacent to Peabody Coal Company's Big Sky Mine and are described as follows:

T. 1 N., R. 41 E., P.M.M.,
Sec. 24: W½NW¼NE¼, NW¼SW¼NE¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼, NE¼SE¼NW¼.
110 acres.

Two economically minable beds, the Rosebud and McKay are found in this tract. The upper Rosebud seam averages 25 feet in thickness and the lower McKay seam averages 9 feet in thickness. The tract contains an estimated 1.66 million tons of recoverable sub-bituminous coal. The Rosebud coal seam averages (as-received) 8,675 BTU/1b. with 23.6 percent moisture, 0.68 percent sulfur, 9.4 percent ash, 37.57 percent fixed carbon, and 29.4 percent volatile matter. The McKay seam averages (as-received) 8,631 BYU/1b. with 27.3 percent moisture, 0.79 percent sulfur, 6.7 percent ash, 38.89 percent fixed carbon, and 27.1 percent volatile matter.

The public is invited to submit written comments on the environmental analysis, fair market value and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on June 25, 1985, on the environmental assessment, the proposed lease sale, fair market value and maximum economic recovery on the above lease tract.

DATES: Comments must be received on or before June 25, 1985. The public hearing will be held at 1:00 p.m. on the same date, at the Bureau of Land Management, Powder River Resources Area office, (Conference Room), Miles City Plaza, Miles City, Montana 59301.

ADDRESS: For more complete data on this tract, please contact Jeanette Bejot (telephone 406-657-6875), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107. Copies of the environmental assessment are available at this address or at the BLM, Powder River Resources Area office, Miles City Plaza, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data market as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so market shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the above addresses during regular business hours (9: 00 a.m. to 4: p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management at P.O. Box 36800, Billings, Montana 59107 and should address, but not necessarily be limited to, the following information:

1. The quality and extent of the coal resource;
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specification of seams to be mined and the most desirable timing and rate of production;
3. The quantity of coal;
4. If this tract should be evaluated as part of a larger mining unit (i.e., a tract which does not in itself form a logical mining unit);
5. The configuration of any larger mining unit of which the tract may be a part;
6. Restrictions to mining which may affect coal recovery;
7. The price that the mined coal would bring in the market place;
8. Costs, including mining and reclamation, of producing the coal;
9. The interest rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;
10. Depreciation and other accounting factors;
11. The value of any surface estate where held privately;
12. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
13. Any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Dated: May 21, 1985.

Eugene D. Russell,

Acting State Director.

[FR Doc. 85-12926 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-DN-M

[OR-34095]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 1,117.36 acres of public lands out of Federal ownership. This action will also open 3,853.21 acres of reconveyed lands to surface entry and to mining and mineral leasing, except oil and gas leasing.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 1,117.36 acres of lands in Benton, Land, Lincoln, Linn, and Polk Counties, Oregon from Federal to private ownership. All oil and gas deposits in the patented lands have been reserved to the United States.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 7 S., R. 4 E.,
Sec. 24, SW¼SW¼;
Sec. 25;
Sec. 26;
Sec. 27, NW¼NE¼, S½NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 36, lots 1 to 4, inclusive, N½, and N½S½.
T. 11 S., R. 3 E.,
Sec. 16.

The areas described aggregate 3,853.21 acres in Clackamas and Linn Counties, Oregon.

3. The oil and gas deposits in the lands described in paragraph 2 are not in United States ownership and will not be opened to operation of the mineral leasing laws as to oil and gas.

4. AT 8:30 a.m., on July 8, 1985, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 8, 1985, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on July 8, 1985, the lands described in paragraph 2 will be open to location under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, inlcuding attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on July 8, 1985, the lands described in paragraph 2, except as provided in paragraph 3, will be open to applications and offers under the mineral leasing laws.

Dated: May 21, 1985.

Harold A. Berends,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 85-12927 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-33-M

Land Resource Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted April 15, 18, and 19, 1985, will be officially filed in the Montana State Office effective 8 a.m. on May 10, 1985.

Principal Meridian, Montana

T. 33 N., R. 36 E.

This plat representing the dependent resurvey of a portion of the 9th Auxiliary Guide Meridian East, a portion of the north boundary, and a portion of the subdivisional lines, and

the survey of the subdivision of sections 1 and 12, Township 33 North, Range 36 East, Principal Meridian, Montana, was accepted April 18, 1985. The area described is in Valley County.

Principal Meridian, Montana

T. 34 N., R. 36 E.

This plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 33 and 34, Township 34 North, Range 36 East, Principal Meridian, Montana, was accepted April 18, 1985. The area described is in Valley County.

These surveys were executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 12 N., R. 13 W.

This plat representing the dependent resurvey of a portion of the Third Standard Parallel North, through Range 13 West, a portion of the east boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 3, 12, 17, 20 and 22, Township 12 North, Range 13 West, was accepted April 15, 1985. The area described is in Granite and Powell Counties.

Principal Meridian, Montana

T. 12 N., R. 17 W.

This plat representing the survey of Lot No. 12 in section 24, Township 12 North, Range 17 West, was accepted April 19, 1985. The area described is in Missoula County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222, North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: May 20, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-12929 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-ON-M

Land Resource Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted April 10, 1985, will be officially filed in the Montana State Office effective 8 a.m. on May 3, 1985.

Principal Meridian, Montana

T. 18 N., R 56 E.

This plat represents the dependent resurvey of portions of the south and west boundaries, and a portion of the subdivisional lines; and the survey of the subdivision of sections 18, 20, and 32, and the survey of a portion of the present left bank meanders of the Yellowstone River in section 32, Township 18 North, Range 56 East, Principal Meridian, Montana. The area described is in Dawson County.

Principal Meridian, Montana

T. 19 N., R 58 E.

This plat represents the dependent resurvey of portions of the east and south boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 14, 22, and 24, Township 19 North, Range 58 East, Principal Meridian, Montana. The area described is in Richland County.

These surveys were executed at the request of the Miles City District Office for administrative needs of the Bureau.

Principal Meridian, Montana

T. 10 S., R 1 E.

This plat represents the dependent resurvey of a portion of the Second Standard Parallel South, through Range 1 East, a portion of the Principal Meridian, through Township 10 South, and a portion of the subdivisional lines; and the survey of the subdivision of sections 31, 32, and 33, Township 10 South, Range 1 East, Principal Meridian, Montana. The area described is in Madison County.

Principal Meridian, Montana

T. 12 N., R 16 W.

This plat represents the dependent resurvey of a portion of the Third Standard Parallel North, through Range 16 West, a portion of the west boundary, a portion of the the subdivisional lines, and certain boundaries of mineral surveys; and the survey of the subdivision of sections 6 and 7, Township 12 North, Range 16 West, Principal Meridian, Montana. The area described is in Missoula County.

These surveys were executed at the request of the Butte District Office for administrative needs of the Bureau.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: May 20, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-12930 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey of the lands described below accepted April 10, 1985, will be officially filed in the Montana State Office effective 8 a.m. on July 5, 1985.

Principal Meridian, Montana

T. 18 N., R. 57 E.

The plat, in three sheets, represents the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, and the adjusted original meanders of Chromo Island; and the survey of the subdivision of sections 14, 22, 24, 26, and 28, a division of accretion line, an informative traverse of the present bank of a portion of Chromo Island, through section 1 and a portion of section 2, the meanders of a portion of the present bank of Chromo Island (Tract 37), an island (Tract 38), a division of accretion line, and the present left bank meanders of a portion of the Yellowstone River in section 2, Township 18 North, Range 57 East, Principal Meridian, Montana. The area described is in Wibaux and Dawson Counties.

This survey was executed at the request of the Miles City District Office for administrative needs of the Bureau.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: May 20, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-12931 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-DN-M

Salem District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held June 17, 1985, at 1:30 p.m. at the BLM District Office, 1717 Fabry Road, S.E., Salem, Oregon.

Agenda for the meeting will include:

1—U.S. Forest Service-Bureau of Land Management Interchange.

2—Update of studies involved in proposed Walker Creek Water Supply project.

3—Table Rock Wilderness Area.

4—Oral statements from the public.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road S.E., Salem, Oregon, 97302, by June 13. Written comments will also be received for the council's consideration.

Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: May 17, 1985.

Melvin Chase,

District Manager.

[FR Doc. 85-129303 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-33-M

[OR-2711 (Wash)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that 440 acres of a land withdrawal for the Wynoochee Reservior Project continue for an additional 100 years. The land would remain closed to mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers proposes that the existing land withdrawal made by Public Land Order No. 4530 of September 30, 1968, be partially continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located within the Olympic National Forest at Wynooche Lake approximately 30 miles northeast of Aberdeen, and contains 440 acres within Sections 17 and 20, T. 22 N., R. 7 W., W.M., Grays Harbor County, Washington.

The purpose of the withdrawal is to protect the Wynoochee Reservior Project. The withdrawal segregates the land from operation of the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 21, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-12928 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-33-M

Oil and Gas Lessee Qualifications Auditing System

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice that Oil and Gas Lessee Qualifications Auditing System is Operational.

SUMMARY: This notice informs the public of the existence of the "Oil and Gas Lessee Qualifications Auditing System" and that selective audits of Federal onshore oil and gas lessees will be conducted from time to time to verify compliance with statutory and regulatory requirements for leasing.

EFFECTIVE DATE: May 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli, Division of Fluid Mineral Leasing (620), Washington, D.C. 20240, Telephone: (202) 653-2190.

SUPPLEMENTARY INFORMATION: The preamble to the interim final rulemaking dated February 26, 1982 (47 FR 8544), apprised the public of the Bureau of Land Management's elimination of the regulatory requirement that documents relating to qualifications be routinely submitted in conjunction with lease applications and assignments by trusts, associations, corporations, agents, other-parties-in-interest, and municipalities. The preamble further stated that in lieu of submitting such documents, all lease applicants would be required to certify their compliance with statutory requirements on the lease or assignment application and that the Bureau would conduct selective audits to verify compliance.

This notice is to apprise the public that the Bureau of Land Management has developed an Oil and Gas Lessee Qualifications Auditing System which is now operational. Periodically, a number of oil and gas lessees will be selected to be audited for purposes of verification of compliance with the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and other statutory authority, as well as the department regulations. Such audits will require the lessee to submit to the Bureau documentation verifying acreage holdings, foreign interest, citizenship, etc.

Dated: May 23, 1985.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 85-12976 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Offshore the Middle Atlantic States; Availability of Final Environmental Impact Statement for Proposed Oil and Gas Lease Sale 111 in the Middle Atlantic

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) for proposed Oil and Gas Lease Sale 111 in the Middle Atlantic.

