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federal register

Tuesday
July 16, 1985

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Census Data
Census Bureau

Endangered and Threatened Species
Fish and Wildlife Service

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Agriculture Department

Grant Programs—Housing and Community Development
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Loan Programs—Housing and Community Development
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Occupational Safety and Health Administration

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Presidential Documents

Title 3—

The President

Executive Order 12525 of July 12, 1985

Termination of Emergency Authority for Export Controls

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "IEEPA"), 22 U.S.C. 287c, and the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) (hereinafter referred to as "the Act"), it is hereby ordered as follows:

Section 1. In view of the extension by Public Law 99-64 (July 12, 1985) of the authorities contained in the Act, Executive Order No. 12470 of March 30, 1984, which continued in effect export control regulations under IEEPA, is revoked, and the declaration of economic emergency is rescinded.

Sec. 2. The revocation of Executive Order No. 12470 shall not affect any violation of any rules, regulations, orders, licenses, and other forms of administrative action under that Order that occurred during the period that Order was in effect. All rules and regulations issued or continued in effect under the authority of the IEEPA and that Order, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall remain in full force and effect, as if issued, taken or continued in effect pursuant to and as authorized by the Act or by other appropriate authority until amended or revoked by the proper authority. Nothing in this Order shall affect the continued applicability of the provision for the administration of the Act and delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, and Executive Order No. 12214 of May 2, 1980.

Sec. 3. All rules, regulations, orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant to the authority of the IEEPA and Executive Order No. 12470 relating to the administration of Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) shall remain in full force and effect until amended or revoked under proper authority.

Sec. 4. This Order shall take effect immediately.

Ronald Reagan

THE WHITE HOUSE,
July 12, 1985.

[FR Doc. 85-16956
Filed 7-12-85; 2:29 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Uniform Federal Assistance Regulations; Subpart I—Audits

AGENCY: Department of Agriculture (USDA).

ACTION: Interim rulemaking, with comments invited.

SUMMARY: This Interim final rule amends 7 CFR Part 3015, Subpart I, Audits, to implement the Office of Management and Budget (OMB) Circular A-128 "Audits of State and Local Governments," dated April 12, 1985, and issued pursuant to the Single Audit Act of 1984, (Pub. L. 98-502). It establishes audit requirements for State, local, and Indian Tribal governments that receive USDA Federal assistance and defines USDA responsibilities for implementing and monitoring those requirements.

EFFECTIVE DATE: July 16, 1985.

DATE: Comments must be received on or before September 16, 1985.

ADDRESS: Interested persons should submit comments to Ms. Lyn Zimmerman, Office of Finance and Management, USDA, Room 2117, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Office of Finance and Management, Financial Management Division, 201 14th Street, SW., Room 2117, Auditors Building, Washington, D.C. 20250, on (202) 382-1553.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and it is determined that this rule is "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, and John E. Carson, Director, Office of Finance and Management, has certified that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this rule will be submitted to OMB and will not be effective until OMB has approved them.

Proposed rulemaking

It is determined that the Administrative Procedure Act public participation requirements are not applicable to this rulemaking because: (i) That portion of the rule that embodies OMB Circular No. 128 has been subject to notice and comment and thus further notice and comment is unnecessary in view of the fact that the USDA is obliged pursuant to section 7505 of the Single Audit Act of 1984, Pub. L. 98-502, to follow the Circular, and (ii) to the extent that the rule does not embody the Circular, the rule is a matter of internal agency management. Nevertheless, to assure uniformity with the approach adopted by other Departments and agencies with respect to rules to be issued under the Single Audit Act of 1984, the USDA has decided to promulgate this rule as an interim rule and seeks public comment.

Background

Over $100 billion in Federal financial assistance is provided to State and local governments each year and the Federal Government relies on auditing as one of the principal means of assuring accountability for its use. Traditionally, recipients were required to obtain financial and compliance audits of funds on a grant-by-grant basis. Studies showed that such grant-by-grant auditing was uncoordinative, inefficient, and ineffective, often producing duplicative and overlapping results.

In response to this criticism, there arose the concept of a single, organizationwide audit that would be acceptable to all funding organizations. Such an audit would assure that a recipient's financial records and controls were adequate and would check for compliance with important terms of grants received. The audits would be made periodically and funding organizations would be free to perform additional audits of economy and efficiency and program results, as deemed necessary.

To accommodate this concept, OMB issued Attachment P to Circular A-102, which required each State, local and Indian Tribal government receiving Federal financial assistance to obtain an organizationwide financial and compliance audit of its operations at least once every two years. The audits were to be conducted in accordance with guidelines and standards established by the General Accounting Office (GAO), OMB, and the American Institute of Certified Public Accountant. To this effect, GAO issued the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," which was a Governmentwide audit guide intended to replace about 80 individual audit guides previously used by Federal agencies. Additionally, to assist auditors in testing Federal programs for compliance, OMB issued a listing of the major compliance requirements of 60 Federal assistance programs. These programs represented approximately 90 percent of total Federal assistance to State and local governments. Attachment P also prescribed a cognizant audit agency system to administer the single audit process. This role is currently being performed by the Office of Inspector General.

A GAO evaluation report on implementation of Attachment P indicated that the transition to a single audit had met with slow progress. The report concluded that the principal problems hampering implementation of Attachment P were disagreement among Federal, State, and local officials on the scope and purpose of the single audit; diffusion of responsibility in the current cognizant agency system; and conflicts between the provisions of Attachment P and existing statutory grant audit requirements. At that time, GAO recommended the adoption of single audit legislation to correct these problems.

Purpose

The Single Audit Act of 1984 (Pub. L. 98–502) builds upon earlier efforts to improve audits of Federal programs. The Act requires State or local governments and Indian tribes that receive more than $100,000 a year in Federal funds to have an audit made for that year. Circular A–128 was issued pursuant to section 7505 of the Act, which requires OMB to issue implementing guidelines. This rule amends 7 CFR Part 3015, Subpart I, to implement OMB Circular A–128. It is intended to improve the financial management of Federal assistance programs; promote the efficient use of audit resources; relieve State, local and Indian Tribal governments of cost and paperwork burdens due to conflicting, redundant, and unreasonable audit requirements of Federal assistance; and provide for the establishment of consistent and uniform requirements for financial audits of State, local and Indian Tribal governments, and other recipients of Federal assistance.

List of Subjects in 7 CFR Part 3015

Grant programs (agriculture), Intergovernmental relations.

Issued at Washington, D.C. July 10, 1985.

Approved: July 10, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

John R. Block,

Secretary of Agriculture.

* * * * *

PART 3015—[AMENDED]

Accordingly, USDA amends 7 CFR Part 3015 as follows:

1. The authority citation for Part 3015 is revised to read as follows:

Authority: 5 U.S.C. 301 Subpart I, 31 U.S.C. 7505.

2. Subpart I is revised to read as follows:

Subpart I—Audits

Sec.

3015.70 Audits of State, local, and Indian Tribal governments.
3015.71 Policy.
3015.72 Definitions.
3015.73 Audits arrangements and requirements.
3015.74 Cognizant agencies.
3015.75 Reporting requirements.
3015.76 Audit costs.
3015.77 Audits of institutions of higher education, hospitals and other nonprofit organizations.

Appendix B–OMB Circular A–128, "Audits of State and Local Governments".

Authority: Single Audit Act of 1984, Pub. L. 98–502.

* * * * *

§ 3015.70 Audits of State, local and Indian Tribal governments.

(a) This subpart establishes audit requirements for State, local and Indian Tribal governments that receive Federal assistance and defines Federal responsibilities for implementing and monitoring those requirements. Additionally, this subpart implements the audit requirements and policies for government organizations contained in the following documents, which are incorporated into this subpart by reference and/or as an appendix:

(1) Single Audit Act of 1984, (Pub. L. 98–502);

(2) The Office of Management and Budget (OMB) Circular A–128, and any subsequent revisions;

(3) Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States in 1981 (GAO Standards), and any subsequent revisions;

(4) Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants (AICPA);

(5) AICPA Industry Audit Guide, Audits of State and Local Governmental Units, Federally Assisted Programs;

(6) Compliance Supplements for Single Audits of State and Local Governments issued by OMB in April 1985, and any subsequent revisions; and

(7) Federal cognizant agency assignments issued by OMB on October 6, 1980, and any subsequent revisions.

(b) All of the requirements contained in paragraphs (a) (1) through (5) must be met by a recipient before an audit can be accepted as a Federal audit by the respective cognizant agencies referenced in paragraph (a)(7). The auditor may use the Compliance Supplement for Single Audits of State and Local Governments, published by OMB, or ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual Federal programs.

§ 3015.71 Policy

(a) Under OMB Circular A–128, included herein as Appendix B, OMB has established uniform audit requirements for State, local and Indian Tribal governments, or their subdivisions, that receive Federal financial assistance. The Circular requires recipients and subrecipients of Federal financial assistance to arrange for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations, and to assure that single audits are made in accordance with Circular A–128.

(b) A State, local, or Indian Tribal government which receives less than $25,000 in Federal assistance is exempt from the requirements contained herein, but shall have an audit made in accordance with State or local law or regulations for any fiscal year in which it receives less than $25,000 in Federal financial assistance.

(c) A single audit in accordance with Circular A–128 and this subpart shall be in lieu of any audit required under individual USDA Federal assistance programs. A single audit should provide USDA agencies with the information they need to carry out their responsibilities and they shall rely upon and use that information. Any additional audits needed by USDA shall be conducted or arranged by the Office of Inspector General in such a way as to avoid duplication of effort. Audit requirements in USDA individual agency regulations and directives for assistance programs administered in cooperation with State, local, and Indian Tribal governments shall be limited to requiring compliance with OMB Circular A–128 and this subpart.

(d) State, local and Indian Tribal governments for which OMB has assigned USDA as the "cognizant agency" shall apply the audit requirements set forth in Circular A–128 and this subpart.

(e) State, local and Indian Tribal governments that receive financial assistance from USDA, and have been assigned a cognizant agency other than USDA, shall follow the audit requirements established by the respective cognizant agency. If the designated cognizant agency has not established Circular A–128 audit requirements, or if OMB has not designated a cognizant agency, those units of government shall follow the audit requirements contained in Circular A–128, and this subpart.

§ 3015.72 Definitions.

(a) "Cognizant agency" means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A–128. Within USDA the Secretary has designated the Office of Finance and Management (OFM) as the "cognizant agency." OFM further has the responsibility to delegate cognizant agency responsibilities to those USDA awarding agencies that provided the major portion of Federal funds or services to the recipient and monitoring the agencies implementation of the Single Audit Act of 1984 and OMB Circular A–128. In those instances where USDA is designated as the cognizant agency, the USDA Office of Inspector General (OIG) shall act for the Department in accordance with § 3015.74 of this subpart.

(b) "OIG" means the Office of Inspector General, United States Department of Agriculture.

(c) "Regional Inspector General" means the OIG official in the United States Department of Agriculture who is responsible for audit-related matters in one of the designated regions covered by a Regional Audit Office.

(d) Other definitions applicable to this subpart are set forth in Appendix B.

§ 3015.73 Audit arrangements and requirements.

(a) *Arrangements.* (1) State, local and Indian Tribal governments shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in this subpart and Circular A–128.

Note.—It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work required by this subpart should be done in conjunction with those audits.

(2) In arranging for audits, USDA awarding agencies and recipients shall coordinate proposed audit plans and related documents with the appropriate USDA Regional Inspector General prior to initiating the audit. The purpose of coordinating the proposed audit plans and related documents is to enable the Regional Inspectors General to provide timely technical assistance and assure that satisfactory audit coverage is planned.

(3) Provisions shall be included in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with § 3015.75(b).

(b) *Use of small and minority audit firms.* As set forth in Circular A–128, paragraph 19 small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of Circular A–128 and this subpart.

(c) *Requirements.* (1) *Scope of audit.* (i) Each audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives over $25,000 in General Revenue Sharing funds in a fiscal year, it shall have an audit of the entire organization. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(ii) The single audit may exclude public hospitals and public colleges and universities. Such audits, if excluded from the scope of the single audit, shall be made in accordance with § 3015.77.

(iii) The audit shall determine and report in accordance with OMB Circular A–128 and § 3015.75.

(2) *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, USDA shall permit biennial audits, if the government so requests. USDA shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning prior to January 1, 1987.

(3) *Internal control and compliance reviews.* Internal control and compliance reviews shall be conducted in accordance with OMB Circular A–128, paragraph 8.

(4) *Other testing.* The recipient's independent auditor is responsible for:

(i) Reviewing the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports;

(ii) Testing to determine whether these systems are functioning in accordance with prescribed procedures;

(iii) Commenting on the recipient's monitoring procedures, if warranted by the circumstances; and

(iv) Considering whether subrecipient audits require adjustment of the recipient's financial statements, footnote disclosure, or modification of the auditor's report.

(5) *Subrecipients.* Each State, local, or Indian Tribal government that receives Federal financial assistance and provides $25,000 or more of it in a fiscal year to a subrecipient shall follow the requirements set forth in Circular A–128, paragraph 9.

(6) *Relation to other audit requirements.*

(i) Audits made in accordance with Circular A–128 and this subpart shall be in lieu of any audit required under individual USDA Federal assistance programs. This paragraph applies to State, local, or Indian Tribal governments that make audits in accordance with Circular A–128 and this subpart, even though not required to do so.

(ii) USDA or its designee shall arrange for or make any additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of Circular A–128 and this subpart do not authorize any State, local, or Indian Tribal government (or subrecipient thereof) to constrain, in any manner, USDA or its designee from carrying out such additional audits.

(iii) When the Office of Inspector General or USDA agencies make or contract for audits or evaluations in addition to the audits made by recipients pursuant to OMB Circular A–128 and this subpart, consistent with other applicable laws and regulations, the cost of such additional reviews shall be paid by USDA "unless applicable laws and regulations provide for payment by the recipient". Such additional reviews include economy and efficiency audits, program results audits, and program evaluations.

§ 3015.74 Cognizant agencies.

(a) *Cognizant agency assignments.* In accordance with Circular A–128, OMB assigns cognizant agencies for State and larger local governments. In order to fulfill the cognizant responsibilities, other Federal agencies may participate with an assigned cognizant agency. Smaller governments not assigned a cognizant agency should contact the Federal agency that provides them the most funds to work out a cognizant agency agreement.

(b) *USDA responsibilities.* When USDA is assigned as the cognizant agency, the OIG shall have the following responsibilities:

(1) Work with USDA awarding agencies to ensure that audits are made in a timely manner and in accordance with the requirements of Circular A–128 and this subpart;

(2) Provide the liaison between the Federal audit organizations, USDA awarding agencies and the recipient entities and independent auditors;

(3) Provide technical advice to State, local, and Indian Tribal governments, USDA awarding agencies, and independent auditors;

(4) Obtain or make quality control reviews of individual audits made by non-Federal audit organizations, and provide the results to other interested organizations, when appropriate;

(5) Inform other affected Federal organizations of any reported illegal acts or irregularities. The Federal organizations, in turn, shall inform appropriate Federal law enforcement officials. State or local government law enforcement and prosecuting authorities, if not advised by the recipient, may also be informed of any violation of law within their jurisdiction by the OIG;

(6) Advise the USDA awarding agency and the recipient of any audit reports that do not meet the audit standards and requirements set forth in Circular A–128 and this subpart. In such instances, the recipient shall work with the auditors to take corrective action. If corrective action is not taken, OIG, as the cognizant agency, shall notify the Federal awarding agencies and the recipient of the facts and make recommendations, if appropriate. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action;

(7) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to Circular A–128 and this subpart, and ensure that any additional audits build upon such audits; and

(8) Assure that all recipient audit reports affecting Federal assistance programs are received, reviewed, and distributed to the proper Federal cognizant agencies. These agencies (including USDA OIG) are responsible for distributing audit reports to their respective program officials.

(9) Assure that necessary audits are performed of indirect cost proposals submitted by governmental units for which USDA is cognizant under the provisions of OMB Circular A–87.

(c) *Audit resolution.* OIG shall be responsible for overseeing and assigning responsibility to the appropriate USDA awarding agency for the resolution of crosscutting audit findings that affect the programs of more than one USDA or non-USDA awarding agency. Resolution of findings that relate solely to the programs of a single Federal agency shall be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned. Resolution shall be made within six months after issuance of the report by the departments and agencies that provide Federal assistance funds to State and local governments. Corrective action should proceed as rapidly as possible.

§ 3015.75 Reporting requirements.

(a) *Audit reports.* Audit reports must be prepared at the completion of the audit and shall be in accordance with the provisions of Circular A–128, paragraph 13.

(b) *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by OIG to extend the retention period. Audit workpapers shall be made available upon request to OIG, or its designee, or the General Accounting Office, at the completion of the audit.

(c) *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, *prompt* notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify OIG of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

§ 3015.76 Audit costs.

(a) The costs of audits made in accordance with the provisions of Circular A–128, paragraph 16, are allowable charges to USDA Federal assistance programs.

(b) If the recipients or subrecipients fail to arrange for the required audits set forth in OMB Circular A–128, or fail to assure that an acceptable audit is performed, the USDA awarding agency may arrange for the performance of the required audits. If USDA arranges for the required audits because of these circumstances, the recipients and/or subrecipients shall reimburse USDA for the cost of these single audits.

§ 3015.77 Audits of institutions of higher education, hospitals and other non-profit organizations.

(a) *Non-Federal audits.* If not included within the scope of a single audit as set forth in § 3015.73(c)(1), institutions of higher education, hospitals and other nonprofit organizations that receive USDA Federal assistance shall comply with the requirements for non-Federal audits set forth in OMB Circular A–110, including any amendments to those requirements published in the **Federal Register** by OMB.

(1) Each recipient must arrange for a financial and compliance audit annually, but not less frequently than every two years.

(2) The recipient's audits must comply with the GAO "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," including the standards for auditor independence and any subsequent revisions to the standards.

(3) The audit shall be conducted on an organizationwide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests shall include an appropriate sampling of Federal agreements. USDA awarding agencies may not impose grant-by-grant (or subgrant-by-subgrant) audit requirements except as may be prescribed by law.

(4) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of these regulations;

(ii) Evaluating acceptability of subrecipient audits;

(iii) Following up on results of subrecipient audits.

(5) Subrecipient audit reports shall be transmitted by the subrecipient to the applicable primary recipient. These reports shall not be routinely transmitted to OIG. Instead the recipient shall retain all subrecipient audit reports on file and make them available to OIG and GAO officials, or their designees, upon request.

(6) The recipient is responsible for taking appropriate action on subrecipient audits and incorporating the results of these audits into their financial records and related reports. The recipient's auditors shall state in the audit report the amount of funds at the subrecipient level that were audited by the subrecipient's auditors and make any pertinent comments concerning those audits. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(7) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Federal audit responsibilities.* (1) Audits of Federal contracts and assistance programs at institutions of

higher education are performed periodically by the Federal agencies designated as cognizant agencies in OMB Circular A–88. In addition, OIG may perform audits of USDA programs at Land Grant Institutions from time to time. Such audits shall be coordinated in advance with the cognizant agency and shall, to the extent possible, not duplicate work done by the Federal cognizant agency, or by independent auditors in accordance with OMB Circular A–110.

(2) OIG reserves the right to perform audits of USDA assistance programs and other nonprofit organizations as determined by OIG to be necessary. In performing such audits, OIG shall rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

Executive Office of the President

Office of Management and Budget

Appendix B

Circular No. A–128

April 12, 1984

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipalitity, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews of other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal

awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on case-by-case basis by a case-by-case basis by agreement among the agenices concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for large audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited

government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
1 billion	2 billion	4 million
2 billion	3 billion	7 million
3 billion	4 billion	10 million
4 billion	5 billion	13 million
5 billion	6 billion	16 million
6 billion	7 billion	19 million
Over 7 billion		20 million

[FR Doc. 85-16760 Field 7-15-85; 8:45 am]

BILLING CODE 3410-23-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-127-AD; Amdt. 39-5102]

Airworthiness Directives; Israel Aircraft Industries, Ltd. Westwind Models 1123, 1124, and 1124A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On March 20, 1981, the FAA issued an airworthiness directive (AD), effective upon receipt, by air mail letter to all known operators of Israel Aircraft Industries, Ltd. Westwind Models 1123, 1124, and 1124A airplanes, which requires modification of the intercom system. That action was prompted by an incident in which a resistor in the intercom system overheated and caused a fire. This action publishes that AD in the **Federal Register** and makes it effective to all persons.

EFFECTIVE DATE: August 5, 1985. This AD was effective earlier to all recipients of airmail letter AD 81-07-07 issued March 20, 1981.

ADDRESSES: The applicable service information may be obtained from Israel Aircraft Industries International, Inc., 50 West 23rd Street, New York, New York 10010, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 20, 1981, the FAA issued by air mail letter Airworthiness Directive (AD) 81-07-07, applicable to Israel Aircraft Industries, Ltd. Westwind Models 1123, 1124, and 1124A airplanes. The AD requires installation of placards prohibiting the use of the intercom system and setting procedures for microphone switches until a resistor in the intercom system is replaced. An operator of a Westwind 1124 airplane had reported an incident in which a resistor in the intercom system overheated and caused a fire on the ground. During subsequent investigation of another Westwind airplane, deformation of shielding as a result of the resistor overheating was detected.

This final rule is revised from the air mail letter only in that the interim procedure of installing a placard has been deleted. The interim procedure would not be required for modification of airplanes being imported.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued March 20, 1981, to all known U.S. owners and operators.

Since this condition may still exist on airplanes of this model registered in the United States, this action publishes the AD in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Israel Aircraft: Applies to Israel Aircraft Industries Ltd. Westwind Models 1123, 1124, and 1124A (S/N 151 thru 315 except S/N 294, 196, 197, 309, 310, and 314) airplanes, certificated in any category. Compliance is required within the next 100 flight hours after the effective date of this amendment, unless previously accomplished.

A. To prevent fire due to overheating of the intercom system, replace the intercom system audio load R-61 resistor with an RH-25 resistor in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, or in accordance with IAI Service Bulletin WW-25 for the Model 1123 and IAI Service Bulletin WW-24-23 for the Models 1124 and 1124A.

B. Airplanes may be flown in accordance with FAR 21.197 and 21.199 to a maintenance base for accomplishment of the modification required by this AD.

It was effective earlier to all recipients of air mail letter AD 81-07-07, issued March 20, 1981, which contained this amendment.

Issued in Seattle, Washington, on July 9, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16828 Filed 7-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket No. 50221-5088]

Release of Estimates; Amendment to Challenge Procedure for Certain Population and Per Capita Income Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This action modifies the procedure to be followed in releasing certain population and per capita income estimates. The estimates affected are the figures for subcounty areas covered in 15 CFR Part 90. That regulation stipulates a challenge procedure for use by local officials. The only provision of the original rule that is altered by this action is the way in which the estimates are released.

EFFECTIVE DATE: July 16, 1985. The regulation is being made effective upon publication.

FOR FURTHER INFORMATION CONTACT: Roger A. Herriot, Chief, Population Division, Bureau of the Census, (301) 763-7646.

SUPPLEMENTARY INFORMATION: Rulings were made in 1979 that established standard procedures by which localities could challenge the population and income estimates made by the Bureau of the Census. The regulations: (1) Require that an informal challenge be filed no more than 180 days after the release of the estimates by the Bureau of the Census, (2) require a locality to complete an informal review jointly with the Census Bureau before a formal challenge may be filed, (3) specify the appointment of a qualified hearing officer during the formal challenge stage to receive both written and oral evidence under oath, (4) provide for a formal hearing, and (5) provide for a final decision by the Director of the Census Bureau. These rules require that the Census Bureau release the estimates by sending individual mailings of the figures to each local government and simultaneous publication of release notification in the **Federal Register.**

On March 25, 1985, a Notice of Proposed Rule Making was published in the **Federal Register** (50 FR 11708) that proposed to revise the procedure used by the Bureau of the Census to release the estimates. It was proposed that the estimates be released through the standard Census Bureau publication and release procedures used for all other Census Bureau data, with simultaneous notification of the release published in the **Federal Register,** rather than by sending individual mailings of the figures to each of the 39,000 local governments.

Two letters were received commenting on the proposed rule, both opposing the change. One letter was sent by a county planning agency and the other by a state agency.

Discussion of Comments

The two letters did not overlap in their objections to the change. One letter raised the concern that the release of the estimates might be lost in the large number of publications issued by the Federal Government. However, the estimates are published in a separate Census Bureau report series (*Current Population Reports,* Series P-26) that is devoted solely to the release of figures for local areas. The separate series of reports sets these estimates apart from other Bureau of the Census releases and can be monitored easily for the availability of new estimates. The regularly scheduled release of the new estimates in the summer of odd-numbered years makes it relatively easy to find the new figures when they are published. Notification of the release also is carried in the **Federal Register,** the Census Bureau news releases, the Census Bureau's newsletters such as Data User News, the Census Bureau's nationwide electronic publishing service, and two Census Bureau electronic bulletin boards. Localities also are often notified about new estimates by the Federal agencies using the figures in their programs.

The other letter was concerned that intergovernmental cooperation would be damaged by the change, and that local governments would not have the same opportunity that they have now to challenge the Census Bureau's estimates. However, no provisions of the challenge procedure other than the release process are affected by the change. Even if local governments learn of the population or income estimates through their use by another Federal agency, the other Federal agencies, without exception, refer all challenges of the estimates to the Bureau of the Census to be processed through the standard challenge procedure. Federal programs also often allow for later adjustments to their payments when the timing of a challenge and the initial allotments under the program are a problem.

Under Executive Order 12291 the Department must judge whether a regulation is major within the meaning of section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This rule is not a major rule because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

This rule does not contain a collection of information for purposes of the Paper Work Reduction Act.

The General Counsel has certified to the Small Business Administration that pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) the change in the regulation will retain all of the provisions in the

current challenge process and would alter only the way in which the data are released and, therefore, will not have a significant economic effect on a substantial number of small entities.

The Director of the Census Bureau, pursuant to section 553(d)(3) of the Administrative Procedure Act, finds that because of the time constraints in implementing a number of Federal programs that rely on these data, good cause exists for making the rule immediately effective.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure, Census data.

PART 90—[AMENDED]

1. The Authority Citation for 15 CFR Part 90, continues to read as follows:

Authority: 13 U.S.C. 4, unless otherwise noted.

2. 15 CFR Part 90, is amended by revising § 90.5 to read as follows:

§ 90.5 When an informal challenge may be filed.

An informal challenge to the population or per capita income estimates may be filed any time up to 180 days after the release of the estimates by the Bureau of the Census. Publication by the Bureau of the Census and simultaneous publication of a release notification in the **Federal Register** shall constitute release. A challenge to any estimate may also be filed any time up to 180 days from the date the Census Bureau, on its own initiative, revises that estimate.

If, however, a state or unit of local government has sufficiently meritorious reason for not filing in a timely manner, the Census Bureau has the discretion to accept the challenge.

Dated: June 4, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-16837 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate and Oxibendazole Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Norden Laboratories, Inc., providing for use of chewable tablets containing diethylcarbamazine citrate and oxibendazole for prevention of heartworm disease (*Dirofilaria immitis*) and hookworm infection (*Ancylostoma caninum*) in dogs.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68521, filed NADA 136-483 providing for use of Filaribits Plus Chewable Tablets (diethylcarbamazine citrate/oxibendazole, 60/45 milligrams (mg) per tablet or 180/136 mg per tablet) for prevention of heartworm disease (*Diorfilaria immitis*) and hookworm infection (*Ancylostoma caninum*) in dogs. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and §514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new §520.623 to read as follows:

§ 520.623 Diethylcarbamazine citrate, oxibendazole chewable tablets.

(a) *Specifications.* Each tablet contains 60 milligrams of diethylcarbamazine citrate with 45 milligrams of oxibendazole or 180 milligrams of diethylcarbamazine citrate with 136 milligrams of oxibendazole.

(b) *Sponsor.* See 011519 in §510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer orally to dogs at a dosage level of 6.6 milligrams of diethylcarbamazine citrate per kilogram of body weight (3 milligrams per pound of body weight) and 5.0 milligrams of oxibendazole per kilogram of body weight (2.27 milligrams per pound of body weight).

(2) *Indications for use.* For prevention of heartworm disease (*Dirofilaria immitis*) and hookworm infection (*Ancylostoma caninum*) in dogs.

(3) *Limitations.* Orally administer daily during heartworm season. For free-choice feeding or broken and placed on or mixed with feed. Do not use in dogs that may harbor adult heartworms. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 5, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-16800 Filed 7-15-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Custom Feed Blenders Corp., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501, is the sponsor of a supplement to NADA 106–507 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in swine, and use in beef cattle and chickens. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

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

2. Section 558.625 is amended by revising paragraph (b)(63) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(63) To 048987: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: July 10, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–16799 Filed 7–15–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

Appendix to Subpart R, Redelegation of Functions; Section 5, Legal Functions; Delegation of Authority to DEA Officials

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration [DEA], U.S. Department of Justice, is amending its regulations relating to the redelegation of legal functions. The Chief Counsel is currently authorized to settle any employee claims filed under the Military Personnel and Civilian Employee's Claims Act in an amount not to exceed $15,000. This final rule vests this function in the Controller of DEA. This final rule also changes the maximum amount for which such a claim may be settled to $25,000 in conformity with the 1983 amendments to that Act. Pub. L. 97–452.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: James J. Hogan, Controller, Drug Enforcement Administration, U.S. Department of Justice, 1405 I St., NW., Washington, D.C., 20537, (202) 633–1477.

SUPPLEMENTARY INFORMATION: The Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721 et seq., authorizes the head of an agency to settle and pay not more than $25,000 for a claim against the Government made by an officer or employee of the agency for damage to, or loss of, personal property incident to service. The head of the U.S. Department of Justice is the Attorney General. 28 CFR Subpart R vests this function of the Attorney General in the Administrator of DEA. The Administrator of DEA is authorized by 28 CFR 0.104 to redelegate to his subordinates any of the powers vested in him by 28 CFR Subpart R.

By virtue of the authority vested in me as the Administrator of DEA by 28 CFR 0.100 and 0.104, the following amendment is made to Title 28, Appendix to Subpart R, Redelegation of Functions, of the Code of Federal Regulations:

List of Subjects in 28 CFR Part 0

Organization and functions (Government agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for 28 CFR Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

Subpart R—Drug Enforcement Administration

Appendix to Subpart R, Redelegation of Functions [Amended]

2. Section 5, Legal functions, of the Appendix to Subpart R, Part 0, is amended by deleting from the first sentence of the section, which authorizes the Chief Counsel of DEA to perform certain functions, the following clause: "to settle any employee claims filed under the Military Personnel and Civilian Employees' Claims Act in an amount not to exceed $15,000."

3. The following section is added to the Appendix to Subpart R: "Section 8. *Financial functions.* The Controller of the DEA is authorized to settle any employee claims filed under the Military Personnel and Civilian Employees' Claims Act in an amount not to exceed $25,000."

Dated: July 5, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85–16840 Filed 7–15–85; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-013]

Utah State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of revised compliance staffing benchmarks and final state plan approval.

SUMMARY: This document amends Subpart E of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing benchmarks and granting final approval to the Utah State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Utah plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector and on the Hill Air Force Base. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and .4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actural operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Utah Plan and its Compliance Staffing Benchmarks

Utah Plan

On September 20, 1972, Utah submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on October 21, 1972, a notice was published in the **Federal Register** (37 FR 22781) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Utah Manufacturers Association, United States Steel Corporation, Associated General Contractors of America, and the Horne Construction Corporation. No requests for a hearing were received. In response to these comments as well as to OSHA's review of the plan submission, the State made changes in its plan, which were discussed in the notice of initial approval (38 FR 1178). On January 10, 1973, the Assistant Secretary published a notice granting initial approval of the Utah plan as a developmental plan under Section 18(b) of the Act (38 FR 1178). The plan provides for program patterned in most respects after that of the Federal Occupational Safety and Health Administration. The plan covers all issues except safety and health in private sector maritime employment and the State does not enforce its standards on the Hill Air Force Base.

The Utah Industrial Commission is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Utah Division of Occupational Safety and Health within the Industrial Commission. The plan provides for the adoption by Utah of occupational safety and health standards which are generally identical to the Federal standards including emergency temporary standards. Utah also has promulgated under its plan independent State standards for oil, gas, geothermal and related services, lock-out and tag-out procedures, industrial railroads and explosive masterials.

The plan requires employers to furnish employees employment and a place of employment free from recognized hazards that are causing or

likely to cause death or physical harm and to comply with the standards promulgated under the Utah Act. Employees are likewise required to comply with the standards, orders, rules, and regulations promulgated under the Utah Act applicable to their conduct.

The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, employee discrimination protection, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are heard by the Occupational Safety and Health Review Commission. Decisions of the Review Commission may be appealed to the State District Court.

The notice of initial approval noted a few distinctions between the Federal and Utah programs. The State plan does not cover safety and health in private sector maritime employment nor employment on Hill Air Force Base. Utah's time period for contesting enforcement actions is 30 calendar days compared to 15 working days under the Federal law. Unlike the Federal program, the Utah Industrial Commission rather than the courts may initially restrain employee discrimination and afford the employee any appropriate relief through the issuance of an order.

The Assistant Secretary's initial approval of the developmental plan for Utah, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart E; 38 FR 1178 (January 10, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending January 3, 1976. These "developmental steps" included enactment of enabling legislation; promulgation of State occupational safety and health standards; adoption of Federal standards and revocation of existing State standards; adoption of program regulations equivalent to 29 CFR Parts 1903, 1904, and 1905; and the development of a management information system.

These submissions were carefully reviewed by OSHA; after oportunity for public comment and modification of State submissions where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Utah subpart of 29 CFR 1952 was amended to reflect each of these approval determinations (see 29 CFR 12952.114).

During 1974, OSHA entered into an operational status agreement with the State of Utah. A **Federal Register** notice was published on October 10, 1974 (39 FR 36474), announcing the signing of the agreement. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Utah plan.

On November 19, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Utah had satisfactorily completed all developmental steps (41 FR 51014). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Utah Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan State the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a *Report to the Court* containing the benchmarks and requiring Utah to allocate 15 safety compliance officers and 23 industrial hygienists to conduct inspections under the plan.

In September 1984 the Utah State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Utah. Pursuant to an initiative begun in August 1983 by the State plan designees as group with OSHA and in accord with the formulas and general principles established by that group for individual State revision of the benchmarks, Utah reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 10 safety and 9 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Utah and the resultant eligibility of the Utah State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2483). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Utah plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Utah operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Utah plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 4–12). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

The January 16 **Federal Register** also contained notice of the Occupational Safety and Health Administration's proposal to approve revised compliance staffing benchmarks for Utah. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing

benchmarks for Utah was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T-013), Utah's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T-018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., the OSHA Region VIII Office in Denver, Colorado, and the office of the Utah Industrial Commission in Salt Lake City. Summaries of the January 16 proposal, with an invitation for public comments were published in Utah on February 1, 1985. (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL-CIO), written comments and views regarding the Utah plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Five comments from organized labor were received in response to these notices. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Utah plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Utah.

In response to the January 16 **Federal Register** notice, OSHA received comments from the Utah State American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Ed Mayne, President, Secretary-Treasurer (Ex. 2-2); United Steelworkers of America, Geneva Local Union No. 2701, Kay Mitani, Safety-Health Director (Ex. 2-2a); Utah Building and Construction Trades Council (AFL-CIO), Franklin L. Fry, Safety Director (Ex. 2-2b); American Federation of Labor and Congress of Industrial Organizations, Department of Occupational Safety, Health and Social Security, Margaret Seminario, Associate Director (Ex. 2-3); United Steelworkers of America, Mary Win O'Brien, Assistant General Counsel (Ex. 2-4). Mr. Douglas McVey, Administrator of the Utah plan, responded to the public comments (Ex. 2-5).

The Utah State AFL-CIO objected to Utah's proposed revised benchmarks and final approval and submitted comments it had solicited from United States Steelworkers' Local Union No. 2701 and the Utah Building and Construction Trades Council.

Although the Utah State Building and Construction Trades Council and the United Steelworkers of America Local No. 2701 commented that they believe State plan enforcement activities have not been effective because the staff benchmark is "low," both commented positively on several aspects of the Utah program as discussed in the relevant portions of the Findings and Conclusions section of this notice.

The Utah State AFL-CIO suggests in its comments that OSHA should delay Utah's final approval for one year to ensure that there is a "continual demonstration of conscientious effort toward worker safety and health." However, neither OSHA's evaluation findings nor any of the comments received provide evidence that the effectiveness of State performance will diminish in the future; and, OSHA's decision on granting final approval of the Utah plan must be based on the record established in this proceeding, as described in the Findings and Conclusions section of this notice. Furthermore, the State AFL-CIO's concern is addressed by the fact that if Utah in the future fails to maintain a level of performance at least as effective as the Federal OSHA program, the final approval determination can be revoked.