Single copies of the final environmental impact statement can be obtained from the Office of Regional Director, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Copies of the final EIS will also be available for inspection in the following public libraries:

East Albemarle Regional Library, 205 E. Main Street, P.O. Box 303, Elizabeth City, NC

Olivia Raney Public Library, 104 Fayetteville Street, Raleigh, NC

New York Public Library, 5th Avenue & 42nd Street, New York, NY

New Bern-Craven County Public Library, 400 Johnson Street, New Bern, NC

Wilmington Public Library, 409 Market Street, Wilmington, NC

Nassau Library System, Reference Division, 900 Jerusalem Avenue, Uniondale, NY
Suffolk Cooperative Library, 627 N. Sunrise Service Road, P.O. Box 1872, Bellport, NY
Atlantic City Free Library, Illinois & Pacific Avenues, Atlantic City, NJ
Newport Public Library, Aquidneck Park, Newport, RI
Christian Science Monitor, 1 Norway Street, Boston, MA
Rehoboth Beach Public Library, Municipal Center, Rehoboth Avenue, Rehoboth Beach, DE
Atlantic County Library, Surrogate Building, Mays Landing, NJ
Public Library, 639 Washington Street, Cape May, NJ
Norfolk, Public Library System, 301 S. City Hall Avenue, Norfolk, VA
East Brunswick Public Library, 2 Jean Walling Civic Center, East Brunswick, NJ
Eastern Shore Area Library, 122–126 South Division, Salisbury, MD
Richmond Public Library, 101 E. Franklin Street, Richmond, VA
Trenton Free Public Library, 120 Academy Street, Trenton, NJ
Providence Public Library, 150 Empire Street, Providence, RI
Boston Public Library, Copley Square, Boston, MA
Free Library of Philadelphia, Logan Circle, Philadelphia, PA
Ocean County Library, 15 Hooper Avenue, Toms River, NJ
Public Library, 105 45th Street, Sea Isle City, NJ
Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, MD
Monmouth County Library, 25 Broad Street, Freehold, NJ
New Jersey State Library, P.O. Box 1898, Trenton, NJ
Wilmington Institute Free Library and Newcastle County Free Library, 10th & Market Streets, Wilmington, DE
Newport New Public Library System, 2400 Washington Avenue, Newport News, VA
Portsmouth Public Library, 601 Court Street, Portsmouth, VA
Virginia Beach Department of Public Libraries & Information, Room 310, Operations Building, Virginia Beach, VA

Dated: May 24, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 85–12941 Filed 5–29–85; 8:45 am]

BILLING CODE 4310–84–M

Outer Continental Shelf; Lease Sale 111—Mid-Atlantic Request for Supplemental Information

Purpose of Request

The Mid-Atlantic OCS oil and gas lease sale (Sale 111) tentatively planned for late 1985 is being reviewed by the Secretary of the Interior to determine if the current level of industry interest warrants continuing with the presale procedures. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interests in leasing and exploring within the proposed sale area. The Regional Director, Minerals Management Service, Suite 601, Vienna, Virginia 22180 (703–285–2165) will receive information on areas of interest by mail, telephone, or informal meeting. As part of this effort the Regional Director intends to initiate direct contact with some of the companies previously expressing an interest in the area.

As an adjunct to this undertaking, the Minerals Management Service is asking industry for comments relevant to whether a lower minimum acceptable bid for any block in this sale would promote industry participation in the lease sale. Unlike the request for comments on this subject solicited as part of the Draft Proposed Program for a new 5-year OCS Leasing Program (50 FR 11585), this request only addresses a possible minimum bid reduction for proposed Sale 111, and the effect such a reduction might have on industry participation in the sale.

The below listed blocks are discussed as deferral alternatives in the proposed Sale 111 Final Environmental Impact Statement. Decisions regarding these deferrals could be influenced by specific indications of industry interest. The oil and gas industry is asked to provide information on whether or not the inclusion of these blocks is pivotal to industry participation in this lease sale. These areas are depicted on large-scale maps available at no cost from the Regional Director at the address or telephone number indicated in the first paragraph.

NJ 18–3

515–518	816
560–563	860
603–607	903–906
648–651	947–950
694–695	

NJ 19–1

22–23	111–112
66–67	155–156

NJ 18–6

64–65	149–151
108–110	195
237–239	668–670
368	713–714
410–412	795
493	839–840
581–582	884–885
623	926–929
626	970–972

NJ 18–8

80	386–388
124	429–432
127–128	472–476
168	517–520
170–172	561–564
211–212	602–603
214–217	605–608
255–256	645–652
259–261	688–696
299–300	731–740
304–305	954–956
342–344	995–996
349	998–1000

NJ 18–9

3	265
221	

NJ 18–11

1039–1044	

NI 18–2

27–32	555–560
71–76	598–604
114–120	641–648
158–164	685–692
203–208	728–736
247–252	771–780
291–296	814–824
335–340	858–868
379–384	901–912
423–428	944–956
467–472	987–997
511–516	

Use of Information From Request

Responses will help the Secretary of the Interior to determine if and when a proposed notice of sale will be issued, the blocks to be included in the proposed notice of sale, and the minimum bid required for those blocks.

Instructions on Request for Supplemental Information

Information on industry interest may be provided by mail or telephone to the Regional Director at the address and telephone number stated in the first paragraph. Alternatively, companies are invited to meet with the Regional Director or his representative to personally convey specific information. Although individual indications of interest are considered privileged and proprietary information, the names of persons submitting indications of interest will be a matter of public record.

Comments on this matter should be received within 30 days following publication of this request. It will be appreciated if envelopes containing responses to this request are marked

"Request for Supplemental Information on Proposed Lease Sale 111."

Ralph V. Ainger,

Acting Regional Director, Atlantic OCS Region.

May 24, 1985.

[FR Doc. 85-12940, Filed 5-29-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; Rainier Mountaineering, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Regional Director of the Pacific Northwest Region of the National Park Service proposes to negotiate a concession contract for the continued provision of mountain climbing guide services for the public at Mount Rainier National Park in the state of Washington. The contract will be for a period of seven (7) years from November 1, 1985 through October 31, 1992.

The existing concessioner, Rainier Mountaineering, Inc., has performed its obligations to the satisfaction of the Secretary under a current contract. Therefore, pursuant to the Act of October 9, 1965, the existing concessioner is entitled to be given a preference in the negotiation of a new contract. This preference allows an existing satisfactory concessioner to offer to meet the terms of the best offer made in response to the terms of the Statement of Requirements if that offer is not that of the existing satisfactory concessioner.

For a copy of the Statement of Requirements describing the opportunity offered and including the application requirements, interested parties should write to the Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, Washington, 98304 or call Mr. Cy Hentges, Management Assistant, 206-569-2211.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

This contract action has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: May 7, 1985.

Daniel J. Tobin, Jr.,

Regional Director, Pacific Northwest Region.

[FR Doc. 85-12953 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; Saga-Hill Corp.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Saga-Hill Corporation authorizing it to continue to provide gift shop and food facilities and services for the public at Sagamore Hill National Historic Site, New York for a period of five (5) years from January 1, 1985, through December 31, 1989.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time of December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmaked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Dated: May 13, 1985.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 85-12955 Filed 5-29-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-255 (Preliminary)]

Animal Feed Grade DL-Methionine From France

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from France of animal feed DL-methionine, provided for in item 425.04 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 3, 1985, a petition was filed with the Commission and the Department of Commerce by Degussa Corp., a U.S. producer of DL-methionine, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of animal feed grade DL-methionine from France. Accordingly, effective April 3, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-255 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 10, 1985 (50 FR 14171). The conference was held in Washington, DC, on April 26, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 20, 1985. The views of the Commission are contained in USITC Publication 1699 (May 1985), entitled "Animal Feed Grade DL-Methionine from France: Determination of the Commission in

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Investigation No. 255 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 20, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12988 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-197]

Certain Compound-Action Metal Cutting Snips and Components Thereof; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (Order No. 13) terminating respondent Azco Tool, Inc., as a respondent in the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: On April 16, 1985, complainant Cooper Industries, Inc. and respondent Azco Tool, Inc. (Azco), filed a joint motion to terminate this investigation as to respondent Azco on the basis of a settlement agreement. The Commission investigative attorney did not oppose the motion. On April 18, 1985, the presiding administrative law judge issued an initial determination (ID) granting the motion. The Commission has received neither a petition for review of the ID nor comments from Government agencies or the public.

FOR FURTHER INFORMATION CONTACT: Charles Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0661.

Issued: May 23, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12989 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-208, 209, and 210 (Final)]

Barbed Wire and Barbless Wire Strand From Argentina, Brazil, and Poland

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations..

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-208, 209, and 210 (Final) (under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarted, by reason of imports from Argentina, Brazil, and Poland of barbed wire and of barbless wire strand,[1] provided for in items 642.02 and 642.11, respectively, of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before July 15, 1985 and the Commission will make its final injury determinations by August 29, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202-523-6620), Office of Investigations, U.S. International Trade Commission, 701 E. Street NW, Washington, DC 20436.

[1] The Department of Commerce has described these products as barbed wire and barbless fencing wire. For purposes of the Commisison's investigations, these products are described as low tensile and high tensile barbed wire and loosely twisted double wire strand suitable for fencing purposes.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of barbed wire and barbless fencing wire from Argentina, Brazil, and Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). These investigations were requested in petitions filed on November 19, 1984 by Forbes Steel and Wire Corp., Canonsburg, PA. The petitions were also supported by CF&I Steel Corp., Pueblo, CO, Davis Walker Corp., Los Angeles, CA, and Oklahoma Steel Wire Corp., Madill, OK. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 1135, January 9, 1985).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules of practice and procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on July 5, 1985, pursuant to §207.21 of the Commission's rules (19 CFR §207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on July 24, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 18, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 17, 1985 in room 117 of the U.S. International Trade Commisison Building. The deadline for filing prehearing briefs is July 17, 1985.

Testimony at the public hearing is governed by §207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least (3) working days prior to the hearing (see §201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with §207.22 of the Commission's rules (19 CFR §207.22). Posthearing briefs must conform with the provisions of §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 31, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 31, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with §201.8 of the Commission's rules (19 CFR §201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of §201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

By Order of the Commission.

Issued: May 20, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12987 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-243 and 244 (Preliminary) and 731-TA-256, 257, and 258 (Preliminary)]

Carbon Steel Wire Rod From Poland, Portugal, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the the United States is materially injured,[2] or threatened with material injury,[3] by reason of imports from Portugal and Venezuela of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Portugal and Venezuela.

In addition, on the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured,[2] or threatened with material injury,[3] by reason of imports from Poland, Portugal, and Venezuela, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 8, 1985, petitions were filed with the Commission and the Department of Commerce by Atlantic Steel Co., Atlanta, GA; Continental Steel Corp., Kokomo, IN; Georgetown Steel Corp., Georgetown, SC; North Star Steel Texas, Inc., Beaumont, TX; and Raritan River Steel Co., Perth Amboy, NJ, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of carbon steel wire rod from Portugal and Venezuela, and by reason of LTFV imports of carbon steel wire rod from Poland, Portugal, and Venezuela. Accordingly, effective April 8, 1985, the Commission instituted preliminary countervailing duty investigations on carbon steel wire rod from Portugal (investigation No. 701-TA-243 (Preliminary)), and Venezuela (investigation No. 701-TA-244 (Preliminary)) and preliminary antidumping investigations on carbon steel wire rod from Poland (investigation No. 731-TA-256 (Preliminary)), Portugal (investigation No. 731-TA-257 (Preliminary)), and Venezuela (investigation No. 731-TA-258 (Preliminary)).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 17, 1985 (50 FR 15234). The conference was held in Washington, DC, on April 30, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 23, 1985. The views of the Commission are contained in USITC Publication 1701 (May 1985), entitled "Carbon Steel Wire Rod from Poland, Portugal, and Venezuela: Determinations of the Commission in Investigations Nos. 701-TA-243 and 244 (Preliminary) and 731-

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[1] The record is defined in section 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern and Vice Chairman Liebeler determine that there is a reasonable indication that an industry in the United States is threatened with material injury.

[3] Commissioner Eckes and Commissioner Rohr determine that there is a reasonable indication that an industry in the United States is materially injured.

TA-256 through 258 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: May 23, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12974 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02

[Investigation No. 337-TA-194]

Certain Aramid Fiber; Extension of Time for Commission Decision on Whether To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the initial determination (ID) finding that there is a violation of section 337 of the Traiff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation has been extended from June 26, 1985, to July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202-523-0189.

SUPPLEMENTARY INFORMATION: On May 9, 1985, the administrative law judge (ALJ) issued an initial determination (ID) in the above-captioned investigation finding that there is a violation of section 337. Pursuant to § 210.53(h) of the Commission's rules, the ID becomes the Commission's determination on June 26, 1985, unless the Commission decides to review the ID or extends the deadline for that decision.