The national AFL-CIO also indicated opposition to the approval of the proposed revised benchmarks for Utah and therefore opposed the granting of State plan final approval. Some of the comments of the AFL-CIO were directed toward OSHA's system for monitoring and evaluating State plans and the requirements that a State must meet to be eligible for final approval.

The evaluation of the Utah plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL-CIO expressed concern that Federal OSHA's monitoring system with its reliance on statistical indicators fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made.

The AFL-CIO also commented on specific State performance issues as did the Utah State AFL-CIO, Utah Building and Construction Trades Council, and USWA Local 2701. These comments are addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Mr. Douglas McVey, Administrator of the Utah State plan, responded to the concerns expressed on both the benchmarks and State specific performance issues.

The United Steelworkers of America (USWA) commented on the benchmark revision process in general with particular reference to Utah's benchmarks. The USWA indicated that Utah's benchmark submission appears better in comparison to some of the other States; however, the union opposes approval of the revised benchmarks for Utah and final approval of the State plan, although the union indicates that its members are not "unhappy" with the plan.

Comments by the unions addressing the proposed revised benchmarks for Utah reflected for the most part the commenters' concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmarks formula as applied in Utah should have assumed a need for routine, general schedule inspections at all covered workplaces; whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Utah's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the

Federal Register notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes that the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Utah and other States involved in the 1984 revision process employs the best information and techniques currently available; properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall;* and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985, Federal Register notice approving revised benchmarks and granting final approval of the Kentucky State plan (50 FR 24884).

Comments filed by the unions also addressed issues relating more specifically to the calculation of benchmarks for Utah. The AFL–CIO objected to the fact that some but not all non-manufacturing industries with lost workday case rates above the State average had been added to the initial safety inspection universe. Utah's response pointed out that establishment-specific workers' compensation data were utilized in the selection of non-manufacturing firms for inclusion in the State's general schedule inspection universe for safety. The State's analysis of site-specific information resulted in the addition of 519 non-manufacturing firms, whose lost workday case rates based on Workers' Compensation injury reports exceeded the overall State rate, to the safety inspection universe. It should also be noted that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in terms of scheduling specific employers for enforcement visits. A State's general schedule inspection universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards.

The AFL–CIO made a similar comment with regard to the State health inspection universe, asserting that Utah has improperly excluded "many industries with serious health hazards." As was true in safety, the State used a detailed establishment-specific approach enabling it to identify the specific firms, as opposed to industries, which are likely to present enforcement-preventable health hazards, and excluded those which are less likely to present such hazards. Thus, the State added almost 450 establishments to its initial health inspection universe based upon establishment-level inspection histories which indicated repeated health violations requiring continued program surveillance. Establishments not included in the initial inspection universe continue, of course, to be subject to complaint inspections.

With regard to the construction industry, the AFL–CIO objected that not enough resources were projected for coverage of health hazards, stating a belief that asbestos and other hazards had not been "adequately covered" by Utah in the past. The union's comments on the Utah plan and revised benchmarks do not provide any data in support of this conclusion. The results of OSHA monitoring of State plan enforcement, set forth elsewhere in this notice, do not support the assumption and, indeed, generally show that State inspections effectively identify and require the correction of health hazards. As is noted in Administrator McVey's response, Utah's safety compliance specialists in construction are well trained to identify asbestos and other health hazards. Safety inspections in construction account for 40% of all general schedule inspections in the State. The 1.1% of total health inspections projected as necessary for construction and other mobile industry are the State's best estimate, based on experience, of the resources needed to respond to requests by construction specialists for more sophisticated industrial hygiene studies. OSHA believes the State's calculation of the resources necessary for health enforcement is adequate to provide proper program coverage in construction. In related comments, the Building and Construction Trades Council stated that Utah's revised staffing levels for construction safety (as opposed to health) were inadequate, supporting this conclusion by stating an opinion that two construction specialists, as presently provided by the plan, were an insufficient number for construction industry coverage. However, as Administrator McVey indicated, these two specialists are devoted primarily to "high rise" heavy construction. All of Utah's safety inspectors are qualified to perform trenching, excavation, and other routine construction inspections, and thus the supposition that the needs of the State's entire construction industry must be met by only two specialists is not correct. With regard to the AFL–CIO's criticisms regarding Utah's health coverage of the public sector, the State responded that the public sector is afforded the same protections and coverage as the private sector. The State added 53 public sector establishments to its health inspection universe. In addition, health hazards in the public sector are frequently cited as the result of referral or health complaint inspections.

The Building Trades Council also mention slow response time to complaints as a possible indicator of inadequate staffing.

The suggestion that certain complaints have been handled in an untimely manner seems to be based exclusively on informal conversations with an unknown number of unidentified construction workers, and OSHA is reluctant to draw conclusions about enforcement resource needs based on this information. A better and more reliable basis for evaluation is OSHA's monitoring data, discussed elsewhere in this notice, which generally show the State to be responding to complaints in an effective manner within acceptable time limits. Data supplied by the State in its response show that since April 1, 1983, all formal complaints concerning construction sites have been investigated within four working days, and telephone complaints alleging serious hazards are addressed on the same day if possible, but in all cases within one to two days. Finally, the Building Trades Council submits that injury rates in the State require a greater enforcement emphasis in construction than contemplated by the revised benchmarks. In Utah, as in the nation as a whole, injury rates in construction are high compared with most other industries. As shown in data discussed elsewhere in this notice, the downward trend of injury rates in Utah indicates effective action by the State under its plan, particularly in heavy construction where Administrator McVey indicates the State injury rate was reduced by 17% during the period covered by the

evaluation. In the construction industry overall, the State further asserts that in 1983 the rate decreased 10%. The State's calculations for benchmarks provide sufficient staff for a proper emphasis on this high hazard industry. OSHA finds that the resources devoted to construction under the revised benchmarks are sufficient to provide for proper program coverage in that industry.

The United Steelworkers commented that although Utah's safety and health inspection universes (in terms of number of establishments) are somewhat similar in size to those in Maryland and Kentucky, the revised benchmark staffing levels for Utah are lower than those for the other two States. The Steelworkers' comment assumes a drastically different and more simplistic methodology for calculating benchmarks than was used, one which merely establishes a ratio between covered worksites in the universe and the number of compliance staff. Such a methodology would perpetuate one of the principal shortcomings of the 1980 benchmarks, which was the failure to take into account not only the differences among the States in industrial mix, geography, etc., but in the resultant differences in program structure and methodology. The State-specific input into the benchmark formula will differ significantly between a Western State with a less concentrated and/or complex industrial base and a highly industrialized Eastern State. The requirements for proper program coverage will also necessarily vary as a result.

Finally, both the AFL-CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Utah and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL-CIO* v. *Marshall* Court Order in 1980.

However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was the direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting, devoting resources to the relative minority of industries where enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Utah.

For these reasons OSHA believes application of the current benchmark formula for Utah has resulted in staffing levels which result in fully effective enforcement in the State of Utah.

Findings and Conclusions

Utah Benchmarks

As provided in the 1978 Court Order in *AFL-CIO* v. *Marshall*, Utah, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Utah. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and carefully considered the public comments received with regard to this proposal, and determined that compliance staffing levels of 10 safety and 9 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Utah Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Utah State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984, and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Utah State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Utah plan provides for the adoption of standards and amendments thereto which are generally identical to Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 3-2 and 3-3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and, to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the January 16, 1985 **Federal Register** notice, Utah adopts standards that are generally identical to Federal standards. Utah has adopted a Hazard Communication Standard identical to the Federal. In addition, Utah has adopted State standards for conditions not covered by Federal standards such as oil, gas,

geothermal and related services; lock out and tag out procedures; industrial railroads; and, explosive materials.

Utah's response to adoption of Federal standards is timely; during the period covered by the 18(e) Evaluation Report, Utah adopted all applicable standards within the six-month time frame (Evaluation Report, p. 3). Local No. 2701, USWA, and the Utah Building and the Construction Trades Council, in their written comments, have stated that Utah has adopted standards in a timely fashion and in some cases has gone beyond that which the Federal OSHA standards have required (Exs. 2–2a; 2–2b). No challenges to standards have occurred in Utah.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. As noted above, the Utah plan provides for the adoption of standards which are generally identical to the Federal standards. The State likewise adopts standards interpretations which are also identical to the Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Utah program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Utah State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the January 16 notice, Utah granted two permanent variances during the evaluation period. The report notes that equivalent protection for affected employees is assured in both cases (Evaluation Report, p. 4). During the evaluation period, no temporary variances were granted (Evaluation Report, p. 4); however, past years' experience indicates that the State's procedures were properly applied when granting temporary variances.

Accordingly, OSHA finds that the Utah program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Utah law (Utah Statutes 35–9–1 through 35–9–21, UCA) and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" shows no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)).

Although the National AFL–CIO commented favorably on Utah's record in responding to complaints (Ex. 2–3), the State AFL–CIO in its written comments (Ex. 2–2) asserted that the major problem with the State plan is that there are few inspections at their plants or construction sites because Utah spends more time responding to complaints than to general schedule inspections and developing preventative programs. The 18(e) Evaluation Report shows that for both safety and health, Utah does exceed the Federal experience in the percentage of complaints resulting in inspections (Utah: Safety—52.6%; Health—50%). However, this is a result of State policy to respond to complaints with inspections rather than by letter. Letters are used only for de minimis type violations. Utah believes complaint inspections are an important enforcement tool. The State also uses health complaints as a means to get their health staff into a wider variety of establishments than general schedule inspections (Evaluation Report, p. 11). Further, as Utah State plan Administrator McVey points out in his response to the public comments (Ex. 2–5), complaints actually make up only a small percentage, about 5% to total inspections. The written comments of the Utah Building and Construction Trades Council assert that in response to complaints from workers in the construction trades, Utah's response time is too slow; the only time that the response time is faster is when there has been a serious accident on a project (Ex. 2–2b). Utah State plan Administrator McVey responds that since April 1, 1983, the State received five formal complaints on construction sites, none of which were of serious problems, yet all were investigated within four working days (Ex. 2–5). Local No. 2701, USWA, in its written comments indicates that Utah has responded to complaints from workers in a timely fashion during the last year (Ex. 2–2a). OSHA's monitoring has found that Utah is effective in handling and responding to employee complaints (Evaluation Report, p. 12) and that State policy in this regard has not diminished its coverage of other high-hazard workplaces.

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)).

Utah's scheduling system for safety and health inspections is generally the same as OSHA's except that it uses workers' compensation data to supplement the safety scheduling. The State does not conduct records inspections, a policy with which the National AFL–CIO expresses agreement in its written comments. Ninety-eight percent (98.0%) of Utah's programmed safety inspections and 98.9% of programmed health inspections are conducted in high hazard industries. The 18(e) Evaluation Report indicates that the percent of total inspections that were general schedule for safety and health is 76.7% and 57.1%, respectively. The percent is slightly lower than the Federal and is due to Utah's practice of conducting more follow-ups (15.6% safety and 10.8% health) (Evaluation Report, p. 9).

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their

representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The AFL–CIO comments that there is a very low percentage of worker participation in walk-around inspections in the state (Ex. 2–3). The evaluation report acknowledges that the percentage of inspections where an employer actually accompanied the walk-around is low. However, employees were interviewed in all inspections conducted. In sum, employee representatives either accompanied inspectors or employees were interviewed on 100% of inspections during the evaluation period (Evaluation Report, p. 15). The 18(e) Evaluation Report concludes that the State's overall performance in this area is satisfactory. Local No. 2701, USWA, and the Utah Building and Construction Trades Council affirm in their written comments that workers and unions have been given the opportunity to participate in inspections (Ex. 2–2a; 2–2b).

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Utah requires that a poster, which was previously approved by OSHA (41 FR 1904), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. The 18(e) Evaluation Report indicates posting violations were cited in 200 inspections. Written comments from Local No. 2701, USWA, and the Utah Building and Construction Trades Council, affirm that workers and unions have been given complete access to information (Exs. 2–2a; 2–2b). Federal OSHA concludes that the State's performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). As discussed earlier in this notice, the Utah State plan provides authority to protect employees from being discriminated against for exercising their rights thereunder in terms similar to section 11(c) of the Federal Act, except that the Utah Industrial Commission rather than the courts may initially restrain employee discrimination and afford the employee appropriate relief through the issuance of an order. Past monitoring of Utah's plan has disclosed effective application of the State's approved discrimination protection provisions (Evaluation Report, p. 24).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)), and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were no imminent danger situations identified nor any Complaints About State Program Administration (CASPA's) received concerning trade secrets during the reporting period.

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Under the Utah plan, the Industrial Commission is authorized to petition for a court order to permit entry into places of employment that have refused entry for the purpose of inspection or investigation. In order to be found qualified for final approval, a State is excepted to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. During this evaluation period, Utah had 10 denials of entry and obtained warrants in all cases where warrants were necessary. Utah's average time from date of denial to date of warrant application is 7.1 days (Evaluation Report, p. 14).

The AFL–CIO asserts in its written comments that the average time allowed to elapse between denial of entry and application for warrant is significantly higher then the Federal average. However, in measuring State performance from date of denial to date of entry, Utah has an average of 11.7 days which is significantly shorter than the Federal average. This shows that the State does respond in a very prompt and effective manner when refused entry (Evaluation Report, p. 14).

Utah's procedures for advance notice generally parallel OSHA's during the evaluation period, Utah issued no advance notice of inspection (Evaluation Report, p. 15).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Utah plan through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the Federal for promptly issuing citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure to abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Utah has adopted a Compliance Operation Manual and also follows established inspection procedures, including documentation procedures, which are generally identical to Federal procedures. The 18(e) Evaluation Report indicates that the State adheres to these approved procedures. Utah's lapse time from inspection to issuance of citations has averaged 9 days for safety and 7 for health. The State percent of serious violations for safety and health is 5.1% and 12.7%, respectively (Evaluation

Report, pp. 15 and 16). The AFL–CIO in its written comments expresses concern that Utah issues fewer citations for serious violations resulting from scheduled inspections in both safety and health than the federal average (Ex. 2–3). The 18(e) Report, however, indicates that Utah historically has had a serious citation rate below Federal levels, primarily due to the lack of large, complex, and heavy industry in the State. In addition, although there was a smaller percentage of violations classified as serious, Utah cites a higher number of total violations per initial inspection (2.2) than does OSHA. Past monitoring efforts have always shown that few violations were found to be improperly classified (Evaluation Report: p. 17; Appendix A, p. 14). Neither the data nor comments demonstrate that the State has any problem in adequately identifying and citing violations or documenting inspections to support citations. Utah's procedures for penalty calculation and adjustment are generally identical to the Federal. The average proposed penalties for serious safety ($320.00) and serious health ($346.00) are somewhat higher than OSHA's (Evaluation Report, pp. 20–21).

Utah conducted more follow-up inspections to assure abatement of violations (15.6% safety and 10.8% health) than the Federal average, because the State has a policy which generally provides for reinspection on all citations for serious, willful or repeated violations. Utah's percent of open inspections (safety) 30 days after the last abatement is 22.5%. Since Utah has corrected a procedural error in coding case closing data, a later review indicates that virtually no safety cases are open 30 days after the last abatement date (Evaluation Report, p. 18).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Utah's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Occupational Safety and Health Review Commission and may be further appealed to the State District Court. Fifteen cases during October 1982 through March 1984 resulted in contests. OSHA evaluation of these cases supports the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. 23). Local No. 2701, USWA, and the Utah Building and Construction Trades Council both commented that workers and unions have been kept informed of and participate in settlements of contested cases between employers and the State (Exs. 2–2a; 2–2b).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). There were no such adverse adjudications in Utah during the evaluation period. However, past monitoring has shown that the Utah plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Utah plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

The Utah plan provides a program for the public sector which is identical to its private sector program, except the State does not assess monetary penalties. The AFL–CIO in its written comments (Ex. 2–3) notes that there was an increase in lost work day case rates from 1981 to 1982 in the public sector. However, the 18(e) Evaluation Report (p. 8) indicates that the public sector rates in Utah are very low in absolute terms and still well below the private sector rates. Further, in his April 22, 1985 response (Ex. 2–5) to the AFL–CIO comments, Utah State Plan Administrator Douglas McVey indicates that there was no change in the public sector lost workday case rate from 1982 to 1983, and that the increase from 1981 to 1982 was likely due to reporting errors by a major public employer in 1981, as postulated in the 18(e) Evaluation Report. Utah conducted 5.5% of its total inspections in the public sector during the evaluation period (104 inspections) and cited 288 violations. The proportion of inspections dedicated to the public sector was considered appropriate to the needs of public employees (Evaluation Report, p. 8).

Because the State treats the public sector in the same manner as the private sector, with the exception of assessing monetary penalties, as evidenced by its written procedures, which are applicable to all covered employees, public or private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Utah program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Utah has committed itself to funding the State share of salaries for 10 safety inspectors and 9 health enforcement officers as evidenced by the amended FY 1984 Application for Federal Assistance (Ex. 3–6) as well as its subsequent FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Utah.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Utah (39 FR 28154), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

The 18(e) Evaluation Report indicates that Utah recognizes the importance of training its staff and sets up sessions when a need surfaces for training in a particular area. Federal OSHA personnel have taught several of the training courses given to all Utah compliance personnel. Utah also makes good use of the OSHA Training Institute and EPA courses (Evaluation Report, p. 7). The United Steelworkers of America, in its written comments (Ex. 2–4), expressed concern that "approximately 4 of the Utah health inspectors are cross-trained safety inspectors." This

assertion is misleading, however, because while these health inspectors have a background in safety inspection, all have received the same basic training at the OSHA Training Institute as OSHA industrial hygienists and also have received extensive on-the-job training and follow-up courses. Utah State Plan Administrator Douglas McVey, in responding to the public comments (Ex. 2–5), points out that the selection of these former safety inspectors was based on the quality of their education and experience. Furthermore, the Utah Building and Construction Trades Council and Local 2701, USWA, point out that all of the State compliance personnel have been properly trained and are competent in their field of assignment (Exs. 2–2a; 2–2b).

Because Utah has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order and in *AFL–CIO* v. *Marshall, supra*, are being met by the Utah plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Utah plan was funded at $1,588,488 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Utah's funding appears sufficient. Moreover, the State compares favorably to Federal OSHA with respect to expenditures per covered employee (Evaluation Report, p. 26). On this basis, OSHA finds that Utah has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Utah's employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Utah has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State play is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the 18(e) evaluation period, Utah provided training to 2,824 employers and supervisors and 18,156 employees. Of the employees trained, 25.5% were in high hazard industries (Evaluation Report, p. 6). Written comments from Local 2701, USWA, and the Utah Building and Construction Trades Council indicate that full and appropriate health and safety training and education for covered workers has been accomplished, although the Building and Construction Trades Council believes that more should be done for construction. Utah State plan Administrator McVey's April 22, 1985 response to the public comments indicates that the State annually trains about 2,000 workers within construction or about 10% of the total trained, and about 10% of the total construction workforce, despite seldom receiving requests for assistance from the Utah Building and Construction Trades Council, which conducts training under its own grant from OSHA. Utah's Job Safety and Health Consultation Service (JSHCS) operates a private-sector consultation program in the State under a 7(c)(1) contract with OSHA. While the JSHCS is a part of the Utah Industrial Commission, it is entirely separate from the Division of Occupational Safety and Health although the working relationship and interaction between them complements both of these programs. Utah's State plan does not include an onsite consultation program in the public sector because this type of activity is not authorized by the Utah enabling legislation (Evaluation Report, p. 5).

OSHA finds that Utah has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics Annual Occupational Safety and Health Survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)). As noted in the 18(e) Evaluation Report, in 1982 the all industry all case rate for Utah (8.9) was slightly higher than in Federal States and the all industry lost workday case rate for the year was the same (3.4). However, from 1981 to 1982, the percent of reduction in the all industry lost workday case rate in Utah (–10.5%) was greater than the reduction for that rate in Federal States.

The National and State AFL–CIO's comments, as well as comments from the Utah Building and Construction Trades Council, expressed concern that the rates in construction are particularly high in Utah. Specifically, the Trades Council stated that the injury and illness rate for Utah in heavy construction has remained at a high level, above the national average, from 1975 through 1983.

As noted in Utah State plan Administrator McVey's April 22, 1985 response to the public comments, the rates the union presents appear to apply only to heavy construction or SIC Code 1600; and, in this category, Utah improved from 20.5 in 1982 to 17.0 in 1983, a 17.1% reduction. Further, the overall incidence rate in Utah for construction in 1983 was 16.7, down 10% from 18.4 in 1982. Moreover, Utah's rate for construction lost work days of 6.4 in 1983 is only slightly higher than the Federal average; and, the overall construction rate in Utah dropped by 4.6% during this period. Thus while the Utah rate is slightly above the Federal rate, Utah is showing greater improvement.

Considering the overall decline in Utah's injury and illness rates since initiation of the State plan, OSHA finds a favorable comparison between Utah's trends in injury and illness statistics and those in States with Federal enforcement.

Decision

OSHA has carefuly reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Utah meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) the Utah State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as

the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR 1902. Therefore, the revised compliance staffing benchmarks of 10 safety and 9 health are approved and the Utah State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective July 16, 1985.

Under this 18(e) determination, Utah will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in protecting employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Utah must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Utah plan terminates OSHA authority for Federal enforcement of its standards in Utah, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a) (2) and (9)); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Utah plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in November 1974.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private-sector maritime employment and on Hill Air Force Base, since these issues are excluded from coverage under the Utah plan. In addition, Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47. *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determination be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart E of Part 1952 to reflect the final approval of the Utah plan.

A new paragraph § 1952.113, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Utah.

A new paragraph § 1952.114, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

A newly redesignated paragraph § 1952.115, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.112, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on October 4, 1974. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Utah, and the Operational Status Agreement is no longer in effect. § 1952.115 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart E has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.110, to clearly identify the 1973 initial plan approval decision to which it relates, and deletion of former § 1952.115, which pertains to approval of miscellaneous, unrelated plan changes. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.116.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Utah under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A certification to this effect previously was forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C. this 16th day of July 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart E of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

§ 1952.115 [Removed]

2. Section 1952.115, Changes to approved plans, is removed.

3. Section 1952.110 is amended by revising the heading to read:

§ 1952.110 Description of the plan as initially approved.

* * * * *

§§1952.111, 1952.112, 1952.113, and 1952.114 [Redesignated as 1952.116, 1952.115, 1952.111, and 1952.112, respectively]

4. Section 1952.111 redesignated as § 1952.116.

5. Section 1952.112 redesignated as § 1952.115.

6. Section 1952.113 redesignated as §1952.111.

7. Section 1952.114 redesignated as § 1952.112 and amended by revising the heading to read:

§ 1952.112 Completion of developmental steps and certification.

* * * * *

8. The Table of contents for Part 1952, Subpart E, is revised to read as follows:

Subpart E—Utah

Sec.

1952.110 Description of the plan as initially approved.
1952.111 Developmental schedule.
1952.112 Completion of developmental steps and certification.
1952.113 Compliance staffing benchmarks.
1952.114 Final approval determination.
1952.115 Level of Federal enforcement.
1952.116 Where the plan may be inspected.

9. New §§ 1952.113 and 1952.114 are added to read as follows:

§ 1952.113 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984, Utah, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 10 safety and 9 health compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements effective July 16, 1985.

§ 1952.114 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO* v. *Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Utah State plan for a period of at least one year following certification of completion of developmental steps (41 FR 51014). Based on the 18(e) Evaluation Report for the period of October 1, 1982 through March 31, 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Utah's occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Utah plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 16, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Utah except safety and health coverage in private-sector maritime employment and on Hill Air Force Base.

(c) Utah is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

10. Newly designated §§ 1952.115 and 1952.116 are revised to read as follows:

§ 1952.115 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval of the Utah plan under section 18(e) of the Act, effective July 16, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Utah plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a) (2) and (9) of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate

criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private-sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification; as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). Federal jurisdiction is also retained on the Hill Air Force Base, and with respect to all Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Utah State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement and/or proceedings for withdrawal of plan approval.

§ 1952.116 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1961 Stout Street, Room 1554, Denver, Colorado 80294; and, the Office of the Utah Industrial Commission, Utah Occupational Safety and Health, 160 East Third South, Salt Lake City, Utah 84110–5800.

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Proposed Rules

Federal Register
Vol. 50, No. 136
Tuesday, July 16, 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

Farmers Home Administration

7 CFR Parts 1930, 1944 and 1965

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the management and supervision of FmHA Multiple Family Housing loan and grant recipients. This action is taken to incorporate changes required by the Housing and Urban Rural Recovery Act of 1983 (83–Act). The changes closely align FmHA's methodology governing tenant income calculation and tenant contribution with the Department of Housing and Urban Development's (HUD) methodology and make administrative revisions and clarifications.

The intended effect of this action is to establish: new priority rules for rental assistance; rules requiring management policy that permit persons in housing for the elderly to keep a pet; rules that establish priority levels for very low-income tenants; and rules affecting rent increases, management fees, and rental assistance for manufactured housing.

DATE: Comments must be received by September 16, 1985.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW, Washington, DC 20250

All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James D. Tucker, Branch Chief, Multiple Family Housing Servicing and Property Management Division, FmHA, USDA, Room 5321, South Agriculture Building, 14th Street and Independence Avenue SW, Washington, DC 20250, telephone (202) 382–1618.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, and Environmental Impact Statement is not required.

Intergovernmental Review

This instruction does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

The following Catalog of Federal Domestic Assistance Programs are affected: 10.405, Farm Labor Housing Loans and Grants; 10.411, Rural Housing Site Loans; 10.415, Rural Rental Housing Loans; and 10.427, Rural Assistance Payments.

General Information

Background and Statutory Authority

On November 18, 1983, the Ninety-Eighth Congress passed legislation known as the Housing and Urban-Rural Recovery Act of 1983, hereinafter referred to as the "83–Act." The legislation was enacted November 30, 1983, upon signature by the President. Only the language of the 83–Act is available; there are no known congressional committee minutes available to provide a background discussion to the provisions of the 83–Act. Due to the imminent need to promulgate regulations to implement the 83–Act, FmHA has developed these proposed regulations internally except for occasional contracts, primarily with the Department of Housing and Urban Development (HUD) concerning HUD's regulations. A major thrust of the 83–Act is to require alignment of the FmHA definitions of low-income families or persons and very low-income families or persons with those established by HUD in implementing the provisions of the United States Housing Act of 1937. Closely related is the requirement that FmHA's definitions of income and adjusted income be consistent with those established by Congress under sections 3(b)(4) and 3(b)(5) respectively of the United States Housing Act of 1937, which are described in this rulemaking. Another requirement of the 83–Act is the establishment of rules prohibiting denial of common household pets in federally financed housing for the elderly.

Other proposed changes are corrective and clarifying in nature in response to questions raised by the public and FmHA staff after the December 19, 1983, issuance of 7 CFR Part 1930–C.

HUD Related Changes

Definitions

The proposed definition changes are discussed hereafter in generally alphabetical order as found in Exhibit B to Subpart C of Part 1930.

Adjustments to annual income are changed in paragraph II A of Exhibit B. Previously, they were 5 percent of annual income and $300 for each minor person. The deduction will become $480 for each person under 18 years of age or who is 18 years of age or older and is disabled, handicapped, or a full-time student. This deduction will not be available for foster children or unborn children. Other permissible deductions to annual income will be $400 for any elderly family plus medical expenses in excess of 3 percent of annual household income for any elderly family, and the amount paid by a family for the care of minors under 13 years of age, or for the care of disabled or handicapped persons when such care enables a household member to be gainfully employed or to further their education.

The definition of annual income in paragraph II C of Exhibit B, previously included the planned income of all residing household members for an ensuing 12 month period. The proposed definition includes anticipated income for all adult members who will reside during the 12 months following the effective date of proposed Form FmHA 1944–8, "Tenant Certification." The discussions about exempted income and income deductions to determine annual income are restated and include substantially the same provisions as the previous regulations. The major changes are removing the $400 per month limits on child and nursing type care deductions and permitting total medical expense deductions in excess of 3 percent of annual elderly family income and the total cost of care of minors to permit a family member to be gainfully employed or to facilitate further education.

By adopting the same definition as HUD of annual income and adjusted annual income, several other definitions or factors affecting the calculation of eligibility determination and subsidy qualification need to be adopted by FmHA. The proposed definition of elderly in paragraph II I of Exhibit B replaces the previous definition of senior citizen. Wherever the term senior citizen appears in FmHA regulations, it shall mean elderly. The proposed definition restates the definition for senior citizen and now includes a definition for handicap and also adds inclusively a definition of disability as defined in the "Development Disabilities Assistance and Bill of Rights Act"; Pub. L. 95–602. Thus, the term elderly includes persons 62 years of age and older, handicapped and disabled persons.

The term elderly family in paragraph II J of Exhibit B, is found in HUD regulations and is proposed in FmHA regulations for the first time. An elderly family may include a tenant household where the tenant or co-tenant is 62 years of age or older, or handicapped or disabled. It may also include a tenant household where a person(s) younger than 62 is a member who is essential to the elderly, handicapped, or disabled person's care and well-being.

Eligibility income in paragraph II K of Exhibit B, is another proposed term in FmHA regulations for multiple family housing (MFH). This is the calculated adjusted gross income that is compared to an established income limit to determine if a tenant applicant is eligible for occupancy or continued occupancy.

The definition of minor in paragraph II U of Exhibit B, is proposed to make FmHA and HUD regulations compatible. The term minor includes persons under 18 years of age who are not the tenant or co-tenant. The term minor does, however, include persons aged 18 or older who are full-time students.

The term net family assets in paragraph II W of Exhibit B, is a proposed addition to the list of definitions. New family assets include household savings and checking accounts market value of stocks and bonds, equity in real property, and other capital investments. Explanation that any income derived from such assets is treated as annual income is included in the definition. Further explanation describes that when such assets exceed $5,000, the value of the net family assets will be used in determining the eligibility income described above. The calculation takes an applicant's net family assets into consideration, commonly known as an "assets test." If net family assets are less than or equal to $5,000, eligibility income is the equivalent of annual income. If net family assets are greater than $5,000, eligibility income will be the greater of: (1) Annual income or (2) annual income less income from assets plus an amount equal to bank passbook savings rates on net family assets.

In the discussion of rent that a tenant pays, especially when rents are subsidized, HUD distinguishes between project rent and the portion of project rent paid by a tenant as shelter cost and tenant contribution respectively. Definitions are proposed for each of these terms. Shelter cost in paragraph II HH of Exhibit B is described as the basic and/or market rent plus any utility allowances, when required. Tenant contribution in paragraph II KK of Exhibit B, is described as the portion of approved shelter cost paid by the tenant. To complete this discussion, a definition for rental assistance (RA) in paragraph II CC of Exhibit B is added. Rental assistance is the portion paid by FmHA to compensate for the difference between the approved shelter cost and tenant contribution.

Increase in Tenant Contribution

Section 517 of the Act stipulates that when RA is provided, the rent contibution for tenants receiving RA shall not exceed the highest of (1) 30 percent of monthly *adjusted*, (2) 10 percent of gross monthly income, or (3) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designed by such agency to meet the person's or family's housing costs. Section 517 of the 83–Act further stiplulates that when interest credits are provided, a tenant's rent contribution shall not exceed the highest of (1) 30 percent of monthly *adjusted* income, (2) 10 percent of gross monthly income, or (3) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs, or, where no RA authority is available, the rent level established on a basis of a 1 percent interest rate on debt service. (FmHA interprets this requirement to also apply to Plan I projects with a 3 percent interest rate when RA is not available.) These stipulations replace the previous requirements that tenants pay no more than 25 percent of monthly adjusted income as rent contribution including utilities when RA is available. FmHA proposes to implement the change of tenant contribution in paragraph IV A 2 c of Exhibit B to Subpart C to Part 1930 from 25 percent to 30 percent with this rulemaking subject to a provision of the 83–Act which limits the increase of tenant contribution as a result of this 83–Act or by other revision of Federal law or Federal regulation to no more than 10 percent during any twelve-month period unless the income above 10 percent is attributable to an increase in income. The details of tenant contribution calculation are contained in the revised Form FmHA 1944–8, "Tenant Certification" and the associated Forms Manual Insert.

Section 530 of Title V of the Housing Act of 1949 is amended by the 83–Act to replace 25 percent with 30 percent of monthly adjusted income for the purpose of requiring application for RA as a result of a rent increase. Accordingly, FmHA proposes this change in paragraph III C of Exhibit C to Subpart C to Part 1930.

By electing to adopt HUD's income and eligibility determination criteria, there is some impact on FmHA's occupancy standard. The HUD criteria refer to unborn children and foster children, where FmHA regulations have not. FmHA is also cognizant that HUD has eliminated its numerical occupancy standard and has adopted a narrative type of occupancy policy. With this rulemaking, in paragraph VI B 2 of Exhibit B to Subpart C to Part 1930, FmHA is proposing to adopt much of HUD's occupancy policy. Borrowers will be required to establish their own occupancy policies following the FmHA occupancy policy guideline and with FmHA approval. FmHA is retaining the numerical occupancy standard as a desired goal and guideline rather than as a mandatory standard. The numerical occupancy standard will remain, however, until borrowers have adopted their own occupancy policy.

Other Related Changes

Other changes in 7 CFR Parts 1930 and 1944 are proposed to correlate with the changes proposed to definitions, tenant contribution, and occupancy policy. These changes are generally confined to changed reference and a change or addition of termonology. For example, the term "very low-income" is proposed in numerous places where income levels are discussed. This change is found in 7 CFR Part 1930 topic areas of tenant eligibility, maintenance of waiting list, notification of eligibility or rejection, tenant selection, form of lease, required lease clauses, other lease provisions, occupancy rules, security deposits, and in Exhibits B–1, B–3, C, C–2, and E; and in 7 CFR Part 1944, Subpart D and E.

Pet Policy

Section 227 of the 83–Act stipulates that no owner or manager of any federally assisted rental housing for the elderly or handicapped may: (1) As a condition of tenancy or otherwise prohibit or prevent any tenant in such housing from owning common household pets or keeping common household pets in the dwelling accommodations of such tenants or (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of ownership of such pets by, or the presence of such pets in the dwelling accommodation of such person. This rulemaking contains proposed regulations in paragraph VIII F 6 establishing guidelines under which an owner or manager of FmHA financed rental housing for the elderly or handicapped may prescribe reasonable rules for the keeping of pets by tenants in such housing. The regulations require borrowers (owners) to establish project rules pertaining to the keeping of commonly accepted pets by tenants in projects designed for the elderly, handicapped or disabled within 12 months of the effective date of this rulemaking. Borrowers with operational projects must consult with the tenants of each project when establishing the pet rules and document for FmHA how the consultation process was conducted. Borrowers with new projects must establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions after occupancy occurs. The definition of Pet is proposed in paragraph II Z of Exhibit B to Subpart C to Part 1930 to mean a commonly accepted domesticated animal such as a dog, cat, bird, etc. Security deposits for animal maintenance are allowed in paragraph VIII G 1 of Subpart C to Part 1930 for all pets except seeing eye and hearing ear animals. These animals are not considered pets. The Pet Food Institute in Washington, D.C., the National Center for Law and the Deaf, and FmHA National Office staff were consulted in developing the proposed definition.

Rental Assistance (RA)

Priorities

Sections 512, 516 and 517 of the 83-Act include changes or additions that affect the administration of RA by FmHA. Only those RA provisions involving actual allocation of RA are addressed in this proposed rulemaking.

In Section 512, Congress mandated that when RA is available as described in paragraph XI C of Exhibit E to Subpart C to Part 1930, at least 75 percent of RA vacancy shall be filled by very low-income tenants in projects made operational before November 30, 1983. For projects made operational on or after November 30, 1983, Congress mandated that when RA is available, at least 95 percent of the RA will be assigned to very low-income tenants. To achieve this mandate, FmHA is proposing rules in paragraph XI B of Exhibit E to Subpart C to Part 1930, governing priority in assigning RA to tenants. First, RA will be assigned to very low-income tenants paying the highest percentage of adjusted annual income for approved shelter cost and then to very low-income applicants on the waiting list selected on a first come, first served basis. Second priority will go to eligible low-income tenants in residence paying the highest percentage of adjusted annual income for approved shelter cost and then to low-income applicants on the waiting list selected on a first come, first served basis.

Section 517 of the 83-Act establishes a new priority system for allocating RA to projects. Under the previous regulations, RA priority was extended to projects which limited RA usage to no more than 40 percent of the units contained in the project, although RA could be used in up to 70 percent of the project units, except for rental housing financed for the elderly or handicapped where 100 percent of the units could benefit from RA.

FmHA received in FY 1984 a split RA appropriation; part for servicing and another for new construction. The new priority system stipulates that projects with expiring RA contracts shall receive first priority. Regulations addressing the first priority were in effect when the 83-Act was enacted. The second priority is to serve new construction with RA funded through the new construction RA appropriation. The third priority of the Act is for servicing operations projects to the extent any RA funds remain after meeting the first priority. Proposed revisions are made to paragraph IV A 2 and 3 of Exhibit E to Subpart C of Part 1930 to identify the priorities.

RA for Manufactured Housing

Section 517 of the 83-Act added a provision where RA may be used where manufactured housing has been purchased. Paragraph II B 4 of Exhibit E to Subpart C to Part 1930 is proposed to clarify when borrowers may provide RA under this provision.

Other Provisions

Rent Increases

Section 512 of the 83-Act amended section 515 of the Housing Act of 1949 to limit rent increases in certain situations. Rent changes to cover project operating and maintenance costs occurring in newly constructed or substantially rehabilitated rental housing projects approved on or after November 30, 1983, may be approved provided, (1) the cost changes are actual costs, and (2) the amount of cost change incurred is comparable to costs incurred in comparable projects in the project's maket area or to the best available cost information. These proposed

amendments are described in paragraph VI C of Exhibit C to Subpart C to Part 1930. The Agency is particularly interested in the public's comment concerning the impact of this proposed change in rent increase requirements.

Management Fees

Section 512 of the Act amended section 515 of the Housing Act of 1949 by adding (j) forbidding excessive management fees in rental housing projects managed by a developer or an affiliate of the developer. Regulations published on December 19, 1983, in the Federal Register address this concern.

Administrative Changes

Annual Reports

Annual reports, including audit reports, are presently due from borrowers within 45 days following close of the borrower's project fiscal year. In response to comment from the public, since issuance of this regulation on December 19, 1983, especially from project accountants and FmHA staff, the Agency proposes changing the requirement to 60 days. The Agency considered a longer submission period. The Agency believes, however, that project annual reports and audits are vital sources of compliance and performance information that warrant review as early in the following operational year as possible to make any needed changes effective without delay. These proposed changes are found as follows:

1. Section 1930.124 (b).
2. Exhibit A–1, IV B 1 c; Evaluation Checklist for Audit Reports, item no. 5; Example Audit Review Letter, item no. 3.
3. Exhibit b. XIII C 2.
4. Exhibit B–7, "Due Date" column 6 of the 7 listed report items.

Changing Project Designation

A new § 1930.125 is proposed to describe conditions and requirements that will permit the redesignation of use of a multiple family housing project. This will permit administrative flexibility for FmHA and borrowers to respond to changing rental market conditions.

Delegation of Authority

FmHA proposes to expand its administrative delegation authority in § 1930.143 by permitting the Administrator to authorize State Directors on an individual State basis to contract out selected multiple family housing loan servicing actions. The Agency is investigating the possibility of contracting selected loan servicing actions to reduce the workload on District Offices while still meeting regulatory requirements.

Site Manager's Compensation

FmHA proposes clarification of paragraph V E 1 of Exhibit B to Subpart C of Part 1930. Correct calculation of the site manager's compensation where the site manager's apartment unit is provided at no cost or at a reduced cost has been confusing to FmHA staff and borrowers. The discussion has been expanded to describe calculation scenarios of no rent or reduced rent. The discussion emphasizes that costs associated with providing a rent-free or reduced rent apartment are reflected in the expenses of the project budget while income from the same unit is either reduced or is zero.

Tenant Eligibility

FmHA proposes clarification of paragraph VI B 1 by stating that tenant households are eligible for occupancy when a household member is disabled if adequate care and assistance is provided by the tenant household for the safety and well-being of the disabled household member.

Tenant Recertification

FmHA proposes paragraph VII F 4 to Exhibit B to Subpart C of Part 1930 to clarify that "mid-year" recertification of tenant income and/or household size is permitted.

Tenant Income Verification

FmHA proposes paragraph VII F 5 to Exhibit B to Subpart C of Part 1930 to permit the borrower to provide a tenant's social security number to the District Director to verify the tenant's incomes on record with the appropriate state employment agency. This proposed change is included in response to recommendations to the Agency by the USDA Office of Inspector General based on their findings of incorrect reporting and verification of tenant income.

Tenant Guest Policy

FmHA proposes paragraph VIII F 9 to Exhibit B to Subpart C of Part 1930 to establish a policy for tenant guests. This policy is entered in response to recurring questions raised by FmHA field staff. The specific number of 14 days and nights in a 45-day period are taken from a 1983 consent decree in the State of Texas.

Advance of Funds to Cover Project Operating Shortfalls

On March 24, 1983, FmHA issued FmHA Administrative Notice No. 824 (1930) to its State Directors, Rural Housing Chiefs and District Directors. This Administrative Notice provided clarification of Agency policy of when payback of funds provided from outside a MFH project could or could not be permitted to cover shortfalls in project operations. This policy statement is now proposed in paragraph XII C of Exhibit B to Subpart C of Part 1930. Advances for operational shortfalls are discouraged but may be permitted conditionally with prior written approval by an FmHA District Director.

Separate Maintenance of Project Funds

FmHA currently requires borrowers to maintain separation of a project's funds from funds of another project owned by the borrower or managed by the borrower's management agent. This requirement is cited in paragraph XIII B 1 d of Exhibit B to Subpart C of Part 1930. The Agency adopted this policy for fiscal control of project funds. Some borrowers, management agents, and FmHA staff maintain that fiscal control can be maintained through proper bookkeeping and auditing procedures while permitting the commingling of different project funds. They further maintain that commingling of funds simplifies bookkeeping and permits better investment yield on deposits of reserve and surplus funds. The Agency invites the public to express its viewpoint and to provide reasons for and against maintaining the current policy.

Notice of Tenancy Termination

FmHA proposes revision of paragraph XIV B 3 of Exhibit B to Subpart C of Part 1930. The present regulation refer the District Director to Subpart L of Part 1944 of 7 CFR for guidance in reviewing a notice of tenancy termination. Reference to Subpart C of Part 1944 of 7 CFR is incorrect. The revised language directs the District Director to review paragraph XIV of Exhibit B to Subpart C of Part 1930 for guidance in reviewing a notice of tenancy termination.

Fidelity Bonds

Paragraph XV A of Exhibit B to Subpart C of Part 1930 contains a proposed revision to clarify borrower and management agent fidelity bond requirements. The present requirements result in duplicate coverage in situations where there is a management agent in addition to borrower officials. The proposed revision to the regulation will require fidelity bond coverage of the person, persons, or firm with exclusive access to project assets.

Paragraph XV A 12 of Exhibit B to Subpart C of Part 1930 contains a proposed revision to clarify fidelity bond deductible requirements. The

phrase "initial to clarify investment" is changed to "initial project contribution for operating capital." Some confusion has emerged from the present language. Some people think of "initial project investment" as the value of total project development cost. The correct meaning is the amount of contribution made by the borrower "up-front" as an initial investment into the project.

Rent Change Meeting with FmHA District Director

FmHA proposes to change its requirement in Exhibit C to Subpart C of Part 1930 that all borrowers desiring an increase of project rents must first meet with the District Director. Paragraph IV A is revised to permit the District Director to use discretion in exercising this requirement. The District Director may allow rent change information to be submitted in lieu of a meeting not needed. The borrower will be permitted to post a notice of rent change 15 days after submitting the rent change information to the District Office.

Notice of Approved Rent Change

Revision of Exhibit C–2 to Subpart C of Part 1930, "NOTICE OF APPROVED RENT CHANGE," is proposed to remove confusion in its use. References to 30-day notice have been removed and a fill-in date has been inserted. This change will permit compatibility with use of Exhibit C–1 to Subpart C of Part 1930, "NOTICE TO TENANTS OF PROPOSED RENT CHANGE." The Exhibit C–1 provides notice to tenants of pending rent increase at least 60 days prior to effective date of increase. FmHA approval/rejection of a rent increase must be given to a borrower by the 45th day of the 60-day period. Hence there is only 15 days remaining. The revised Exhibit C–2, as proposed, will confirm the effective date and fact of rent increase stated in the Exhibit C–1 issued 45 days earlier. In paragraph V B 1 a of Exhibit C to Subpart C of Part 1930, proposed discussion is added to clarify that the Exhibit C–2 notice will be mailed or it can be hand-delivered to each tenant. It must also be posted in a conspicuous place for all tenants to view.

In addition, Farmers Home Administration (FmHA) has determined it necessary to consider including in Exhibit C, "Rent Changes" of Part 1930, Subpart C of this chapter, a rent preemption regulation and invites comments. The added paragraph is proposed as follows, but final language would be developed and published as a final rule.

The Department of Agriculture through Farmers Home Administration (FmHA) finds it is necessary and desirable to minimize defaults by the mortgagor in its financial obligations with regard to projects covered by this subpart, and to assist mortgagors to preserve the continued viability of those projects as a housing resource for low- and moderate-income families. The Department also finds that it is necessary and desirable to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards (hereinafter referred to as board), or other authority acting pursuant to State or local law as it affects projects covered by this subpart.

Furthermore, we invite comments on a proposal that Farmers Home Administration (FmHA) permit computerization of data gathering forms which are used by Multiple Family Housing Borrowers on a regular basis. Regulations would be amended to allow computerization of FmHA data gathering forms as long as the content was neither increased or decreased.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidiaries, Rural housing.

7 CFR Part 1965

Administrative practice and procedure, low and moderate income housing—Rental, Mortgages.

Accordingly, FmHA proposes to amend Part 1930, Subpart C; Part 1944, Subparts D and E; and Part 1965, Subpart B, Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.101 [Amended]

2. Section 1930.101(d)(1) is amended by changing the reference "Form FmHA 444–8" to read "Form FmHA 1944–8."

§ 1930.102 [Amended]

3. Section 1930.102(h) is amended in the first sentence by removing the words "located on the same or contiguous site(s) and" and inserting the words "in one community such as a densely settled area, town or village" and by adding the words "under § 1965.68 of Subpart B of Part 1965 of this chapter" at the end of the last sentence.

§ 1930.109 [Amended]

4. Section 1930.109 is amended in the last sentence by inserting the word "actions" beteen the words "servicing" and "will" and by placing a period after the word "chapter" and removing the remainder of the sentence.

§ 1930.110 [Amended]

5. Section 1930.110 introductory text is amended by inserting the words "Periodic group meetings with borrower;" between the words "meetings;" and "analysis."

6. Section 1930.110(a)(4) is amended in the first sentence by inserting the word "and" between the words "plan" and "to."

7. Section 1930.110(a)(5) is amended by changing the spelling of "personal" to "personnel."

§ 1930.117 [Amended]

8. Section 1930.117(b)(3) is amended by inserting the words "and conduct" between "Develop" and "training" and by adding the letter "s" to the word borrower.

9. Section 1930.117(b)(5) is amended in the second sentence by changing the spelling of "benefitting" to "benefiting" and by replacing the words "made available to" with the words "offered to or accessible by."

10. Section 1930.117(b)(6) is amended by replacing the words "to assure" with the word "for."

11. Section 1930.117(c) introductory text is amended in the first sentence by replacing the word "officers" with "chiefs."

12. Section 1930.119(a) introductory text is amended in the first sentence by inserting the words "or other FmHA authorized persons" between the words "officials" and "will."

13. Section 1930.119(b)(1) is amended in the second sentence by adding the words "or other FmHA authorized

person" between the words "person" and "will."

14. Section 1930.119(b)(2) is amended in the first sentence by inserting the words "or other FmHA authorized person" between the words "Director" and "will" and by removing the words "a biennial" and inserting "an" in that place and inserting words "at least once every three years" between the words "Project" and "with."

15. Section 1930.119, paragraphs (d) and (e) are redesignated as (e) and (f), paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 1930.119 Supervisory visits and inspections.

* * * * *

(c) *Preparation.* The person planning to make the visit and inspection will review the most recent monthly or annual reports, the running records, correspondence and other District Office records to be fully aware of the supervisory needs of the project. This awareness should be developed into an informal visit plan and include, but not be limited to such things as: payment status, subsidy status, due dates of taxes and insurance, adequacy of fidelity bond, and any known maintenance problems.

(d) *Conducting visit or inspection.* The person making the visit or inspection should spend sufficient time at the project to accomplish the visit plan and any additional needs that are observed or brought out by the tenants or management staff.

* * * * *

16. In Section 1930.119 paragraph (f) is amended in the first sentence by adding the words "or other FmHA authorized person" between the words "member" and "will."

§ 1930.124 [Amended]

17. Section 1930.124 introductory text is amended at the end of the last sentence by removing the period (.) and inserting a colon (:) in its place.

18. Section 1930.124(a)(3) is amended in the first sentence by removing the words "full fiscal year of" and inserting in their place the words "six months of successful."

19. Section 1930.124(b) introductory text is amended in the first sentence by deleting the words "and will consist of" and inserting the punctuation and words ", or any extension authorized in writing by the District Director. The report will consist of:".

20. Section 1930.124(c) introductory text is amended in the fourth sentence by inserting the words "through the State Office" between the words "referred" and "to."

21. Section 1930.124(c)(1) is amended in the first sentence by placing a period (.) after "1970" and by deleting the remainder of the sentence and by removing the word "closely" from the second sentence.

22. Section 1930.124(d)(1)(iii) is amended by changing the reference "§ 1930.119 (b)" to read "§ 1930.119(b)(2)."

23. Section 1930.124(f)(1) is amended by deleting the last sentence and replacing it with the sentence "In cases where the Dirtrict Director does not have delegated authority, the State Director or state staff delegate will approve Form FmHA 1930–7."

24. Section 1930.125 is added to read as follows:

§ 1930.125 Changing project designation.

Generally projects designated for families, elderly or handicapped persons will be used for the original purpose throughout the life of the FmHA loan. However, if it becomes necessary to change the designation of a project due to housing market changes which inhibit the borrower's ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation with the prior written concurrence of the National Office. No change in the plan of operation (limited profit, nonprofit or full profit) will be authorized in conjunction with the change in project designation. Project design must meet elderly housing requirements when changing the designation to elderly. The National Office will only consider such requests on a case by case basis when all of the following information has been provided:

(a) The complete borrower case files have been submitted together with the State Director's specific recommendations and analysis of the present and long term situation.

(b) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the long term marketability of the project and include the appropriate demographic information which reflects the population trends in the area.)

(c) A summary of all servicing actions taken by FmHA to aid the borrower in maintaining the present designation.

(d) A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants.

(e) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

§ 1930.141 [Amended]

25. Section 1930.141 (i)(6) is amended by changing the reference "Form FmHA 444–8" to read "Form FmHA 1944–8."

26. Section 1930.143 is amended by redesignating the text as paragraph (b) and by adding a new paragraph (a) to read as follows:

§ 1930.143 Delegation of responsibility and authority.

(a) The Administrator may on an individual state basis, authoize the State Director to contract out selective fact gathering, non-decision making servicing actions in this Subpart.

* * * * *

27. Exhibit A is amended in paragraph III D by adding the prefix "ex" to "penditures."

28. Exhibit A is amended in the last paragraph entitled "Summary" by placing "VIII" before the word "Summary."

29. Exhibit B is revised to read as follows:

Exhibit B—Multiple Housing Management Handbook

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Multiple Housing Management Handbook

I. Purpose

This management handbook prescribes the Farmers Home Administration (FmHA) regulations, policies and procedures for management of RRH and LH projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide clarification and guidance. These regulations are intended to assist borrowers in the successful operation of FmHA-financed rental projects.

II. Definitions

A. *Adjusted Annual Income.* This is the income of the household members who live or propose to live in the rental unit for the next 12 months (including spouse or children of an elderly family in nursing homes or hospitals who would otherwise live in the unit), excluding:

1. $480 for each member of the family residing in the household (other than the tenant or co-tenant or spouse of either) who is under 18 years of age or who is 18 years of age or older and is disabled, handicapped or a full-time student.

2. $400 for any elderly family;

3. Total medical expenses in excess of 3 percent of annual family income may be deducted for any elderly family.

a. The term "total medical expenses" includes:

(1) Medical expenses the tenant anticipates incurring over the 12 months following the effective date of the certification;

(2) Medical expenses not covered by insurance; and

b. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of a live-in resident assistant, monthly payments required on accumulated major medical bills including that portion of the spouse's or children's nursing home care paid from tenant family income(s).

4. Reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

5. The amounts paid by the family for the care of minors under 13 years of age or for the care of disabled or handicapped household members may be deducted. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expenses.)

B. *Adjusted Monthly Income.* This is the amount obtained by dividing the adjusted annual income by 12.

C. *Annual Income.* Annual income is the gross amount of income to be received by all members of the household to be in residence during 12 months following the effective date of Form FmHA 1944-8, "Tenant Certification."

1. *INCOME INCLUDED.* The following are included when determining annual income:

a. The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses of all members of the household. A deduction from the gross amount may be made in the same manner as outlined in IRS regulations for necessary work-related expenses actually paid by the employee in excess of the amount reimbursed by the employer. Deductions, however, are not permitted for the following:

(1) Transportation to and from work.

(2) Educational expenses except for those incurred to meet the minimum requirements for the employee's present position.

(3) Fines and penalties for violation of laws.

(4) Any other deduction not permitted by IRS.

b. The *net* income from operations of a business or profession or from rental or real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be computed as zero. Deductions from gross business, professional, or rental income to arrive at net income may be made in the same manner as outlined in IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members. An itemized schedule must be provided showing the depreciation claimed. The schedule should be consistent with the

amount of depreciation actually claimed for these items for Federal income tax purposes.

c. Interest, dividends, and other income from net family assets as defined in paragraph II W of this Exhibit. On contracts for sale of real estate, deeds of trust or mortgages held by the applicant or tenant, only the interest portion of the monthly or annual payments received by the applicant or tenant is included as income.

d. The full amount of periodic payments received from Social Security (including Social Security payment received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts. Include any payments that will begin during the next 12 months.

e. Payments in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

f. Periodic and determinable allowances, such as alimony and child support payments, which the applicant or tenant can reasonably expect to receive.

g. Regularly recurring contributions or gifts received from persons not residing in the dwelling.

h. Any amount of education grants or scholarships or Veterans Administration benefits on behalf of tenant, co-tenant or applicant available for subsistence after deducting expenses for tuition, fees, books and equipment.

i. All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.

j. Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities and that amount is subject to adjustments by the Public Assistance Agency according to the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(1) The total amount of the public assistance, minus the amount specifically designated for shelter and utilities; plus

(2) The maximum amount which the Public Assistance Agency could in fact allow the family for shelter and utilities.

EXAMPLE:

Total grant	$300
Amount specifically designated for shelter and utilities	−150
Amount of grant excluding shelter and utility allowance	150
The maximum the agency could provide for this family for shelter and utility allowance	+180
Amount per month to be included in annual income	330

2. *EXEMPTED INCOME.* The following are not included in annual income:

a. Income of dependent minors under 18 years of age except as specified in paragraph II C 1 d of this Exhibit. (Tenant or co-tenant or spouse of either may never be considered minors.)

b. In the case of contracts for sale of real estate, mortgages or deeds of trust held by the tenant or co-tenant, the principal portion of the payments received by the tenant or co-tenant.

c. The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible household.

d. Foster child care payments.

e. Casual, sporadic or irregular gifts.

f. Lump-sum additions to household assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker compensation policies, and settlements for personal or property losses.

g. Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may live independently (e.g., attendant care).

h. Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence, are considered to be income of tenant, co-tenant or applicant.

i. Student loans.

j. The special military pay to a service person head of a household or spouse away from home and exposed to hostile fire.

k. Payments received pursuant to participation in the following programs:

(1) Older Americans Volunteer Programs (OAVP) of the Federal Action Agency.

(i) Retired Senior Volunteer Program (RSVP).

(ii) Foster Grandparent Program (FGP).

(iii) Senior Companion Program (SCP).

(2) National Volunteer Programs such as VISTA and Service Learning Program.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), and

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program

(ii) National Caucus Center on Black Aged

(iii) National Urban League

(iv) Association National Pro Personas Mayores

(v) National Council on Aging

(vi) American Association of Retired Persons

(vii) National Council of Senior Citizens

(viii) Green Thumb.

l. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

D. *Borrowers.* "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

E. *Caretaker.* The individual(s) employed by the borrower or the management agent as specified in the management plan to handle normal maintenance and upkeep of the project.

F. *Chore Service Worker.* An individual who provides intermittent assistance essential to the well being of a tenant whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the tenant's living unit.

G. *Congregate Housing.* Housing that affords an assisted independent living environment that offers the elderly, disabled or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain, or return to a semi-independent life style and prevent prmature or unnecessary institutionalization as they grow older. Congregate housing also includes:

1. Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single family dwelling is considered a unit.

2. A group living arrangement where one or more elderly, disabled or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single family dwellings or a multi-unit structure.

H. *Domestic Farm Laborers.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families or such persons, and as further defined in Subpart D of Part 1944 of this chapter.

I. *Elderly (Senior Citizen).* A person who is 62 years of age or older. The term elderly (senior citizen) also means persons with the following handicaps or disabilities, regardless of age:

1. *Handicapped.*

a. Inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:

(1) Can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months;

(2) Substantially impedes the ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

b. In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as determined in section 223 of the Social Security Act),

inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time.

2. *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

a. Is attributable to a mental or physical impairment or combination of mental or physical impairment;

b. Is manifested before the person attains age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

(1) Self care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for individual living,

(7) Economic self-sufficiency; and

e. Reflects the person's need for a continuation and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

J. *Elderly Family.* A household where the tenant or co-tenant is 62 years of age or older, disabled or handicapped as defined in paragraph III of this Exhibit. An elderly family may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped or disabled person's care and well-being. (To receive an elderly family deduction the elderly, disabled or handicapped person must be the tenant or co-tenant.)

K. *Eligibility Income.* The calculated adjusted gross income which is compared to the income limits in Exhibit C to Subpart A of Part 1944 of this chapter.

L. *Forms Manual Insert (FMI).* A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

M. *Household.* One or more persons who maintain or will maintain residency in one rental unit, but not including a resident assistant or chore service worker.

N. *LH* means Farm Labor Housing loans and/or grants.

O. *Low-Income Household.* A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter.

P. *Management Agent.* The firm or individual engaged by the borrower to manage the project in accordance with a written agreement.

Q. *Management Agreement.* The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for management services.

R. *Management Fee.* The compensation for providing overall management services for a MFH project. The fee is compensation for the time, expertise and knowledge required to direct and oversee the present and future operation of the project. Project management fees may include the cost of day to day reasonable management activities of the project such as: (1) Developing and modifying operation budgets, (2) renting the units, (3) collecting the rent, (4) preparing reports to FmHA, (5) normal bookkeeping, (6) maintaining tenant records, (7) arranging for the proper maintenance of the project, and (8) making inspections, etc. A management fee does not include the compensation paid to a site manager.

S. *Management Plan.* The primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

T. *Migrant.* A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

U. *Minor.* The term *minor* includes persons under 18 years of age other than the tenant or co-tenant. Persons aged 18 and over who are full-time students are treated as minors. The tenant or co-tenant may never be counted as a minor.

V. *Moderate-Income Household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944.

W. *Net Family Assets.* Net Family Assets is the sum of the household's savings and checking accounts, market value of stocks and bonds, equity in real property and other capital investments excluding farm and non-farm business assets. Equity is the difference between the estimated market value of the property and the total of any loans secured by the property. The value of personal property such as furniture or automobiles, and vehicles specially equipped for the handicapped, is excluded. Income from Net Family Assets which is included in Annual Income is determined as follows:

1. If Net Family Assets equal $5,000 or less Annual Income includes the actual income derived from the Net Family Assets.

2. If Net Family Assets exceed $5,000 Annual Income includes the greater of:

a. Actual income derived from all Net Family Assets, or

b. A percentage of the value of such assets based on the Bank Passbook annual savings rate.

X. *New Housing.* Newly constructed or substantially rehabilitated RRH, RCH or LH project financed by FmHA. For Rental Assistance purposes, it further means before any units are occupied.

Y. *Operational Housing.* A completed RRH, RCH or LH Project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants.

Z. *Pet.* A commonly accepted domesticated household animal (such as a dog, cat, bird, etc.) owned or kept by a Tenant.

AA. *Project.* A project is the total number of rental housing units in one community such as a densely settled area, town or village operated under one management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project according to § 1965.68 of Subpart B of Part 1965 of this chapter.

BB. *Rental Agent.* The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower, or the management agent as specified in the management plan.

CC. *Rental Assistance (RA).* RA, as used in this Exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV of this Exhibit. When the monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to paragraph IX A 2 of Exhibit E to his Subpart.

DD. *Resident Assistant.* A person(s) residing in a housing unit who is essential to the well-being and care of the elderly, disabled or handicapped person(s) residing in the unit and who is not related by blood, marriage or operation of the law to these tenants. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant. The resident assistant receives compensation from sources other than FmHA. A resident assistant is not a chore service worker.

EE. *RCH* means Rural Cooperative Housing Loans.

FF. *RHS* means Rural Housing Site Loans.

GG. *RRH* means Rural Rental Housing Loans.

HH. *Shelter Cost.* The approved shelter cost consists of basic and/or market rent plus any utility allowance, when required. Basic and/or market rent must be shown on the project budget for the year and approved according to § 1930.124 of this Subpart. Utility allowances, when required, are determined and approved according to Exhibit A–5 to Subpart E of Part 1944 of this Subpart. Any change in rental rates or utility allowances must be processed according to Exhibit C of this Subpart.

II. *Site Manager.* The individual employed by the borrower or the managment agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager.

JJ. *Tenant.* A tenant also includes a co-tenant and is a person(s) who has signed a lease and will be, or is an occupant of a unit in an RRH, RCH or LH project. A person who has ceased to be an occupant, but whose personal property remains in the rental unit will be considered a tenant until such personal property is removed voluntarily or by legal court proceedings.

KK. *Tenant Contribution.* The portion of the approved shelter cost paid by the tenant household (tenant rent). For tenants not receiving HUD Section 8, this amount will be calculated according to Form FmHA 1944–8, "Tenant Certification." For tenants receiving HUD Section 8, this will be the amount referred to on HUD Form 50059 (or other HUD approved Form), as family contribution. The proportion of tenant income and adjusted income paid as the tenant contribution will

vary according to the type of subsidy provided to the household.

LL. *Very Low-Income Household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter.

III. Borrower Responsibilities

A. *General.* All borrowers are responsible for:

1. Understanding the distinction between FmHA supervised credit and the credit provided by other Federal, State, or conventional sources.

2. Meeting the objectives for which the loan and/or grant was made and complying with the respective program requirements.

3. Understanding the unique characteristics and function of their particular type of borrower entity as provided by charter, articles of incorporation, by-laws, and/or statute.

4. Assuring that a site manager or contact person is in close proximity to their MFH project.

5. Complying with the provisions of their security instruments and any directive issued by FmHA.

B. *Borrowers Without a Loan Agreement.* Unless otherwise specified, these borrowers are exempt from the requirements of this Subpart, except for Exhibit C (Rent Changes), as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income eligibility by properly completing a Form FmHA 1944–8 for each tenant as required by the FMI.

C. *Borrowers With a Loan and/or Grant Agreement.* These borrowers are responsible for meeting the requirements and conditions of their agreement/resolution and the requirements of this Subpart.

D. *Borrowers With Government Bodies.* The elected or appointed officials comprising the governing body of the borrower are responsible for:

1. Maintaining records of all current members and maintaining membership at the required level.

2. Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and mangement of its operations, and to keep the membership informed.

E. *Borrowers With a Membership.* Members of a membership type borrower are responsible for full support of the project and operation by:

1. Promptly paying any dues, fees and other required charges.

2. Electing responsible officials.

3. Complying with organization rules and regulations.

4. Participating in annual and special meetings.

F. *Delegation of Responsibility and Authority.* The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements. FmHA will hold the borrower ultimately responsible for management of the project. FmHA may require a borrower to change the plan of project management and/or make appropriate redelegations of project management responsibility to achieve program objectives.

IV. Rent Subsidy Opportunities

The available subsidy programs should be considered at the time of developing a project proposal and during project operation as they may be available to meet the tenant's needs. These subsidy programs are as follows:

A. *FmHA Interest Credit—RRH and RCH Loans.* Regulations are contained in Exhibit B to Subpart E of Part 1944 of this chapter and include:

1. Plan I—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. Those broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:

a. Occupancy is limited to very low- or low-income non-elderly; very low-, low- and moderate-income elderly, disabled or handicapped persons.

b. Budgets and rental rates are based on a 3 percent loan amortization. The rent schedule consists only of "market" rental rates.

2. Plan II—This interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis.

a. Occupancy is limited to very low, low- and moderate-income persons except as noted in paragraph VI B 2 c (8) of this Exhibit.

b. Budgets are prepared for two rental rates, basic and market. The minimum (basic) rental rate for tenants not receiving rental assistance is based on a 1 percent loan amortization. The maximum (market) rental rate is based on the loan amortized at the interest rate shown in the promissory note.

c. Tenant's contribution for shelter cost, calculated according to the FMI for Form FmHA 1944–8, may not exceed the *highest* of:

(1) Thirty (30) percent of monthly *adjusted* income, or

(2) Ten (10) percent of gross monthly income, or

(3) If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter costs (Example in paragraph II C 1 j (2) of this Exhibit), or

(4) The basic rent where no rental assistance is available.

d. Any tenant contribution increase caused by the change from 25 percent of the household adjusted income to the greater of c (1), (2), or (3) or by other provision of Federal Law or Federal regulation is restricted to not more than 10 per centum in any 12 month period unless the increase above 10 per centum is attributable to an increase in income.

e. Rural rental housing borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation they must convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and rental assistance agreement according to Exhibit B of Subpart E of Part 1944 of this Chapter.

B. *Rental Assistance (RA) Program—FmHA.* This is a subsidy program available to RRH, RCH and LH borrowers to assist very low- and low-income tenants in paying their shelter cost. RA is not authorizd for tenants whose adjusted income is above the low-income level. RA is not available to LH borrowers who are individual farmowners, partnerships, family corporations, or association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full Profit borrowers may utilize rental assistance by converting to a Limited Profit operation. The provisions of the RA program are covered in detail in Exhibit E of this Subpart.

C. *Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments Program.* This subsidy program is administered by HUD or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD (Exhibit H to Subpart E of Part 1944 of this Chapter) will also be subject to the requirements of the Housing Assistance Payments (HAP) Contract executed by the borrower. Projects accepting tenants utilizing Section 8 assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases tenants receiving Section 8 assistance must meet the eligibility requirements specified in paragraph VI B of this Exhibit. Requirements that conflict with FmHA requirements should be referred to the District Director for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.) Additional information on the HUD Section 8 program is contained in Exhibits G and H to Subpart E of Part 1944 of this Chapter.

V. Management Operations

A. *Management Plan.* A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed policies and procedures in managing the project. *Unless program regulations specifically permit an exception, a management plan is required for:* (1) All proposed multiple housing projects; (2) existing projects in which the loan, transfer, or reamortization, was approved after October 27, 1980; and (3) any other multiple housing projects where the State Director determines a management plan is needed because of loan delinquency or default, neglected maintenance, or known landlord-tenant problems. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated by the borrower at least biennially. Exhibit B–1 of this Subpart outlines the requirements of the plan. The

following items, as a minimum, should be addressed in the plan.

1. The relationship between owner and management agent (when applicable).
2. Personnel policy and staffing arrangements.
3. Publicizing and achieving early occupancy and affirmative marketing.
4. Tenant certification and verification of income.
5. Tenant admissions policies and leasing policies.
6. Rent collection.
7. Rent changes.
8. Maintenance.
9. Records Maintenance and reports.
10. Energy conservation measures.
11. Tenant participation in project operations and tenants' relationship with management.
12. Termination of leases and evictions.
13. Management of Support Services to congregate and/or group home projects.
14. Management Background and/or Experience.
15. Management agreement (when applicable).
16. Management compensation.
17. Occupancy policy.

B. *Management Agreement.* The management agreement is the primary document by which the management agent is guided, evaluated, and compensated. It bears a close relationship to the management plan. A management agreement is required except in cases where the borrower (owner) fills the role of manager. Requirements of a management agreement are listed in Exhibit B–2 of this Subpart. Exhibit B–3 of this Subpart is a suggested management agreement. The two types of agreements acceptable to FmHA, are described as follows:

1. The owner hires a professional management agent to oversee and operate the project. The management agent may provide a site manager for onsite management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required by the borrower and FmHA. Exhibit B–4 of this subpart provides a guideline for preparing the statement.

2. The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing onsite management and/or services of a caretaker when justified by the size of the project. FmHA requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B–5 of this Subpart provides a guideline for preparing the statement.

C. *Responsibility.* The management plan and management agreement must be based on applicable provisions of local, State, and Federal statues and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA for the project, regardless of the authority delegated by the owner to the management agent.

D. *Compensation.*

1. *Projects with management agent.* The amount of compensation is to be negotiated between the owner and the management agent. The amount of compensation must be reasonable, typical when compared with similar services available in the area, and earned. The amount of compensation or "fee" should generally be stated on a monthly per occupied unit or as a percentage of rents collected for each occupied unit. Rents collected could include any rental assistance and/or interest credit subsidy. The fee should vary from project to project depending upon size, complexity, services to be provided, type of project, age of loan and other relevent factors, such as comparable fees for similar projects in the area in which the project is located. The State and District Offices shall assemble data on comparable management fees in the District and State to be used as a basis for determining the fairness of fees negotiated between borrowers and management agents.

a. The management agreement must specifically define any project services to be provided that are to be paid directly from the Owner's Operating and Maintenance Account by the management agent; but not included in the agent's management fee. These costs may include the following budget line items:

(1) Cost of salary and wages of the project's site manager and/or caretaker. (These persons will be hired and/or dismissed by the management agent.) The management plan must specify the duties of the site manager.

(2) Legal fees for the project.

(3) Auditing fees for the project.

(4) Repair and maintenance costs for the project.

b. The management agreement must also define costs that accure to the management agent, but not directly to the project. The management fee will include cost such as:

(1) Monitoring project operations, training and supervision of on-site staff.

(2) Establishing a system to keep project books, reports, records, and accounts.

(3) Preparation and distribution of monthly reports.

(4) Preparation and distribution of annual reports of operations and maintenance.

(5) Preparation of requests for reserve withdrawal, rent adjustment, rehibilitation and energy conservation proposals, plans and specification.

(6) Review of tenant certifications and submission of monthly RA requests. Assure protection of project receipts and make project invoice and payment disbursements.

(7) Management agent's office overhead including office space and utilities, clerical staff and training, agent's office bookeeping, office supplies and equipment, transportation and telephone calls to projects, office data processing systems and postage.

(8) Supervision by management agent (time, knowledge, and expertise) of overall operations and capital improvements.

(9) Meeting with owners, investors, and/or lending agency.

(10) Development, preparation, and revision of management plans and/or agreements.

2. *Owner managed projects.* The owner will be authorized to manage the project only when FmHA detemines in writing that the owner (either as the individual borrower or as a part of an organizational/borrower) has the necessary management capabilities.

Projects with owners having identity-of-interest relationships to the management agent will *not* be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V D of this Exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

3. *Initial Rent-Up Fees.* Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed project is permitted when it is determined necessary and documented by the FmHA loan approval official and the loan applicant. Rent-up fees should be paid on a per-unit basis only after each unit has been occupied by the initial tenant. Payment of the rent-up fee and other project management start-up expenses should generally be made from the 2 percent initial operation and maintenance fund as follows:

a. In owner managed projects or when there is an identity of interest as defined in § 1924.4(h) of Subpart A of Part 1924 of this Chapter between the management agent and the borrower, such as the owner or the owner's principals or family members owning an interest in the management firm (or vice versa), initial rent-up fees may be allowed but only up to reasonable actual cash expenditures.

b. When there is not an identify of interest, a person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

E. *Site Manager and/or Caretaker Services.* The onsite services of a site manager and/or caretaker may be used when jusitifed by the size, composition and location of a project, whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties of the site manager and to provide a basis for evaluating the site manager. FmHA may require an onsite resident manager and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or government's interests. It is desirable but not mandatory the site manager and/or caretaker meet the tenant eligibility requirements for occupancy in the project.