The Commission has extended the time in which the parties may file a petition for review in this investigation because of the large volume of confidential information contained in the ID and the concomitant delay in issuing a nonconfidential version of the ID. The nonconfidential version of the ID is the only version available to certain parties and interested Government agencies. Thus, the Commission has determined to extend the deadline for deciding whether to review the ID in this investigation to July 15, 1985.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation will be available for inspection on or about May 28, 1985, during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: May 24, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12973 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-216]

Certain Ceramic Drainage Foils; Commission Decision Not To Review Initial Determination Granting Motion for Summary Determination and Terminating Two Respondents

AGENCY: International Trade Commission.

ACTION: Decision not to review initial determination granting the motion of respondents TVW Paper Machines, Inc. and Oy Tampella for summary determination terminating the investigation as to those two respondents.

SUMMARY: The Commission has determined not to review the administrative law judge's initial determination (ID) (Order No. 3) granting the aforementioned respondents' motion for summary determination that they have not violated section 337 and terminating the investigation as to the two respondents. The Commission takes no position on the ALJ's discussion of jurisdiction in Order No. 3 because the part of the order is not before the Commission.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

SUPPLEMENTARY INFORMATION: On March 21, 1985, respondents TVW Paper Machines, Inc. and OY Tampella moved for summary determination to terminate the investigation as to them on the basis of lack of jurisdiction and because they allegedly has not violated section 337. The presiding administrative law judge issued an ID granting the motion for summary determination and an order denying the respondents' motion for termination on jurisdictional grounds. No petitions for review or comments from Government agencies or the public were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: May 20, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12990 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Motions for Termination of Respondents and the Entry of Consent Orders

AGENCY: International Trade Commission.

ACTION: Notice is hereby given of the Commission has received motions for (1) termination of the investigation as to the following Taiwanese respondents and (2) the entry of the consent orders incorporated into the settlement agreements signed by those respondents: Formosan United Corporation (Motion No. 174-72"C"); Good Will Mercantile Co. (Motion No. 174-73"C"); Show Soon Enterprises Co., Ltd. (Motion No. 174-74"C"); Fortune Development Corp. (Motion No. 174-75"C"); King Feng Fu Machinery Works Co., Ltd. (Motion No. 174-77"C"); and King Tun Fu Machinery Co. (Motion No. 174-77"C").

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-174 is being conducted to determined whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines by reason of alleged unfair acts and practices by Taiwanese and U.S. companies. (See 48 FR 55786, Dec. 15, 1983; 49 FR 20767, May 31, 1984.) The complainant is Delta International Machinery Corp. (See 49 FR 23463, June 6, 1984.)

Public Inspection

Copies of the motions, the settlement agreements, the proposed consent orders, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S.

International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Written Comments

Interested persons may file written comments with the Commission concerning the proposed termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, not later than 7 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document or portion thereof to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission, and must include a full statement of the reasons why confidential treatment should be granted. The Commission either will accept the submission in confidence or return it.

Copies of the motions have been served on the U.S. Customs Service, the U.S. Department of Justice, the Department of Health and Human Services, and the Federal Trade Commission. Those agencies may file written comments on the motions within 7 days after service. (See 19 CFR 201.14 and 201.16 regarding the computation of time for filing after service.)

By order of the Commission.

Issued: May 24, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12972 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-26]

Sugar Content of Certain Articles From Australia

AGENCY: International Trade Commission.

ACTION: Institution of a review investigation of an outstanding countervailing duty order and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note), the Commission hereby gives notice that it is instituting this investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of sugar content of certain articles from Australia [1] if the outstanding countervailing duty order regarding such merchandise were to be revoked.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-523-0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1923, the Department of the Treasury issued a countervailing duty order on the sugar content of certain articles imported directly or indirectly from Australia (T.D. 39541). Subsequent notices, the last of which was T.D. 79-216 (44 FR 45923, August 6, 1979), amended the countervailing duty rates. On January 1, 1980, the Trade Agreements Act of 1979 (Pub. L. 96-39) became effective. That act provided, in section 104(b), that "In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) * * * which applies to merchandise which is the product of a country under the Agreement, and which is in effect on January 1, 1980, * * * the Commission, upon the request of the government of such a country * * * submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 (January 1, 1980) shall . . . commence an investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked." The Tariff Act of 1930 specifically validated prior decisions under section 303 of the Tariff Act of 1922. We interpret this validation as allowing review of outstanding countervailing duty orders issued pursuant to section 303 of the Tariff Act of 1922 in accordance with section 104(b) of the Trade Agreements Act of 1979.

On September 9, 1982, the Commission received such a request from the Government of Australia regarding sugar content of certain articles.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules of practice and procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rule (19 CFR § 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on July 1, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

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[1] Imports covered by the review are "approved fruit products" and "other approved products" produced in Australia. The current list of "approved fruit products" includes the following items: Jams, canned fruit, citrus peel, crystallized (or glace) fruits, certain fruit cordials and fruit juices containing not less than 25 percent pure Australian juice. The list of "other approved products" currently includes: alcoholic beverages, bisquits, cakes, puddings, pastries and similar mixtures and ingredients used to make them, chemicals derived from cane sugar by hydrolysis, chemical preparations used as inhibitors or stabilizers, condiments, confectionery, desserts and ingredients used to make them, drink powders and crystals, essences and flavorings, ice block mixtures, leather, icing sugar mixture, maple syrup, medicines and drugs, mixtures used used to make icings, fillings, dressings and other foods, processed cereal foods or vegetables, processed egg products, processed milk products, quick frozen fruits, soft drinks, soups, spreads, sweetened fruit pulp and other fruit products which are not "approved fruit products." Exceptions to the above are pure sugar and pure icing sugar (that is, not mixed with other manufacturing ingredients), golden syrup, treacle and molasses. These are regarded as sugar and sugar syrups.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 18, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 19, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 24, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 11, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 25, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 25, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.30 of the Commission's rules (19 CFR 207.30, as amended by 49 FR 32569, August 15, 1984).

By order of the Commission.

Issued: May 17, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12971 Filed 5-29-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30667]

Missouri Pacific Railroad Co.—Trackage Rights Exemption

On May 14, 1985, the Missouri Pacific Railroad Company (MoPac) filed a notice of exemption of trackage rights over a line of track of the Illinois Central Gulf Railroad Company (ICG) between ICG milepost 590.94 and milepost 591.52 in Sparta, IL, a total distance of 3,069 feet.

The trackage rights will permit MoPac to transport its overhead traffic through Sparta over the more efficient ICG trackage. Moreover, utilization of ICG's trackage will enable MoPac to retire and remove approximately 3,300 feet of its parallel trackage through Sparta.

This joint project involves the relocation of a line of railroad which does not disrupt service to shippers and falls within the class of transactions identified at 49 CFR 1180.2(d)(5) which the Commission has found to be exempt under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed herein. See *D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 22, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-12900 Filed 5-29-85; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Treasury Executive Institute Seminar Room in the 2100 corridor of the Interstate Commerce Commission Building, 1201 Constitution Avenue, NW. in Washington, D.C. on June 26 and 27, 1985, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss recommended questions for the Joint Board's examinations referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1985 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass scores. A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and the review of the May 1985 Joint Board basic examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

In addition, there will be a discussion of: (1) The appropriateness of adopting the stochastic approach to the subject of life contingencies and other syllabus topics on future basic actuarial examinations, (2) the number of questions on the future basic actuarial examinations, (3) the possible revision of the scoring formula for the examinations on account of omitted questions, (4) the concept of a two-part basic examination after the examination transition period, and (5) the standards to be applied to university or college credit for satisfying the knowledge requirement of eligibility for enrollment. The portion of the meeting dealing with the discussion of these topics will be open to the public as space is available. Such discussion will commence at 1:30 p.m. on June 26 and will continue until the discussion is finished but not beyond 4:30 p.m. that day.

Time permitting, after discussion of the agenda items by Committee members during the open meeting, interested persons may make statements germane to the subjects under consideration. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Advisory Committee and the Joint Board by sending it to the Committee Management Officer. Notifications and statements should be received no later than June 14, 1985. They should be sent to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220. Telephone inquiries may be directed to Mr. Shapiro at (202) 535-6787.

Dated: May 24, 1985.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 85-12942 Filed 5-29-85; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Consent Decree in Clean Air Act Enforcement Action; Kern Oil and Refining Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, July 17, 1973, notice is hereby given that a consent decree in United States v. Kern Oil and Refining Company was entered by the United States District Court for the Eastern District of California on May 9, 1985. The decree acknowledges that Kern Oil converted its fuel transfer and storage facility to a "bottom loading" system so as to eliminate the emission of volatile organic compounds. The decree also requires Kern to pay a civil penalty of $2000.00 for past violations.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States v. Kern Oil and Refining Company*, 90-5-2-1-737.

The consent decree can be examined at the office of the United States Attorney, 4311 Federal Building, 1130 "O" Street, Fresno, California, at the Region IX office of the Environmental Protection Agency, Office of Regional Counsel, 215 Fremont Street, San Francisco, California, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1515), Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-12935 Filed 5-29-85; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-414]

Duke Power Co. et al.; Receipt of Antitrust Information

The Duke Power Company, acting as agent for the North Carolina Municipal Power Agency Number One, and the Piedmont Municipal Power Agency, has submitted antitrust information in conjunction with its application for an operating license for Catawba Nuclear Station Unit 2, a pressurized water nuclear plant located in northeastern York County, South Carolina. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, D.C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluations that are requested will also be published in the **Federal Register** and copies sent to the Washington, D.C. and local public document rooms.

A copy of the general information portion of the applicaton for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, and in the local public document room at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensees' activities since the construction permit review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Site Analysis Branch, Office of Nuclear Reactor Regulation on or before July 1, 1985.

Dated at Bethesda, Maryland, this 23rd day of May 1985.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85-12994 Filed 5-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

Finding of No Significant Environmental Impact Regarding Construction and Operation of the University of Texas Research Reactor

The Nuclear Regulatory Commission (the Commission) is considering issuance of a construction permit to The University of Texas for a research reactor to be constructed at the University's Balcones Research Center in Austin, Texas.

The construction permit will allow The University of Texas to construct a research reactor in accordance with the application dated November 9, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Construction Permit and Facility Operating License published in the **Federal Register** on March 29, 1985, at 50 FR 12669. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Finding of No Significant Environmental Impact

The Commission has prepared an Environmental Assessment of this action, dated May 13, 1985, and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts as Described in the Environmental Assessment

The proposed action would authorize the applicant to construct a reactor facility at the Balcones Research Center in Austin, Texas. The environmental impacts associated with the construction and subsequent operation of the facility are discussed in the Environmental Assessment associated with this action. The assessment concludes that the construction and subsequent operation of this facility will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions regarding construction were based on the following:

The reactor facility will be constructed in an area that has already been developed by the University for a Research Center. Utility requirements and construction activities for the reactor laboratory and its related facilities will not be substantially different from those required for previous construction projects at the Balcones Research Center. Indeed, construction activities for the proposed reactor facility are expected to be less extensive than those of three previous major research projects constructed since 1980 and should have no impact on areas beyond the Research Center site.

The conclusions regarding operation of the facility were based on the following:

(a) Normal operations will generate insignificant amounts of gaseous, liquid and solid wastes. Anticipated radiation doses from these wastes in an unrestricted area will be within the 10 CFR Part 20 guideline values,

(b) The ultimate heat rejection source (the central chilled water facility) is capable of absorbing all the waste heat from the reactor operation,

(c) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding,

(d) At a thermal power level of 1100 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(e) The hypothetical loss of integrity of the cladding of the maximum irradiated fuel rod will not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR 20.