1. *Calculation of rental rate for site manager or caretaker.* The associated cost of the unit occupied by the site manager or caretaker will always be reflected in the project budget the same as the cost for other non-revenue producing portions of the project. When a unit for the site manager or caretaker was authorized by the State Director according to the requirements of § 1944.212(g) of Subpart E of Part 1944, the unit may or may not be designated as part of the non-revenue producing facilities. This determination will be reflected in the

project's management plan. The rental rate will then be determined as follows:

a. If the unit is planned or designated as a revenue producing unit, the compensation paid to the site manager and/or caretaker will be reflected in the operation and maintenance expenses of the project and will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker's rent contribution will be based on their total income from all sources.

b. When a living unit is provided at a reduced cost to the site manager and/or caretaker in a Plan II project, the rental value of the unit will be considered to be basic rent. The portion of rent furnished by the project in the form of rent reduction below the basic rent will be reflected in the operation and maintenance expenses of the project. Debt payment will be as if the unit were rented at basic rent.

c. When a living unit was planned as a revenue producing unit but is provided at no cost to the site manager and/or caretaker in a Plan II project, the rental value of the unit will be considered to be basic rent. The associated cost of the unit will be treated the same as those of other non-revenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the unit were rented at basic rent.

d. When a living unit is provided at no cost or reduced cost to the site manager and/or caretaker in a Plan I or profit type operations project, the rental value of the unit will be considered to be the FmHA approved "market" rental rate.

e. When the site manager and/or caretaker resides in a living unit and pays rent, the rental rate will be calculated as follows:

(1) If the site manager and/or caretaker meets the tenant eligibility requirements for the type of project being occupied, the appropriate rental rate will be the rate established for an eligible tenant in accordance with paragraph VI B of this Exhibit.

(2) If the site manager and/or caretaker does not meet the tenant eligibility requirements for the type of project being occupied because the site manager's and/or caretaker's adjusted annual income exceeds the maximum income limits, the site manager's and/or caretaker's appropriate rental rate for all projects except those operating under interest credit Plan I will be the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the appropriate rental rate will be the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

f. If the unit was planned and designated as a non-revenue producing unit, it will be treated as any other essential facility for which loan funds were authorized so long as it is used according to the approved management plan. The operating costs, reserve payment and debt service for the manager or caretaker's unit will be budgeted as a part of the overall cost of operation.

2. *Owner Occupancy.* Homeownership is not an objective of the FmHA Mulitple Housing loan programs. With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V E 1 of this Exhibit.

F. *Projects Without a Site Manager and/or Caretaker.* Projects without a site manager and/or caretaker must have, at a minimum, a tenant who will serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

VI. Renting Procedure

Preparations for initial rent-up, occupancy and maintenance will begin 90–120 days ahead of the projected completion date of the project. This procedure will include a prerent-up conference between the FmHA District Director, the borrower, and the person(s) responsible for project management. Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria.

A. *Affirmative Fair Housing Marketing Plan.* All borrowers with *five* or more rental units must meet the requirements of § 1901.203(c) of Subpart E of Part 1901 of this Chapter by preparing and submitting an Affirmative Fair Housing Marketing Plan on HUD Form 935.2. Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be subject to review by FmHA during compliance reviews for Title VI of the Civil Rights Act of 1964. *The approved plan will be made available by the borrower for public inspection upon request at the borrower's place of business, rental office, or at any other location where tenant applications are received for the project.* In developing the plan, the following items should be considered:

1. *Direction of Marketing Activity.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, marital status, national origin, or physical or mental handicap (must possess capacity to enter into legal contract). The plan must show that efforts will be made to reach very low-income, low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts.

2. *Marketing Program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc. are best suited to reach those very low-income, low-income and minority persons who otherwise might not apply for occupancy in the project. The aging network such as the State and Area Agencies on Aging should be contacted to assist in reaching elderly persons.

a. SIGNS, BROCHURES, ETC. Any radio, TV or newspaper advertisement, signs, pamphlets, or brochures used must contain appropriate equal opportunity statements. A copy of this proposed material should be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled, "And Justice For All" and/or the "Fair Housing" poster must be displayed in the rental office. If the rental office is not on site, the posters must be displayed in a common conspicuous place on the site.

b. COMMUNITY CONTACT. Special interest groups such as social and religious organizations should be contacted in small communities without formal communication media aimed at minorities. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups.

c. RENTAL STAFF. All staff persons responsible for renting the units will be instructed in the procedures and requirements of the Affirmative Fair Housing Marketing Plan and in those actions necessary to carry out the plan promoting equal housing opportunity.

3. *Marketing Records.* The borrower will be required to provide data according to Subpart E of Part 1901 of this Chapter, pertaining to compliance reviews, to indicate to what extent minority groups are being benefited.

B. *Tenant Eligibility.* The rental agent of the project must be knowledgeable about the FmHA tenant eligibility requirements as they relate to a particular project. FmHA loans require occupany of the units by eligible tenants. Except for migrant farm worker tenants, tenant/applicants must certify on their application that the housing they will occupy is/will be their permanent residence. They will further certify that they do/will not maintain a separate subsidized rental unit in a different location.

1. ELIGIBLE TENANTS. The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized:

a. To determine eligibility for occupancy the applicant's income must be a defined in paragraph II K and include net family assets as defined in paragraph II W of this Exhibit.

b. The adjusted annual income must meet the defintion of very low-, low- or moderate-income as defined in this Exhibit as required for that specific project for applicant selection, tenant contribution and continued occupancy.

c. To determine eligibility for continued occupancy, the tenant's Adjusted Annual Income must be determined at least once every 12 months. When the tenant's Adjusted Annual Income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease and paragraph VI B 5 of this Exhibit.

d. In RRH projects operating on a Plan I basis, tenants will:

(1) Be a very low-, low-, or moderate-income elderly, disabled or handicapped person.

(2) Be a very low or low-income non-elderly, non-disabled or non-handicapped person.

e. In RRH project operating on a non-profit or limited profit Plan II basis, tenants will be a very low-, low-, or moderate-income persons regardless of age, disability or handicapped condition.

f. In RRH projects operating on a full-profit basis, tenants will:

(1) Be an elderly, disabled or handicapped person of any income.

(2) Be a very low-, low-, or moderate-income non-elderly, non-disabled or non-handicapped person.

g. In labor housing (LH) projcets designed and operated either for year-round or seasonal occupancy, tenants will be domestic farm laborers.

h. Occupancy in RRH projects or those portions of RRG projects designated by FmHA as:

(1) Family housing may be by any combination of elderly, disabled or handicapped, and/or non-elderly, non-disabled or non-handicapped tenants.

(2) Elderly housing must be by elderly, disabled and/or handicapped tenants but not restricted exclusively for us by disabled and/or handicapped tenants.

i. Tenant households must generally be capable of caring for themselves and must meet the following criteria:

(1) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations. Tenant households are eligible for occupancy when a member of the household is disabled if adequate care and assistance is provided by the tenant household for the safety and well-being of the disabled household member.

(2) Possess the legal capacity to enter into a lease agreement, except in the case of tenants residing in a congregate housing project who have a legal guardian.

(3) Persons meeting the definition of elderly in paragraph II I of this Exhibit may be considered an eligible tenant or co-tenant if more suitable housing will improve their ability to live independently. The disability or handicap must be supported by a doctor's certificate and must meet one of the definitions in paragraph II I of this Exhibit. Receipt of veterans benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. The owner-manager must make the determination based upon evaluation of the applicant's condition and the documentation presented.

j. In congregate housing projects, eligible tenants will include elderly, disabled or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. They must be able to provide for their own sustenance in projects that provide less than a full meal program. The borrower will regularly assess the level of function and degree of competence of the tenant and/or co-tenant's ability in performing daily living activities. This assessment should enable the borrower to determine whether or not the tenant can maintain relatively independent occupany given the supportive services in the project (see Exhibit B-10 to this Subpart). The tenants must also meet the criteria found in paragraph VI B 1 h above.

k. For LH projects and units in RRH projects specifically designed and designated for the elderly, disabled and/or handicapped as defined by FmHA, occupancy is limited solely to those meeting the eligibility requirements for the specific type of project (i.e., domestic farm laborers, elderly, disabled and/or handicapped). Eligible occupants in these projects may also include other persons who are usually household members of the domestic farm laborer, elderly, disabled or handicapped persons. Resident assistants or chore workers will not be considered to be members of the tanant household.

l. In a group home situation, a Resident Assistant may occupy separate living space of appropriate size without regard to income.

m. A student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a RRH project may be considered an eligible tenant when all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) The persons seeking occupancy signs a written statment indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

n. A former domestic farm laborer may continue occupancy of a LH project after retirement or after becoming disabled if the farm laborer was an eligible tenant living in the project prior to the event.

o. A tenant who does not personally reside in a unit for a period exceeding 60 days, for reasons other than health or emergency, shall be required to pay market rent in Plan II projects or 125 perecnt of rent in Plan I projects for the period of absence exceeding 60 days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start eviction proceedings.

(2) In those cases existing before the issuance of this Subpart on *December 19, 1983*, where the tenant's lease does not contain the lease clause in paragraph VIII B 3c of this Exhibit, the tenant will be advised that the lease will not be renewed.

2. OCCUPANCY POLICY: Occupancy policy in FmHA financed projects shall have the objective of effective utilization of space without overcrowding or providing more space than is needed by the number of people in the household.

a. Each borrower must develop an occupancy policy tailored to the design, location and intended occupants for each specific project by adopting the following guidelines or by developing a more detailed policy and obtaining Farmers Home Administration written approval.

b. The following should be considered when adopting the policy outlined in paragraph c of this section or in developing a detailed project occupancy policy:

(1) The size of each bedroom and common living area in each unit.

(2) the amount of open space and/or recreation area in the project and the number of tenants who could reasonably use this area without overcrowding or underoccupying the units.

c. Management shall assign units based upon the number of persons in the household and the relationship and sex of those persons. In matching unit size with household need, management must balance the need to avoid overcrowding with the objective of maximizing use of space and avoiding unnecessary tenant subsidy cost.

(1) Every member of the household, regardless of age, shall be counted as a person. An unborn child may, at the discretion of management, be counted for purposes of determining the appropriate size unit for an eligible household.

(2) Foster children may be counted *only* for determining the appropriate size unit.

(3) It is expected that two children of the same sex will share a bedroom and that usually, only two children will be assigned to a bedroom. However, in projects with more spacious bedrooms, management may permit three children to occupy one bedroom if units with more bedrooms are not available in the project or if the tenant wishes to put three children in one bedroom to avoid the additional rent associated with a larger unit. (Consideration must always be given to the amount of common living area available to accommodate a larger family.)

(4) Units should be assigned so that it will not be necessary for persons of the opposite sex, other than tenant and co-tenant, to occupy the same bedroom. However, if the tenant requests that children of the opposite sex or a parent and a young child be permitted to occupy the same bedroom, management may honor the request.

(5) Without FmHA approval, management may assign a larger or smaller unit than the household needs if all the following conditions are met:

(i) No household, otherwise eligible and having the number of members appropriate to the unit, is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the larger or smaller size unit;

(ii) The tenant agrees to transfer to the first correctly-sized unit if and when it becomes available in the project;

(iii) The tenant agrees to pay all costs associated with the subsequent move; and

(iv) The agreements in (ii) and (iii) above are included in the tenant's lease.

(6) Borrowers with RRH projects specifically built for the elderly prior to October 27, 1980, with only a few or no one-bedroom units, may permit occupancy of two bedroom units by single eligible tenants if this provision is included in the project occupancy policy. The occupancy policy should reflect the needs of the local market

area. This eligibility determination made by management must be included in the tenant's lease and will entitle such tenant to all benefits without need for further FmHA approval.

(7) When a unit cannot be rented under the provisions in paragraphs (5) and (6) above, the State Director may authorize an exception according to paragraph VI B 6 of this Exhibit.

(8) A tenant who was determined eligible and allowed to occupy under regulations in effect prior to (*effective date of this regulation*) who does not meet eligibility requirements regarding income or borrower occupancy policy as prescribed in these regulations may be permitted continued occupancy in the same unit.

(9) The following table represents the occupancy standards that were required prior to the issuance of this regulation on (*date of final rule*) and will continue in effect for projects approved before that date until the owner meets the requirements of paragraph A of this section. Further, it will serve as the desirable occupancy level for all Multiple Family Housing projects:

	Occupants	
	Min	Max
No. bedrooms:		
0	1	2
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10

(10) Owner of migrant farm labor housing will comply with local or State design requirements and occupancy standards.

d. For each RRH project specifically built for the elderly, the borrower or management may not:

(1) Prohibit, prevent, restrict or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.

(2) Prohibit, prevent, restrict or discriminate against any applicant who owns a pet with respect to obtaining occupancy to the project.

3. OTHER ITEMS THE RENTAL AGENT SHOULD CONSIDER IN DETERMINING ELIGIBILITY OF APPLICANTS FOR ADMISSION TO THE PROJECT.

a. Credit reports to reflect the applicant's past record of meeting obligations.

b. Prior landlord references to determine if the tenant was responsive to meeting rent payment obligations, care, and maintenance of the unit.

c. Verification of income and/or employment according to paragraph VII of this Exhibit. This item is a requirement in all cases.

d. The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where rental assistance is not available, any very-low or low-income household that would be required but unable to pay the approved rent, including utilities, may be eligible for some form of rent subsidy described in paragraph IV of this Subpart if it is available in the area.

4. SURVIVING MEMBERS OF ELIGIBLE TENANT HOUSEHOLD.

a. Surviving members of an elderly, disabled and/or handicapped tenant's household may continue occupancy of the unit even though they may not meet the definition of an elderly, disabled or handicapped person stated in paragraph II of this Exhibit, provided:

(1) They are eligible occupants in all other respects,

(2) They occupied the unit at the time that the original tenant ceased to occupy the unit, and

(3) The District Director determines on a yearly review basis that their continued occupancy will not be detrimental to the integrity of the project in the community.

b. Surviving members of a domestic farm laborer household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II of this Exhibit. When they do not meet the definition, the provisions for formerly eligible tenants in paragraph VI B 5 of this Exhibit will apply.

5. FORMERLY ELIGIBLE TENANTS. Unless authorized by paragraph VI B 2 c (8), formerly eligible tenants will be required to vacate their unit within 30 days (7 days for migrant farm labor tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer, when an eligible applicant is on the waiting list and is available for occupancy. If vacating the unit in the time period described creates an undue hardship on the family, the District Director may permit continued occupancy for a reasonable period of time. The following "formerly eligible" situations apply to this paragraph:

a. Tenants who no longer meet FmHA income eligibility requirements. (This includes tenants receiving Rental Assistance or Section 8 assistance.)

b. Tenants in LH projects who no longer meet the farm labor occupation requirement, except retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or becoming disabled may continue to occupy a project that they initially occupied as an eligible domestic farm laborer.

c. Tenants who no longer meet the occupancy policy for the project. These tenants must either move to a unit of appropriate size in the project, or when none is available, vacate the project at the termination of their lease.

6. STATE DIRECTOR AUTHORITY TO PERMIT AN RRH OR LH BORROWER TO RENT TO INELIGIBLE TENANTS.

a. The State Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent *units* to ineligible persons for temporary periods to protect the financial interest of the Government. This authority will be for periods not to exceed one year. Within the period of the lease the tenant may not be required to move for any reasons of ineligibility. When the District Director has been redelegated the authority, according to § 1930.143 of this Subpart, a copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA Official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to rent any vacant unit(s) to an eligible tenant household has been made. Such evidence may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, and real estate agencies.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submt to the District Office, along with Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The required followup should be posted in the District Office on Form FmHA 1905-6, "Management System Card—Multifamily Housing."

(4) To protect the security interest of the Government the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when an eligible prospective tenant is available. The ineligible tenant will then be given 30 days to vacate.

(5) Tenants who are ineligible, because their household income exceeds the maximum for the project, will be charged the FmHA approved market rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved market rental rate.

(6) Tenants who are ineligible for reasons other than income may benefit from rental assistance and/or interest credit if they are otherwise eligible in the same manner as an eligible tenant.

b. Examples of situations where the State Director may consider authorizing a borrower to rent units to ineligible persons when units cannot be returned to eligible persons are:

(1) Permitting occupancy by other eligible families in a project designed for, designated as, and limited to occupancy by eligible elderly, disabled, and/or handicapped persons.

(2) A household that does not meet eligibility requirements regarding income, i.e., an above moderate-income household.

c. When the State Director or District Director determines that a borrower may rent to an ineligible tenant, the written authorization must contain the appropriate clauses which must be inserted into the ineligible tenant's lease. At a minimum it should include:

(1) The reason for ineligibility.

(2) The term of ineligible occupancy.

(3) Any conditions under which the tenant will be required to vacate the unit.

(4) The length of notice the tenant will be given to vacate.

C. *Maintenance of Inquiry and Waiting Lists.*

1. When a prospective tenant inquires (by telephone, letter or visit) concerning the availability of a rental unit, the borrower or rental agent will place the prospect's name chronologically on an inquiry list. The list should contain enough information for future contact by mail or telephone. THIS LIST DOES NOT ESTABLISH ANY PRIORITY.

2. When a prospective tenant files an application for occupancy the borrower or rental agent will place the prospect's name chronologically on the appropriate written waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent to complete the steps necessary to determine eligibility, the action determination of eligibility will be conducted according to the application process described in paragraph VI D of this Exhibit.

3. Separate waiting lists by categories and/or a master waiting list with income levels identified (very low, low and moderate), and categories or priorities indicated will be maintained for rural rental and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fit more than one category or priority.

a. Separate lists may be maintained for:

(1) Income levels (very low, low, moderate, ineligible).

(2) Various size units.

(3) Units for elderly, disabled or handicapped persons, families, or any other combination as planned for the project according to the borrower's loan agreement or resolution.

(4) Persons who require the special design features of the handicapped units in the project such as persons confined to a wheelchair. Persons on this list have priority for these units.

(5) Displacees, such as victims of natural disasters and eminent domain, to whom priority consideration may be given.

(6) In congregate housing projects, priority will be given to the frail or impaired eligible applicants to sustain an occupancy level of 25% to 35% of the project units. After this occupancy level is attained, priority will be given to non-frail or non-impaired applicants.

b. Separate waiting lists will be maintained for very low-income households who *are* eligible for rental assistance. This list may be compiled from the filed applications or extracted from the master list.

4. For seasonal farm labor housing a waiting list should be chronologically compiled as in paragraphs VI C 1, VI C 2 and VI C 3 of this exhibit. these lists should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season.

a. Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b. A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

5. A Letter of Priority Entitlement (LOPE) issued by FmHA according to § 1965.90 of Subpart B of Part 1965 of this Chapter entitles prospective tenants to move to the top of any waiting list for that appropriate unit size for which the applicant qualifies.

6. Each list by category will be available for inspection by prospective tenants on the waiting list. When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application.

7. Borrowers may establish a procedure for purging the inquiry and waiting list(s) periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under Subpart L of Part 1944 of this Chapter.

D. *Notification of Eligibility or Rejection.*

1. *Application Status for Determining Eligibility.* All persons desiring to apply for occupancy will be provided the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants with a written list of all information required for a complete application.

a. After the potential tenant has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b. When an operational project has few or no vacancies, and there are sufficient active applications from households determined eligible to fill expected vacancies, the borrower may postpone verification of eligibility for new applicants.

c. While application fees are discouraged, any fee charged to a prospective tenant must be reasonable and limited to actual costs for obtaining necessary information.

2. *Application Requirements.* At a minimum to be considered complete, applications must include the following information for each prospective tenant household:

a. Name and present address.

b. Household income and eligibility income information, verified and certified according to paragraph VII of this Exhibit.

c. Age and number of household members.

d. Handicap status, if applicable.

e. Race or ethnic group and sex designation.

(1) The borrower or management agent will request that each prospective tenant provide this information on a voluntary basis for statistical purposes only. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

"The following information is requested by the apartment owner in order to assure the Federal Government, acting through its Farmers Home administration, that Federal Laws prohibiting discrimination against tenant applicants on the basis of race, national origin, and sex are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

3. *Notification to Applicant.* The applicant who has submitted a *completed* application will be notified in writing that he or she has been selected, rejected, or placed on a waiting list.

4. *Applicants Determined Ineligible.* Applicants determined ineligible will be notified in writing of the specific reasons for rejection.

a. The rejection letter must also outline the applicant's rights under the FmHA tenant Grievance and Appeals Procedures in Subpart L of Part 1944 of this chapter.

b. When the rejection is based on information from a Credit Bureau, the source of the Credit Bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c. Applicants may be rejected due to:

(1) A history of unjustified and chronic nonpayment of rent and financial obligations.

(2) A history of violence and harassment of neighbors.

(3) A history of disturbing the quiet enjoyment of neighbors.

(4) A history of violations of the terms of previous rental agreement such as the destruction of a unit or failure to maintain a unit in a sanitary condition.

d. Rejection of applicants on an arbitrary basis is prohibited. Examples of such arbitrary rejections are:

(1) Race, color, religion, sex, age, marital status, national origin, physical or mental handicap (except in those projects or portions of projects designated for elderly, disabled and/or handicapped, where occupancy by non-elderly, non-disabled or non-handicapped can be prohibited).

(2) Receiving income from public assistance.

(3) Familes with children of undetermined parentage.

(4) Participation in tenant organizations.

e. In the case of Labor Housing projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

f. Rejected applications must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA in accordance with Subpart E of Part 1901 of this Chapter.

E. *Tenant Selection.*

1. Applicants determined eligible will be selected on a first come first-served basis according to the chronological order of each categorized waiting list or by chronological order of each income group identified on a master waiting list in the following priority:

a. Very low-income.

b. Low-income.

c. Moderate-income.

d. Ineligible.

2. When RA is available:

a. Very low-income applicants eligible for RA have a priority over all other applicants on each type of waiting list maintained by the borrower in accordance with paragraph XI of Exhibit E to this Subpart.

b. Low-income applicants may be selected provided no very low-income applicants remain on the waiting list.

c. Moderate-income applicants may not be selected where the number of unassigned RA units equals or exceeds the number of vacant units. (Borrowers unable to use RA may consider requesting a transfer of RA authority according to paragraph XV of Exhibit E.)

3. Selections will be made from the waiting list maintained for the particular unit size and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented. The applicant's name will then be removed from the waiting list unless the rental agent determines that hardship exists for reasons such as health problems or high cost of rent without rental assistance in which case the applicant's name will remian on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply. Applicants who give *written* reasons why they cannot accept the living unit at the time it is offered forfeit their right to appeal the borrowers decision to remove their name from the waiting list.

4. When there is no applicant named on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application on the master waiting list. The selected tenant will be subject to the provisions for ineligible tenants found in paragraph VI B 6 of this exhibit.

F. *Tenant Record File.* A separate file must be maintained for each tenant. This file will include items such as application, income verification forms, lease agreement and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant, and any other necessary information. The income verification, tenant eligibility certification and recertification information must be retained for a least 3 years while the tenant is living in the unit and for 3 years after the tenant has moved out.

VII Verification and Certification of Tenant Income and/or Employment

The incomes reported by the tenants (and employment in the case of LH tenants) selected for occupancy must be verified by the borrower or rental agent before the tenant is determined eligible. If in unusual circumstances a tenant is allowed to move in before income is verified, the lease should contain a clause "subject to verification of income."

A. *Verification of Income from Employment.* Verification of income from employment, authorized by the tenant/applicant, must be obtained from the employer in writing and filed in the "Tenant Record File." A suggested Employment Inquiry form is attached as Exhibit B–9.

B. *Verification of Income from Other Sources.* Any income from other than employment (e.g., social security, Veterans Administration, public assistance) must be verified in writing by the income source. Verification of income must be documented and filed in the "Tenant Record File." When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the tenant possesses which indicates the tenant's gross income. Temporary verification may also be obtained through contacts with individuals who may be knowledgeable of the tenant's income. When no other verifiable source is available, a notarized affidavit from the tenant attesting to his/her gross annual income may be accepted.

C. *Verification of Income and/or Employment for LH Tenants.*

1. Verification of income is required for those domestic farm laborers, including migrants, who will receive the benefits of rental assistance. When the tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

2. Verification that all LH tenants have sufficient income from farm labor employment, that meets the definition of domestic farm labor, is required for all domestic farm laborers, including migrants. Employment verification is an addition to income verification for those tenants described in paragraph VII C 1 above. Verification must be documented and filed in the "Tenant Record File."

D. *Random Sample of Tenant Income and/or Employment Verification.* District Directors are required to make a random sample of tenant income verifications; in the case of LH tenants, employment verifications. The random sample can be derived from information on the tenant certification forms that will be submitted to the District Office in accordance with paragraph VI F of this Exhibit. The random sample should be representative of very low-, low-and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of the contribution level cited in paragraph IV A 2c (1) or (2) or (3) of this exhibit for the costs of rent and utilities, and those paying the market rent. The District Director will conduct the random sample in the borrower's office during supervisory visits and at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications. If the random sample discloses discrepancies, the District Director will be required to investigate further or report to the State Director to obtain the assistance of the Office of Audit or the Office of Investigations.

E. *Use of HUD Certification Form for Section 8 Recipients.* HUD Form 50059, "Certification and Recertification of Tenant Eligibiity," or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA 1944–8 for the tenants receiving Section 8 assistance. However, the tenant's income cannot exceed FmHA limits for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA 1944–8.

F. *Certification of Tenant Income.*

1. The borrower must initially submit Form FmHA 1944–8, or for tenants receiving Section 8 assistance the acceptable Department of Housing and Urban Development (HUD) tenant cetification form to the District Office for each tenant. The initial tenant certification must be submitted to the FmHA District Office on or before the day the tenant occupies the unit. The District Office will review the tenant certification and verify that the information contained on the form is complete and correctly computed based on information contained on the form.

2. Each tenant must be recertified within twelve months of the previous certification. Tenants receiving Section 8 assistance will be recertified according to HUD regulations.

a. Ninety (90) days prior to the required recertification, the District Office will notify the borrower in writing that a tenant recertification is required and specify the due date. The due date will be the first day of the month following the expiration date of the tenant certification. Failure to receive the notification does not relieve the borrower of responsibility to provide the recertification under the requirements of this regulation and Covenant 3 of Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

b. The borrower must:

(1) Notify the tenant that a current tenant certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification;

(2) Process the appropriate tenant certification and verification of income; and

(3) Submit the signed recertification to the District Office by the due date.

c. The borrower must provide a second written notice to the tenant 30 days prior to the due date if the tenant has not responded. The second notice must advise the tenant that without a current tenant certification, the tenant will be required to pay market rent and that eviction proceedings may be started as of the due date since an annual recertification is required for continued occupancy. If the tenant has rental assistance (RA), the tenant must be advised that without a current certification, the tenant's RA will be cancelled and may not be immediately available for reinstatement should a proper tenant certification be provided at a later date.

3. The borrower must submit Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," to the District Office with each payment, report of overage or request for RA as required in paragraph XIII C 1 b of this Exhibit. The calculations on Part II of the form must be for tenants in

residence on the first day of the month for which the payment or request is submitted. All calculations will be made as if the tenant will be in residence for the full month. ADJUSTMENTS WILL NOT BE MADE TO THE BORROWER'S SUBSIDY PAYMENT OR CHARGES FOR OVERAGE FOR TENANTS MOVING IN OR OUT AFTER THE FIRST OF THE MONTH.

4. Paragraph VIII B 3 b of this exhibit is a required lease provision requiring tenants to notify the management of any permanent change in adjusted monthly income or size of household. Upon receipt of such notice, the borrower must obtain a new tenant certification and income verification. The new tenant certification will be submitted to the District Office with the next payment transmittal reflecting the revised tenant contribution, if applicable.

5. When a borrower/agent believes that an applicant/tenant certification and income verification is inaccurate, they may provide the information including the tenant's social security number to the District Office requesting a further verification through the appropriate state employment agency. The District Office will forward the request to the State Director for submission to the state agency that keeps records on the incomes of wage earners. The State Director will develop a method of obtaining the information from the state agency.

VIII. Lease Agreements

A Lease Agreement is a written contract between the tenant and landlord assuring the tenant quiet, peaceful enjoyment and exlcusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property.

A. *Form of Lease.* Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA requirements. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

1. All leases will be in writing and must cover a period of at least 30 days but not more than 1 year, except that leases for labor housing may be weekly where occupancy is typically seasonal. In areas where there is a concentration of non-English-speaking individuals, leases and the established rules and regulations for the project written in both plain English and the non-English concentration language must be available to the tenants. The tenant should have the opportunity to examine and execute either form of lease.

2. Annual leases should contain an appropriate escalation clause permitting changes in basic and/or market rents prior to the expiration of the lease. Rent changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA according to Exhibit C of this Subpart.

3. The form of lease to be used by the borrower and any modifications of the lease form must be approved by the FmHA District Director. When submitting a lease form for FmHA approval, it must be accompanied by a letter from the borrower's attorney regarding its legal sufficiency and compliance with State law and FmHA regulations.

4. A copy of a properly completed and approved Exhibit A–5, "Housing Allowances for Utilities and Other Public Services," of Subpart E of Part 1944 (when the tenant will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

5. A copy of a properly completed and signed Form FmHA 1944–8, "Tenant Certification," or HUD 50059, "Certification and Recertification of Tenant Eligibility," for those tenants receiving HUD Section 8 tenant subsidy, will be used to calculate each tenant's contribution and will be provided to the tenant as an attachment to the lease.

B. *Required Lease Clauses.* The following clauses will be required in leases used in connection with FmHA financed housing projects.

1. All lease agreements must include a statement indicating that the project is financed by the Farmers Home Administration and is subject to the Title VI nondiscrimination provisions, and that all complaints are to be directed to the Secretary of Agriculture or to the Office of Equal Opportunity, USDA.

2. All lease agreements must also specify that should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, he/she will be required to vacate the unit unless an exception is authorized by the State Director.

3. All leases used in FmHA financed RRH projects must include the following clauses except for elderly, disabled and handicapped persons in a full profit plan project:

a. "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration for the (State/Territory)."

b. "I agree to immediately notify the lessor of any permanent change in the adjusted monthly income or change in the number of persons living in the household."

c. "I understand that if I do not personally reside in the unit for a period exceeding 60 days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to $ ——— per month (market rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord you may take the appropriate steps to terminate my tenancy at the end of the lease period."

d. "I understand that should I receive rental benefits to which I an not entitled due to my/our failure to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to pay any amount of benefits to which I was not entitled."

e. "I agree to promptly provide any certifications and income verifications required by the owner to permit determination of eligibility and, when applicable, the monthly tenant contribution to be charged."

4. Leases used by borrowers participating in the FmHA rental assistance program will contain the following clauses. (These clauses can be made an addendum to the lease and they must be signed by the lessor and lessee):

"I understand and agree that as long as I receive rental assistance, my gross monthly tenant contribution (as determined on the latest Form FmHA 1944–8, which must be attached to this lease) for rent and utilities will be $———. If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $——— will be deducted from my gross monthly tenant contribution will be $———. If my net monthly tenant contribution would be less than zero, the lessor will pay me $———.

"I also understand and agree that my monthly tenant contribution under this lease may be raised or lowered, based on changes in the household income, changes in the number and age of persons living in the household, and on the escalation clause in this lease. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the owner and FmHA expires, I understand and agree that my monthly tenant contribution may be adjusted to no less than $——— (Basic Rental) nor more than $——— (Market Rental) during the remaining term of this lease, except that based on the escalation clause in this lease these rental rates may be changed by a Farmers Home Administration approved rent change."

[Note: Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $——— (Basic Rental) nor more than" from the last sentence of the above statement.]

"I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the owner and FmHA remains in effect. However, should this assistance be terminated I may arrange to terminate this lease, giving proper notice as set forth elsewhere in this lease."

5. For leases with borrowers operating under Plan II Interest Credit Only:

"I understand and agree that my gross monthly tenant contribution as determined on the latest Form FmHA 1944–8, which must be attached to this lease, for rent and utilities will be $———.

"If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $——— will be deducted from my gross monthly tenant contribution except that I will pay not less than the basic rent nor more than the market rent stated below. My net monthly tenant contribution will be $———. I understand that should I receive rental subsidy benefits (interest credit) to which I am not entitled, I may be required to make restitution and I agree to pay any

amount of benefit to which I was not entitled. I also understand and agree that my monthly tenant contribution under this lease may be raised or lowered based on changes in the household income, changes in the number and age of persons living in the household, and on the escalation clause in this lease. My tenant contribution will not, however, be less than $——— (Basic Rental) nor more than $——— (Market Rental) during the term of this lease, except that based on the escalation clause in this lease, these rental rates may be changed by a Farmers Home Administration approved rent change."

6. Leases used by borrowers with farm labor housing loans and/or grants will use the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their immediate families. I do hereby certify that a substantial portion of my immediate family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either: (1) Are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage, provided the place of employment, such as a packing shed, is on or near the farm where the commodity is produced. It also includes labor for the production of aquatic organisms under a controlled or selected environment."

b. "I agree that if my household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will promptly vacate my dwelling after proper notification by the owner."

7. The lease agreement in congregate housing cases must include the following statement: "I understand that my ability to live independently in the project with the support services available will be evaluated on a periodic basis. I may be requested to vacate if a determination is made that I am no longer able to live in the project without additional assistance." This involves cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

C. Other Lease Provisions. All leases must contain provisions covering:

1. Names of the parties to the lease and all individuals to reside in the unit and the identification of the premises leased.

2. The amount and due date of monthly tenant contributions.

3. Any penalty for late payment of monthly tenant contribition according to paragraph IX B of this Exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant by the management and the tenant's responsibility to pay utility charges promptly when due.

5. The process by which tenant contribution and eligibility for occupancy shall be determined and redetermined including:

a. The frequency of such tenant contribution and eligibility determinations.

b. The information which the tenant shall supply to permit such determinations: usually, income verification; names and ages of household members; and, in congregate facilities, information that permit management to determine the tenant's or co-tenant's level of function and degree of competence in performing daily living activities.

c. The standards by which rents, eligibility, and appropriate dwelling unit size shall be determined.

d. Tenant's household agreement to move to a unit of appropriate size if the household size changes.

e. The circumstances under which a tenant may request a redetermination of tenant contribution.

f. The effect of misrepresentation by the tenant of the facts upon which tenant contributions or eligibility determinations are based.

g. The time at which shelter cost changes, tenant contribution changes, or notice of ineligibility shall become effective.

6. The limitation upon the tenant of the right to the use and occupancy of the dwellings.

7. The responsibilities of the tenant in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8. Agreement of management to accept a tenant contribution without regard to any other charges owed by tenant to management and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s).

9. The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management to provide the tenant with a written statement of the condition of the dwelling unit (when the tenant initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management may enter the premises during the tenant's possesion thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12. Responsibility of tenant to advise management of any planned absence for an extended period, usually 2 weeks or more.

13. Agreement that tenant may not let or sublet all or any part of the premises.

14. Understanding that should the project be sold to a buyer approved by FmHA, the lease will be transferred to the new owner.

15. The formalities that shall be observed by management and the tenant in giving notice one to the other as may be called for under the terms of the lease.

16. The circumstances under which management may terminate the lease, all limited to good cause, and the length of notice required for the tenant to exercise the right to terminate.

17. The procedure for handling tenant's abandoned property as provided by State law.

18. Disposition of lease if building becomes untenantable because of fire or other disaster. Right of owner to repair or rehabilitate the building within a certain period or terminate the lease.

19. The agreement that any tenant grievance or appeal from management's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures which are posted in the rental office.

20. The usual signature clause attesting that the lease has been executed by the parties.

D. Prohibited Leose Clauses. Lease clauses in the classifications listed below shall not be included in any lease.

1. CONFESSION OF JUDGEMENT. Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

2. DISTRAINT FOR RENTAL OR OTHER CHARGES. Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. EXCULPATORY CLAUSE. Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. WAIVER OF LEGAL NOTICE BY TENANT PRIOR TO ACTIONS FOR EVICTION OR MONEY JUDGMENTS. Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. WAIVER OF LEGAL PROCEEDINGS. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred.

6. WAIVER OF JURY TRAIL. Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to trial by jury.

7. WAIVER OF RIGHT TO APPEAL JUDICIAL ERROR IN LEGAL PROCEEDINGS. Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. TENANT CHARGEABLE WITH COSTS OR LEGAL ACTIONS REGARDLESS OF OUTCOME. Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of this clause does not mean that the tenant, as part to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

E. Modification of Lease—Notification to Tenants. The landlord may modify the terms and conditions of the lease, effective at the end of the initial term or a successive term,

by serving an appropriate notice on the tenant, together with the tender of a revised lease or an addendum revising the existing lease. This notice and tender shall be delivered to the tenant either by first-class mail, properly stamped and addressed or hand delivered to the premises to an adult member of the household.

The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant has the right to terminate the tenancy without executing the revised lease. The notice must advise the tenants that they may appeal modifications to the lease in accordance with the FmHA tenant grievance and appeals procedure (Subpart L of Part 1944 of this Chapter) if the modification will result in a denial, substantial reduction, or termination of benefits being received.

The same notification will be applicable to any changes in the rules and regulations for the project.

F. *Occupancy Rules.* Occupancy rules establish the basis for the management-tenant relationship. Occupancy rules and regulations must be provided and explained by the project management to enable the tenant to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA State Director or designee, generally together with the project management plan, management agreement, and lease form.

1. All rules for occupancy and rent structures will be in writing posted conspicuously in the borrower's and/or manager's offices and provided to each tenant with the lease agreement.

2. Proposed changes of any rules for occupancy must be made available to each tenant at least 30 days in advance of implementation, and tenants must be advised that they may appeal changes in accordance with the FmHA tenant grievance and appeals procedure (Subpart L of Part 1944 of this Chapter).

3. No rule may infringe on the rights of the tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members. The project management person or organization should be available and willing to work with a tenant organization.

4. Rules may be promulgated that prohibit activities which are detrimental to management and tenants. Such activities include threats to the health or safety of other tenants or the employees of the borrower, interference with the quiet enjoyment of the premises by other tenants, or damage to the physical structure of the project.

5. The borrower may choose to provide rules for *non-elderly* projects that either permit or exclude pets *except* that no rules may be promulgated that would prohibit the tenancy of a tenant household member who requires the services of a trained and certified seeing eye or hearing ear animal to achieve the normal function of that household member.

6. For each RRH project specifically built for the *elderly*, the borrower must establish project rules by (*12 months after effective date of this revision*) permitting elderly, handicapped or disabled tenants to keep commonly accepted household pets. These pet rules are to be established according to the following:

a. Pet rules *must not:*

(1) Prohibit, prevent, restrict or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.

(2) Prohibit, prevent, restrict or discriminate against any applicant who owns a pet with respect to obtaining occupancy to the project.

b. Borrowers with operational projects must consult with the tenants of the project when establishing pet rules and document to the District Director how the consultation process was conducted.

c. Borrowers with new projects will establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions received after rent-up begins.

d. Pet rules will be approved by FmHA as part of, or an amendment to, the project lease. FmHA approval will be granted when the rules meet the provisions and intent of this subparagraph.

e. Pet rules will be reasonable and will be written to consider at least the following factors:

(1) Density of project units.

(2) Pet Size.

(3) Type of pet.

(4) Potential financial obligations of tenants who own or keep pets.

(5) Standards of pet care.

(6) Pet Exercise Areas.

(7) State and Local animal laws or ordinances.

f. Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants in the project or persons in the surrounding community.

7. Initial rules will be attached to the lease agreement. Approval by FmHA for changes and additions may be requested annually with submission of annual reports or more frequently only in the case of an emergency situation.

8. The following items illustrate areas that should be addressed in rules developed by management and provided to all tenants prior to move-in:

a. Explanation of rights and responsibilities under the lease. Where a non-English language is common to a project area, a lease written in that language should also be provided.

b. Rent payment policies and procedures should be fully explained.

c. Policy on periodic inspection of units.

d. Responding to tenant complaints.

e. Maintenance request procedure.

f. Project services and facilities available to tenants.

g. Office location, hours, and emergency telephone numbers.

h. Map showing location of community facilities including schools, health care, libraries, parks, etc.

i. Restrictions on storage and prohibition against abandoning vehicles in the project area.

j. A project newsletter; if desired.

k. Community and public transportation schedules.

9. Tenant may be permitted to have a guest(s) visit their household. However, an adult person(s) making reoccurring visits or one continuous visit of 14 days and nights in a 45 day period *without consent* of the management will be counted as a household member(s).

G. *Security Deposits.*

1. Security deposits are encouraged and they should be used when it is reasonable and customary for the area. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA District Director. When security deposits are used, they should be an amount equal to the tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets must be reasonable and not designed to prohibit or discourage tenancy. Where a seeing eye or hearing ear animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be charged.

2. Security deposits for persons eligible for Rental Assistance or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants cannot pay the full amount initially, they may be given terms that should ordinarily:

a. For RRH projects, not exceed a down payment of 25 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within twelve months, whichever is greater.

b. For low-income farmworkers in a LH project, not exceed $25 down payment and $15 per month until an equivalent of one month's project rent is reached. In the case of migrants who will occupy the units for a short period of time, exception to this policy by FmHA may be made upon written request from the borrower when it is shown that such deposits need to be raised to protect the security interest of the government and it will not create a hardship on the tenants.

3. Security deposits shall be handled in accordance with any State or local laws governing tenant security deposits. Tenant security deposits shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants.

4. Borrowers may assess fair and reasonable charges to the security deposit for damage and loss caused or allowed by the tenant. An itemized accounting for such charges must be presented to the tenant after the move-out inspection provided for in paragraph X E 2 of this Exhibit, unless the tenant has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

H. *Special Lease Supplement.* Borrowers are encouraged to supplement lease agreements, particularly of elderly, disabled and handicapped tenants, to:

1. Permit the borrower, with competent medical or clergical advice, to contact a predetermined sponsor(s) or guardian(s) to effect the transfer of the tenant to other appropriate housing when the tenant is (a) no longer able to functionally make self-determinations or (b) to adequately provide self-care within the facilities and services provided by the project. A sponsor or guardian would be a person(s) designated by the tenant, generally a family member, friend, doctor, or member of the clergy.

2. Provide instruction to the borrower of a person(s) to contact in the event of death of the tenant.

When a lease has been supplemented, the borrower should also obtain an agreement from the designated sponsor(s) or guardian(s) to assume responsibility for the tenant in the event of need as identified in subparagraphs 1 and 2 above.

IX. Rent Collection

A pre-established day of the month should be the designated rental collection day. The time and place of onsite collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours' depository if needed.

A. *Rental Receipts.* A form of serially-numbered rental receipts should be selected for use and the collection agent held accountable for every receipt. Optional collection services may be considered when they are available.

B. *Delinquent Rents.* A system to identify and detect unpaid rents should be instituted within the project. A penalty of up to $10.00 for late payment of rent after a 10-day grace period, or the grace period prescribed by State law, may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, maintaining a firm and fair policy on rent collection encourages tenants to meet their rental obligations.

C. *Recapture of Improperly Advanced Rental Assistance and Interest Credit.*

1. In cases where a tenant has received rental assistance and/or interest credit benefits to which he/she may not be entitled, because of the tenant's failure to properly report income or changes in the size of the household, the borrower will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Office of the agreement made by the tenant for repayment. In the event that collection from the tenant is not achieved by active collection effort, including legal remedy, the borrower will report the facts to the Disctrict Director. The District Director will report the facts to the State Director who will obtain the advice of OGC on further actions.

2. If it appears that the tenant has willingly and knowingly misrepresented his/her income, the borrower will demand restitution of the improper rental subsidy. The case will also be reported to the FmHA District Director who will monitor the borrower's actions. If the tenant fails to make restitution, the District Director will refer the matter to the OGC for further advice.

3. Recapture of rental assistance assigned to the wrong tenant household will be handled according to paragraph XII of Exhibit E of this Subpart.

4. If improper interest credit or rental assistance is paid due to the negligence or ineffectiveness of the borrower or its designee, the borrower is required to make restitution to FmHA without making claim against the tenant. This restitution will not be charged to the project as any part of the budget or operating expense. In the case of a non-profit or public body borrower, when funds from non-project sources are not available, the State Director exclusively, may make an exception if the funds were used for appropriate and justified project expenses and allow project income not required for approved operating budget items to cover the cost of restitution. Restitution may be made by remittance of the excessive payment amount to FmHA, and applied to the project account as an overage in the case of interest credit or the rental assistance account.

5. Or unauthorized rental assistance and/or interest credits derived through inaccurate calculation, the unauthorized amount of subsidy will be determined by the Director. The borrower will be requested to correct the error by remitting the excess subsidy. If it is not repaid, the excess subsidy amount will be deducted by FmHA from subsequent credits or payments.

X. Maintenance

Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A. *Routine Maintenance.* Routine or short-term type maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics. Also included are janitorial tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B. *Responsive Maintenance.* This includes all maintenance tasks performed in response to either requests for service from tenants or unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager should develop a plan to focus on: who receives the requests, how they are handled, how specific employees are assigned to the tasks and what kind of records are kept. The capacity of the project manager to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C. *Preventive Maintenance.* This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating systems in rental projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D. *Long Term Maintenance.* These are major expense items which normally do not occur on an annual basis. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be preapproved by FmHA.

E. *Inspection Maintenance.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each tenant's apartment should be made at appropriate times:

1. MOVE-IN INSPECTION. Before move-in occurs, the management and the applicant accepted for tenancy should together inspect the unit to be occupied and agree upon any repairs needed. A written inspection report shall be prepared and a copy retained in the tenant's file. Any of the identified deficiencies not corrected prior to occupancy should be noted on the lease or inspection move-in report and signed by the tenant and borrower's representative.

2. MOVE-OUT INSPECTION. An inspection should be scheduled with the tenant when the management becomes aware that the tenant is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the furniture has been moved out and before any portion of the security deposit is returned to the tenant. Any repairs or costs to be charged to the tenant will be according to the terms of the lease, local law, and regulations governing security deposits in paragraph VIII G of this Exhibit.

3. PERIODIC INSPECTION. An inspection of this type should be made at least annually. The borrower should make provisions in the lease for periodic inspection of the units as a part of a preventive maintenance program.

XI. Rent Changes

It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental rates to keep the project viable. Before any change of rental rates may occur, *prior written consent* of FmHA *is required.* The procedure to request and implement a rent change is specifically covered in Exhibit C of this Subpart.

XII. Borrower Project Budgets

A. *Budget Development and Preparation.*

1. Borrowers are required to develop an annual budget of project income and expense.

2. Separate budgets will be developed for each project when the borrower owns more than one MFH project.

3. Budgets will cover a 12 month period selected by the borrower to be the project fiscal year of operation.

4. Budgets will be prepared according to the instructions contained in Form FmHA 1930–7, "Statement of Budget and Cash Flow."

B. *Return on Investment as Authorized by Borrower's Loan Agreement/Resolution.*

1. Limited profit borrowers may take the return authorized for the current budget year without further FmHA approval under the following conditions:

a. Payment may be made only once a year at the end of the project fiscal year.

b. Payment must have been approved as part of the borrower's annual budget on Form FmHA 1930–7.

c. The project must have produced adequate income during that year to cover all expenditures in accordance with the approved budget.

d. The balance in the reserve account must be current less any authorized withdrawals.

e. Payment of the return may not produce a year end deficit.

2. If income is not adequate in any given fiscal year to cover payment of the return to owner, FmHA may authorize the return to be paid from:

a. Excess funds available at the end of the following fiscal year of operation provided it does not result in a rent increase and the reserve account is current less authorized withdrawals. (Non-profit losses of the borrower entity do not qualify to be recouped in following years.) This option is authorized only for the year immediately following the year in which the return was not paid.

b. Release of reserve funds with District Director approval, provided:

(1) The Reserve Account will not be reduced below the amount required to be accumulated by that time considering adjustments for any previously authorized withdrawals; and,

(2) During the next 12 months the amount in the Reserve Account will not likely fall below that required to be accumulated by the end of such 12 month period.

C. *Advancement (Loan) of Funds to a Project by the Owner, Member of the Organization, or Agent of the Owner.*

1. Such advances are discouraged but may be allowed when justified, provided the prior written approval of the District Director has been obtained. Justification will be based on the following:

a. A review of the documented circumstances and the project operating budget before any funds are advanced (loaned).

b. Funds are not immediately available from any of the following sources:

(1) Reserve funds.

(2) Initial operating capital.

(3) An imminent rent increase.

2. The funds will be applied to ordinary project operating and maintenance expenses.

3. No interest will be charged or paid on the loan from project income.

4. No lien in connection with the loan will be filed against the property securing the FmHA loan or against project income.

5. The pay-back of the advance (loan) may be permitted by the District Director provided the terms and conditions were mutually agreed to by the borrower and FmHA at the time of the advance and the financial position of the project will not be jeopardized. payback should only be permitted on the advance when the FmHA debt is current and the reserve requirements are being maintained at the required levels.

XIII. Accounting and Reporting Requirements and Financial Management Analysis

A. *General.* RRH, RCH, and LH borrowers are expected to account for all project income and expenses through a bookkeeping or accounting system appropriately reflecting the complexity of project operations.

The degree of sophistication will also reflect such factors as the type of borrower; the size, location and type of project; and the type of finanical management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1. Borrowers with loan agreements or resolutions are subject to the following conditions:

a. All RRH and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of this paragraph XIII.

b. All RRH and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

(1) They are encouraged, however, to adopt the provisions of this section by amending their existing loan agreement or resolution.

(2) The State Director may require adoption of these provisions when deemed necessary as a loan servicing action.

c. Any amendment to an existing loan agreement, or resolution, requires concurrence of all parties and written approval by the State Director with advice from the OGC prior to enactment of the amendment.

d. Individual farm borrowers with LH units will be considered in general compliance with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home planning with FmHA.

2. Borrowers without loan agreements or resolutions are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B. *Accounting System.* A bookkeeping and accounting system provides the financial information needed to effectively plan, control and evaluate project activity. The type of system should be determined prior to loan closing, but it may be revised with FmHA approval to meet program objectives. FmHA may also prescribe the system to be used. Form FmHA 1930–5, "Bookkeeping System—Small Borrower," can be adapted to the bookkeeping needs of small RRH projects. Bookkeeping for MFH projects may be maintained using a cash, modified cash, or accrual type accounting system.

1. *Type of accounts.* As used in this paragraph, the term account is used in interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or types of accounts established, all bookkeeping and accounting systems must meet the following:

a. All project funds shall be held only in accounts insured by an agency of the Federal Government, unless otherwise specifically authorized by the borrower's loan agreement, loan resolution and this paragraph.

b. All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this paragraph.

c. All funds received and held in any account, except the tenant security deposit shall be held in trust by the borrower for the loan obligation until used.

d. All project funds will be maintained separately and distinct from any other project or enterprise of the borrower and/or his/her management agent. Under no circumstances will project funds be commingled with those of another project.

e. Each project will maintain at least one demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

2. *Required Accounts.* All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are required for all RRH and RCH loans approved after October 27, 1980, or those who have amended their loan agreements or resolutions to adopt these accounts:

a. *General Operating Account.* This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as follows:

(1) *Initial Operating Capital.* The borrower will have deposited the required initial operating capital into this temporary bookkeeping account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. The initial operating capital will be deposited in the General Operating Account. After two, but before five full budget years of project operation, the State Director may authorize the borrower to make a onetime withdrawal from project funds, an amount not to exceed the borrower's beginning cash contribution to the Initial Operating Capital as described in the loan agreement or resolution, provided that:

(i) The loan was closed on or after October 27, 1980.

(ii) The loan agreement or resolution signed by the borrower is Form FmHA 1944–33 "Loan Agreement," 1944–34 "Loan Agreement," or 1944–35 "Loan Resolution."

(iii) The project has achieved at least a 95% occupancy level at time of the withdrawal request.

(iv) The withdrawal will not affect the financial integrity of the project. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred.

(v) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation.

(vi) The State Director has reviewed and approved any required borrower reports before the Initial Operating Capital is withdrawn.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the General Operating Account. This will include rent receipts, housing subsidy payments (including HUD Section 8 and FmHA Rental Assitance payments), laundry revenue, or any other project income. The borrower may also deposit other funds at any time which are to be used for purposes authorized by this section including transfers from the Reserve Account.

(3) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account, the borrower shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. (However, non-profit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in FmHA Instruction 1944–E.) Other authorized disbursements are FmHA approved installments of debt service, real estate tax and insurance escrow, reserve, and return on investment as provided in Section 2 c below. Any balance remaining in the General Operating Account except as authorized above, may be retained in this account or transferred to the Reserve Account.

(4) *Unauthorized Disbursements.* Late fees charged the borrower according to Subpart K of Part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project General Operating Account must be reimbursed from nonproject income of the owner or mangement agent or deducted from the owner's return on investment. (Added.)

b. *Real Estate Tax and Insurance Escrow Account.* Funds recorded in this account may be deposited in an interest bearing project account. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the General Operating Account to the Real Estate Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated real estate tax and insurance payments for the year. Any interest earned shall be prorated based on the amount held in the escrow account at the time the interest is earned and shall accrue and be part of the account.

c. *Reserve Account.* Funds recorded in this account should be held in an interest bearing project account.

(1) Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the next month following disbursement from the Reserve Account until it is restored to the specified total minimum sum.

(2) Reserve Account funds not immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution, or invested in readily marketable obligation of the United States Treasury Department, the earings on which shall accrue to the the Reserve Account.

(3) Interest earnings may be used to meet the monthly installments to the Reserve Account and/or to meet a modified and higher reserve level established periodically by an FmHA approved amendment to the borrower's loan agreement or resolution. Such amendment may be made to build reserve for scheduled replacement of depreciable property items in addition to general reserve requirements.

(4) Any amount in the Reserve Account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the General Operating Account for the authorized purposes *only when* it is agreed between the borrower and the FmHA to be in excess of the requirement. However, the FmHA District Director may direct the excess sum to be retained in the Reserve Account when determined necessary to protect the Government's security interest.

(5) With prior written consent of the District Director, funds in the Reserve Account may be used by the borrower or its designee for the following purposes:

(i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(ii) To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses. Withdrawal for authorized purposes should be approved in advance during the annual budget approval process.

(iii) To make improvements to the housing project without creating new living units.

(iv) For other purposes desired by the borrower, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collectibility of the loan without jeopardizing the loan or impairing the adequacy of the security.

(v) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the Reserve Account will not be less than that required by the loan agreement or resolution to be accumulated by that time and the amount in the Reserve Account will likely not fall below that required to be accumulated during the next 12 months.

(A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

d. *Tenant Security Deposit Account (when applicable).* Upon receipt, all tenant security deposit funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in an account that is kept separate from any project funds and will be handled according to any State or local laws governing tenant security deposits. Funds in the Tenant Security Deposit Account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower in trust for the respective tenants until so used. Any amount of the Tenant Security Deposit Account which is retained by the borrower as a result of lease violations shall be transferred to the General Operating Account and treated as income of the housing.

(1) The owner will follow all state and local requirements governing the handling and disposition of tenant security deposits.

(2) In no case, will interest earned on security deposits accrue to project management or the owner. Any interest earned but not returned to the tenants will accrue to the project's general operating account for disposition as outlined in the management plan.

C. *Borrower Reporting Requirements.* Certain reports are necessary to verify compliance with FmHA requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA payments and others submitted to FmHA either monthly or annually. Exhibits B–6, B–7, and B–8 of this Exhibit (Management Handbook), are to be used as a guide for determining when reports are due and the number of copies required. (Also see § 1930.124 of this Subpart.) The

following reports will be prepared and submitted by the borrower:

1. MONTHLY REPORTS:

a. Submit Form FmHA 1930-6, by the tenth of each month to the District Office to reflect the project operations for the preceding month. Monthly reports will generally be completed on a cash basis, but may also be completed on a modified cash or accrual basis with appropriate modifications made on the form.

b. Submit Form FmHA 1944-29, with the payment to the District Office. This form *must* be submitted each month to report overage and/or request rental assistance, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of each month.

c. For LH projects, Form FmHA 1944-29 will be submitted monthly for the LH tenants who receive rental assistance. Otherwise, the Form FmHA 1944-29 covering all LH tenants will be submitted to FmHA at least once annually with the annual reports.

2. ANNUAL REPORTS: Annual reports may be completed on a cash, modified cash, or an accrual basis. Within 60 days following the close of the borrower's fiscal year, the borrower will submit the following reports to the FmHA District Office:

a. Form FmHA 1930-7, showing all planned project income and expenses for the next year as well as actual project income and expense for the past year.

b. Form FmHA 1930-8, "Year End Report and Analysis For Fiscal Year Ending ———.

c. Audit report or verification. All audit reports will be completed according to the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits for FmHA Borrowers and Grantees." For projects with 25 or more units the audit will be prepared by a LPA licensed on or before December 31, 1970, or a CPA. Borrowers with 24 units or less will need to provide a verification by an individual who is qualified by education and/or experience and who is independent of the borrower or by a committee of the membership not including any officer, director, or employee of the borrower; however, the State Director may also require audits by a CPA or LPA for any project.

d. Copy of the minutes of the annual meeting, when applicable.

e. Energy audit for review according to the provisions of Exhibit D of this Subpart.

f. Any other related material that may be requested by the District Director.

D. *Financial and Management Analysis.* Financial and management analysis provides information on the status of the project's operation. Regular analysis can help identify strengths and weaknesses so that appropriate corrective actions can be taken. Some methods of analysis are:

1. Budget Analysis: Using monthly and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2. Ratio Analysis: Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratio are:

a. Vacancy Rate equals Total vacancy days for the month divided by Total unit days for the month
b. Resident Turnover Ratio equals Total units becoming vacant during the period divided by Average units occupied for the period
c. Expense Ratio equals Total Expense divided by Total Income
d. Cost Per Unit equals Total Expense (By category) divided by Total No. of Units
e. Working Capital Ratio equals Current Assets divided by Current Liabilities
f. Collection Ratio equals Total Collections divided by Total Rent Rool
g. Percent of revenue from Government sources equals FmHA Rental Assistance or HUD Section 8 Payments divided by Total Market Rent

XIV. Termination of Tenancy and Eviction

Borrowers and project managers should actively develop ways and means to avoid forced terminations of lease and the eviction of tenants by considering the following:

A. *Tenant's Entitlement to Continued Occupancy.*

1. *General.* The borrower or project manager may terminate or refuse to renew any tenancy only for material noncompliance with the lease or other good cause such as:

a. Noneligibility for tenancy.

b. Action or conduct of the tenant which disrupts the liveability of the project by adversely affecting the health or safety of any tenant, or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, or that has an adverse financial effect on the project.

c. Expiration of the lease period is not sufficient grounds for eviction of a tenant.

2. *Material Noncompliance.* Material noncompliance with the lease includes:

a. One or more substantial violations of the lease; or

b. Repeated nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period constitutes a substantial violation; or

c. Repeated minor violations of the lease which disrupt the liveability and harmony of the project by adversely affecting the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

3. *Other Good Cause.* Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant *prior notice* that the conduct will constitute a basis for termination of tenancy.

4. *Rent Overburden.* Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraphs IV A C (1) or (2) or (3) of this exhibit toward rent, including utilities, is considered to be experiencing rent overburden. Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental rental subsidies including FmHA rental assistance and/or interest credit; or to assist tenants in applying for Section 8 housing assistance to minimize termination of tenancy.

B. *Notice of Termination.* Any notice to terminate tenancy must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager.

1. The notice of intent to terminate the tenancy will be handled according to the terms of the lease. Tenants will be given prior notice of eviction according to State or local law. The notice must:

a. Refer to relevant provisions in the lease.

b. State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In those cases where the proposed termination of the tenancy is due to the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

c. State that the tenancy is terminated on a date specified.

d. Advise the tenant that if he or she remains in the leased unit on the date specified for termination, the borrower may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense.

2. The notice shall be accomplished by: (a) sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address; *and* (b) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

3. A copy of any eviction notice will be forwarded to the FmHA District Office. The District Director will review the notice for compliance with this paragraph XIV and any State Supplements that have been issued covering tenant evictions with respect to the proper preparation and handling of the notice. If the notice is found to be properly prepared, no further action is needed. If the notice is found to be improperly prepared, the District Director will notify the borrower to cease the action and will then inform the borrower how the notice is improperly prepared. The District Director will not indicate any opinion on the merits of the eviction to the borrower or project manager at this time.

XV. Security Servicing

Security servicing, as referenced in this Exhibit, concerns the borrower's general responsibilities in relation to the loan agreement or resolution, mortgage, and other loan documents. It does not deal with security items between the borrower and the

tenants. FmHA will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A. *Fidelity Bond.* All projects will be required to obtain Fidelity bond coverage for the borrower officials and all employees entrusted with the receipt, custody, and disbursement of any project funds or negotiable or readily saleable personal property. Fidelity bond coverage should be obtained as soon as there are assets within the organization and must be obtained before any loan funds or interim financing funds are made available to the borrower. Fidelity bonds will be obtained according to the following guidelines:

1. Individual or organizational borrowers will provide a fidelity bond when they have employees with access to project assets as cited in paragraph XV A, other than when a management firm has exclusive access to such assets.

2. Borrowers who use a management firm/individual with exclusive access to project assets as cited in Paragraph XV A will require the firm/individual to provide a fidelity bond. In addition, if the borrower takes possession of or gains access to the cited project assets, the borrower must be covered as stated in paragraph XV A(1).

3. Fidelity bond coverage is not required when a loan is made to an individual (natural person) and that individual will be responsible for such activities.

4. In the case of a Land Trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

5. A General partnership will not be required to provide fidelity bond coverage where the partners are responsible for the receipt, custody and disbursement of its funds or any other negotiable or readily saleable personal property.

6. The amount of the bond will at least equal the potential gross project income for two months rental collection or the maximum amount of money the project is expected to have on hand at any one time, including cash on hand, money in reserve and other special accounts, etc., whichever is greater.

7. The United States acting through the Farmers Home Adminstration will be named as co-obligee in the bond when not prohibited by State Law.

8. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used when permitted by State Law. In those cases where other forms are used, the form of bond must be approved by the State Director only after its is found not to be inconsistent with the intent and general requirements of Form 440-24 and is determined legally acceptable by the OGC.

9. A blanket bond may be accepted from a borrower or management agent when blanket coverage is more advantageous cost-wise for each project on a pro-rata basis, the coverage limit for each project is identified *or* the total coverage limit is at least equal to the sum of all projects and coverage is restricted exclusively to FmHA financed MFH projects.

10. The borrower's fidelity bond premiums may be a project expense when coverage is obtained and paid by the borrower.

11. Fidelity bond premiums for a management agent(s) will be included in the management fee.

12. A fidelity bond may have a deductible figure in an amount equivalent to 2 percent of the initial project contribution for operating capital but not in excess of $2,000.

B. *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA in accordance with Subpart A of Part 1806 (FmHA Instruction 426.1) and Subpart B of Part 1806 (FmHA instruction 426.2). All references to County Supervisor shall be construed to mean District Director when applied to the Multiple Housing Program. The borrower or its agent shall obtain:

1. Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings including as security for the loan or grant. The amount of coverage will be not less than the amount specified on Form FmHA 426-1, "Valuation of Buildings."

2. Suitable Worker's Compensation Insurance on all its employees. (Worker's Compensation Insurance for employees of a management agent shall be paid out of the agent's management fee.)

3. Adequate liability insurance.

4. Flood insurance when the project is located in designated flood hazard area.

C. *Real Estate and Personal Property Taxes.* All borrowers will be required to pay their taxes before they become delinquent and provide FmHA with proof of payment. An exception to the above may be made if the borrower has formally contested the amount of the property assessment and has escrowed the amount of taxes in question in a manner acceptable to the District Director.

30. Exhibit B-1 is amended by redesignating paragraphs 4d and 4e as 4e and 4f respectively and adding paragraph 4d and revising new paragraph 4e, revising the title to paragraph 11, redesignating paragraphs 17 to 18 and adding a new paragraph 17 to read as follows:

Exhibit B-1—Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

4. * * *

d. What is the occupancy policy for the project?

* * * * *

e. Is the responsible person aware of FmHA guidelines covering family size and needs as they relate to unit size?

* * * * *

11. *Plans for tenant participation in project operations and tenant's relationship with management.*

* * * * *

17. *Occupancy policy.* Attach a copy of the project occupancy policy. See paragraph VI B2 of Exhibit B of this subpart for guidelines in establishing an occupancy policy.

* * * * *

31. Exhibit B-3 is amended by changing the reference in paragraph IV E from "Form FmHA 444-8" to "Form FmHA 1944-8" and in the first sentences of paragraph VB and Paragraph VC by removing the words "a separate" and inserting in their place in word "an."

32. Exhibit B-9 is amended in the heading information by inserting a line between the lines "Employee" and "Address" to read "SSN (optional) _____."

33. Exhibit C is revised to read as follows:

Exhibit C—Rent Changes

I. Objectives

This Exhibit prescribes the method of processing changes in the monthly rental rates for tenants in Farmers Home Administration (FmHA) Rural Rental Hosing (RRH) and Labor Housing (LH) projects. This Exhibit covers all RRH and LH loans, including those approved before the date of this Subpart.

II. Definitions

A. Approval Official. State Director or designated State and District Office staff with delegated authority according to § 1930.143 of this Subpart.

B. Utility. Sewer, water, trash collection, electricity, natural gas, and any other fuel used specifically for cooking, heating, and/or cooling.

III. Initial understanding with borrower

A. All RRH and LH applicants will be informed at the application stage of the agency's rent change procedure. All borrowers will be advised that all proposed rent changes must comply with this Exhibit. This Exhibit will also apply to rent changes resulting from Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving Section 8, assistance.

1. Projects approved *prior* to November 30, 1983, may submit a rent change request based on a realistic projected budget for the interim year or the ensuing full year.

2. Projects approved on or *after* November 30, 1983, may submit a rent change request only after cost(s) incurred demonstrate a need.

B. Rental rates in projects financed in whole or in part by an RRH or LH loan may not be raised without FmHA written consent according to requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH and LH loans. Changes requiring only prior FmHA review are those which are beyond the borrowers' control to cover changes in taxes or utilities, and rent changes which do not result in an increase in the tenants' total shelter cost. Borrowers are encouraged to have the effective date of needed rent changes coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis. Rental change requests normally should be made at least 60 days prior to the end of the borrower's fiscal year.

It is anticipated that rent changes would not be necessary more than once a year.

C. All borrowers are encouraged to participate in the FmHA Rental Assistance Program. However, unless the Administrator notifies State and District Offices otherwise, all borrowers with projects meeting the eligibility requirements of paragraph II B of Exhibit E of this Subpart, except full profit borrowers, will be *required* according to Section 530 of Title V of the Housing Act of 1949, as amended, to apply for and accept Rental Assistance when it appears that a rent change will cause the very low-and low-income tenants to pay in excess of 30 percent of adjusted monthly income for costs for rent and utilities. If FmHA does not have RA available for this purpose, the borrower is encouraged to use other sources of governmental rent subsidies. The availability or nonavailability of governmental rent subsidies will not preclude FmHA from processing a rent change request.

D. Even though rental assistance is not available, borrowers are encouraged to convert to Interest Credit Plan II to give tenants the most favorable rents possible.

IV. Borrower's Responsibility in Processing Rent Changes Which Increase Housing Costs to Tenants and Require FmHA Approval

A. When a RRH or LH borrower determines that a rental change is needed for reasons other than those specified in paragraph VI, the borrower should meet with the District Director to review the following information before the "Notice of Proposed Rent Change" is posted and delivered to the tenants. In lieu of meeting with the borrower, the District Director may allow the information to be submitted to the District Office for prior review before being posted. The borrower may proceed to post the notice 15 days after the submission or upon receipt of the District Office's response whichever is earlier.

1. Facts demonstrating the need and justification for a rent change in accordance with paragraphs III A 1 or 2 of this Exhibit.

2. A new operating budget for borrower fiscal year showing:

a. Currently approved budget at old rents.

b. Actual income and expenses to date.

c. Proposed budget at proposed new basic rents.

d. Proposed budget at proposed new market rents (when applicable.)

3. An application for Rental Assistance on Form FmHA 1944–25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed rent change will cause 20 percent of the very low- and low-income tenants to pay in excess of 30 percent of adjusted monthly income for the costs of rent and utilities. If the low-income tenants are receiving some other form of rent subsidy, such as HUD's existing Section 8, an exception may be made to this requirement.

4. A new energy audit or a listing of deferring improvements identified in a previous energy audit that was performed within the past five-year period according to the requirements of Exhibit D of this Subpart or regulations then extant.

5. Any other information the borrower believes necessary to justify the proposed rent change.

B. Current tenant certifications on Form FmHA 1944–8 "Tenant Certification," or other form approved by FmHA must be on file in the District Office.

C. After the borrower and District Director have reviewed the rent change application, the borrower will notify all affected tenants of any proposed rent change using the format of Exhibit C–1 of this Exhibit. The "Notice to Tenants of Proposed Rent Change" will advise tenants that during a 20-day comment period identified in the posted Notice, they have an opportunity to inspect, copy, and make written comments or objections to all materials which will be made available to them justifying the proposed rental increase. Tenants will be advised that they may also review any subsequent material submitted by the borrower to FmHA to support the rent change. If subsequent material is submitted, the borrower will be required to post a new notice. The Notice will advise the tenants that all written comments or objections should be submitted directly to the FmHA District Director by the end of the 20 day comment period. Tenants must be notified by the following methods:

1. The owner or management agent must mail or hand deliver copies of the Notice to all *affected* tenants and the District Director at least 60 days prior to the anticipated effective date of the rent change. By the end of the 20 day comment period, which is included within the 60 day period, the borrower may submit to the District Director any other information to be considered.

2. The management must also post prominently in common areas around the project (laundry rooms, parking areas, recreation rooms, etc.) copies of the Notice. In addition to plain English, all notices will be published in the other primary languages of the tenants.

D. Notification to the tenant of proposed rent changes will not be required when a change in the utility allowance only is proposed on Exhibit A–5 of Subpart E of Part 1944 of this Chapter, and the utilities are paid directly by the tenants. This does not preclude posting of the FmHA Letter of Approval as provided for in paragraph V B 1 of this Exhibit.

V. Determination by FmHA

A. *Actions by District Director.* The District Director will not consider a rent change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this Exhibit. When the application and all attachments for the proposed rent change have been received (including the tenant comments when notification is required), the District Director will:

1. Review all the material submitted.

2. Provide a copy of the borrower's latest Form FmHA 1944–29, "Project Worksheet for Interstate Credit and Rental Assistance."

3. Determine if Rental Assistance is available for an eligible project on behalf of the low-income tenants.

4. When the change is requested for energy savings improvements identified in an Energy Audit, the District Director shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The District Director's determination will be made according to paragraph VI of Exhibit D of this Subpart.

5. When State Office approval is required, the District Office will submit to the State Director:

a. Appropriate recommendations on the request,

b. An indication of the number of tenants who will need rental assistance as a result of the rent changes,

c. All the material received from the borrower, including tenant comments or objections, at the end of the 20 day comment period.

d. A short narrative describing the general tone of tenant comments and concerns.

6. When a member of the District Office staff is the approval official, the documentation required by V A 5 above, will be attached to the rent change request.

7. When the borrrower has requested rental assistance, complete Form FmHA 1944–25 and forward it to the State Director.

B. *Actions by the Approval Official.* When the application, attachments and comments are received, the approval official will review the material to determine if the rent change is justified. The borrower will be notified by the approval official of the determination within 45 days from the date the "Notice to Tenants of Proposed Rent Change" is posted.

1. *Approval Actions.*

a. When a rent change is approved, the approval official will notify the borrower by using Exhibit C–2 of this subpart. The Notice letter will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise. The Notice Letter will be mailed or hand delivered to each tenant *and* posted in a conspicuous place(s).

b. When the borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944, and the purpose of the rent change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. *Disapproval Actions.* When the approval official determines an application for a proposed rent change is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reasons(s) why the rent change is not approved. The borrower will be advised of the right to file an appeal regarding the rent change disapproval according to § 1900.56 of Subpart B of Part 1900 of this Chapter. Rent changes may not be approved when any of the following circumstances exist:

a. The borrower is able but unwilling: to comply with applicable tenant eligibility requirements; the audit and reporting requirements of this Subpart; or, the conditions set forth in the borrower's loan agreement or resolution, interest credit and/

or rental assistance agreement, promissory note, or mortgage.

b. The budget for the project reflects sufficient income at the present rent structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.

c. The borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944 and the proposed rent change is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is to allow excessive profits and the proposed rent change will result in rental rates in excess of what eligible tenants can afford.

d. The State Director is able to provide rental assistance to the project and the borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205(r) of Subpart E of Part 1944; but the borrower has not applied for rental assistance within the most recent period of 180 days prior to the rent change request.

VI. Rent Changes Requiring FmHA Prior Review Only

A. Rent changes caused by increases in operating costs for taxes and utilities, which are beyond the borrower's control, may be implemented with only prior FmHA review. The changes may not be greater than the amount necessary to cover the specific tax or utility increases.

1. Prior to notifying tenants, the borrower must meet or consult with the District Director to review:

a. A new operating budget for borrower fiscal year showing:

(1) Currently approved budget.

(2) Actual income and expenses to date.

(3) Budget at new basic rents.

(4) Budget at new market rents (when applicable).

(5) Proposed Notice of Rent Change (Exb. C–3).

b. A copy of the notification to the borrower from the taxing body or vendor showing that taxes or utilities are being increased. The amount of the change or the basis on which the increased cost can be computed, must be shown in the notice.

c. Detailed calculations showing how the increased operating cost was determined.

d. An updated Exhibit A–5 to Subpart E of Part 1944 when the tenants pay their own utilities and the rent change involves increased utility costs.

e. A new energy audit or listing of deferred improvements identified in a previous energy audit that was performed within the past five-year period according to the requirements of Exhibit D of this Subpart or regulations then extant.

2. The District Director shall review the budget and supporting documentation and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to notifying each tenant of the new rents as required by State law, The borrower will:

a. Include in the notice an explanation of the increased costs which necessitated the rent change.

b. Mail a copy of the notice to the tenant at least 30 days prior to the effective date of the rent change.

c. Offer the tenants an opportunity to meet with management, discuss the rent change and review all material necessitating the change.

d. Inform the tenants of their right to request a review of the rent change approval decision within 45 days of the date of the notice by writing to the next higher FmHA approval official. Until the request is resolved, the tenants are required to pay the changed amount of rent as indicated in the Notice of Approval.