For further details with respect to this proposed action, see (1) the application for construction permit and operating license dated November 9, 1984, as supplemented, (2) the Environmental Assessment, and (3) the Safety Evaluation Report (NUREG–1135) prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. Copies of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of NUREG–1135 may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7982.

Dated at Bethesda, Maryland, This 23rd day of May 1985.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85–12990 Filed 5–29–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC—14531 (File No. 811–4002)]

American Capital Option Income Fund, Inc.; Application and Opportunity for Hearing

May 21, 1985.

Notice is hereby given that American Capital Option Income Fund, Inc. ("Applicant"), 2800 Post Oak Blvd., Houston, Texas 77056, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 25, 1985, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to Section 8(b) of the Act on April 11, 1984, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of Section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that Applicant is presently a corporation in good standing under Delaware state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 14, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–12918 Filed 5–29–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC—14530 (File No. 811–4247)]

Eastwest Penny Stock Fund, Inc.; Application and Opportunity for Hearing

May 21, 1985.

Notice is hereby given that Eastwest Penny Stock Fund, Inc. ("Applicant"), 390 Union Boulevard, Suite 610, Denver, Colorado, 80228, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified,

management investment company, filed an application on March 11, 1985, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to Section 8(b) of the Act on May 8, 1984, made a public offering of its securities but insufficient subscriptions were received to permit a closing, has fewer than 100 security-holders for purposes of Section 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant states that it has one securityholder, Lexicon Resources Corporation ("Lexicon") and $100 in assets which will be distributed to its parent Lexicon upon dissolution. Applicant further states that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant is presently a Colorado corporation in good standing.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 14, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 857-12917 Filed 5-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22058; File Nos. SR-CBOE-84-15 and SR-CBOE-84-16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Disapproving Proposed Rule Change SR-CBOE-84-16 and Approving Proposed Rule Change SR-CBOE-84-15

May 21, 1985.

I. Introduction

On October 31, 1984, the Commission instituted proceedings pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act")[1] to determine whether to disapprove two proposed rule changes filed by the Chicago Board Options Exchange, Incorporated ("CBOE").[2] The first proposal would increase the size of the CBOE's Board of Directors ("Board") from 21 to 24 by increasing from 6 to 9 the minimum number of floor directors on the Board.[3] The second proposal provides that, in the event there is more than one candidate for Chairman of the CBOE Executive Committee, the Chairman would be elected by a plurality of CBOE members.[4]

Both proposed rule changes were approved by the CBOE membership at a special meeting, and were opposed by the CBOE Board. The principal proponent of the amendments, the CBOE Floor Members Association ("FMA"), has taken the position that the members, as "owners" of the exchange, have a right to determine how and by whom they will be governed. The FMA states that an increase in floor representation on the Board is warranted because under the existing rules the floor membership is "not properly nor proportionately" represented on the Board.[5] In contrast, the CBOE Board opposes the proposed rule changes because, in its opinion, the amendments are not in the best interest of the exchange as a whole and will have a negative effect upon the Board's ability to oversee the management of the exchange and carry out the purposes of the Act.[6]

The Commission received letters from 16 commentators in response to its order instituting disapproval proceedings and requesting comment on the two proposed rule changes.[7] A majority of the commentators oppose approval of either proposal, while two individuals submitted comments supporting approval of both proposed rules.

After considering the proposed rule changes together with all comments and submissions filed with the Commission, the Commission is not able to find that the proposed rule change to increase the number of floor directors on the CBOE Board is consistent with the Act, particularly sections 6(b)(1), 6(b)(3) and 6(b)(5) thereof,[8] and therefore has determined to disapprove it. The Commission has concluded that the proposal providing for membership election of the CBOE Executive Committee Chairman is consistent with the Act and therefore should be approved.

II. The Board Expansion Proposal

A. Summary of Proposed Rule Change and Comments

Under the proposal to add 3 additional floor directors to the Board, the Board would hereafter be composed of 24 directors, 18 of whom would be members or executive officers of member organizations of the exchange, and 4 of whom would be public directors. The other two seats on the Board would be occupied by the Chairman of the Board and the President. Of the 18 Board members who

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] The proceeding was noticed in Securities Exchange Act Release No. 21439 (October 31, 1984), 49 FR 44577 (November 7, 1984) ("October Release").

[3] File No. SR-CBOE-84-16. The proposal was noticed in Securities Exchange Act Release No. 21121 (July 6, 1984), 49 FR 29173 (July 18, 1984). This proposal would amend Art. VI, Sec. 6.1 of the CBOE Constitution.

[4] File No. SR-CBOE-84-15. The proposal was noticed in Securities Exchange Act Release No. 21122 (July 6, 1984), 49 FR 29174 (July 18, 1984). This proposal would amend Art. VIII, Sec. 8.1(a) of the CBOE Constitution.

[5] The comments of the FMA are found in letters which were distributed to the membership prior to the special meeting in April 1984 at which the membership voted to approve the proposed rule changes. Copies of these letters were attached to the Form 19b-4 filings submitted by the exchange to the Commission in May 1984. Additional comments of the FMA are found in Amendment No. 1 (June 21, 1984) to each of the rule filings.

[6] The comments of the CBOE Board are found in letters to George A. Fitzsimmons, Secretary, SEC, from Anne Taylor, Secretary and Associate General Counsel, CBOE, and the CBOE Board, dated July 26, 1984.

[7] The Commission received comments from the following retail firms: Advest, Inc.; A. G. Edwards & Sons, Inc.; The Chicago Corporation; Donaldson, Lufkin & Jenrette ("DLJ"); Drexel Burnham Lambert Incorporated ("Drexel"); Merrill Lynch & Co., Inc. ("Merrill Lynch"); Paine Webber Group Inc. ("Paine Webber"); and Shearson Lehman/American Express Inc ("Shearson"). The Commission received letters from three CBOE public directors: Stephen J. Friedman, Richard B. Ogilvie, and J. Richard Zecher. In addition, two CBOE members submitted comment and rebuttal letters: Gary P. Lahey and Steven I. Givot. The Commission also received letters from the American Stock Exchange, Inc. ("Amex") and the Board of Directors of the Securities Industry Association ("SIA").

[8] 15 U.S.C. 78f(b), (1), (3), (5) (1982).

must be members of the exchange, 9 would be members who individually either own or directly control their memberships and are primarily engaged in business on the exchange floor ("floor directors"). Another six must be executive officers of member organizations which primarily conduct a non-member public customer business and individually are not primarily engaged in business activities on the exchange floor ("off-floor directors"). The remaining three elected directors are members who function in any recognized capacity either individually or on behalf of a member organization ("at-large directors"). Under the current rule, the Board is composed of 21 directors: 6 floor directors, 6 off-floor directors, 3 at-large directors, 4 public directors, and the Chairman and President of the CBOE.

The majority of commentators oppose the proposed rule change which would increase the minimum number of floor directors on the Board from six to nine. Several commentators conclude that the increase would result in the domination of the Baord by one of the exchange's constituencies, namely, the floor membership, with a concomitant decrease in representation of member firms and public investors.[9] One commentator states that "the proposed rule change and resulting realignment not only threatens the current balance of the Board but presents the opportunity for special interests to prevail." [10] Another commentator expresses concern that the numerical superiority of floor directors on the Board "would assure that the floor membership could never be overruled, should they vote as a block, and would enable them to effectively 'stonewall' all other representation on the Board." [11]

Commentators opposed to this rule change also expressed the opinion that the proposal would discourage qualified persons from serving no the Board as industry or public representatives.[12] These commentators maintain that, because control of the Board would rest with the floor directors, representatives of the public and industry would have very limited opportunities to influence the exchange's decision-making process, and accordingly, would not be attracted to the position.

Finally, a number of commentators take the position that the present structure of the CBOE Board provides for the fair representation of all interests, and that a need for change has not been demonstrated and therefore cannot be justified.[13]

The Commission received letters from two commentators, Gary P. Lahey [14] and Steven I. Givot,[15] who are both CBOE floor members who have been active in exchange governance. Both support approval of the proposal to increase the number of floor directors on the Board. They take the position that it is wrong to assume that the three at-large Board seats are " 'generally reflective of floor interests.' "[16] In support of this position, Mr. Givot states that in the last four years, none of the at-large director positions has been filled by individuals qualifying for seats on the Board as floor directors.[17] Accordingly, Mr. Givot argues that the proposal should be viewed as increasing the number of floor directors from 6 to 9, not 9 to 12.[18]

Both commentators also reject the notion that floor directors *per se* have a "pro-floor, anti-firm, anti-public bias" [19] and will as a result act in their own best interests, to the detriment of the exchange's other constituencies. Messrs. Lahey and Givot argue, in fact, that the trading floor population of any exchange "has a vested interest in satisfying the public customer. . . . [because] he will either go elsewhere or stop trading options." [20] Mr. Lahey states that "[t]he members with floor functions at CBOE, as no other group in the securities industry, have everything to loss and nothing to gain, including their livelihood, if CBOE does not offer the investing public a fair and open market place. . . ." [21]

Finally, Mr. Givot rejects the notion that an increased number of floor directors will discourage private individuals from serving on the Board as public directors. He notes that, when floor directors comprised 40% of the CBOE Board, the exchange had no difficulty in attracting individuals from the public and industry to serve as public directors.[22]

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[9] *See* letter from Patrick G. Finegan, Jr., Assistant General Counsel, Advest, to John Wheeler, Secretary, SEC, dated December 20, 1984 ("Advest Letter"); letter from Robert P. Rittereiser, Executive Vice President, Merrill Lynch, to George A. Fitzsimmons, Secretary, SEC, dated December 6, 1984 ("Merrill Lynch Letter"); letter from Robert E. Linton, Chairman of the Board, and Howard M. Brenner, Executive Vice President, Options Administrator, Drexel, to Secretary of the Commission, SEC, dated December 4, 1984 ("Drexell Letter"); letter from Victor Elting III, Secretary, The Chicago Corporation, dated December 28, 1984 ("Chicago Corporation Letter"); and letter from Richard H. Jenrette, Chairman of the Board, DLJ, to Richard G. Ketchum, Director, Division of Market Regulation, dated December 6, 1984 ("DLJ Letter").

[10] Drexel Letter at 2.

[11] DLJ Letter at 2.

[12] *See* Merrill Lynch Letter and DLJ Letter.

[13] DLJ Letter at 2; Merrill Lynch Letter at 2; Advest Letter at 2; and letter from David W. Mesker, Senior Vice President, A.G. Edwards & Sons, Inc. to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated November 21, 1984.

The Commission also received a comment letter from the Amex which discusses the Amex system of governance and the manner in which it has evolved. Particularly noteworthy is the Amex's decision in 1979 to increase from 3 to 5 the number of floor directors on its Board, while at the same time reservicing a majority of Board member seats (7) for representatives of public firms. It is the Amex's view that the Commission "should consider the CBOE proposals in light of the need to ensure an adequate balance between the public interest and those of the various industry groups represented on its Board . . . ." *See* letter from Robert J. Birnbaum, President, Amex, to John Wheeler, Secretary, SEC, dated December 31, 1984 ("Amex Letter") at 6.

[14] *See* letters from Gary P. Lahey to John Wheeler, Secretary, SEC, dated December 12, 1984 ("Lahey Letter") and January 14, 1985 ("Lahey Rebuttal Letter"). In addition to submitting written comments, Mr. Lahey requested that the Commission hold a public hearing regarding the two proposed rule changes. *See* letter from Gary P. Lahey to John Wheeler, Secretary, SEC, dated February 11, 1985. Under Section 19(b)(2) of the Act, the Commission has discretion to determine what type of proceeding, either oral presentation or notice and opportunity for written comments, is appropriate for consideration of a particular proposed rule change. S. Comm. on Banking, Housing & Urb. Affs., *Rep. to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975). *See Belenke* v. *SEC*, 606 F.2d 193 (7th Cir. 1979) and Securities Exchange Act Release No. 21759 (February 4, 1985), 50 FR 7250, 7259 n. 100 (February 21, 1985). In the instant case, the Commission has determined not to hold oral or public hearings because ample opportunity has been afforded and utilized by interested persons to submit written comments on the CBOE proposals.

[15] *See* letters from Stevens I. Givot to John Wheeler, Secretary, SEC, dated December 31, 1984 ("Givot Letter") and January 14, 1985 ("Givot Rebuttal Letter").

[16] Givot Letter at 6, *citing* October Release, *supra* note 2, 49 FR 44579.

[17] Givot Letter at 7. Mr. Givot notes that those persons currently serving as "at-large" directors on the CBOE Board have the following affiliations: one director is a nominee of a firm conducting a public securities business and two are officers of market-maker clearing firms.

[18] Under the terms of the proposal, floor directors would occupy 37.5% of the seats on the Board. Mr. Givot terms it a "questionable speculation" to presume that this percentage of control will lead to block voting. He states that his review of CBOE minutes of Board meetings during the years 1973–78, when 40% of the Board was comprised of floor directors, fails to reveal any evidence of block voting. *See* Givot Rebuttal Letter at 3.

[19] Givot Letter at 7; *Cf.* Lahey Letter at 5, 6.

[20] Givot Letter at 8. Mr. Givot argues that CBOE floor directors, dependent upon public customer order flow for their livelihood, have no reason to harm either their direct customers (member firms) or their indirect customers (the public). He also rejects the suggestion raised in the Commission's October Release that member firm directors may represent the public interest to a greater degree than do floor directors.

[21] Lahey Letter at 5. Messrs. Lahey and Givot cite the CBOE Competitive Market Maker Task Force as an example of a group which, though dominated by floor members, recently made 34 recommendations to the CBOE Board aimed at improving the CBOE marketplace and thereby benefiting public customers. The board and the membership voted to approve all of the recommendations.

[22] Givot Letter at 7–8.

B. Statutory Criteria

Under section 19(b)(2) of the Act, the Commission must approve a proposed rule change of an exchange if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to exchanges. The Commission must disapprove a proposed rule change if it is unable to make such a finding.

In the October Release, the Commission identified the following statutory provisions which might provide a basis for disapproval of the proposed rule change: Section 6(b)(1), which requires that an exchange be so organized as to have the capacity to carry out the purposes of the Act; section 6(b)(3), which requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors be representative of issuers and investors; and section 6(b)(5), which requires that the rules of an exchange be designed, in general, to protect investors and the public interest.

C. Grounds for Disapproval

The Commission is unable to find, for the following reasons, that this proposed rule change is consistent with the aforementioned requirements of the Act.

The Commission has concluded that the proposal would have a negative impact on the Board's ability to carry out the purposes of the Act and enforce compliance with exchange and Commission rules, as is required by section 6(b)(1). Under the proposal those directors who are floor members will become the dominant membership group represented on the Board. In addition to controlling 9, or 37.5%, of the 24 Board seats, the clear possibility exists that directors who chiefly identify with the interests of the floor membership would control 12, or 50%, of the Board seats, assuming that the persons filling the 3 at-large positions continue to be more closely allied with floor interests than with the interests of public member firms.[23]

Those commentators who support approval of the proposal contend that under the terms of the rule change the floor will not possess a majority of Board seats, and therefore will not dominate the Board through block voting. It is clear, however, given the numerical domination of CBOE seats by floor members, that the floor would have the ability to obtain control of 50% of the seats on the Board. In addition, it is apparent that the purpose of the two instant proposed rule changes is to increase the role of the floor in exchange governance, so that there also appears to be an interest by CBOE floor members in increasing the floor's voice in the operation of the exchange. The Commission is concerned that this numerical domination by one faction of the CBOE membership may make it very difficult for the Board to act in the best interests of the public or the CBOE as a whole. It also could impede efforts by the Board to vigorously enforce Commission or exchange rules which are not favored by the floor membership.[24]

These concerns highlight why the Commission is unable to find that the proposal is consistent with section 6(b)(3) of the Act. In view of Congress' and the Commission's historical concern with ensuring that member firms and public customers are adequately represented in exchange governance,[25] the Commission is unable to find that allowing a single exchange constituency to establish a dominant position on the Board would be consistent with a "fair" representation requirement. Rather, the Commission believes that section 6(b)(3) must be interpreted in a manner to promote a balance between all of the exchange's constituencies, particularly between floor members and upstairs firms.

The Commission also is unable to find that the proposed rule change is consistent with the requirement of Section 6(b)(5) that the rules of an exchange be designed, in general, to protect investors and the public interest. Under the proposed rule change the interests of public investors may be represented to a lesser degree due to the decreased representation of public customer member firms. Historically, both Congress and the Commission have recognized that public customer member firms may better represent the interests of public customers than do floor members, because of the fiduciary obligations and personal contact between member firms and their public customers.[26] While Messrs. Lahey and Givot assert that floor directors would not take any action to harm investors because they are dependent for their livelihood upon public customer order flow, this argument erroneously assumes that the interests of floor members and public investors generally will be identical, regardless of the issue.[27] It

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[23] Messrs. Givot and Lahey argue that it is wrong to assume that the 3 at-large Board seats are " 'generally reflective of floor interests' ". Givot Letter at 6, *citing* October Release, *supra* note 2, 49 FR at 44529. While the Commission acknowledges that not all past at-large directors were floor members, those individuals that were not floor members generally were affiliated with firms whose primary function was to *clear* for floor members. (Generally, clearing firms provide essential financing services for market makers, in addition to performing the usual clearing functions.) For example, at the present time, 2 of the 3 at-large directors are associated with firms whose primary function is providing clearing services for options market makers, while the third at-large director is affiliated with a member firm conducting a public business, but spends the preponderance of his time on the floor of the exchange. In this regard, it is significant that the informal procedures currently in place for selecting the ECC call for an *ad hoc* committee of the six floor directors and three at-large directors to nominate the ECC from among themselves. *See infra* note 28. If it were not perceived by the parties involved, including the floor members, that the at-large directors normally were allied with the exchange's floor community, it is highly unlikely this *ad hoc* committee would have this composition. In addition, the majority of commentators addressing the issue believe that the "at-large directors" generally reflect the concerns of floor interests. *See* Advest Letter at 1 ("By tradition, the at-large members are floor members"); DLJ Letter at 1 (the proposal "will probably result in the floor membership attaining a total of 12 out of 24 available Board seats"); Drexel Letter at 2 ("traditionally, the three at-large Directors have come from the floor and not from firms engaged primarily in a public customer business"); letter from Robert F. Shapiro, Chairman, Board of Directors, SIA, to John Wheeler, Secretary, SEC, dated December 11, 1984 ("SIA Letter") at 2 ("At-large members of the CBOE Board traditionally have come from the floor. . . .").

[24] In this connection, the Commission notes that Mr. Lahey disagrees with the suggestion in the October Release, *supra* note 2, 49 FR 44579 n. 17, that a prior floor sponsored (Board opposed) rule change to modify the CBOE's disciplinary rules indicated a reluctance on the part of the floor community to enforce exchange or Commission rules. Lahey Letter at 4; and Lahey Rebuttal Letter at 2. The Commission, however, continues to believe that its experience with those proposed modifications to the disciplinary process highlights the potential for the floor community to be in conflict with the broader exchange community and for those disagreements to directly affect the CBOE's enforcement process. *See infra* note 27.

[25] *See e.g.* H.R. Doc. No. 85, 74th Cong., 1st Sess. at 4, 8 (1935); SEC *Report of Special Study of Securities Markets*, 88th Cong., 1st Sess. pt. 4, at 572, 763–65 (Comm. Print 1963) ("Special Study"); Subcomm. on Com. & Fin. of the Comm. on Interstate & For. Com., *Securities Industry Study*, H. Rep. No. 1519, 92nd Cong. 2nd Sess. at 103, 107 (Comm. Print 1972) ("Securities Industry Study"); letter from Roderick M. Hills, Chairman, SEC, to James I. Needham, Chairman, NYSE, dated January 6, 1976, contained in File No. SR–NYSE–75–4 (questioning whether an NYSE proposal, subsequently abandoned, to add four new industry representatives to the NYSE Board of Directors was consistent with the "fair representation" requirement); and October Release, *supra* note 2, 49 FR at 44579 n. 19.

[26] *See id.* For example, public member firms generally trade *for* the public as their agents, whereas floor members trading for their own accounts and taking the other side of a trade can be said, in this sense, to trade *against* the public.

[27] For example, in 1980, the CBOE membership submitted to the Commission a proposed rule

Continued

also overlooks the fact that public investors may be indirectly harmed by a refusal on the part of a floor-controlled Board to ensure rigorous compliance with exchange rules which are not favored by the floor membership. The Commission has therefore determined, for the above-stated reasons, to disapprove the Board expansion proposal.

III. Executive Committee Chairman Proposal

A. Summary of Proposed Rule Change and Comments

Under the proposal providing for membership election of the Executive Committee Chairman ("ECC"), the ECC would be elected by a plurality of members voting at a meeting of the membership held each year on the third business day in January. Currently, the ECC is selected by a majority of the Board.[28] As under the current rule, only a director who owns or directly controls his own membership would be eligible to seek the office. In the event there is only one candidate, no election would be held and the Board would be required to declare the office filled by the sole announced candidate.

Pursuant to the CBOE Constitution, the ECC presides at meetings of the Executive Committee and of members, appoints standing and special committees with Board approval, and is responsible for the coordination of the activities of all committees. In addition, in case of the absence or inability to act of the Chairman of the Board, the ECC acts as Vice-Chairman and exercises the powers and discharges the duties of the Chairman.

Three commentators contend that the ECC proposal may deny member firms fair representation in the selection process.[29] They argue that this proposal would result in the ECC representing only one segment of the CBOE constituency (*i.e.*, the floor membership), would "operate to the detriment of the Exchange's many other constituencies,"[30] and would interfere with "a system of corporate governance designed to include all elements of the exchange, and to act as a check and balance to the nominating committee."[31] Additionally, one commentator suggests that, in view of the substantial public business done by member firms, seat ownership is an inappropriate means of determining whether member firms are fairly represented in exchange governance.[32]

Four commentators state that the proposal, if approved, will have a negative impact upon the CBOE's ability to carry out the purposes of the Act.[33] Specifically, these commentators are concerned about the fact that the Board will have no authority to review the qualifications of candidates and prevent an unsuitable candidate from taking office. One commentator states that direct election "would seriously undermine the CBOE's ability to carry out its statutory functions and call into question how well responsibilities could be carried out by one of the exchange's most important officials."[34]

Seven commentators expressed the opinion that both proposed rule changes may be inconsistent with a system of exchange governance designed to protect investors and the public interest.[35] One commentator states that because the CBOE is a quasi-public institution, "it is essential that the exchange governance consist of a reasonable balance among the representatives of the exchange's constituencies. . . ."[36] In addition, the SIA stated that "[t]he appearance of a market structured to provide advantages to professionals would make a statement to public customers that could not be mistaken, and would impact this marketplace."[37] Similarly, another commentator found that the proposals would result in "an erosion of the public's and market professionals' confidence in the CBOE in particular and the fairness of the securities markets in general."[38]

Messrs. Lahey and Givot support approval of the proposal, emphasizing that from 1973–78, the CBOE's Chairman and Vice-Chairman were elected by the membership, rather than by the Board, and that at the present time key officials of other exchanges are selected by membership vote, including the Vice-Chairman Elect of the Board of Governors of the Pacific Stock Exchange ("PSE"), the Chairman and two Vice-Chairmen of the Board of Governors of the Philadelphia Stock Exchange ("Phlx") and the Vice-Chairman of the Board of Directors of the Midwest Stock Exchange ("MSE").[39]

In addition, Mr. Lahey disagrees with those commentators who argue that membership selection of the ECC will disenfranchise the public and member firm communities. Mr. Lahey states that this argument "might lead you to believe . . . that only floor members would be allowed to vote or that one candidate would be 'pro-floor' and the other 'anti-floor' and the floor forces would throw all their support to one candidate."[40] Mr. Lahey states that this argument is unfounded because, since all candidates must be directors *and* floor members, all candidates initially will have been elected by the membership to the Board, and in the event of a membership election, each candidate will have the support of floor members. Mr. Lahey contends, therefore, that member firm votes will be extremely important in an election, because floor member support neessarily will be divided between the two floor director candidates.