B. Rent changes decreasing or not increasing tenant's total shelter cost (rent plus utilities), may be implemented with only prior FmHA review provided:

1. Prior to notifying tenants, the borrower must meet with the District Director to review:

a. A new borrower fiscal year operating budget showing:

(1) Currently approved budget.

(2) Actual income and expenses to date.

(3) Budget at new basic rents.

(4) Budget at new market rents (when applicable).

b. Any material contributing to the change and justification for the change.

c. An updated Exhibit A–5 to Subpart E of Part 1944 when the change involves the tenant's utility allowance.

2. The District Director shall review the budget and supporting documentation, and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to any State requirements, the borrower notifies each tenant of the new rents and/or utility allowance as required by State law, and:

a. Include in the Notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants.

b. Mail a copy of the Notice to the tenant at least 30 days prior to the effective date of the rent change.

c. Offer the tenants an opportunity to meet with management to discuss the change and review any material contributing to the change.

d. Inform the tenant of their right to request a review of the rent change approval decision according to paragraph VI A 3 d of this Exhibit.

C. Rent changes to cover project operating and maintenance costs occurring in newly constructed or substantially rehabilitated RRH projects approved after November 30, 1983, may be approved with prior FmHA review only, provided:

1. The limit of rent change shall be the lesser of:

a. The actual operating cost change incurred.

b. The amount of operating cost change incurred with respect to comparable rental dwelling units serving the project's market area. When no comparable dwelling units exist in the project's market area, the FmHA approval official may approve a rent change according to the best available data regarding operating cost changes in rental units.

2. The same requirements of paragraph VI B 1 and 2 above are met.

D. When the budget and supporting documentation for any rent changes authorized by this paragraph are not acceptable to the District Director, and the District Director and the borrower cannot jointly agree on a budget based on acceptable rents, the borrower will be notified in writing to reduce or rescind the proposed rent change. The borrower will be given appeal rights as specified in Subpart B of Part 1900 of this Chapter.

VII. Unauthorized Rent Increases

When a borrower implements a rent change that does not meet the requirements of this Exhibit, the borrower will be notified in writing that: (1) The rent change has not been authorized, and (2) the rents must be rolled back to the last FmHA authorized level. Tenants affected by the unauthorized rent change will be given a rebate or credit for the unauthorized amount retroactive to the date of the unauthorized change. Those borrowers that fail to comply with the provisions of this paragraph will be handled according to § 1965.85(d) of Subpart B of Part 1965 of this Chapter.

VIII. Automatic Annual Adjustment Factors for Section 8 Units

If the approval official disapproves a rental rate change requested as a result of HUD's automatic annual adjustment factors for units receiving Section 8 assistance, or approves a rent change for a lesser amount than the change permitted by HUD, the approval official must require the borrower to deposit any excess funds into the Reserve Account. If this results in an accumulation of funds in the Reserve Account beyond the sum shown in the Loan Agreement or Loan Resolution, the interest reduction on a Section 8/515 project should be adjusted or canceled by memorandum to the Finance Office. The borrower will still be required to operate on a limited profit basis.

IX. Special Problem Cases

Problem cases which cannot be handled under this Subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

34. Exhibit C–2 is revised to read as follows:

Exhibit C–2—Notice of Approved Rent Change

Dear:

You are hereby notified that the Farmers Home Administration (FmHA) has approved a rent change for the **XXXXX** project(s). The rental changes for all rental units will become effective on **XXX, 19X.** (Insert effective date shown in Exhibit C–1 or later effective date in accordance with last paragraph of Exhibit C–1.)

(Insert Reasons for Approval)

The approved rent changes are as follows:

Project Name	Unit	Present Rent		Requested Rent		Approved Rent	
		Basic	Market	Basic	Market	Basic	Market

(Use the following required and/or optional paragraphs where applicable)

*You must notify the tenants of FmHA's approval of the rent changes by posting this letter in the same manner as the "Notice to Tenants of Proposed Rent Change." This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant.

*This rent change approval does not authorize you to violate the terms of any lease you currently have with your tenants.

**For those tenants receiving rental assistance (RA), their costs for rent and utilities will continue to be based on the higher of their adjusted monthly income or 10 percent of gross monthly income or if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the households shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

**Since RA units are not available, the approved rent change is subject to your acceptance of the units should they become available. Your application for RA units on behalf of eligible tenants has been received.

This rent change is conditioned on the requirement that you carry out energy conservation measures as detemined necessary by the project energy audit. You will be allowed **XX days for completion of the work. FmHA assistance may be available to finance any needed improvements.

*You may file an appeal regarding the rent change as approved within 45 days of the date of this notice. An appeal by you must be in writing to the appropriate hearing officer as specified in Subpart B of Part 1900 of this Chapter.

*You must inform the tenants of their right to request a review of the rent change approval decision within 45 days of the date of this notice by writing to (*insert name and address of next higher FmHA approval official*). Until the request is resolved, the tenants are required to pay the changed amount or rent as indicated in the Notice of Approval.

*Any tenant who does not wish to pay the FmHA approved rent changes may give the owner 30-days notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

FmHA Approval Official

*Required

**Optional, as applicable

35. Exhibit D is amended in the first sentence of paragraph V by removing the words "as appropriate" after the fifth comma.

36. Exhibit E is revised to read as follows:

Exhibit E.—Rental Assistance Program

I General

The objective of the rental assistance program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to Subpart E of Part 1944 of this chapter.

II Definitions

A. *Eligible Tenants.* Any very low-income, or low-income household, elderly, disabled or handicapped person, meeting the following requirements:

1. The household adjusted annual income must not exceed the very low- or low-income limit established for the area as indicated in Exhibit C to Subpart A of Part 1944 of this chapter.

2. The household must be unable to meet the approved rental rate plus utility allowance within a portion of their income described as follows:

(a) 30 percent of their adjusted monthly income; or

(b) 10 percent of gross monthly income, or

(c) If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by the agency to meet the household's shelter cost.

3. The household must meet the occupancy policy established for the project and approved by FmHA according to paragraph VI B 2 of Exhibit B of this subpart.

B. *Eligible Project.*

1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing (SCH), or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) or Subpart E to Part 1944 of this chapter, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Borrowers may utilize HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA RA for other eligible households in the same project.

3. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation, by either the dual or single track processing procedures will not be considered an eligible project for RA.

4. Borrowers may provide RA to only those eligible tenants occupying rental housing units financed by FmHA LH, RCH, or RRH funds.

C. *Operational Project.* A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants.

D. *New Projects.* Newly constructed or substantially rehabilitated RRH, RCH or LH project financed by FmHA. For Rental Assistance purposes, it further means before any units are occupied.

E. *Rental Assistance (RA).* RA, as used in this Exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV A 2 C of Exhibit B to this Subpart. When the monthly net tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to paragraph IX A 2 or this Exhibit.

F. *Shelter Cost.* The approved shelter cost consists of basic or market rent plus utility allowance, when required. Basic and/or market rent must be shown on the project budget for the year and approved according to § 1930.124 of this Subpart. Utility allowances, when required, are determined and approved according to Exhibit A–5 to Subpart E of Part 1944 of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C to this Subpart.

G. *Utility Allowances.* The allowance approved by FmHA according to Exhibit A-5 to Subpart E of Part 1944 of this chapter, to cover the cost of utilities which are payable directly by the households.

H. *Replacement Units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

III Utilization of Rental Assistance

All borrowers with eligible projects as defined in paragraph II B of this Exhibit are encouraged to utilize the RA program and receive RA payments on behalf of eligible tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV Priority of Rental Assistance Applications

A. The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

B. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this Exhibit.

1. *Replacement Units.* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each District Office during the current fiscal year and the first quarter of the following fiscal year.

2. *New Housing.* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a. Applications for RRH and RCH loans where the market survey information indicates that a large percentage of the prospective tenants need RA. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(c) of Subpart E of Part 1944 of this chapter.

b. For LH projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Operational Housing:* When the National Office provides an allocation for servicing RA units, the State Director will distribute them to operational RRH, RCH, and LH projects based on Forms FmHA 1944-25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on this exhibit and administrative directives issued by the National Office under the annual rental assistance appropriations or other authorizations or guidelines established through the budget process. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

V Processing of Rental Assistance Applications

All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. *Operational Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 30 percent of their adjusted income for rent is encouraged to file Form FmHA 1944-25 with the District Director. A separate Form FmHA 1944-25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project. (All Forms FmHA 1944-8, "Tenant Certification," must be current.)

b. Approved or proposed budget for the year on Form FmHA 1930-7, "Statement of Budget and Cash Flow," with Exhibit A-5 to Subpart E of Part 1944 of this chapter attached, when applicable.

2. Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. This request should contain all the material requested in paragarph V A 1 of this Exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944-51, "Multiple Family Housing Obligation—Fund Analysis", is received obligating the replacement units. Form FmHA 1944-51 requesting the additional units must be coded sequentially as required by paragraph V C 5.

3. The District Director will review the budget, Exhibit A-5, Form FmHA 1944-29, and Form FmHA 1944-25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944-25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. *Projects to be Funded.*

1. Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944-25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.* Only the State Director or delegated members of the State Office staff may approve or disapprove rental assistance requests.

1. *Approval Actions.* When the State Director determines that RA can be obligated or transferred, Part III of Form FmHA 1944-51, "Multiple Family Housing Obligation-Fund Analysis," for obligation, or Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the FMI. Form FmHA 1944-27, "Rental Assistance Agreement," will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal, on the day following the request.

2. *Completing Agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944-51 or Form FmHA 1944-55 to the District Director. The District Director will complete Form FmHA 1944-27, and attach the appropriate copies of Form FmHA 1944-51 or Form FmHA 1944-55 according to the FMI.

a. *Initial Agreements.* The District Director will prepare an original and two copies of Form FmHA 1944-27. When the project does not have a Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" in effect, the District Director will prepare an original and three copies. The District Director and the borrower will then execute the originals and all copies of Form FmHA 1944-27 and Form FmHA 1944-7. The forms will be distributed according to their FMIs.

b. *Replacement or Modified Agreements.* When an RA agreement initiated prior to, is replaced or modified, a new Form FmHA 1944-27 will be prepared and distributed according to the FMI. For every replacement or modification after , the original and all copies of the affected RA agreement will be notated, assembled and distributed by the District Director according to the FMI.

3. *Modification of an Existing Agreement.* After any request for a change in the amount of RA has been obligated by the Finance Office, a copy of Form FmHA 1944-51 or Form FmHA 1944-55 will be attached to Form FmHA 1944-27 and distributed according to the FMI. A new Form FmHA 1944-7 is not required.

4. *Denial of Rental Assistance Request.* If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights according to Subpart B of Part 1900 of this chapter in all cases except when RA is not available from the State's allocation or the National Reserve.

5. *Rental Assistance Agreement Numbers.*

a. Each RA agreement will be assigned a six digit Rental Assistance Agreement Number by the Finance Office as follows:

(1) First two digits—Fiscal Year (FY in which the funds were obligated, i.e., 85, 86, etc.

(2) Second two digits—Initial obligation for the project will be coded 01. Rental obligations will be coded sequentially starting with 02.

(3) Third two digits—Initial obligation will be coded 00 . Each modification where units are added to the agreement by obligation will be coded sequentially starting with 01.

b. RA agreements with units obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project, i.e., 78, 79, 80, etc.

(2) Second two digits—Will always be "00."

(3) Third two digits—Indicate the number of modifications plus 1. (RA agreement with two modifications on September 30, 1984, will be designated "03.")

c. The Finance Office will assign RA agreement number when RA is obligated on Form FmHA 1944–55. The Finance Office will also track RA agreements by number and notify the District Office on Form FmHA 1951–53, "Multiple Family Housing Transaction Record."

VI Terms of the Rental Assistance Agreement

A. *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this Exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B. Term.

1. *Twenty (20) Year Agreement.* Twenty (20 year agreements when authorized are restricted to new projects or modifications of existing twenty (20) year agreements. The agreement shall be effective for twenty (20) years from the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2. *Five (5) Year Agreement.* Five (5) year agreements may be used for operational projects, or for new projects when twenty (20) year units are not available. The agreement shall be effective for five (5) years from the effective date of the agreement. This five (5) year agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in section 1 of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3. *Modification of Agreements.* RA agreements may be modified:

a. To add or subtract RA units assigned to the project through obligation or through transfer from another rental assistance agreement;

b. To reinstate a suspended RA agreement to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multi-Family Housing program; or

c. To transfer a suspended RA agreement to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4. *Amendment of Agreement.*

a. Any existing RA agreement executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in Section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444–27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

b. Any existing RA agreement containing an occupancy standard may be amended by mutual consent of the borrower and FmHA when a new occupancy policy for the project is approved according to paragraph VI B 2 of Exhibit B of this Subpart. To amend the agreement:

(1) Delete Section 5 of the original agreement and the borrower's copy and have the deletion dated and initialed by the appropriate FmHA offical and the person(s) authorized to sign for the borrower.

(2) Type the following statement on the reverse of the original agreement and the borrower's copy and have the statement dated initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower.

"Amended (date) by authority of paragraphs VI B 4 of Exhibit E and VI B 2 a of Exhibit B to Subpart C of part 1850, Chapter XVIII, Title 7, Code of Federal Regulations."

5. *Replacement Agreements.* Replacement RA agreements for either 5-year or 20-year agreements will be for a five (5) year period. All requirements in paragraph VI B 2 and 3 of this Exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for one month so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII Recordkeeping Responsibilities

A. the State Director will maintain Form FmHA 444–28, "Record of Rental Assistance Agreements." Any changes which are made in the number of rental units assisted will be recorded on Form FmHA 444–28.

B. The Finance Office (FO) will track the use of RA and ensure that RA is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the District Director with an RA payment and obligation status report for each project. The annual version of this report will be filed in Position 2 or the project case file and maintained indefinitely.

C. The District Director will notify the borrower to apply for replacement RA units when the RA Undisbursed Balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

D. Information on FmHA Rental Assistance on Form FmHA 2033–42, "Multi-Family Housing Information Status Tracking and Retrieval System," (MISTR) regarding balance of RA funds must be updated annually at the end of each fiscal year by the District Director and State Director.

VIII Responsibilities of Borrower in Administering the Rental Assistance Program

The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A. RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B. The borrower must submit Form FmHA 1944–8 "Tenant Certification," for each tenant as required in paragraph VII F of Exhibit B to this Subpart (Management Handbook)

C. The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of Exhibit B to this Subpart (Management Handbook).

D. Borrowers utilizing RA must comply with § 1930.124 of this Subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of Exhibit B to this Subpart (Management Handbook).

F. The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to Subpart B of Part 2012 (available in any FmHA Office).

IX Handling Utility allowances

A. *Payment of Utilities.*

1. When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the portion of income cited in paragraph II A 2 (a) or (b) or (c) of this exhibit.

2. When utilities are paid by the household receiving RA and the portion of income cited in paragraph II A 2 or (b) or (c) of this exhibit is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and one of those limits of the household's adjusted monthly income.

3. In a project where the owner pays all utilities, the tenant rent will be the portion of income cited in Paragraph II A 2 (a) or (b) or (c) of this exhibit up to the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A–5 to Subpart E of Part 1944 of this chapter.

C. *Changes in Allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual

basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C to this Subpart.

X Method of Payment of Rental Assistance to Borrower

A. Regular monthly rental assistance payments.

1. *Borrower Responsibilities.*

a. Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," and the remaining balance must be submitted to the District Office. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, an RA check for the excess will be issued by the Finance Office.

b. Each month the borrower must forward to the District Director a separate Form FmHA 1944–29 and any new Form FmHA 1944–8, for each project according to the instruction attached to the form.

2. *District Director Responsibilities.*

a. When a Form FmHA 1944–29 and new Form FmHA 1944–8 are received, the District Director will:

(1) Review Form FmHA 1944–8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

(2) Review Form FmHA 1944–29 and ensure that entries are supported by the current Form FmHA 1944–8.

(3) Submit the borrower's payment and payment data to the Finance Office using Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal."

b. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office record. When the address shown is incorrect, Form FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics" will be prepared and the Finance Office record corrected via a field computer terminal. File Form FmHA 1944–50 in the borrower casefile.

B. When a project loan account is delinquent, the District Director should counsel with the borrower and develop a servicing plan in accordance with § 1965.85(b) of Subpart B of Part 1965 of this chapter. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operation. This amount will be shown in the "Amount of Rental Assistance Check" block on Form FmHA 1944–9. The check will be delivered to the District Director.

2. The RA Check may be released to the borrower according to the servicing plan.

C. An RA payment request must be based on actual occupancy as of the first day of the month, except for the initial month of rent-up in a new project. During the initial month of participation by a new project in the RA program, the borrower must collect RA on a prorata basis for eligible tenants occupying the project. This initial RA request may be submitted with the borrower's first payment and subtracted from the payment due.

XI Assigning Rental Assistance to Tenants

A. *New Project.* Applications for occupancy should be accepted during the construction phase of the project and placed on a waiting list. During initial rent-up period the following priorities will apply:

1. Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for applicant households who qualify for RA as defined in paragraph II A of this Exhibit. Applicants qualifying for RA will be considered according to the priority established by paragraph XI B, by-passing those applicants on the waiting list whose income is above the low-income limits for the area. The balance of the apartment units will be rented simultaneously to other applicants on a first come, first served basis.

2. If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may consider requesting a transfer of unused RA units in accordance with Paragraph XV B 5 of this chapter. Applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until unused RA units are transferred.

3. If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come first-served basis.

B. *Operational Project.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944–29 must be updated as of the date the unit is available, assuring that columns 3 through 9 are current and accurate.

1. First priority for assigning RA must always be given to eligible very low-income households in the following order:

a. *Eligible very low-income tenants* paying the highest percentage of adjusted annual income for approved shelter costs.

b. *Eligible very low-income applicants from waiting list.* Very low-income applicants will be selected from the waiting list on a first come, first served basis as provided in paragraph VI E of Exhibit B to this Subpart. No eligible tenant household in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA, to move in.

2. Second priority for assigning RA will be given to eligible households with *low-income* in the following order.

a. *Eligible low-income tenants* paying the highest percentage of adjusted annual income for approved shelter cost.

b. *Eligible low-income applicants from waiting list.* Low-income applicants will be selected on a first come, first served basis according to paragraph VI E of Exhibit B of this Subpart, provided the borrower has satisfied the requirements of paragraph XI C of this Exhibit.

3. Third priority for RA will be given, with State Director approval, to occupancy ineligible tenants living in the project. The occupancy requirements of paragraph VI B 2 of Exhibit B of this subpart must be met.

4. When the project has vacancies and RA is not available, an applicant who is eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA according to paragraph XI B of this Exhibit. If the applicant elects not to accept occupancy because RA is not available, their application will retain its priority date on the waiting list if the rental agent determines that a hardship to the applicant will exist according to paragraph VI E 2 of Exhibit B to this Subpart.

5. Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for rental assistance and there is a RA agreement in effect.

C. *Limits on Low-Income Applicants Which May Receive Occupancy and RA.*

1. When no more very low-income applicants are on the waiting list *and RA is available,* eligible low-income applicants may obtain occupancy and receive RA provided that:

a. For projects available for initial occupancy prior to November 30, 1983, no more than 25 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

b. For projects available for initial occupancy on or after November 30, 1983, no more than 5 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

2. The borrower may rent units and provide RA to other than very low income applicants/tenants in excess of the percentages in XI C 1 a and b above, respectively, when no more very low-income applicants/tenants are in the market area. The borrower must have in its file and available to FmHA or its representative documentation that shows the efforts made, and the facts used to determine that there are no more very low-income applicants in the market area.

D. *Assigning Rental Assistance Other Than The First of The Month:*

1. When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

2. When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the pro rata amount for ½ month would be $60.]

3. When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form FmHA 1944–29 for that month will be made. The tenant will begin to receive the benefits of RA as of the first day of the next month.

4. No adjustment will be made on Form FmHA 1944–29 to request additional RA

payment or to refund any excess RA payment or overage when RA is reassigned other than the first of the month.

XII Rental Assistance Assigned to Wrong Household

When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be cancelled and reassigned. Incidents involving incorrect reporting are addressed in paragraph IX C of Exhibit B to this subpart (Management Handbook).

A. Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due date after the end of the 30 day notice period. The tenant will also be notified in writing that:

1. The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2. The RA granted in error will not be recaptured.

3. The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review the borrower must give the tenant appeal rights under Subpart L of Part 1944 of this chapter.

B. Reassigning rental assistance:

1. The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944–29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

2. If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944–29 and the priorities in paragraph XI of this Exhibit.

XIII Rental Assistance Payment Cancellation

When a RA check must be cancelled, the following procedure will be followed:

A. *Return of the original rental assistance Treasury Check:* The District Office will prepare Form FmHA 1944–53, as specified in the FMI and mail it to the MFH Unit in the Finance Office.

B. *Return of all or a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration (FmHA) will be submitted to the MFH Unit in the Finance Office on Form FmHA Form 1944–53, completed according to the FMI.

XIV Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years

A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office. The Finance Office will notify the District Office on Form FmHA 1951–51, "Multiple Family Housing Transaction Record." The District Office will notate Form FmHA 1944–27 according to the FMI to indicate that a termination has occurred. The District Director will notify the borrower in writing that the obligation under the RA agreement number has expired and the RA agreement number must be stricken from the agreement.

1. *For all RA obligations before FY 1985.* RA is considered fully disbursed by the Finance Office when all RA funds obligated before FY 1985 are disbursed.

2. *For all RA obligations after FY 1984.* RA is considered fully disbursed by the Finance Office when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3. When an RA agreement (Form FmHA 1944–27) consists of several different obligations (Form FmHA 1944–51, Part III, or Form FmHA 1944–55) identified by different RA agreement numbers, and the obligations will not be fully disbursed at the same time, only those RA agreement numbers with fully disbursed obligations will be terminated.

B. Prior to Full Disbursement of Obligated Funds:

1. *Prior Fiscal Year Obligations.* Prior fiscal year (FY) obligations *will not* be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2. *Current Fiscal Year Obligations.* The State Director is authorized to terminate RA agreements prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV Suspending or Transferring Existing Rental Assistance Agreements

A. RA may be suspended or transferred according to the requirements for each situation described in Paragraph XV B and the following:

1. *Suspension.*

a. The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in Paragraph XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of this suspended RA.

b. The District Director will notify the borrower in writing and the Finance Office by memorandum.

c. After notification, the Finance Office will suspend all RA payments to the affected project.

d. The State Director may reinstate the RA to the same borrower in the same project, by memorandum to this Finance Office.

2. *Transfer.*

a. Only the State Director may approve a RA transfer.

b. RA may be transferred to any borrower with an RA eligible project according to the priorities established by this Exhibit or the National Office.

c. The amount of RA which may be transferred must be:

(1) A specific unit and dollar amount. The dollar value of each RA unit to be transferred will be determined by dividing the transferring project's total remaining RA obligation(s) balance in the transferring RA agreement by the total number of obligated RA units in the RA agreement.

(2) A unit and dollar value equal to or less than those shown on the current RA agreement for the transferring project. For example, a portion of an RA agreement unit and remaining obligation dollar value may be transferred.

d. RA units identified by different RA agreement numbers must be transferred with separate RA agreement numbers on Form FmHA 1944–55.

e. When the State Director approves an RA transfer, Form FmHA 1944–55 completed according to the FMI, will be used to notify the Finance Office except as noted in Paragraph XV B 1 below.

f. Form FmHA 1044–27, with Form FmHA 1944–55, attached will be completed according to the FMI for each transferee. The transferors' RA agreement will be modified by attaching a copy of Form FmHA 1944–55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B. RA may be suspended and/or transferred in the following situations according to the following directions:

1. *RA transfer accompanying a loan transfer.* When a loan is transferred to an eligible borrower, the transferee may assume the transferor's RA agreement. The RA will be transferred using Form FmHA 1944–55 which will be forwarded to the Finance Office with Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement" as required in § 1965.65(c)(11) of Subpart B of Part 1965 of this chapter.

2. *Suspension and transfer after a voluntary conveyance.* When a project with RA is voluntarily conveyed to the Government, the RA will be suspended rather than cancelled. When Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgage Real Estate Acquired" is sent to the Finance Office, Form FmHA 1944–55 must be attached indicating the Code 4 status of the suspended RA units according to the FMI. If the project is sold through a credit sale within the program, the suspended RA may be transferred to the project's new borrower, or a different project if it is not needed.

3. *Suspension and transfer after a liquidation.* When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project.

4. *Suspension and transfer or reinstatement due to a servicing action.*

a. When servicing a project's account according to § 1965.85 of Subpart B of Part

1965 of this chapter and the account is accelerated, the RA will be suspended and either:

(1) Transferred with the project to a new borrower when all appeals and redemption periods of the defaulting borrower have expired and a credit sale is to be completed, or

(2) Transferred to a different project if the defaulting project is subsequently sold outside the program, or

(3) Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

b. The borrower will be apprised of the appeal rights available under subpart B of Part 1900 of this chapter upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

5. *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a. The borrower demonstrates that:

(1) The original market survey completed according to Exhibit A–6, Subpart E of Part 1944 of this chapter clearly indicates no significant need for rental housing by households in the market area that would require RA for occupancy, and that there are no eligible tenants in the project not receiving RA or there are no eligible applicants on the waiting list who could use RA when obtaining occupancy. The State Director may require a new market survey for the project to make this determination if the original market survey does not adequately address potential very low-income tenants in the area, or does not reflect current market conditions.

(2) When the market survey indicates that there is a significant need for rental housing by households in the market area that would have required RA for occupancy but all or a substantial portion of the RA units available remain unused after a two year period since initial availability, the borrower must demonstrate that:

(i) A good faith effort was made to market the project to RA eligible applicants;

(ii) The waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) Project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(3) Rent increases anticipated for the following two years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b. The District Director recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of Paragraph XV B 5 of this exhibit have been met.

b. *Transfer due to an uncloseable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may be transferred except as provided under the conditions of § 1944.235(b) of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior fiscal year must be cancelled and will be lost *unless* the conditions of § 1944.235(b) of Subpart E of Part 1944 of this chapter exist.

XVI. Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration

A. Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by Farmers Home Administration, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA as specified in subpart B or Part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borrower denial of RA to tenants will be handled according to Subpart I, of Part 1944 of this chapter.

XVII. Forms and Exhibits

Exhibit A–5 to Supbart E of Part 1944 of this chapter and Form FmHA 1944–7 are to be used in determining the amount of rental assistance to be provided.

37. In addition to the amendments set forth above, 7 CFR Part 1930 is amended by removing the words "45 days" and inserting the words "60 days" in the following places:

(a) Section 1930.124 (b) introductory text;

(b) Exhibit A–1, paragraph IV B 1 c; item 5. of the Evaluation Checklist for Audit Reports, and item 3. of the Example Audit Review Letter;

(c) Exhibit B–7, wherever it appears under the column entitled "Due dates."

PART 1944—HOUSING

38. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.182 [Amended]

39. Section 1944.182 is amended in the fifth sentence by changing "Form FmHA 444–8" to "Form FmHA 1944–8."

§ 1944.200 [Amended]

40. Section 1944.200 is amended in the first sentences of paragraphs (a)(1) and (a)(2) by adding the words "very low-," before the words "low- and moderate-income . . ."

41. Exhibit A is amended in the first sentence of the second paragraph by adding the words "very low- and" before "low-income farmworkers."

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

42. Section 1944.205 is amended by revising paragraphs (b), (c), the title of paragraph (d), the introductory paragraph of paragraph (f), paragraphs (f)(2), (f)(3), (f)(4), (f)(5), (i) and (j), and by adding paragraph (cc) to read as follows:

§ 1944.205 Definitions.

* * * * *

(b) *Elderly (Senior Citizen).* A person who is 62 years of age or older. The term elderly, or senior citizen, also means persons with the following handicap or disabilities, regardless of age:

(1) *Handicapped.*

(i) Inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:

(A) can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months, and

(B) substantially impedes his or her ability to live independently, and

(C) is of such a nature that such ability could be impaired by more suitable housing conditions.

(ii) In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as determined in Section 223 of the Social Secuity Act), inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time.

(2) *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

(i) is attributable to a mental or physical impairment or combination of mental or physical impairment;

(ii) is manifested before the person attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in three (3) or more of the following areas of major life activity:

(A) self-care,

(B) receptive and expressive language,

(C) learning,

(D) mobility,

(E) self-direction,

(F) capacity for individual living,

(G) economic self-sufficiency, and

(v) reflects the person's need for a continuation and sequence of special, interdisciplinary or generic care or treatment, or for other services which are of lifelong or extended duration and

are individually planned and coordinated.

(c) *Resident assistant.* A person(s) residing in a housing unit who is essential to the well-being and care of the elderly, disabled or handicapped person(s) residing in the unit and who is not related by blood, marriage, or operation of the law to these tenants. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant. The resident assistant receives compensation from sources other than FmHA.

(d) *Very low, low or moderate income household.* * * *

* * * * *

(f) *Eligible occupants.* Eligible occupants in a project may be either the elderly, disabled, handicapped, or very low-, low- and moderate-income households, or any combination thereof, as planned for the project and shown on the applicant's loan resolution or loan agreement, and who comply with the occupancy policy of the borrower as governed by the provisions of paragraph VI B 2 of Exhibit B to Subpart C of Part 1930.

* * * * *

(2) For a direct loan or a loan developed under Plan I, be:

(i) an elderly, handicapped or disabled person with a very low-, low- or moderate-income, or

(ii) Any household with a very low- or low-income.

(3) for loans developed under Plan II, be persons with a very low-, low- or moderate-income.

(4) For all other loans be persons with a very low-, low- or moderate-income or elderly, handicapped or disabled without regard to income.

(5) In the case of cooperative housing projects all members (tenants) must be very low-, low- or moderate-income; however, any tenant who is admitted as an eligible tenant of the cooperative may not subsequently be deprived of her/his membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit C of Subpart A of Part 1944 of this chapter.

* * * * *

(i) *Related facilities.* Related facilities may consist of community rooms or buildings, site manager's apartment unit, cafeterias, dining halls, appropriate recreation facilities, and other essential service facilities such as central heat and cooling, sewerage, light systems, ranges and refrigerators, clothes washing machines and clothes dryers, and a safe domestic water supply. Under special conditions, such as a congregate housing project or a project housing handicapped tenants, space may be provided for cafeterias, dining areas, an infirmary, therapy room, special bathing room, and other special areas needed by the elderly and the handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan to equip these facilities. When ranges, refrigerators, dish washing machines, dish dryers and other kitchen equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(j) *Project.* A project is the total number of rental housing units in one community such as a densely settled area, town or village, operated under one management plan with one loan agreement or resolution.

* * * * *

(cc) *Elderly family.* A household where the tenant or co-tenant is 62 years of age or older, handicapped or disabled as defined in § 1944.205(b). An elderly family may include a person(s) younger than 62 years of age who is essential to the elderly handicapped or disabled person's care and well-being. (To be eligible to receive an elderly family deduction the elderly, handicapped or disabled person must be the tenant or co-tenant.)

43. Section 1944.211 is amended by adding paragraph (c) to read as follows:

§ 1944.211 Eligibility requirements.

* * * * *

(c) *Eligibility of tenants.* Eligibility requirements for tenants are specified in Exhibit B to Subpart C of Part 1930 of this chapter.

§ 1944.215 [Amended]

44. Section 1944.215(i)(4) is amended by inserting "very low-" between the words "eligible" and "low- and moderate-income."

45. Section 1944.235 is amended by revising paragraph (i)(1) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(i) * * *

(1) The District Director will review the applicant's marketing plan to determine that it is complete with all supplemental information provided. If it is determined that the plan should be modified before marketing activity begins, approval of the modification must be granted by the respective loan approval official. The District Director will review the approved project operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, a rent change will be made according to paragraph VI C of Exhibit C of Subpart C of Part 1930 of this chapter.

* * * * *

46. Exhibit B is amended by revising paragraphs IV A 1, IV B 1, IV F and VIII to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

IV. * * *

A. * * *

1. Borrowers operating under this plan must agree to limit occupancy of the housing to very low- or low-income nonelderly and very low-, low- and moderate-income elderly, disabled or handicapped persons.

* * * * *

B. * * *

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, persons, and elderly, disabled and handicapped persons of very low-, low- and moderate-incomes. Under Plan II, interest credits are based on the cost of operating the project and the size and income of the household.

* * * * *

VI. * * *

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant's eligibility may be found in paragraph VI B of Exhibit B to Subpart C to Part 1930 of this chapter (Multiple Housing Management Handbook).

* * * * *

VIII. *TENANT CERTIFICATION*

Tenant certification and recertification for interest credit borrowers will be performed according to paragraph VII of Exhibit B to Subpart C to Part 1930 of this chapter.

* * * * *

47. In addition to the amendments set forth above, 7 CFR Part 1944, Subpart E is amended by changing the references from "Form FmHA 444–8" to "Form FmHA 1944–8" in the following places:

(a) Exhibit B, paragraph IV B 2 c;

(b) Exhibit H, paragraph VII.

48. In addition to the amendments set forth above, 7 CFR Part 1944, Subpart E is amended by changing the references from "Form FmHA 444–29" to "Form FmHA 1944–29" in the following places:

Exhibit B, paragraphs IV B 2 d, the introductory paragraph of paragraph IX and paragraph IX A 2.

49. In addition to the amendments set forth above, 7 CFR Part 1944, Subpart E is amended by changing the references from "Form FmHA 444–7" to "Form FmHA 1944–7" in the following places:

Exhibit B, paragraphs II B, VI D, VII A, and VII C.

50. In addition to the amendments set forth above, 7 CFR Part 1944, Subpart E is amended by changing the references from "Form FmHA 444–9" to "Form FmHA 1944–9" in the following places:

Exhibit B, the introductory paragraph of paragraph IX and paragraph IX A 2.

PART 1965—REAL PROPERTY

51. The authority citation for Part 1965 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

52. Section 1965.65(c)(6) is amended by changing the reference from "Form FmHA 444–8" to "Form FmHA 1944–8."

Dated: April 30, 1985.

F.W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 85–16700 Filed 7–15–85; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Modification of General Design Criterion 4 Requirements for Protection Against Dynamic Effects of Postulated Pipe Ruptures

Correction

In FR Doc. 15756, beginning on page 27006, in the issue of Monday, July 1, 1985, make the following corrections:

1. On page 27006, in the third column, first complete paragraph, twelfth line, "flows" should read "flaws".

2. On page 27007, in the first column, second paragraph, third line, "appled" should read "applied".

3. On page 27007, in the first column, third paragraph, seventh line, "fast" should read "last".

4. On page 27007, in the second column, first complete paragraph, the colon at the end of the last line should be replaced with a period.

5. On page 27008, in the second column, fifth complete paragraph, sixth line, "he" should read "the".

6. On page 27008, in the third column, under the heading

Availability of Documents:

a. In the first line of paragraph 1, "CR–106" should read "CR–1061".

b. In the first line of paragraph 5, "CR–21189" should read "CR–2189".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–66–AD]

Airworthiness Directives; Boeing Model 747 Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) that requires inspection of trailing edge flap tracks for corrosion and cracking on certain Boeing Model 747 airplanes. This amendment would incorporate increased inspection intervals on the condition the maximum operational flap setting is reduced to 25 degrees. Investigations have shown that this may be accomplished without adversely impacting safety.

DATES: Comments must be received on or before September 9, 1985.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–66–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–66–AD, 17900 Pacific Highway South, C–68968, Seattle, Washington 98168.

Discussion

Amendment 39–4745 (48 FR 48220; October 18, 1983), AD 83–21–02, requires repetitive inspection of trailing edge flap tracks for corrosion and cracking. The corrosion is caused by the accumulation of water in the aft end of the flap track cavity. Extensive cracking that originates from the corrosion could result in separation of the flap under some conditions, and the resultant trajectory of the flap could cause it to damage the horizontal stabilizer, jeopardizing continued safe flight.

The manufacturer has since conducted tests and analyses and has determined that operation of airplanes with flaps not exceeding 25 degrees reduces the loads on the flap tracks and reduces crack growth rate. Boeing issued a revision to the service bulletin that describes an alternate operating procedure and corresponding inspection programs.

This proposed amendment would incorporate the manufacturer's alternative increased external visual inspection intervals on the condition that the maximum operational flap setting is reduced to 25 degrees. These inspection intervals could be further increased if a magnetic particle or penetrant inspection method is used in conjunction with the maximum flap setting of 25 degrees. Also, the X-ray inspection interval may be increased by accomplishing additional visual inspections and/or by determining if corrosion progression has been arrested.