Another issue addressed by both Messrs. Lahey and Givot concerns the contention that the proposal could impair the Board's ability to effectively govern the exchange on the grounds that it will have no authority to review the qualifications of ECC candidates and prevent an unsuitable candidate from taking office. Both commentators found

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change to amend the disciplinary procedures of the CBOE. The principal proponent of the proposal was the CBOE Market Maker Association, and the proposal was unanimously opposed by the CBOE Board. The Commission found that certain provisions of the proposed rule change would undermine the ability of the CBOE Board to enforce compliance with the Act and CBOE rules and would substantially impair the administration of the CBOE disciplinary process. Accordingly, the Commission disapproved the proposed rule change. *See* Securities Exchange Act Release No. 17198 (October 7, 1980), 45 FR 68488 (October 15, 1980).

[28] From 1978–82, an informal nominating committee comprised of the 6 floor directors plus the 3 at-large directors nominated a candidate from among themselves for the position of ECC. The Board then confirmed as ECC the candidate receiving the support of a substantial majority of the informal nominating committee. During the years 1978–82, the nominating committee unanimously supported one candidate, and this candidate always received Board conformation. In 1982, however, the committee divided its support between two candidates, and the issue was submitted to the full Board for final determination.

[29] *See* letter from Sam Scott Miller, Vice President, General Counsel and Secretary, Paine Webber, to John Wheeler, Secretary, SEC, dated December 21, 1984 ("Paine Webber Letter"); DLJ Letter; and SIA Letter.

[30] DLJ Letter at 1.

[31] SIA Letter at 2.

[32] Paine Webber Letter at 2.

[33] *See* Paine Webber Letter; SIA Letter; Merrill Lynch Letter; and Drexel Letter.

[34] Paine Webber Letter at 2.

[35] *See* Paine Webber Letter; SIA Letter; Merrill Lynch Letter; Drexel Letter; Advest Letter; Letter from Stephen J. Friedman, Public Director, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated December 10, 1984 ("Friedman Letter"); and Chicago Corporation Letter.

[36] Merrill Lynch Letter at 1.

[37] SIA Letter at 2. Another commentator expressed a related concern by stating that "domination of the CBOE by floor members may lead to the suspicion that floor member professionals are entitled to advantages not available to the public investor and the firms through which such investor transacts business." Advest Letter at 1.

[38] Paine Webber Letter at 1.

[39] Givot Letter at 3. *See* Art. III, Sec. 2(a), PSE Constitution; Art. III, Sec. 3–2, Phlx Constitution; and Art. IV, Sec. 2, MSE Copstitution.

[40] Lahey Rebuttal Letter at 1.

this concern unwarranted in light of CVOE Constitutional provisions which safeguard against abuse of office by the ECC. For example, the Board is empowered to remove the ECC from office and must approve all committee appointments made by the ECC. [41] In addition, Mr. Givot states that, during his seven years as a director, the Board has taken whatever actions were necessary to ensure that the best interests of the CBOE were served in instances where the ECC overstepped the bounds of office.[42]

Both commentators also disagree with a statement in the October Release concerning the role the ECC plays in the governance of the CBOE.[43] Mr. Givot states that the ECC does not interact with the CBOE staff on a daily basis, and in fact has very limited contact with exchange staff. Mr. Givot maintains that the principal roles of the ECC are confined to chairing the Executive Committee, recommending committees to the Board, and coordinating committee activities.[44]

Mr. Lahey states that the proposal would have a positive impact upon the CBOE because it would enhance the credibility of the ECC and thus increase his effectiveness in communicating to exchange members the importance of adhering to applicable exchange and Commission rules. In addition, Mr. Givot argues that it is very important for the members of the CBOE to perceive themselves as having some role in the governance of the exchange. Mr. Givot maintains that the current structure of the CBOE wherein the Chairman, the Vice Chairman and the President are all selected by the Board has made it "very difficult for the Board-elected leadership to lead effectively." [45]

Both commentators also expressed the opinion that there is "no history of abuse" [46] at the CBOE which evidences any intent on the part of the floor membership to dominate member firms or the public. Mr. Givot maintains that there is no evidence to support the idea that an ECC elected by the membership will focus upon the concerns of the floor constituency to the exclusion of the best interests of the CBOE and the public.[47]

B. Discussion

In the October Release, the Commission expressed concern that election of the ECC by the CBOE membership may be inconstistent with sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act because it may result in the CBOE floor members having greater control over the administration of the exchange, at the expense of the CBOE's other constituencies, namely, public customer member firms and public investors.[48] The Commission continues to believe that as a policy matter the proposal is undesirable because it raises the possibility that floor members may be successful in controlling the selection of the ECC. We believe, however, that these concerns are counterbalanced in this case by the considerable oversight authority vested in the CBOE Board, and the continuing balance of representation on the Board which will result from disapproval of the Board expansion proposal. We have therefore determined, for the following reasons, to approve the proposal providing election of the ECC.

The ECC proposal does not appear literally inconsistent with any specific provision of the Act. Indeed, an argument can be made that the proposal is consistent with the requirement of section 6(b)(3) that the rules of an exchange "assure a fair representation of its members in the selection of its directors and administration of its affairs." Because every seatholder is entitled to one vote in a membership election (*i.e.*, no membership group is allocated more votes per seat than any other group), the proposal appears to come within the ambit of "fair representation." At the same time, we believe there is considerable merit to the arguments of the public firms commenting on the proposal that they are proportionally underrepresented, in terms of membership seats, in comparison to floor members of the exchange. The Commission does not believe it is necessary, in this context, however, to determine whether the one seat-one vote principle would in all circumstances constitute "fair representation" of the membership of the exchange. We are satisfied that in the context of the election of the ECC, in light of the limitations the Board is able to impose on the ECC, the existence of other senior positions selected by the Board which share authority with the ECC, and the additional reasons discussed below, membership election of the ECC is consistent with section 6(b)(3) of the Act.[49]

The Commission is cognizant of the fact that CBOE Constitution already provides that the HHC must be a director who owns or directly controls his own membership. Therefore, the person elected EEC always will be a floor member, regardless of whether he is elected by the membership or appointed by the Board. Further, under the terms of the proposed rule change, a membership election only will take place in the event there are two or more candidates nominated for the position of ECC. If there is only one candidate, that person will be confirmed by the Board. This latter scenario mirrors the election procedures currently utilized by the CBOE. Since 1978, when the ECC position was created at the CBOE, the ECC has been selected by an informal nominating committee, and the Board simply confirmed the chosen candidate.[50] On only one occasion has there been more than one candidate for the office. Thus, an argument can be made that the proposed rule change may not have a significant practical effect.

More importantly, the Commission recognizes that the governance structure of the CBOE places limitations on the ECC's authority and divides the power to govern the exchange among a number of exchange officers, notably, the Chairman of the Board and the President, in addition the the ECC. (Unlike the ECC, the Board Chairman is not a member of the exchange and is elected by the affirmative vote of at least two-thirds of the Board of Directors.[51] The result of this division of functions and power is a system of checks and balances in which the ultimate check upon the ECC's authority rests with the Chairman of the Board and the Board itself. For example, the Board is empowered to remove the ECC from office for any cause affecting the best interests of the exchange, the sufficiency of which the Board shall be

[41] Mr. Lahey also points out that the ECC cannot schedule items for Board consideration without approval of the Chairman of the Board. Lahey Letter at 4.

[42] Givot Letter at 4.

[43] In the October Release, the Commission stated that the lack of power on the part of the CBOE Board to review the qualifications of candidates and prevent an unsuitable candidate from taking office was of concern "because the ECC heads up the Excahnge's entire committee structure and interacts with the staff of the CBOE on a daily basis". October Release, *supra* note 2, 49 FR at 44579.

[44] Givot Letter at 4.

[45] Givot Letter at 10.

[46] Lahey Letter at 3; Givot Letter at 5.

[47] Givot Letter at 5.

[48] *See* October Release, *supra* note 2, 49 FR at 44578, 44579.

[49] Direct election of exchange officials may not, in all cases, appropriately ensure fair representation of the exchange membership, or adequately protect the interest of investors. Specifically, a simple count of member firms does not adequately reflect that in contrast to floor members, public member firms account for the vast majority of order flow sent to an exchange. *See* Special Study *supra* note 25, 571–72, 578; and Securities Industry Study, *id.*, 103, 105, 106. Moreover, in the context of the options exchanges, where individual exchanges generally have an exclusive franchise to trade particular options, it is especially important that the concerns of investors and public member firms be reflected in the exchange governance procedures.

[50] *See* note 28, *supra*, at 14.

[51] *See* Art. VIII, Sec. 8.1(a), CBOE Constitution.

the sole judge.[52] Additionally, although the ECC is responsible for appointing standing and special committees, his power to do so is subject to Board approval.[53] Thus, while we agree with a number of the commentators that the ECC is a significant position, we are satisfied that there are sufficient checks on his authority and responsibility that membership election of the ECC should not deprive the exchange's membership as a whole of "fair representation" within the meaning of section 6(b)(3) of the Act, or that the interests of investors or the public would be adversely affected in a manner inconsistent with section 6(a)(1) of the Act.

Finally, as noted by the proponents, membership election of key exchange officials is not a novel phenomenon. CBOE provided for direct election of the ECC until 1978. Moreover, the constitutions of four exchanges provide for membership election of officials whose positions arguably are similar to the position of the ECC at the CBOE. In addition, the Chairman of the Board of the Phlx is elected by the membership. While the Commission believes the traditional distinctions which exist between primary and regional exchanges may be relevant to questions of exchange governance, we believe that there are sufficient internal checks upon the ECC's exercise of his authority so as to prevent abuse of the office.

On balance, the Commission concludes that, within the defined limits of this proposal, membership election of the CBOE Executive Committee Chairman is consistent with the Act.

IV. Findings

First, the Commission is unable to find that the proposed rule change providing for an increase in the number of floor directors on the CBOE Board is consistent with the Act, particularly sections 6 (b)(1), (b)(3) and (b)(5) thereof. Rather, the Commission believes that the proposal would negatively affect the CBOE, in particular, and public confidence in the securities markets in general, by providing that the floor membership of the CBOE have a dominant role in the governance of the exchange. It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-84-16) to alter the composition of the CBOE Board be, and hereby is, disapproved.

Second, the Commission finds that the proposed rule change providing for membership election of the CBOE Executive Committee Chairman is consistent with the Act. It is therefore ordered, pursuant to section 19(b)(2) of the Act, that this proposed rule change (SR-CBOE-84-15) be, and hereby is, approved.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-12915 Filed 5-29-85; 8:45 am]

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[52] *See* Art. VIII, Sec. 8.7(a), CBOE Constitution.

[53] *See* Art. VIII, Sec. 8.3, CBOE Constitution.

[Release No. 34-22070; File No. SR-PSE-85-11]

Self-Regulatory Organizations; The Pacific Stock Exchange, Inc. ("PSE" or "Exchange"); Notice of Filing of Proposed Rule Change Relating to the Approval of Underlying Securities for Options Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1985, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes the following changes to its Rule VI, governing exchange options trading. (Italic indicates added language; brackets indicate deleted language.)