These new inspection intervals and procedures are defined in Boeing Service Bulletin 747–57A2225, Revision 2, dated April 12, 1985. The existing inspection intervals specified in Amendment 39–4745 (48 FR 48220; October 18, 1983), AD 83–21–02, remain

in effect until this proposed amendment becomes a Final Rule.

Inasmuch as this Amendment would merely offer alternative inspection intervals and inspection techniques, it will not impose any additional regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By amending AD 83-21-02, Amendment 39-4745 (48 FR 48220; October 18, 1983) by revising paragraphs E. and F. to read as follows:

E. Concurrent with the modification of paragraph D., above, perform an internal borescope inspection of the flaptrack in accordance with procedures defined in Boeing Alert Service Bulletin 747-57A225, Revision 1, or later FAA approved revision, to determine if corrosion exists. If corrosion or pitting is found, determine its extent by accomplishing the track web X-ray inspection specified in the service bulletin.

1. Perform repeat external inspections for cracks or corrosion penetration through track webs at the intervals shown in the following Table II:

TABLE II

Maximum flap setting used for landings	Internal corrosion classification	Maximum external inspection intervals (landings)	
		Visual inspection	Magnetic particle or penetrant inspection
25° (a)	Heavy	200	250
	Moderate	400	450
	Light	600	850
30°	Heavy	50	65
	Moderate	100	115
	Light	250	265

(a) Quadrant and alternate extension system must be modified to block off selection of flaps 30°.

F. Repeat the X-ray inspection specified in paragraph E. in accordance with Boeing Alert Service Bulletin 747-57A2225, Revision 1, or later FAA approved revision, on tracks indicating medium or light internal web corrosion at intervals not exceeding one year or until heavy web corrosion is indicated, whichever occurs first. This twelve month inspection interval may be extended to fifteen months, provided a monthly repeat visual inspection is initiated at the twelfth month and continued until the X-ray inspection is accomplished. When the classification of the internal corrosion changes then the inspection interval changes as indicated in paragraph E(1), above. If the previous two X-ray inspections show that corrosion progression has been arrested, the X-ray reinspection internal may be increased from 12 to 24 months until subsequent X-ray inspections indicate noticeable corrosion progression. At that time, the interval for X-ray inspection shall revert to 12 months.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 9, 1985.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

FR Doc. 85-16829 Filed 7-15-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-1]

Proposed Establishment of Airport Radar Service Areas

Correction

In FR. Doc 85-15668 beginning on page 27528 in the issue of Wednesday, July 3, 1985, make the following corrections:

On page 27534 in the second column, under "Anchorage International Airport, AK [New]" in the fourth line from the bottom "MXL" should read "MSL".

On page 27535 in third column, under Harrisburg International Airport, in the fourth line "D.P." should read "C.P.".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 85-ASO-8]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85-15660 beginning on page 27013 in the issue of Monday, July 1, 1985, on page 27014, third column, tenth line down now reading "V-578—[Amended]" should read "V-578—[New]".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 50584-5084]

United States Geostationary Operational Evironmental Statellites (GOES) Data Collection System (DCS)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Geostationary Operational Environmental Satellites (GOES) Data Collection System (DCS) has extra capacity which has been made available to non-NOAA users for the collection from remote locations of environmental data provided that NOAA, another Federal agency, or a state or local government has an interest in or requirement for obtaining these data and that no adequate alternative commercial service exists. This revision of NOAA's regulations for utilizing this excess capacity of the GOES DCS is necessary because the GOES DCS ground system is approaching saturation and more careful use must be made of it. Also, the revision clarifies that use of the GOES DCS may be allowed when an alterantive commercial service exists but involves significant additional cost to the government. Finally, the revision updates organizational references.

DATE: Comments must be received by August 15, 1985.

ADDRESS: Written comments should be sent to Douglas MacCallum, Chief, Data Collection and Direct Broadcast Branch (E/SP21), National Environmental Satellite, Data and Information Services, National Oceanic and Atmospheric Administration, Room 806, World Weather Building, Washington, D.C. 20233. Telephone Number (301) 763-8325.

FOR FURTHER INFORMATION CONTACT: Douglas MacCallum (301) 763-8325 at address given above.

SUPPLEMENTARY INFORMATION: The GOES DCS is a communications system for collecting and transmitting data from remote data collection platforms (DCP's) via a government-owned geostationary satellite, the primary purpose of which is the collection of environmental data, in particular meteorological, hydrological, and oceanic data.

I. Use of Channel Resources

NOAA has published regulations on the administration and operation of the GOES DCS at 15 CFR Part 911. These regulations establish the NOAA policy that the GOES DCS will be made available to non-NOAA users who own or operate DCP's for the collection of environmental data useful to federal agencies or state or local governments. All users have to agree to permit NOAA and other federal agencies free and open use of data collected except under certain specified conditions where private users can agree with NOAA to have data treated in a proprietary manner.

The NOAA GOES DCS ground system (but not the space system) is nearing saturation and no expansion of the ground system is planned for several years. Of the eighty available channels, 73 are in active use and 4 others already have been allocated. In order for NOAA to properly monitor the GOES DCS to ensure system integrity, all data relayed through the system must be received by the NOAA GOES DCS ground system. Once ground system saturation is reached, users wanting to enlarge their DCP networks will have to delay this enlargement until the NOAA ground system is expanded.

In order to more fairly distribute the impact of ground system saturation on the user community, federal agencies or a state or local government sponsoring new private GOES DCS users must share their existing channel resources with the new user they are sponsoring. Also, as ground system saturation nears, the agency sponsoring a new GOES DCS user must realize that channel resources not previously assigned may be allocated to that user and thus not be available for their future use.

II. Use of Alternative Private Carriers

Section 911.2(a) which precludes the use of the GOES DCS when "adequate" private common carrier communications exist, does not discuss cost as a factor. Of course the use of a commercial system will involve some cost to the user, but may also involve additional cost to a federal agency which needs the data, i.e. to tap into the common carrier. Where a federal agency has an urgent need for certain data, it seems inappropriate to preclude the collector from using the government system. The Government built and paid for the DCS and should not have to pay more for data the system is built to collect. NOAA never intended to preclude users under these conditions and this interpretation is clarified in this amendment. It allows use of the DCS unless a carrier arranges to make relevant data available to NOAA at no additional cost, e.g. by relaying these data.

III. Organizational References

The National Environmental Satellite, Data, and Information Service now is the NOAA element responsible for its environmental satellites and for the GOES DCS. The present revision reflects this change, particularly in new § 911.1(b)(3) which also explicitly authorizes redelegation of some functions.

IV. Other Actions Associated with the Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

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

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

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The proposed regulations revise existing regulations to ensure fair allocation of frequency resources for a limited period and to ensure against subsidization of private industry at taxpayer expense. The regulations will not result in any direct economic or environmental effect nor will they lead to any major indirect economic or environmental impacts.

(B) Administrative Procedure Act and Regulatory Flexibility Act Analysis (5 U.S.C. 553 and 601 et seq.)

This proposed rule is a matter relating to contracts because it determines who may enter into agreements with Federal agencies for use of channel resources in the GCOS DCS. Thus, it is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2). Therefore, the Regulatory Flexibility Act does not apply since the rule is not required to be published as a proposed rule. An initial Regulatory Flexibility Analysis was not prepared.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

The existing regulations at 15 CFR Part 911 contain certain information requirements which have not been reviewed by the Office of Management and Budget. These information requirements are being reviewed at this time and comments on them should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce, The National Oceanic and Atmospheric Administration. The amendments do not impose any additional information requirements and do not require any increase in reporting on the part of any affected party.

(D) National Environmental Policy Act

Publication of the proposed regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

V. Final Rules

NOAA will issue final rules after the comments received in response to the Notice have been evaluated.

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

Dated: May 17, 1985.

John H. McElroy,

Assistant Administrator.

Accordingly, 15 CFR Part 911 is amended as follows:

PART 911—[AMENDED]

1. The authority cite for Part 911 continues to read as follows:

Authority: 15 U.S.C. 313; 49 U.S.C. 1463; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

§ 911.1 [Amended]

2. Adding a new § 911.1(b)(3) to read:

* * * * *

(b) * * *

(3) For purposes of this part, "Assistant Administrator" means the Assistant Administrator for Environmental Satellite, Data, and Information Services or his/her designee.

§ 911.2 [Amended]

3. Revising §§ 911.2 (b) and (c) to read:

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, the GOES DCS is not to be used for data collection where adequate private common carrier communications exist to provide the service. (Adequate is defined in terms of capacity, speed and reliability with respect to the particular use envisioned.) A user must document, with a request for use of the GOES DCS, why private common carrier communications are not adequate.

(2) NOAA may authorize the use of the GOES DCS for environmental data collection critical to a federal program where adequate common carrier communications exist when use of the common carrier would substantially increase the cost to the federal program of collecting these data.

(c) A user must identify the Federal agency or State or local government which will benefit from the proposed collection of data. NOAA will confirm with the identifed sponsor that these data are required by it and that the sponsor is willing to share with the user any frequency channel resource allocated to it.

* * * * *

§ 911.3 [Amended]

4. Deleting the words "for Satellites" wherever they follow "Assistant Administrator" in §§ 911.3 (c)(1), (d)(1), (e)(g)(2) and 911.5(c).

§ 911.5 [Amended]

5. Substituting "Director, Office of Satellite Data Processing and Distribution" for "Director of Data Services for the National Earth Satellite Service" in § 911.5(c).

[FR Doc. 85-16713 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2864-9]

Federal Assistance Limitations and Construction Moratorium; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: USEPA is withdrawing a notice of proposed rulemaking that was published in the August 3, 1983, **Federal Register** (48 FR 35327), and that proposed sanctions for nonimplementation of Inspection and Maintenance (I/M) in southeastern Wisconsin. USEPA proposed to impose Federal funding and construction restrictions, as authorized by sections 176(b) and 173(4) of the Clean Air Act, because Wisconsin had failed to implement an I/M program by the required date of January 1, 1983. However, on April 2, 1984, the Wisconsin I/M program became fully operational in southeastern Wisconsin. USEPA published a notice of final rulemaking approving the program on February 25, 1985 (50 FR 7593). Therefore, USEPA's August 3, 1983 (48 FR 35327), finding of nonimplementation is no longer valid, and USEPA is withdrawing its proposal to impose sanctions.

DATE: This action will be effective on August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: The Wisconsin SIP contains a commitment, and the legal authority, to implement a contractor-operated, centralized motor vehicle inspection and maintenance (I/M) program in the Milwaukee extension area by January 1, 1983 (May 6, 1981; 46 FR 25297-25298). Because the State failed to implement an I/M program by that date, USEPA published a **Federal Register** notice on August 3, 1983 (48 FR 35327), proposing to find that Wisconsin was no longer implementing the Ozone/Carbon Monoxide (CO) SIP for this area. USEPA also stated in that notice that, if the Agency took final action confirming this finding, then funding limitations and a construction moratorium would apply. These restrictions are authorized by sections 176(b) and 173(4) of the Clean Air Act, and are imposed when a State fails to carry out an approved SIP.

However, USEPA also noted in the August 3, 1983 (48 FR 35327), notice that Wisconsin had made progress toward implementation of an I/M program. On December 10, 1982, the Wisconsin Department of Transportation (WDOT) signed a contract with Hamilton Test Systems for the operation of a centralized I/M program in southeastern Wisconsin. The contract called for an April 2, 1984, program start-up date.

Wisconsin's I/M program did, in fact, begin operation on April 2, 1984. On June 11, 1984, the Wisconsin Department of Natural Resources (WDNR) requested that USEPA finally approve the I/M element of the 1982 Ozone/CO SIP revision. On February 25, 1985 (50 FR 7593), USEPA published a notice of final rulemaking approving Wisconsin's I/M program. USEPA has determined that the program meets all Federal I/M program requirements. In addition, since Wisconsin's I/M program is now fully operational, USEPA's proposed finding of nonimplementation (August 3, 1983; 48 FR 35327) is no longer valid. Therefore, USEPA withdraws the August 3, 1983, notice of proposed rulemaking.

Dated: June 11, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-16848 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 86

[AMS-FRL-2864-7]

Public Workshop on Test Procedures for Trap-Based Particulate Standards and the Use of Fuel Additives for Particulate Trap Regeneration Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public workshop.

SUMMARY: This notice announces a public workshop on: (1) The need for modifications to the current test procedures for light- and heavy-duty diesels resulting from the promulgation of trap-based particulate standards and (2) the use of diesel fuel additives as a means of particulate control. In particular, the workshop will examine the treatment of emissions during trap regeneration and the measurement of particulate at low emission levels. In addition to these test procedure related issues, the workshop will also examine the types of fuel additive projected to be

used and EPA's policy towards their use. Information is solicited from those parties possessing technical information or data on the topics identified in this notice. Comments on other subjects related to potential test procedure modifications associated with the trap-based standards are also requested.

DATE: The Workshop will be held on July 29, 1985, at 10:00 a.m. at the U.S. Environmental Protection Agency in Ann Arbor.

ADDRESS: The Workshop will be held in the conference room of the Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Rebecca Kanner (SDSB-12), U.S. Environmental Protection Agency, Emission Control Technology Division, Ann Arbor, Michigan, 48105, (313) 668-4361.

SUPPLEMENTARY INFORMATION: Federal standards for particulate emissions from light-duty diesel vehicles decrease to 0.20 g/mi for 1987 and later model year passenger cars and to 0.26 g/mi for 1987 and later year light-duty trucks; heavy-duty diesel engine particulate standards decrease to 0.10 g/BHP-hr for urban buses and 0.25 g/BHP-hr for all other heavy-duty diesel engines in 1991. In order to meet these standards diesel manufacturers have indicated that they will use particulate traps in their control strategies. Some manufacturers have also expressed their intent to use fuel additives, typically organometallic compounds, in conjunction with the traps.

The impending trap-based standards have raised concerns that revisions to the present test procedure may be required. One concern is the treatment of exhaust emissions during trap regeneration; this is not specifically addressed in the existing test procedures. In addition, the low emission levels required to meet the particulate standards have raised concerns on the part of diesel manufacturers that the present test procedures may not be sufficiently accurate for measuring particulate at these levels. Concern has been expressed regarding what fuel additive compounds may be approved or prohibited by EPA and what other restrictions EPA may place on their use. The purpose of the workshop on this issue is to allow EPA to develop its overall policy towards fuel additive use, following manufacturer input at the workshop.

Because the existing regulations do not specifically address these issues, EPA had decided to hold a workshop to gather information and discuss these issues with interested parties prior to implementing any changes. Because certification testing for some 1987 models will begin this fall, resolution of these issues is necessary soon. EPA believes that this can be best accomplished if all parties are involved early in the process and have an opportunity to informally comment on all potential solutions. Following is a further identification of the issues.

Trap Regeneration

Particulate traps are basically filters which remove the particulate, which is primarily carbon, from the diesel exhaust. Eventually the trapped particulate will clog the filter and restrict exhaust flow. Therefore the particulate must be burned to clean or regenerate the trap. The combustion of the particulate results in some exhaust emissions.

In some trap systems the regeneration process occurs continuously or nearly continuously. Other systems may regenerate in periodic fashion, often by injecting excess fuel in the engine or exhaust to provide sufficient thermal energy to initiate the regeneration. Some systems require the injection of fuel additives to promote regeneration.

EPA is concerned that the present test procedure may not be adequate for trap-equipped vehicles or engines since it does not specifically consider the vehicle emissions during trap regeneration. Particularly for a periodically regenerating trap, the trap may or may not regenerate during the emissions test cycle. If the trap does not regenerate then a vehicle might be certified which, under some conditions, may have very high emissions. If the trap does regenerate during the emission test, then a vehicle might not be certified even though the vehicle might, on the average, comply with the emission standards. High emissions during infrequent trap regenerations may be an even greater problem for durability test vehicles because a single test point could have a major effect on the deterioration factor and the projected emissions at high mileage.

In preparing for the workshop, EPA requests that participants consider the following options for addressing emissions during regeneration:

(1) Require that the vehicle/engine meet the standards both under regeneration and non-regeneration conditions.

(2) Consider regeneration emissions and require that a weighted average of regeneration and non-regeneration emissions meet the standards. Within this option EPA could take two possible approaches:

(a) A detailed plan would be spelled out by EPA, specifying how the testing is to be done and the averaging administered.

(b) The manufacturer would develop the specific test procedures for its system that would comply with a general framework developed by EPA.

(3) Ignore regeneration emissions based upon the presumption that they are too infrequent or insignificant to be a problem.

In addition to comments on the above options, EPA also requests information from manufacturers on the following aspects of their trap programs:

- Trap types, including trapping system, regeneration mechanism, fuel additives.
- How regeneration is initiated.
- How often regeneration occurs.
- Regeneration emission levels.
- Non-regeneration emission levels.
- Regeneration emissions as a function of mileage.

Particulate Emissions Measurement

Other test procedure modifications may also be required as a result of the trap-based particulate standards. At low particulate emission levels, particulate measurement as presently specified may not be sufficiently accurate or precise. The reduced emission levels mean that the test-to-test variability will become a greater percentage of the measured emission values. This may make repeatable measurement of particulate emissions more difficult. Several manufacturers have stated that an improvement to measurement precision is a condition to meeting these reduced particulate emission levels.

In particular, manufacturers have expressed concern that the recommended minimum loading of the sample filters specified in the present test procedures may not be achieved with the lower particulate emission levels. This has led to further concern regarding the measuring error as a result of the required balance accuracy and the reduced filter loading. Another area of concern is the impact of sulfate-absorbed water on the measurement of particulate emissions. As the particulate standard becomes more stringent, the sulfate with its water comprises a larger percentage of the allowable emissions. EPA requests additional information from the manufacturing industry on these subjects.

Fuel Additives

The use of fuel additives to promote trap regeneration raises the question of the possible hazardous nature of these compounds or their combustion

products. Under section 202(a)(4) of the Clean Air Act, the use of an emission control system that will cause or contribute to an unreasonable risk is prohibited. The Clean Air Act also specifies (section 206(a)(3)) that it is the manufacturers' responsibility to ascertain that no such unreasonable risk is associated with the use of a fuel additive.

In addition to commenting on the general criteria that EPA should use to evaluate applications for the use of additives, EPA requests that workshop participants who are developing fuel additive trap regeneration systems submit information related to their current plans in this area. Confidential submissions will be accepted from manufacturers who believe their work in these areas should be proprietary. The following areas of additive use should be covered.

- The type of additive and its specific chemical form.
- The amount of additive used.
- The total amount of additive stored in the vehicle.
- How the additive is stored and added to the fuel or exhaust.
- The chemical characterization of the additive in the exhaust.
- The tailpipe emissions of the additive during regeneration and otherwise.
- Available health effects data on the additive.

Participation

The workshop is open to all interested parties. EPA requests that all persons planning to attend contact Ms. Rebecca Kanner, the Agency contact, at the above address. Those persons desiring to make specific presentations are requested to so advise the Agency contact, identifying the topics to be covered, the appropriate amount of time needed, and any audio visual equipment needed. The workshop will be informal and no official transcript shall be made of the proceedings.

The format of the workshop will be structured by the three identified issues: (1) The measurement of emissions during trap regeneration, (2) particulate emissions measurement at the trap-based standards, and (3) fuel additives. For each issue, EPA will present its current analysis, followed by any presentations from other participants and then the floor will be opened for discussion on that particular issue. In order to facilitate the procedure, EPA requests that parties making a presentation on more than one of the identified issues be prepared to discuss each issue separately.

The issues described in this notice are those planned to be discussed at the workshop; however, participants are not restricted to these issues. Time will be provided for presentations and discussions by any participant on additional procedural or measurement issues associated with the use of trap-oxidizers.

Dated: July 8, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-16847 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184C; Notice No. 85-3]

Implementation of the ICAO Technical Instructions

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, and by motor vehicle incident to transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1986 edition of the ICAO Technical Instructions becomes effective on January 1, 1986, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATE: Comments must be received by October 4, 1985.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. 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, (202) 426-0656.

SUPPLEMENTARY INFORMATION: On November 20, 1984, the Materials Transportation Bureau (MTB) published amendments to the Hazardous Materials Regulations (49 FR 45750) which authorize under certain conditions, and with certain limitations, hazardous materials packaged, marked, labeled, classified and described and certified on shipping papers as provided in the 1985 edition of the ICAO Technical Instructions to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. In addition, amendments were published to Part 175 of the HMR to align the requirements for the loading and handling of hazardous materials aboard aircraft with those in the 1985 edition of the ICAO Technical Instructions. It was necessary that these amendments be published in order to provide consistency between the Hazardous Materials Regulations and the ICAO Technical Instructions because the ICAO Technical Instructions have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. A more detailed explanation of the reasons for this action was provided in the Notice of Proposed Rulemaking published under Docket No. HM-184 on August 2, 1982 [47 FR 33295].

Since publication of the final rule under Docket No. HM-184B, ICAO has developed a number of amendments to the Technical Instructions. These amendments have been incorporated in the 1986 edition of the ICAO Technical Instructions which will become effective on January 1, 1986. In order to continue to fulfill the intent of the amendments published under Docket Nos. HM-184, HM-184A and HM-184B (i.e., to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions), the MTB believes it necessary to amend certain provisions of the HMR to reflect changes introduced in the 1986 edition of the ICAO Technical Instructions. The

purpose of this rulemaking action is to propose these necessary amendments to the HMR.

The following is an analysis of this proposal, by section, which provides the background behind the proposed changes:

Section 171.7. The reference to the 1985 edition of the ICAO Technical Instructions in the matter incorporated by reference would be updated to refer to the 1986 edition. A copy of the Report of the Ninth Meeting of the ICAO Dangerous Goods Panel, indicating all changes introduced into the 1986 edition of the Technical Instructions, is on file in the public dockets.

Section 175.10. The exception for aircraft parts and supplies in subparagraph (a)(2), which is currently aligned with the corresponding text of the 1984 edition of the Technical Instructions, would be amended to reflect the wording introduced in the 1986 edition of the Technical Instructions. ICAO changed the exceptions for aircraft parts and supplies in the Technical Instructions in order to achieve consistency with paragraph 2.4.2 of Annex 18 of the Convention. An amendment was proposed to this paragraph under Docket No. HM-184B, but on the basis of several comments and because it was anticipated that ICAO would introduce further changes to the corresponding provisions upon publication of the 1986 edition, the amendment was withdrawn. The text now proposed provides that replacements for aircraft parts and supplies that would be classed as hazardous materials must be transported in accordance with the HMR except that aircraft batteries would not be subject to a gross weight limitation and, in place of the packaging normally required, containers specially designed for the transport of aircraft spares and supplies may be used. In addition, subparagraph (a)(17) would be amended to provide that packagings containing dry ice used to pack perishables in carry-on baggage be designed to permit the release of carbon dioxide gas in order to eliminate the risk of unacceptable pressure increase in the packagings.

Section 175.33. Paragraph (a)(6) of this section would be revised to provide that when radioactive materials are transported in freight containers or overpacks, the information required to be supplied to the pilot-in-command may be provided for an overpack or freight container rather than for the individual packages contained within the overpack or freight container.

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. 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

Hazardous materials transportation, Incorporated by reference.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171 and 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53(e).

2. In § 171.7, paragraph (d)(27) would be revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1986 edition.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 would be revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53(e).

4. In § 175.10, paragraph (a)(19) would be amended by inserting the words "provided the package permits the release of carbon dioxide gas." after the words "carry-on baggage" and paragraph (a)(2) would be revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(2) Hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. Unless otherwise approved by the Associate Director for HMR, items of replacement for such hazardous materials must be transported in accordance with this subchapter except that—

(i) In place of the required packagings, packagings specially designed for the transport of aircraft spares and supplies may be used, provided such packagings afford equivalent safety to those that would be required by this subchapter; and,

(ii) Aircraft batteries are not subject to a gross weight quantity limitation.

* * * * *

§ 175.33 [Amended]

5. In § 175.33(a)(6), the words "overpacks or freight containers," would be added preceding the words "their category."

Issued in Washington, D.C. on July 10, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-16835 Filed 7-15-85; 9:13 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Dismal Swamp Southeastern Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the Dismal Swamp southeastern shrew, a small mammal restricted primarily to the Dismal Swamp of southeastern Virginia and adjacent North Carolina. This swamp has undergone extensive environmental changes in the recent past, as a result of human activities. In addition to causing direct adverse effects on the shrew, these habitat changes apparently are also enabling a neighboring upland subspecies of

southeastern shrew to invade the swamp. The Dismal Swamp southeastern shrew may be vulnerable to genetic extinction through continued interbreeding with the more widespread upland subspecies. This proposal, if made final, would implement protection provided by the Endangered Species Act of 1973, as amended, for the Dismal Swamp southeastern shrew. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by September 16, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virignia Street, Annapolis, Maryland 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs or Mr. G. Andrew Moser at the above address (301/269–6324 or FTS 922–4197).

SUPPLEMENTARY INFORMATION:

Background

The Dismal Swamp southeastern shrew (*Sorex longirostris fisheri)* is a small, long-tailed shrew with a brown back, slightly paler underparts, buffy feet, and a relatively short, broad nose (Handley 1980). It was first described as a species, *Sorex fisheri,* by C.H. Merriam in 1895, based on four specimens trapped that same year in the Dismal Swamp by A.K. Fisher. Jackson (1928) reduced *S. fisheri* to a subspecies of the species *Sorex longirostris,* which is found over much of the southeastern United States, and now the former is usually referred to as *Sorex longirostris fisheri.* There is, however, still some question as to whether *fisheri* is a full species, because originally there was not evidence of intergradation between *fisheri* and *longirostris* (Judge and Hoffman 1981). A lack of intergradation in physical characters is generally considered an indication that two wild populations represent species, rather than subspecies. *Fisheri* is 15 to 25 percent larger than its upland relative *S. l. longirostris* and is generally duller in color. Most *S. l. fisheri* measure 95–100 millimeters in greatest length, while most *S. l. longirostris* measure 75–80 millimeters (Rose 1983).

The Dismal Swamp southeastern shrew is essentially restricted to the Great Dismal Swamp National Wildlife Refuge in southeastern Virginia (cities of Suffolk and Chesapeake, formerly Nansemond and Norfolk counties) and adjacent portions of the swamp in North Carolina (Camden, Gates, Pasquotank, and Perquimans counties) (Handley 1980, Hall 1981, Rose 1983). Prior to 1980, the subspecies was known from only 19 specimens collected within the Dismal Swamp (Handley 1979). Since 1980, at least 39 additional specimens have been collected in and adjacent to the Dismal Swamp, which can be identified as *Sorex longirostris fisheri* on the basis of body length (Rose 1983). The subspecies is found in a variety of habitats from lowland old fields to mature pine and deciduous forest areas, but is most abundant in mesic successional habitats such as cane stands, regenerating clearcuts, and 10- to 15-year-old forested plots (Rose 1983).

The Dismal Swamp southeastern shrew is considered threatened due to its very limited distribution and to recent human-induced habitat changes in the swamp. In addition to affecting this lowland shrew directly, these changes may be allowing its restricted habitat to be overrun by the more plentiful upland subspecies, *Sorex longirostris longirostris* (Handley 1980, Rose 1983).

In order to understand this situation more clearly, it is necessary to consider the dynamics of the evolutionary process within the swamp. The Dismal Swamp has apparently acted like an island for several subspecies of small mammals, including *Sorex longirostris.* These subspecies show a feature typical of small mammals on islands, that is, individuals are larger than those from the nearby "mainland," in this case, members of upland subspecies. In the process of subspeciation, individuals in the swamp must have been at a competitive disadvantage when living outside the swamp, and the upland race must have been equally handicapped in the swamp. It follows that any action which detracts from the distinctive nature of the Swamp (e.g., draining) will favor the upland race, in this case *S. l. longirostris,* over the swamp subspecies, *S. l. fisheri.*

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454–58460), the U.S. Fish and Wildlife Service placed *S. l. fisheri* in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial data were not then available to biologically support such a proposal. Subsequently, the Service received a report from Dr. Robert K. Rose (1983), who had been contracted to investigate the status of the shrew. The data in Dr. Rose's report, along with other new information assembled by the Service, show that a proposal to list the shrew as threatened is now warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisons of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Dismal Swamp southeastern shrew, *Sorex longirostris fisheri,* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Handley (1980) noted that the Dismal Swamp southeastern shrew is essentially confined to the Dismal Swamp. Around the turn of the century, this swamp was estimated to have occupied some 2,000 to 2,200 square miles (Oakes and Whitehead 1979). Even at that time, its size had been reduced by clearing and draining for agriculture. Today, approximately 328 square miles of the original swamp remain intact (U.S. Fish and Wildlife Service 1982), there having been a reduction of roughly 85 percent. According to Rose (1983), ditching has lowered the water table within the remaining swamp. Other human activities such as burning, grazing, and logging, which once maintained portions of the swamp in various stages of succession, were curtailed or eliminated with the establishment of the Great Dismal Swamp National Wildlife Refuge in 1973. As a consequence, the former Dismal Swamp, a heterogeneous mosaic of large tracts of bald cypress, Atlantic white cedar, and cane, has been replaced by a more homogeneous, mesic swamp dominated by a rapidly maturing red maple and black gum forest. This progression toward homogeneous mature forest is likely detrimental to the Dismal Swamp southeastern shrew. Rose's trapping data revealed that, of all habitats evaluated in the swamp, densities of *Sorex* were lowest in mature forests. Rose found the shrew to be abundant in cane stands and regenerating clearcuts, with the highest densities (=healthier populations) in 10- to 15-year-old, mid-successional forested areas with grassy or shrubby understories. These habitats are now rare within the Dismal Swamp, and will essentially disappear if present trends continue.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem.

C. *Disease or predation.* Not known to be a problem.

D. *The inadequacy of existing regulatory mechanisms.* As a faunal component of the Great Dismal Swamp National Wildlife Refuge, the subspecies is protected within refuge boundaries from direct disturbance violations (to kill, possess, disturb, injure, damage, etc., without special permit) by 50 CFR 27.51. The main problem of the shrew, however, is not direct disturbance or taking, but alteration of habitat (see "A"), and consequent vulnerability to genetic swamping (see "E").

E. *Other natural or manmode factors affecting its continued existence.* The Dismal Swamp southeastern shrew probably developed its large size and coloration while geographically or ecologically isolated from its smaller upland relative, *Sorex longirostris longirostris*, during the late Pleistocene (Handley 1980, Rose 1983). Changes in the Dismal Swamp (as described in "A" above) may have converted the swamp environment into habitat more suitable for the latter subspecies, causing an ingress of the latter into the swamp (Handley 1980, Rose 1983). The Dismal Swamp southeastern shrew is threatened primarily through contact and interbreeding with this smaller upland subspecies (Handley 1980, Rose 1983). Rose (1983) found evidence of interbreeding between the two subspecies along the east and west periphery of the swamp. Evidence of contact and interbreeding is further reinforced by Rose's observation of a clear trend in size, from large to small shrews, as one moves peripherally from the Dismal Swamp. Because of the restricted distribution of the larger Dismal Swamp shrew, it is probable that the continued interbreeding of the two subspecies will eventually result in an infusion of genes of *Sorex longirostris longirostris* into the entire Dismal Swamp shrew population. This would constitute extinction from the Dismal Swamp southeastern shrew.

The hybridization process now jeopardizing the Dismal Swamp southeastern shrew is comparable to that which has nearly destroyed another mammal, the red wolf *(Canis rufus)*, which is federally classified as endangered. According to Nowak (1979), the red wolf originally occupied a range and habitat in the forested southeastern United States, largely separate from that occupied by its smaller relative, the coyote *(Canis latrans)* of the western prairies. Human activities reduced red wolf numbers, disrupted its habitat, and allowed the coyote to invade its range. The latter species then began to interbreed with surviving red wolf populations. As a result, by the early 20th century zones of hybridization were evident in central Texas and the Ozark region. At that time there was a clear progression in size, ranging from the small coyote in the north and west, through intermediate-sized *Canis* in central Texas and the Ozarks, to the large red wolf in eastern Texas, Louisiana, and some adjacent areas. This situation was much the same as we see today in the *Sorex* of the Dismal Swamp region. No conservation measures were initiated for the red wolf until the 1960's, and by then the hybridization process had engulfed almost all of the range of the species. The red wolf, in the pure form, has now nearly or entirely disappeared from the wild. By catching the same process at an earlier stage, however, it may now be possible to save the Dismal Swamp southeastern shrew.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Dismal Swamp southeastern shrew as threatened. The Act defines a threatened species as one which "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." This status seems most appropriate for *Sorex longirostris fisheri* at this time. As stated above, the subspecies is currently protected from taking or injury and is jeopardized primarily by its limited distribution and the possibility of genetic swamping if present trends continue. These trends have not yet progressed so far that extinction appears imminent, and may yet be reversed by proper conservation measures. For the reasons given below, no critical habitat is being designated.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threathened. Implementing regulations at 50 CFR 424.12(a)(1) state: "A designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity,and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species." In the case of the Dismal Swamp southeastern shrew, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species. Nearly all of the known habitat of this species lies within the Great Dismal Swamp National Wildlife Refuge, which is managed by the Service. The refuge managers and all other involved parties are already aware of the occupied range of this species. The species is not migratory and continuously occupies its known range. Moreover, a final determination of threatened status would be followed by continued development of Refuge management strategies designed to benefit the Dismal Swamp southeastern shrew. Thus, no benefits would accrue from designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiate by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is listed subsequently, section 7(a)(2) requires agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultaion with the Service.

An overall management plan is currently being developed for the Great Dismal Swamp National Wildlife Refuge. This plan will be designed, in part, to consider the needs of *Sorex longirostris fisheri*. Land use practices likely to benefit this shrew would include: (a) Selective burning and other logging practices that maintain a mosaic of forested plots of differing ages, and (b) increasing the height of the water table (Rose 1983).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity,or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Dismal Swamp southeastern shrew;

(2) The locations of any additional populations of the Dismal Swamp southeastern shrew and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range or distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the Dismal Swamp southeastern shrew.

Final promulgation of the regulation on the Dismal Swamp southeastern shrew will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Annapolis Field Office as shown in the above ADDRESSES section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

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U.S. Fish and Wildlife Service. 1982. Synopsis of planning needs and issues: Dismal Swamp National Wildlife Refuge Master Plan. Manuscript.

Author

The primary author of this proposed rule is Ms. Martha Tacha, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–6324 or FTS 922–4197).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 375; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * *	* * *	*	*	*	*	*	*
Shrew, Dismal Swamp southeastern.	Sorex longirostris fisheri.	U.S.A. (VA, NC).	Entire	T		NA	NA
* * *	* * *	*	*	*	*	*	*

Dated: June 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-16793 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 136
Tuesday, July 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Mt. Graham Astrophysical Area; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a proposed astrophysical area on the Safford Ranger District, Coronado National Forest, Graham County, Arizona.

A range of alternatives for this site will be considered. One of these will be non-development of the site. Other alternatives will consider different levels of observatory development and location of support facilities.

Federal, State and local agencies, Indian Tribes, individuals and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include identification of those issues to be addressed and analyzed in depth and elimination of insignificant issues or those which have been covered by a previous environmental document.

The Forest Supervisor will hold public meetings at the following locations in Southeast Arizona.

Location, Date, and Time

Old Armory, Safford, AZ, August 1, 1985, 5:00–9:00 PM
Sierra Vista Ranger District Office, Sierra Vista, AZ, July 22 and 25, 1985, 5:00–9:00 PM
Elks Lodge, Willcox, AZ, August 7, 1985, 6:30–9:00 PM
Wilmont Branch Library, Tucson, AZ, August 15, 1985, 5:00–9:00 PM

James C. Overbay, Acting Regional Forester of the Southwest Region in Albuquerque, New Mexico is the responsible official.

A draft environmental impact statement should be available for public review by October, 1985. The final environmental impact statement should be available by Janaury, 1986.

Written comments and suggestions concerning the analysis should be sent to Robert Tippeconnic, Forest Supervisor, Coronado National Forest, Tucson, Arizona 85701 by August 15, 1985.

Date: July 8, 1985.

James C. Overbay

Acting Regional Forester.

[FR Doc. 85–16861 Filed 7–15–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–502]

Low-Fuming Brazing Copper Rod and Wire From South Africa; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving low-fuming brazing copper rod and wire from South Africa is being postponed until not later than September 17, 1985.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2613.

SUPPLEMENTARY INFORMATION: On March 11, 1985, we announced the initiation of an antidumping investigation to determine whether low-fuming brazing copper rod and wire from South Africa is being, or is likely to be, sold in the United States at less than fair value (50 FR 10524). The notice stated that we would issue preliminary determination by July 29, 1985.

As detailed in that notice, the petition alleged that imports from South Africa of low-fuming brazing copper rod and wire are being, or are likely to be, sold in the United States at less than fair value.

On July 3, 1985, counsel for petitioners, American Brass, Century Brass, and Cerro Metal Products, requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than September 17, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 9, 1985.