RULE VI—EXCHANGE OPTIONS TRADING

Approval of Underlying Securities

Section 12. No change.

Commentary .01–.02 No change.

.03 Subparagraph (a)(iv) of Section 12 does not apply to classes of options on Convergent Technologies, Inc. (CVGT).

Section 13. No change.

Commentary .01–.04 No change.

.05 Commentary .01 and Commentary .02 do not apply to the classes of options on CVGT.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 16, 1985, the Securities and Exchange Commission ("Commission") gave preliminary approval to a pilot program of side-by-side trading in six classes of options on National Market System ("NMS") Tier 1 Securities. The Exchange understands that one of the underlying securities proposed for the side-by-side pilot, Convergent Technologies, Inc. does not meet options listing standards because the stock will not have had a market price of at least $10.00 per share for each business day during the three months prior to the date of selection. (See PSE Rule VI, Section 12(a)(iv).) However, the Commission states in Release No. 34-22026 that due to the volume, capitalization, and number of shareholders of this security, the lower share price should not prevent the trading of standardized options thereon. (See Release No. 34-22026, pps. 76-77, Fn.150, May 8, 1985.)

Since the Commission has stated that it will permit exchanges to list for trading standardized options on NMS Tier 1 securities, including the six side-by-side pilot stocks, the Exchange submits this rule filing to exempt the CVGT options from its listing and delisting standards based on price.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and Section 6(b)(5), in that the rule will permit investors in CVGT stock to utilize standardized options for hedging purposes, and that the capitalization, volume and number of shareholders of CVGT counterbalance the lower market price of CVGT stock.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 20, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-12914 Filed 5-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22071; File No. SR-PSE-85-12]

Self-Regulatory Organizations; the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"); Notice of Filing of Proposed Rule Change Relating to the Approval of Underlying Securities for Options Training

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1985, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes the following changes to its Rule VI, governing exchange options trading. (Italic indicates added language; brackets indicate deleted language.)

RULE VI—EXCHANGE OPTIONS TRADING

Approval of Underlying Securities

Section 12. No change.

Commentary .01–.02 No change.

.04 Subparagraph (a)(iv) of Section 12 does not apply to classes of options on Chi-Chi's, In. (CHIC).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 16, 1985, the Securities and Exchange Commission ("Commission") gave preliminary approval to a pilot program of side-by-side trading in six classes of options on National Market System ("NMS") Tier 1 Securities. The Exchange understands that several of the underlying securities proposed for the side-by-side pilot do not meet options listing standards because the stocks will not have had a market price of at least $10.00 per share for each business day during the three months prior to the date of selection. (See PSE Rule VI, Section 12(a)(iv)). However, the Commission stated in Release No. 34-22026 that due to the volume, capitalization, and number of shareholders of two of the securities selected, the lower share price should not prevent the trading of standardized options thereon. (See Release No. 34-22026, Fn.150.)

The purpose of this filing is to request an exemption from the options listing standards based on minimum share price for options traded on CHIC. The Exchange bases its request on the volume, capitalization, and number of shareholders of this security, and believes these factors justify the trading of standardized options on CHIC. As the Commission stated in Release No. 34-22026, ". . . it might be appropriate to permit options trading on stocks such as MCIC and CVGT that have a lower price per share than that required by the exchanges' current . . . options eligibility criteria but also have exceptionally high market values. Such stocks would not seem prone to the speculative abuse or manipulative potential the price per share criterion is designed to address. (Release No. 34-22026, pps. 76-77, Fn.150, May 8, 1985)

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and Section 6(b)(5), in that the rule will permit investors in CHIC stock to utilize standardized options for hedging purposes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by June 20, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-12916 Filed 5-29-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-5192]

Broward Venture Capital Corp.; License Surrender

Notice is hereby given that Broward Venture Capital Corp. (Broward), Plantation, Florida, has surrendered its license and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Broward was licensed by the Small Business Administration on January 19, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective April 22, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 21, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12948 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 03/03-0177]

Erie Small Business Investment Co.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 611 *et seq.*), has been filed by Erie Small Business Investment Company (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1985).

The officers, directors and shareholders of the Applicant are as following:

Name	Title	Percent of ownership
George R. Heaton, 3901 State Street, Erie, PA 16508.	President, Treasurer, Director.	100% shareholder of class "A" common stock.
John E. Britton, 1324 S. Shore Dr., Erie, PA 16505.	Secretary, Director.	4% shareholder of class "B" common stock.
Thomas B. Hagen, 5727 Grubb Road, Erie, PA 16506.	Assistant Secretary, Director.	3.5% shareholder of class "B" common stock.
Joseph P. Scottino, 603 West 6th Street, Erie, PA 16507.	Assistant Secretary.	
George A. Clark, 3640 Longwood Dr., Erie, PA 16505.	Director	5% shareholder of class "B" common stock.
Michael J. Crosby, 1055 West Lotus Crt., Fairview, PA 16415.	Director	
Gary W. Lyons, 4151 State Street, Erie, PA 16508.	Director	10% shareholder of class "B" common stock.
Walter J. Yahn, 3150 West 22nd St., Erie, PA 16506.	Director	2.5% shareholder of class "B" common stock.
Lord Corporation, 2000 West Grandview Blvd., Erie, PA 16514.		10% shareholder of class "B" common stock.

Nineteen other shareholders each owning less than 10 percent of the class "B" common stock.

The Applicant, a Pennsylvania corporation, with its principal place of business at 32 West 8th Street, Suite 615, Erie, Pennsylvania 16501, will begin operations with $1,080,000 of paid-in capital and paid-in surplus. The Applicant will initially conduct its activities in Erie County, Pennsylvania.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW. Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Erie, Pennsylvania.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 21, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12950 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0200]

Itasca Growth Fund, Inc.; Issuance of a Small Business Investment Company License

On December 20, 1984, a notice was published in the **Federal Register** (49 FR 49531) stating that an application has been filed by Itasca Growth Fund, Inc., 1 NW. Third Street, Grand Rapids, Minnesota 55744 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business January 20, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0200 on May 6, 1985, to Itasca Growth Fund, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12957 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Rocky Mountain Ventures, Ltd., 315 Securities Building, Billings, Montana 59101, A Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903 (1985)) for approval of a conflict of interest transaction.

Subject to SBA approval, Rocky Mountain Ventures, Ltd. proposes to invest in Impulse Computer Systems, Inc., 10 North 27th Street, Suite 300, Billings, Montana 59101.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Messrs. James H. Koessler, Eldon E. Kuhns and Noman M. Dean are members of the Board of Directors of Impulse Computers Systems, Inc., and Officers of Rocky Mountain Ventures, Ltd., and therefore are considered Associates of Rocky Mountain Ventures, Ltd. as defined by § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Billings, Montana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12956 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Rocky Mountain Ventures, Ltd., 315 Securities Building, Billings, Montana 59101, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903 (1985)) for approval of a conflict of interest transaction.

Subject to SBA approval, Rocky Mountain Ventures, Ltd. proposes to invest in WSM, Incorporated, 1123 Third Avenue North, Billings, Montana 59107.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. James H. Koessler is a member of the Board of Directors of WSM, Incorporated, and President of Rocky Mountain Ventures, Ltd., and therefore is considered an Associate of Rocky Mountain Ventures, Ltd. as defined by § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newpaper of general circulation in Billings, Montana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: May 16, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-12951 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Charlotte, NC

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting on Wednesday, June 19, 1985, from 9:00 a.m. to 2:00 p.m., at the North Carolina Small Business and Technology Development Center, 820 Clay Street, Raleigh, North Carolina 27605 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 230 South Tryon Street, Suite 700, Charlotte, North Carolina 28202. Telephone (704) 371-6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 21, 1985.

[FR Doc. 85-12946 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Omaho NE

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 10:00 a.m. to 2:30 p.m., on Monday, June 3, 1985, at the Omaha Club, 20th & Douglas, Omaha, Nebraska 68102, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 19th & Farnam, Omaha, Nebraska 68102; phone (402) 221-3620.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 21, 1985.

[FR Doc. 85-12945 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Houston, TX

The Small Business Administration—Region VI—Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting from 9:00 a.m. until 12:30 p.m., June 18, 1985, at the Ramada Inn, Room 7, located at 6855 Southwest Freeway, Houston, Texas 77057. This meeting will be conducted to discuss such business as may be presented by members of the District Council, the staff of the U.S. Small Business Administration, and others attending. For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660-4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 21, 1985.

[FR Doc. 85-12947 Filed 5-29-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on June 27–28, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Sixth Meeting Held on March 25–26, 1985; (3) Consideration of Proposed Changes to the Sixth Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Working Groups WG–5 and WG–7A Activities; (5) Review Draft Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review the Initial Draft System Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 22, 1985

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–12892 Filed 5–29–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ.; Public Debt Series—No. 15–85]

Interest Rates, Series V–1987 Notes

The Secretary announced on May 22, 1985, that the interest rate on the notes designated Series V–1987, described in Department Circular—Public Debt Series—No. 15–85 dated May 16, 1985, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

Gerald Murphy,

Duty Fiscal Assistant Secretary.

May 23, 1985.

[FR Doc. 85–12902 Filed 5–29–85; 8:45 am]

BILLING CODE 4810–40–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development; Meeting

The Veterans' Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Quality Inn-Capitol Hill, 415 New Jersey Avenue, NW, Washington, DC on June 21, 1985. The meeting will open at 8:30 a.m. and adjourn at 3 p.m. The purpose of the meeting will be to develop general advice to the Director, Health Services Research and Development Service regarding the administration of that Service's research program.

The meeting will be open to the public to the seating capacity of the room. Members of the public may submit written statements or questions for consideration by the Committee to Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, Veterans' Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, 20420, (phone: 202/389–5365) at least 5 days before the meeting. Such members of the public may be asked to clarify submitted material prior to its consideration by the Committee.

Dated: May 23, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 85–12924 Filed 5–29–85; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Proposed Amendment of Systems Notice Revised Routine Use Statement

Notice is hereby given that the Veterans Administration is considering revising a routine use statement to the following system of VA records set forth on page 1156 of the **Federal Register** publication, "Privacy Act Issuances, 1982–83 Compilation, Volume V."

23VA136 Patient Fee Basis Medical and Pharmacy Records—VA

The VA Office of Inspector General under the authority of the Inspector General's Act (Pub. L. 95–452), Section 4(a)), plans to conduct a series of computer matches to determine if VA health care practitioners and private practitioners utilized by the VA hold current, unrestricted licenses, or are currently registered in a State, and if applicable, are board certified in their specialty. The matches will compare information obtained from Federal, State and local government agencies, as well as from private, non-governmental organizations with VA payment records.

Routine use No. 3 in the system of records No. 23VA136 currently allows disclosure of a record to a Federal, State or local agency maintaining civil, criminal or other relevant information, such as current licenses, if it is necessary to obtain information relevant to an agency decision concerning the hiring or retention, etc., of an employee. Various private associations; such as, the American Medical Association and the Federation of State Medical Boards of the United States, Inc., maintain national files and provide, as a service, the status of licensure, registration or certification to interested agencies throughout the country. In order to disclose identifying information, e.g., name, social security number and date of birth to a private organization and to use the information generated by the matches to identify VA employees who may not possess current, unrestricted licenses, registration or certification, an amendment to routine use No. 3 is necessary. The proposed amended routine use will permit the disclosure of identifying information regarding VA employees or private practitioners utilized by the VA, to determine the status of licensure, registration or certification.

The VA has determined that release of information for this purpose is necessary and is a proper use of information in this system of records and that a specific routine use for

transfer of this information is appropriate.

For purposes of these routine uses, "State" means any of the fifty States, the District of Columbia and the Commonwealth of Puerto Rico.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All relevant material received before June 28, 1985 will be considered. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 15, 1985.

If no public comment is received during the thirty-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the amended routine use statement is effective June 28, 1985.

Dated: May 21, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of Systems of Records

In the system identified as 23VA136, "Patient Fee Basis Medical and Pharmacy Records—VA" in Privacy Act Issuances, 1982/83 Comp., Vol. V, p. 1156, the following changes are made:

23 VA 136

SYSTEM NAME:

Patient Fee Basis Medical and Pharmacy Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

3. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local government agency, or to a non-governmental organization maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefits. Any information in this system also may be disclosed to any of the above-listed governmental agencies or nongovernmental organizations as part of a series of ongoing computer matches to determine if VA health care practitioners and private practitioners used by the VA hold current, unrestricted licenses, or are currently registered in a State, and are board certified in their specialty, if any. These computer matches are performed pursuant to the VA Inspector General's authority under Pub. L. 95–452, section 4(a), to detect and prevent fraud and abuse.

* * * * *

[FR Doc. 85–12922 Filed 5–29–85; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of Systems Notices New and Revised Routine Use Statements

Notice is hereby given that the VA (Veterans Administration) is considering revising routine use statements, and adding a new routine use statement for two systems of VA records. The systems are entitled: "Individuals Submitting Invoices/Vouchers for Payment—VA" (13VA047) (Privacy Act Issuances, 1982/83 Compilation, Vol. V., p. 1150); and "Personnel and Accounting Pay System—VA" (27VA047) (Privacy Act Issuances, 1982/83 Compilation, Vol. V., p. 1159, and 48 FR 16372, April 15, 1983). The VA will also revise the paragraph pertaining to systems manager in both systems of records to properly identify the responsible office.

The VA Office of Inspector General, under the authority of the Inspector General's Act (Pub. L. 95–452), Section 4(a), plans to conduct a series of computer matches to determine if VA health care practitioners and private practitioners utilized by the VA hold current, unrestricted licenses, or are currently registered in a State, and if applicable, are board certified in their specialty. The matches will compare information obtained from private, nongovernmental organizations with VA payment records.

Routine use No. 3 in the system of records No. 13VA047, and routine use No. 10 in the system of records No. 27VA047 currently allow disclosure of a record to a Federal, State or local agency maintaining civil, criminal or other relevant information, such as current licenses, if it is necessary to obtain information relevant to an agency decision concerning the hiring or retention, etc., of an employee. Various private associations such as the American Medical Association and the Federation of the State Medical Boards of the United States, Inc., maintain national files and provide, as a service, the status of licensure, registration or certification to interested agencies throughout the country. In order to disclose identifying information, e.g., name, social security number and date of birth to a private organization and to use the information generated by the matches to identify VA employees who may not possess current, unrestricted licenses, registration or certification, amendments to routine uses Nos. 3 and 10 are necessary. The proposed amended routine uses will permit the disclosure of identifying information regarding VA employees, or private practitioners utilized by the VA, to determine the status of licensure, registration or certification. The VA Office of Inspector General, under the authority of the Inspector General's Act (Pub. L. 95–452, section 4(a)), also plans to conduct a series of computer matches to detect and prevent fraud and abuse. The matches will compare records from the Personnel and Accounting Pay System with the following:

a. Federal, State and local wage, tax and employment security records.

b. Department of Defense CHAMPUS records.

c. Independent insurance carrier records (processors of medical claims).

The goal of the matches is to ensure that all full-time VA physicians and dentists are accurately reporting their outside income and are only engaged in permitted outside professional activities, such as teaching, consulting, professional community services, etc. In order to: (1) Disclose identifying information, e.g., names, social security number and date of birth, to agencies or private organizations participating in the matches, (2) use information generated by the match, and (3) meet the requirements of due process, a new routine use must be added to 27VA047. The proposed new routine use permits the disclosure of identifying information regarding full-time VA physicians and dentists to Federal, State and local agencies, as well as independent insurance carriers, to determine if all of the outside professional income has been reported by full time VA physicians and dentists, and to determine if they are engaged in unsanctioned professional activities.

The VA has determined that release of information of these purposes is necessary and a proper use of information in these systems of records and that specific routine uses for transfer of this information is appropriate.

For purposes of these routine uses, "State" means any of the fifty States, the District of Columbia and the Commonwealth of Puerto Rico.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses of the systems of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All relevant material received before July 1, 1985 will be considered. All written comments received will be available for public inspection in the Veterans Service Unit, room 132, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday thru Friday (except holidays) until July 16, 1985.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the new and revised routine use statements included herein are effective July 1, 1985.

Approved: May 23, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

1. In the system identified as 13VA047, "Individuals Submitting Invoices/Vouchers for Payment—VA" in Privacy Act Issuances, 1982/83 Comp., Vol. V. p. 1150., the following changes are made:

13 VA 047

SYSTEM NAME:

Individuals Submitting Invoices/Vouchers for Payment—VA (13 VA 047).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

3. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency, or to a non-governmental organization maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefits. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

* * * * *

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Office of Budget and Finance (Controller)(04), VA Central Office, Washington, D.C. 20420.

* * * * *

2. In the system identified as 27 VA 047, "Personnel and Accounting Pay System—VA," in Privacy Act Issuances, 1980 Compilation, Vol. V, p. 673, and 48 FR 16372, April 15, 1983, the following changes are made:

27 VA 047

SYSTEM NAME:

Personnel and Accounting Pay System—VA (27 VA 047).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

10. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency, or to a non-governmental organization maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefits. These records may also be disclosed as part as part of an ongoing computer matching program to accomplish these purposes.

* * * * *

21. Relevant information from this system of records concerning full time VA physicians and dentists, including name, social security number, and date of birth, may be disclosed to Federal, State and local agencies, and to independent insurance carriers (processors of medical claims), for the purpose of conducting computer matches to determine if their outside professional income is accurately reported and obtained only from sanctioned professional activities.

* * * * *

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Office of Budget and Finance (Controller)(04), VA Central Office, Washington, D.C. 20420.

* * * * *

[FR Doc. 85-12923 Filed 5-29-85; 8:45 am]

BILLING CODE 8320-07-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 104
Thursday, May 30, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 7, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–13086 Filed 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11: 00 a.m., Friday, June 14, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–13087 Filed 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Mercantile Exchange for designation in Crude Oil.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 13088– Filed 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, June 20, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 13089–Filed 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 27, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed amendments to Regulation 1.41.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–13090 File 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Thursday, June 27, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–13091 Filed 5–28–85; 6:56 pm]
BILLING CODE 6351–01–M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, June 27, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–13092 Filed 5–28–85; 3:56 pm]
BILLING CODE 6351–01–M

8

FEDERAL COMMUNICATIONS COMMISSION

May 24, 1985—G.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Friday, May 31, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: *Notice of Inquiry and Proposed Rule Making* on Technical Flexibility in the Mobil Communications Services. Summary: This NOI/NPRM proposes an alternative to the normal type acceptance procedure in order to expedite the approval of new mobile radio technologies while also controlling the interference potential of such technology.

General—2—Title: Notice of Proposed Rule Making to allow further sharing of the UHF television band by land mobil service users. Summary: The FCC will consider a proposed amendment of its regulations to reallocate additional UHF TV channels for sharing with and mobile stations.

Mass Media—1—Title: *Second Report and Order* in MM Docket No. 83–523, amending Part 74 of the Commission's Rules regarding the Instructional Television Fixed Service (ITFS). Summary: The Commission will consider whether to amend its IFTS rules pertaining to permissible ITFS service, eligibility requirements, mutually exclusive selection

procedures, cut-off procedures, technical standards and other matters.
Mass Media—2—Title: Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended. Summary: The Commission will consider whether to issue a declaratory ruling which addresses the scope of alien ownership restrictions established in Section 310(b)(3) and (4) of the Communications Act as they relate to alien limited partnership interests.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary Federal Communications Commission.

[FR Doc. 85-13012 Filed 5-28-85; 10:25 am]

BILLING CODE 6712-01-M

9

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 4, 1985, 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, June 6, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1985-15, Douglas M. Coates, Treasurer, New Mexico Freeze Campaign
Promulgation of final rule (announcement of effective date) testing the waters regulations, revisions of 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-13062 Filed 5-28-85; 2:18 pm]

BILLING CODE 6715-01-M

10

LEGAL SERVICES CORPORATION SPECIAL COMMITTEE ON PRESIDENTIAL SEARCH

TIME AND DATE: Meeting will commence at 8 p.m., June 9, 1985 and continue through June 12 until all official business is completed.

PLACE: State Plaza, 2117 E Street NW., Washington, D.C. 20037.

STATUS OF MEETING: Closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6) and (9)(B)) and 45 CFR 1622.5(a), (e), and (g) and 1622.6(b).

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Adoption of Draft Minutes—May 22, 1985
3. Review of Procedures
4. Interviews

CONTRACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

Date issued: May 28, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-13056 Filed 5-28-85; 1:25 pm]

BILLING CODE 6820-35-M

11

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETING

TIME AND DATE: It will commence at 9:00 a.m. and continue until all official business is completed; Wednesday, June 12, 1985.

PLACE: Legal Services Corporation Headquarters, Eighth Floor Conference Room, 733 Fifteenth Street, NW., Washington, D.C. 20005.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Report from the Presidential Search Committee

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

Date issued: May 28, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-13057 Filed 5-28-85; 1:25 pm]

BILLING CODE 6820-35-M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 27, June 3, 10, and 17, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 27

Wednesday, May 29

2:00 p.m.
Vote on Lifting Immediate Effectiveness of 1979 Shutdown Orders for TMI-1/ Discussion if Necessary (Public Meeting)

Thursday, May 30

9:30 a.m.
Discussion of Pending Investigation (Closed—Ex. 5 & 7)
10:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Palo Verde-1 (Public Meeting)
2:00 p.m.
Discussion on Shoreham Adjudication Matter (Closed—Ex. 10) (tentative)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Severe Accident Policy Statement (tentative) (postponed from May 23)
b. Disposition of Hearing Requests Regarding Nuclear Materials Licenses
c. Motion to Investigate DOE Actions Concerning Shoreham

Week of June 3—Tentative

Monday, June 3

1:30 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Wolf Creek (Public Meeting)

Tuesday, June 4

2:00 p.m.
Discussion/Possible Vote on Review of ALAB-800 and Related Matters (Shoreham) (Public Meeting)

Thursday, June 6

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of June 10—Tentative

Monday, June 10

10:00 a.m.
Briefing by Representatives of INPO Accrediting Board (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Final Rule on Backfitting (Public Meeting)

Tuesday, June 11

2:00 p.m.
Discussion on Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, June 12

10:00 a.m.
Continuation of 5/16 Briefing on Mid-Year Budget and Program Review (Public Meeting)

Thursday, June 13

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of June 17—Tentative

Wednesday, June 19

2:00 p.m.
Staff Briefing on Final Rule on HEU Regulations for Domestic Non-Power Reactors (Public Meeting)

Thursday, June 20

11:00 a.m.
Periodic Meeting with Advisory Panel for Decontamination of TMI-2 (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, June 21

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Disposition of Application of Award for Attorney Fees Under Equal Access to Justice Act by Business and Professional People for the Public Interest (Northern Indiana Service Company, Bailly 1, Docket No. 50-367)" (Public Meeting) was held May 23.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Andrew L. Bates,
Office of the Secretary.
May 23, 1985.

[FR Doc. 85-12995 Filed 5-24-85; 4:50 pm]
BILLING CODE 7590-01-M

Reader Aids

Federal Register

Vol. 50, No. 104

Thursday, May 30, 1985

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S. 484 / Pub. L. 99–46

To amend the Saccharin Study and Labeling Act. (May 24, 1985; 99 Stat. 81) Price: $1.00

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