[FR Doc. 85–16878 Filed 7–15–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–501]

Photo Albums and Filler Pages From Korea; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that photo albums and filler pages from Korea are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of photo albums and filler pages from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date ninety days before the date of publication of this notice, and to require a cash deposit or bond for each entry in any amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by September 23, 1985.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1777.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that photo albums and filler pages from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margins are listed in the "Suspension of Liquidation" section of this notice.

Case History

On January 30, 1985, we received a petition filed in proper form from Esselte Pandaflex, Inc., the Holson Company, Klee-Vu Plastics Corporation, and SPM Manufacturing Corporation, on behalf of the U.S. industry producing photo albums and filler pages. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Korea 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), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on February 19, 1985 (50 FR 7625), and notified the ITC of our action.

On March 18, 1985, the ITC found that there is a reasonable indication that imports of photo albums and filler pages from Korea are materially injuring, or threatening material injury to, a U.S. industry (U.S.I.T.C. Pub. No. 1660, March 1985).

We investigated six Korean producers, Dong In Industrial Co. Ltd. (Dong In), Dong Won Industrial Co. (Dong Won), Donam Industrial Co., Ltd. (Donam), Chinsung Industry Co., Ltd. (Chinsung), Keywon, Inc. (Keywon), and Eunjin Industrial Co., Ltd. (Eunjin). These companies account for 64 percent of all exports of photo albums and filler pages from Korea to the United States.

Scope of Investigation

The merchandise under investigation is photo albums and photo album filler pages. Photo albums are currently provided for in item 256.60 of the Tariff Schedules of the United States (TSUS). Photo album filler pages are currently provided for in items 256.87, 256.90 and 774.55 of the TSUS.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Dong Won, Dong In, Donam, Chinsung, and Keywon and for certain sales for Eunjin because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used the exporter's sales price for other sales by Eunjin to represent the United States Price because the merchandise was sold to unrelated purchasers after importation into the United States.

We calculated the purchase price based on the FOB or CIF packed price to unrelated customers in the United States. We made deductions, where appropriate, the foreign inland freight, brokerage, drayage, loading, inspection charges, wharfarge, banking charges, export recommendation fees, ocean freight, and marine insurance. We calculated exporter's sales price by making additional deductions for U.S. brokerage, U.S. inland freight, and U.S. duty and other selling expenses incurred in the United States. We increased the United States price by the amount of import duties imposed by Korea which have been rebated by reason of the exportation of the merchandise, pursuant to section 772(d)(1)(B) of the Act (19 U.S.C. 1677a(b)(1)(B)).

Foreign Market Value

In accordance with section 773(a) of the Act, we have preliminarily determined that none of the producers being investigated had sales of photo albums and filler pages in Korea during the period of investigation. The petitioners alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in some third countries above the cost of production to allow us to use third country prices in accordance with section 773(a)(1)(B) of the Act to determine foreign market value. We used constructed value as our basis of comparison where there were insufficient sales of such or similar merchandise in third country markets, or where there were insufficient sales above the cost of production. In selecting third countries for comparison purposes, we used sales to the United Kingdom, the Federal Republic of Germany, and Australia, since merchandise sold to these countries were most similar to that sold in the United States or because quantities sold to these countries were most comparable to quantities sold in the United States.

We calculated the third country prices for each product on the basis of FOB or CIF prices to unrelated purchasers. From these prices, we deducted, where appropriate, foreign inland freight, ocean freight, marine insurance, foreign brokerage, loading, wharfage, banking charges, export recommendation fees and drayage. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, pursuant to § 353.16 of our regulations, and for differences in circumstances of sale related to commissions and credit expenses pursuant to § 353.15 of our regulations. We also adjusted for differences in packing costs. We also made additions, where appropriate, for import duties which were rebated by reason of the exportation of the merchandise. Where we used exporter's sales price for sales by Eunjin, we deducted third country indirect selling expenses to offset U.S. selling expenses. We used third country prices for all sales by Dong In and some sales by Keywon, Dong Won, Donam and Eunjin. We used constructed value for other sales by Keywon, Dong Won, Donam and Eunjin and for all sales by Chinsung.

We calculated the cost of production for third country sales by totaling the costs of materials, fabrication, general expenses, and packing. We calculated constructed value by totaling the costs of materials, fabrication used in producing such or similar merchandise, general expenses, profit, and the cost of the packing on the U.S. shipments. Where the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. The amount added for profit in all instances was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses because the companies had no home market sales of merchandise of the same class or kind and we are unable to determine how much of the company's overall profit was related to sales to countries other than the U.S.

The investigation of whether sales were made at prices below the cost of production was initiated on May 30, 1985. Thus, additional information from

respondents and comments by petitioners regarding cost of production and constructed value information were received too late for consideration in this preliminary determination. These submissions will be considered in our final determination.

Critical Circumstances

The petitioners alleged that imports of photo albums and filler pages from Korea present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class of kind or the merchandise which is the subject of the investigation or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of photo albums and filler pages from Korea in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping orders. We also reviewed the antidumping actions of other countries. On March 26, 1985, in the finding of the Antidumping Tribunal in Review No. R-3-84, Canada imposed antidumping duties on photo albums and filler pages from Korea. Thus, we preliminarily find a history of dumping for this merchandise.

Since there is a history of dumping in the United States or elsewhere, we do not need to consider whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels, import penetration ratios for photo albums and filler pages from Korea for equal periods immediately preceding and following the filing of the petition, and seasonal factors. Based on our analysis of recent trade data, we find that imports of photo albums and filler pages form Korea during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios. Therefore, we determine that critical circumstances exist with respect to imports of photo albums and filler pages from Korea.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of photo albums and filler pages from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date ninety days before the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin (Percentage)
Dong In	3.13
Dong Won	13.71
Donam	3.20
Chinsung	3.11
Keywon	0.99
Eunjin	10.71
All others	4.04

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 8, 1985, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 1, 1985. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 9, 1985.

[FR Doc. 85-16879 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-501]

Photo Albums and Filler Pages From Hong Kong; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that photo albums and filler pages from Hong Kong are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of photo albums and filler pages from Hong Kong that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated

dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by September 23, 1985.

EFFECTIVE DATE: July 16, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1777.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that photo albums and filler pages from Hong Kong are being, or are like to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin is listed in the "Suspension of Liquidation" section of this notice.

Case History

On January 30, 1985, we received a petition filed in proper form from Esselte Pendaflex, Inc., the Holson Company, Kleer-Vu Plastics Corporation, and SPM Manufacturing Corporation, on behalf of the U.S. industry producing photo albums and filler pages. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Hong Kong 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), and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on February 19, 1985 (50 FR 7624), and notified the ITC of our action.

On March 18, 1985, the ITC found that there is a reasonable indication that imports of photo albums and filler pages from Hong Kong are materially injuring, or threatening material injury to, a U.S. industry (U.S.I.T.C. Pub. No. 1660, March 1985).

We investigated one producer, Climax Paper Converters, Ltd. This company accounts for approximately 85 percent of all exports of photo albums and filler pages from Hong Kong to the United States.

Scope of Investigation

The merchandise under investigation is photo albums and photo album filler pages. Photo albums are currently provided for in item 256.60 of the Tariff Schedules of the United States (TSUS). Photo album filler pages are currently provided for in items 256.87, 256.90 and 774.55 of the TSUS.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for some sales by Climax because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used the exporter's sales price for other sales by Climax to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States.

We calculated the purchase price based on the FOB or CIF packed price to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, loading, ocean freight, marine insurance, U.S. brokerage and U.S. inland freight. We calculated exporter's sales price by making additional deductions for U.S. brokerage, U.S. inland freight, U.S. duty and other selling expenses incurred in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, we have preliminary determined that Climax had no sales of photo albums and filler pages in Hong Kong during the period of investigation. The petitioners alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in some third countries above the cost of production to allow us to use third country prices in accordance with section 773(a)(1)(B) of the Act to determine foreign market value. We used constructed value as our basis of comparison where there were insufficient sales of such or similar merchandise in third country markets, or where there were insufficient sales above the cost of production. In selecting third countries for comparison purposes, we used sales to the United Kingdom, the Republic of South Africa, France, and Australia since merchandise sold to these countries were most similar to that sold in the United States or because quantities sold to these countries were most comparable to quantities sold in the United States.

We calculated the third country prices for each product on the basis of FOB or CIF prices to unrelated purchasers. From these prices, we deducted, where appropriate, foreign inland freight, foreign handling, ocean freight, and marine insurance. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, pursuant to § 353.16 of our regulations, and for differences in circumstances of sale related to commissions and credit expenses pursuant to § 353.15 of our regulations. We also adjusted for differences in packing costs.

We calculated the cost of production for third country sales by totaling the costs of materials, fabrication, general expenses, and packing. We calculated constructed value by totaling the cost of materials, fabrication used in producing such or similar merchandise, general expenses, profit, and the cost of the packing on the U.S. shipments. Because the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses because the company had no home market sales of merchandise of the same class or kind and we are unable to determine how much of the company's overall profit was related to sales to countries other than the U.S. We expect to receive additional information from respondent regarding the caculation of fabrication costs for use in the final determination. Comments were received from petitioners too late for consideration in the preliminary determination. These comments will be considered in our final determination.

Preliminary Negative Determination of Critical Circumstances

The petitioners alleged that imports of photo albums and filler pages from Hong Kong present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation or the person by whom, or

for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of photo albums and filler pages from Hong Kong in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping orders. We also reviewed the antidumping actions of other countries. On March 26, 1985, in the finding of the Antidumping Tribunal in Review No. R-3-84, Canada imposed antidumping duties on photo albums and filler pages from Hong Kong. This constitutes a history of dumping for this product. Since there is a history of dumping in the United States or elsewhere, we do not need to consider whether there is reason to believe or suspect that importers of this product knew or should have known that this product was being sold at less than fair value.

We generally consider the following concerning massive imports: (1) recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this quesion, we analyzed recent trade statistics on import levels, import penetration ratios for photo albums and filler pages from Hong Kong for equal periods immediately preceding and following the filing of the petition, and seasonal factors. Based on our analysis of recent trade data, we find that imports of photo albums and filler pages from Hong Kong during the period subsequent to receipt of the petition have not been massive when compared to recent import levels and import penetration ratios. Therefore, we determine that critical circumstances do not exist with respect to imports of photo albums and filler pages from Hong Kong.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of photo albums and filler pages from Hong Kong that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturing/producer/exporter	Weighted-average margin (percentage)
Climax	6.12
All others	6.12

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on August 8, 1985, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 1, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publicaton, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 9, 1985.

[FR Doc. 85-16880 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products From Taiwan

July 11, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 17, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards are made on other specific limits or sublimits during the same year. Pursuant to terms of the agreement, as amended, the import restraint limits established for Categories 336/339, 340, 631pt. (work gloves), 638 and 670pt. (luggage), exported during the twelve-month period which began on January 1, 1985 are being increased. The limits for Categories 353/354/653/654, 639, 640 and 670pt (handbags) are being reduced

to account for swing/shift applied to the other Categories.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of goods exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on July 17, 1985, the directive of December 21, 1984 is hereby futher amended to include adjusted restraint limits for the following categories:

Category	Adjusted 12-mo restraint limit [2]
338/339	633,951 dozen.
340	716,110 dozen.
353/354/653/654	224,821 dozen.
631 pt.[3]	219,350 dozen pairs.
638	2,119,849 dozen.
639	4,305,790 dozen.
640	3,221,809 dozen.
670 pt.[4]	70,950,000 pounds.
670 pt.[4]	31,550,000 pounds.

[2] The limits have not been adjusted to account for any imports exported after December 31, 1984.
[3] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525 and 704.9000.
[4] In Category 670, only T.S.U.S.A. numbers 706.4144 and 706.4152.
[5] In Category 670, only T.S.U.S.A. number 706.4140.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16812 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement of November 18, 1982, as amended, concerning cotton, wool, and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Adjusting the Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

July 11, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 17, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea established, among other things, a specific limit of 1,407,963 dozen for man-made fiber textile products in Category 633/634/635, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. The agreement provides, among other things, for the borrowing of yardage from the succeeding year's limit (carryforward) with the amount used to be deducted from the category limit in the succeeding year. The letter to the Commissioner of Customs which follows this notice amends the directive of December 21, 1984 to reduce the limit for Category 633/634/635 by 13,996 dozen to account for carryforward used during the agreement period which began on January 1, 1984. The adjusted level will be 1,393,967 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain cotton, wool and man-made textile products exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985, produced or manufactured in Korea, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on July 17, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to include an adjusted restraint limit of 1,393,967 dozen[2] for Category 633/634/635.

The Committee for the Implementation of Textile Agreements has determined that this actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16813 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in the Arab Republic of Egypt

July 11, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 17, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton Textile Agreement, effected by exchange of

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, which provides, in part, that: (1) During any agreement year specific limits and sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specific conditions specific limits and sublimits may be adjusted for carryover and carry forward not to exceed ten percent; and (3) administrative arrangements or may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limits have not been adjusted to reflect an imports exported after December 31, 1984.

notes dated December 7 and December 28, 1977, as amended, between the Governments of the United States and the Arab Republic of Egypt established, among other things, a specific limit 8,500,000 pounds for cotton textile products in Category 300/301 produced or manufactured in Egypt and exported during the period which began on January 1, 1985 and extends through December 31, 1985 (49 FR 50235). The agreement provides for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used to be deducted from the category level in the succeeding year. The letter to the Commissioner of Customs which follows this notice amends the directive of December 21, 1984 to reduce the limit for Category 300/301 to 8,030,352 pounds to account for carryforward used during the agreement period which began on January 1, 1984.

The letter to the Commissioner of Customs which follows this notice makes this adjustment. The sublimits for Categories 300 and 301 within the overall limit are also being adjusted.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984 the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain cotton textile products exported during the twelve month period beginning on January 1, 1985 and extending through December 31, 1985, produced or manufactured in the Arab Republic of Egypt in excess of designated restraint limits. The Chairman further advised you that the limits are subject to adjustment. [1]

Effective on July 17, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to include the following adjusted restraint limits:

Category	Adjusted 12-mo limit
300/301	8,030,352 pounds of which not more than 6,974,752 pounds shall be in Category 300 and not more than 1,122,800 pounds shall be in Category 301.

[1] The limits have not been adjusted to reflect any imported exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemakinng provisions of U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16874 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactered in Portugal

July 11, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive below to the Commission of Customs to be effective July 17, 1985. For further information contact Ann Fields, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 11, 1985, a notice was published in the **Federal Register** (50 FR 14277) which announced that, on March 29, 1985 the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of cotton pillowcases in category 360 and cotton sheets in Category 361, produced or manufactured in Portugal and exported during the twelve-month period which began on March 29, 1985 and extends through March 28, 1986. Inasmuch as no solution has been reached in consultations on mutally satisfactory limits for these categories, the United States Government has decided to control imports of cotton pillowcases in Category 360, and cotton sheets in Category 361, exported during the twelve-month period which began on March 29, 1985 at levels of 1,626,063 numbers and 2,980,444 numbers, respectively.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 17, 1985, entry for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 360 and 361, produced or manufactured in Portugal and exported during the twelve-month period beginning on March 29 1985 and extending through March 28, 1986, in excess of the following levels:

Category	12-mo restraint level [1]
360	1,626,063 numbers.
361	2,980,444 numbers.

[1] The level has not been adjusted to reflect any imports exported after March 28, 1985.

Textile products in Categories 360 and 361 which have been exported to the United States prior to March 29, 1985 shall not be subject to this directive.

Textile products in Categories 360 and 361 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Terxtile Agreement, effected by exchange of notes dated December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt, which provide, in part, that: (1) The specific limit for Categories 300, 301, and 300/301 may be adjusted for carryover and carryforward; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16809 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia; Correction

July 11, 1985.

On July 1, 1985 a notice was published in the **Federal Register** (50 FR 27041) announcing the import control limits for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period beginning on July 1, 1985. In the letter to the Commissioner of Customs which followed that notice the units designated for the twelve-month restraint limit for Category 320 should have been "square yards" instead of "yards".

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16875 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit on Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 11, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 17, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 8, 1984, a notice was published in the **Federal Register** (49 FR 19570) establishing a twelve-month limit of 435,649 dozen for knit shirts of man-made fibers in Category 638, among other categories, produced or manufactured in China and exported during the twelve-month period, which began on April 23, 1984, pending agreement on a mutually satisfactory solution concerning this category between the Governments of the United States and the People's Republic of China. To avoid the continued risk of market disruption, the Government of the United States has decided, in the absence of agreement on this category, pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, to continue the import restraint limit for an additional twelve-month period beginning on April 23, 1985 and extending through April 22, 1986 at a level of 461,788 dozen. This level reflects a six percent increase over the previous level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

July 11, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on July 17, 1985, to permit entry into the United States for consumption of man-made fiber textile products in Category 638, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on April 23, 1985 and extends through April 22, 1986 in excess of 461,788 dozen.[1].

In carrying out this directive, entries of man-made fiber textile products in Category 638, produced or manufactured in China, which have been exported to the United States on and after April 23, 1984 and extending through April 22, 1985, shall, to the extent of any unfilled balance, be charged against the level established for such goods during that twelve-month period. In the event the level established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

Textile products in Category 638 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 85-16814 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 339; Women's, Girls' and Infants' Cotton Knit Shirts)

July 11, 1985.

On June 27, 1985, the United States Government, under Article 3 of the Arrangement Act of 1956 (7 U.S.C. 1854), requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton knit shirts in Category 339, produced or manufactured in Turkey.

[1] The level has not been adjusted to reflect any imports exported after April 22, 1985.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 339, produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on June 27, 1985 and extends through June 26, 1986 may be restrained at 320,972 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 339 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public with the Committee for the Implementation of Textile Agreements consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553 (a)(1) relating to matters which constitute "an affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 338—Women's, Girls' and Infants' Cotton Knit Blouses

June 1985.

Summary and Conclusions

U.S. imports of Category 339 from Turkey were 376,365 dozens during the year ending April 1985, nearly three times the imports of 126,705 dozens a year earlier. Imports for the first four months of 1985 were 230,150 dozens, an annual rate of 690,450 dozens. Turkey is the largest uncontrolled supplier of these garments and was the fourth largest supplier during the first four months of 1985.

These imports from Turkey are entering a market already disrupted by imports. The rapid growth and substantial volume of imports from Turkey are disrupting the market and continuation of the growth would further disrupt the market.

U.S. Production

Production of Category 339 in 1983 was 8.1 million dozens, down 3.5 percent from the 8.4 million in 1982. Production in 1984 is estimated to have been between 8.0 million and 8.4 million dozens. Cuttings of women's knit blouses during the first quarter declined by 29.1 percent from the first quarter of 1984.

U.S. Imports

Imports of Category 339 from all sources increased from 7.4 million dozens in 1983 to 10.0 million in 1984. Imports during the first four months of 1985 were at an annual rate of 12.8 million dozens.

Import Penetration

The ratio of imports to production in 1984 was at a record level with imports at 10.0 million dozens exceeding production which is estimated to have been between 8.0 and 8.2 million dozen. The ratio for a number of years has been around 100 percent.

Duty-Paid Values and U.S. Producer Prices

Most of the imports of Category 339 from Turkey are entered under TSUSA Numbers 383.2706—women's tank tops; 383.2724—women's girls' and infants' T-shirts; and 383.2730—women's, other shirts. These garments are being imported at duty-paid values below the U.S. producer prices for comparable garments.

[FR Doc. 85-16810 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultation With the Government of Japan To Review Trade in Category 350 (Cotton Dressing Gowns)

July 11, 1985.

On June 27, 1985, the Government of the United States requested consultations with the Government of Japan with respect to Category 350. This request was made on the basis of the Agreement effected by exchange of notes dated August 17, 1979, as amended and extended, between the Governments of the United States and Japan relating to trade in cotton, wool and man-made fiber textiles and textile products and on the basis of section 204 of the Agricultural Act 1956 (7 U.S.C. 1854).

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Japan to limit exports in Category 350, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 at a level of 16,919 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of this category under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Japan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultation is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comments may be invited regarding particular comments of information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Category 350—Cotton Robes

July 1985.

Summary and Conclusions

U.S. imports of Category 350 from Japan were 14,677 dozens during the year-ending April 1985. This was 35 percent above the level imported a year earlier. Japan was the ninth largest supplier and accounted for 2.7 percent of the total imports.

The market for Category 350 has been disrupted by imports and imports from Japan are contributing to the disruption. A continuation of the growth creates a real risk of more intensive disruption.

U.S. Production and Market Share

U.S. production of Category 350 followed a downward trend from 1979 through 1982. It partially recovered in 1983 and 1984 but remained below the levels maintained during 1979–1981.

The domestic producers share of the market for domestically produced and imported Category 350 declined from 80 percent in 1979 to 55 percent in 1983. It is estimated that the share ranged from 51 to 54 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 350 increased sharply from 173,000 dozens in 1979 to 531,000 dozens in 1984. Based on the first four months of 1985 data, imports are estimated to reach 656,000 dozen in 1985.

The ratio of imports to domestic production more than tripled from 25.4 percent in 1979 to 80.7 percent in 1983. The ratio is estimated to have ranged between 85.0 and 92.3 percent in 1984.

Duty-Paid Values and U.S. Producer Prices

About 70 percent of the Category 350 imports entered under TSUSA No. 383.3770—women's, girls' and infants' woven robes. These imports are valued well below the U.S. producer prices for comparable robes.

[FR Doc. 85-16811 Filed 7-15-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Standard and Poor's Over-the-Counter Industrial Stock Price Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for public comment on amended terms and conditions of proposed commodity futures contract.

SUMMARY: On March 19, 1985 the Commodity Futures Trading Commission ("Commission"), in accordance with sections 2(a)(1)(B)(iii) and 2(a)(B)(iv)(II) of the Commodity Exchange Act ("Act"), 7 U.S.C. 2a(iii), 2a(iv)(II)(1983), published in the **Federal Register** a notice of availability of the contract terms and conditions contained in an application by the Chicago Mercantile Exchange ("CME") for designation as a contract market in an over-the-counter stock index (50 FR 11007). The notice provided for a sixty-day comment period which ended on May 20, 1985. Subsequently, the CME notified the Commission that it intended to propose a change to the terms of the contract. The CME requested that the Commission give notice of, and seek public comment on, this change. In light of this request, the Commission has concluded that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before July 31, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME—Standards and Poor's Over-the-Counter Industrial Stock Price Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-6990.

SUPPLEMENTARY INFORMATION: By letter dated July 3, 1985, the CME notified the Commission that it wished to amend the terms of the CME's proposed futures contract in the Standard and Poor's Over-the-Counter Industrial Stock Price Index. This modification would clarify the standards to be employed by Standard and Poor's in its selection of stocks included in the index. The Commission previously published in the **Federal Register** a notice of availability of the contract terms and conditions of the proposed contract and provided a sixty-day comment period which ended on May 20, 1985 (50 FR 11007, March 19, 1985).

The CME requested by letter dated July 5, 1985, that the Commission "publish . . . notification in the **Federal Register** of the selection standard that we submitted to you on July 3, 1985. We intend to afford commentators an additional opportunity to comment on our contract in light of this submission." The Commission agrees that an additional comment period to enable the public to consider the intended modification and to express their views on it is in the public interest and is consistent with the objectives of the Commodity Exchange Act.

The contemplated change to the terms of the proposed Standard and Poor's Over-the-Counter Stock Price Index futures contract modifies the description of the index. This amendment provides that "the index is a price weighted index of 250 larger, actively traded domestic NASDAQ National Market System industrial stocks." The Commission is requesting comment on the potential effects of this change to the design of the contract. The Commission would appreciate commentors' addressing, in particular, the possible effects of restricting the index of stocks to those which are National Market System industrial stocks.

Copies of the CME's letters of July 5, 1985, and July 3, 1985, which contain the amendment to the terms and conditions of its proposed over-the-counter stock index contract, together with the other terms and conditions of that contract, are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies of these documents can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Any person interested in submitting written data, views or arguments on the above identified issues should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 by the specified date.

Issued in Washington, D.C. on July 11, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-16900 Filed 7-15-85; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Survey of Persons Reporting Childhood Ingestion of Prescription Medicines to Poison Control Centers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3601 *et seq.*) the Consumer Product Safety Commission has submited to the Office of Managment and Budget a request for approval of a survey of persons reporting ingestions of prescription medicines by children to poison control centers. Such persons will be asked for information about the person whose medicine was ingested and about the circumstances of the ingestion.

From this information, the Commission will be able to develop effective poison prevention programs and target them at the populations whose medicines pose the greatest risk to children.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th street, Washington, D.C. 20207.

Title of Information Collection: American Association of Poison Control Centers Prescription Drug Ingestion Survey.

Type of Request: Approval of new plan.

Frequency of Collection: One time.

General Description of Respondents: Persons reporting childhood ingestions of prescription drugs to selected poison control centers.

Estimated Number of Respondents: 200.

Estimated Number of Hours for All Respondents: 240.

Comments: Comments on this request for approval for collection of information should be addresed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7513. Copies of the request for approval of collection of information are available from Francine Schacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: July 11, 1985.

Sadye E. Dunn,

Consumer Product Safety Commission

[FR Doc. 85-16834 Filed 7-15-85; 8:45 am]

BILLING CODE 6355-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, July 24, 1985, beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project—County of Montgomery D-85-22 CP.* A sewage treatment project to serve the new Montgomery County Prison in Lower Providence Township, Montgomery County, Pennsylvania. The new treatment facility will be designed to provide tertiary treatment to an average waste flow of 0.053 million gallons per day (mgd). Treated effluent will discharge to an unnamed tributary of Skippack Creek in Lower Providence Township. This hearing continues that of June 27, 1985.

2. *Holdover Project—Town of Rockland—Livingston Manor Sewer District D-85-28 CP.* An application to eliminate the use of chlorination facilities at the existing sewage treatment plant in the Town of Rockland, Sullivan County, New York. The applicant has requested a waiver of the current DRBC disinfection requirement. The Livingston Manor wastewater discharge was approved with a design capacity of 1,050,000 gallons per day (gpd) to be discharged to Willowemoc Creek as described in Docket D-67-29 CP on April 26, 1967. The receiving waters are classified by the New York Department of Environmental Conservation as C(T) trout waters and as such do not require any disinfection. The New York State Health Department has stated that there is no demonstrated need for disinfection at this facility. This hearing continues that of May 29, 1985.

3. *Borough of Doylestown D-79-18 CP (Renewal).* Renewal of an approved ground water withdrawal from Well No. 13 which supplies water to the applicant's distribution system in Doylestown Borough, Bucks County, Pennsylvania. The original 1980 Commission approval was limited to five years and will expire unless renewed. The proposed 30-day limit remains at 8.7 million gallons (mg) from Well No. 13 and 50 mg from all wells. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Borough of Quakertown D-82-4 CP (Revised).* A revised application to increase total ground water withdrawals from the applicant's five existing wells (Nos. 11, 12, 13, 14, and 15) in the Beaver Run Watershed from an average of 0.94 mgd to an average of 1.06 mgd. The wells are located in or near the Borough of Quakertown, Bucks County, and are in the Southeastern Pennsylvania Ground Water Protected Area.

5. *City of Newark D-83-35 CP.* A proposed new interconnection between the City of Newark and the Artesian Water Company water supply systems in New Castle County, Delaware. The interconnection will be located at the intersection of Kirkwood Highway and Polly Drummond Road, approximately two miles northeast of the City of Newark, and will provide for transfer of water of up to 300 gallons per minute (gpm) to Artesian or up to 600 gpm to Newark during emergency conditions. The City of Newark obtains its water supply from 10 wells and two interconnections with the Wilmington Suburban Water Company. Artesian Water Company obtains its water supplies from 41 wells and four interconnections with the City of Wilmington and one interconnection with Wilmington Suburban Water Company.

6. *Citizens Utilities Water Company of Pennsylvania D-84-60 CP.* A ground water withdrawal project to supply approximately 0.25 mgd of water from the applicant's Well No. 23 serving the south side of Gring's Hill. The total withdrawal from all wells in the applicant's distribution system will be 4.24 mgd. The project is located in Spring Township, Berks County, Pennsylvania.

7. *Whitehall Township Authority D-85-37 CP.* A ground water withdrawal project to supply approximately 0.433 mgd of water from the applicant's Mickley Gardens Well No. 2. The total withdrawal from all wells in the applicant's distribution system will be 0.72 mgd. The project is located in Whitehall Township, Lehigh County, Pennsylvania.

8. *Monsanto Polymer Products Company D-85-45.* A project to initiate remedial action towards the removal of PCBs and benzyl compounds from ground water in an isolated area of the existing Monsanto Polymer Products Facility near Bridgeport in Logan Township, Gloucester County, New Jersey. Approximately 50,000 gpd will be withdrawn from 33 wells special 50 feet apart, pretreated in proposed facilities and then processed in the existing wastewater treatment plant prior to discharge into the Delaware River. Clean Water will be reinjected in 33 new injection wells to help flush out the contamination.

9. *Exeter Township, Berks County, Authority D-85-46 CP.* An application for rerating of the Exeter Township, Berks County, Authority sewage treatment plant which serves Exeter Township, St. Lawrence Borough, and a portion of Lower Alsace Township in Berks County, Pennsylvania. The applicant requests that the allowable average waste flow through the existing plant be increased from 2.4 mgd to 3.6 mgd. The existing flow limit of 2.4 mgd has been exceeded because of excessive infiltration and inflow to the collection system. The rerating will allow the plant to accept the seasonal high flows, without permit violation, while the infiltration and inflow problem is being corrected. The plant is designed for secondary treatment at the higher flow rate, and treated effluent will continue to discharge to the Schuylkill River at River Mile 92.47-65.2.

10. *City of Bridgeton D–85–47 CP.* A ground water withdrawal project to replace water from Well No. 4 which collapsed and has been sealed. A proposed withdrawal from new Well No. 16 will be limited to 0.58 mgd. The proposed withdrawal in the applicant's system will be limited to 8.5 mgd. The project is located in the City of Bridgeton, Cumberland County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

July 9, 1985.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1986. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, use attainability assessment, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it may be examined by interested individuals at the Commission's offices upon request. The public review and comment period will begin July 15, 1985 and extend for 30 days. Contact Seymour P. Gross at the Commission.

[FR Doc. 85–16831 Filed 7–15–85; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–169–000]

Consolidated Gas Transmission Corp.; Proposed Changes in Rates and Charges

July 5, 1985.

Take notice that on July 1, 1985, Consolidated Gas Transmission Corporation (Consolidated), pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1 to become effective on August 1, 1985. Consolidated requests that the rates become effective, after five-month suspension, on January 1, 1986, in accordance with a rate, moratorium agreed to in a rate settlement agreement in Docket No. RP82–115.

The proposed rate changes would increase Consolidated's revenues from jurisdictional sales and services by $82.9 million based on the twelve months ended March 31, 1985, adjusted for known and measurable changes through December 31, 1985.

Consolidated states that increased rates are necessary to reflect decreased sales and other billing determinants and to recover increased operation and maintenance expenses, increased taxes, and the increased cost of money. The rate of return is based on the capital structure agreed to for filing purposes in Docket No. RP82–115 with an equity return of 17%.

Consolidated states that the cost of gas, including pipeline production, was computed using the base costs of gas per unit of sales reflected on Consolidated's Substitute Second Revised Sheet No. 31.

Consolidated represents that Statement P will be filed within fifteen days of ts filing. It states that it served copies of its filing upon its jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy 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 July 12, 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. 85–16816 Filed 7–15–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8402–000 et al.]

Melvin R. Hall et al.; Availability of Environmental Assessment and Finding of No Significant Impact

July 9, 1985.

In accordance with the National Environmental Poicy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
8402–000	Rapidan Mill	VA	Rapidan River	Rapidan	Melvin R. Hall.
8875–000	Armstrong-Keta	AK	Betty and Jetty Lake	Port Armstrong	Armstrong-Keta, Inc.
8937–000	Ione Pipeline	CA	Ione Canal	Ione	Amador County Water Agency.
9007–000	Dominguez Gap	CA	Dominguez Gap Barrier	Carson	Los Angeles County, Flood Control, District.
9008–000	Alamitos Barrier Project	CA	Alamitos Barrier Pipeline	Long Beach	Do

LICENSES

Project No.	Project name	State	Water body	Nearest town	Applicant
3451–002	Townsend Dam Transmission Line	PA	N/A	New Brighton	Beaver Falls Municipal Authority.
6632–000	Wiswall Dam	NH	Lamprey River	Durham	John R. Webster.
7449–000	....do	NH	....do	....do	Town of Durham, NH.
7174–000	Cottrell Project	WA	McCloskey Creek	Skamania	Truman Price.
8615–000	Fiske Mill	NH	Ashuelot River	Hinsdale	Fiske Hydro, Inc.
3757–002	Lost Creek	UT	Lost Creek	Croydon	City of Bountiful, UT.
5089–003	Felt	ID	Teton River	Felt	Fall River Electric Cooperative, Inc., and Hydro Valley Development, Inc.

LICENSES—Continued

Project No.	Project name	State	Water body	Nearest town	Applicant
7371-001	Little Butte Creek	CA	Little Butte Creek	Paradise	Dayton K. and Francis S. Butler.
8047-001	Willimantic No. 2	CT	Willimantic River	Willimantic	Summit Hydropower.
8366-000	Sumner Dam	NM	Pecos River	Fort Sumner	PRODEK, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16817 Filed 7-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-137-001 et al.]

MIGC, Inc., et al.; Filing of Pipeline Refund Reports and Refund Plans

July 9, 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 July 19, 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
6/14/85	MIGC, Inc.	RP85-137-001	Report.[1]
6/14/85	Williston Basin Interstate Pipeline Co	RP85-97-001	Report.[1]
6/14/85	Colorado Interstate Gas Co	RP85-95-002	Report.[1]
6/14/85	Colorado Interstate Gas Co	RP85-95-003	Report.[1]
6/17/85	United Gas Pipeline Co	RP85-90-001	Report.[1]
6/17/85	Trunkline Gas Company	RP85-77-002	Report.[1]
6/17/85	Panhandle Eastern Pipe Line Co	RP85-96-003	Report.[1]
6/17/85	Northwest Pipeline Corp	RP85-83-001	Report.[1]
6/17/85	Sea Robin Pipeline Co	RP85-89-001	Report.[1]
6/17/85	Mid Louisiana Gas Co	RP85-82-001	Report.[1]
6/17/85	Mountain Fuel Resources, Inc	RP85-73-001	Report.[1]
6/17/85	Columbia Gas Transmission Corp	RP85-91-002	Report.[1]
6/17/85	Arkla Energy Resources	RP85-119-001	Report.[1]
6/17/85	Texas Gas Pipe Line Corp	RP85-79-001	Report.[1]
6/17/85	National Fuel Gas Supply Corp	RP85-93-001	Report.[1]
6/17/85	Valley Gas Transmission, Inc	RP85-104-001	Report.[1]
6/17/85	Texas Gas Transmission Corp	RP85-84-001	Report.[1]
6/17/85	Tennessee Gas Pipeline Co	RP85-94-001	Report.[1]
6/17/85	El Paso Natural Gas Co	RP85-92-001	Report.[1]
6/18/85	Lone Star Gas Co	RP85-76-002	Report.[1]
6/18/85	KN Energy, Inc	RP85-98-001	Report.[1]
6/18/85	Mississippi River Transmission Corp	RP85-80-001	Report.[1]
6/18/85	Natural Gas Pipeline Co. of America	RP85-99-002	Report.[1]
6/18/85	ANR Pipeline Co	RP85-88-001	Report.[1]
6/18/85	Consolidated Gas Supply Corp	RP85-87-001	Report.[1]
6/18/85	Transwestern Pipeline Co	RP85-68-002	Report.[1]
6/18/85	Florida Gas Transmission Co	RP85-75-001	Report.[1]
6/18/85	Transcontinental Gas Pipe Line Corp	RP85-78-001	Report.[1]
6/18/85	Valero Interstate Transmission Co	RP85-86-001	Report.[1]
6/27/85	Southern Natural Gas Company	RP85-153-001	Report.[1]
6/27/85	Southern Georgia Natural Gas Co	RP77-32-017	Report.[1]
7/01/85	Natural Gas Pipe Line Co. of America	RP80-11-016	Report.[1]

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings receive new sub-docket numbers.

[FR Doc. 85-16818 Filed 7-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-59-004]

Northern Natural Gas Company Division of InterNorth, Inc.; Filing

July 10, 1985.

Take notice that on June 28, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) tendered for filing to become a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Third Revised Sheet No. 4e.1
Substitute Fourth Revised Sheet No. 4e.1
Substitute Fifth Revised Sheet No. 4e
Substitute Forty-Third Revised Sheet No. 4e
Substitute Forty-Fourth Revised Sheet No. 4e
Substitute Forty-Fifth Sheet No. 4e
First Substitute Forty-Sixth Sheet No. 4e
First Substitute Forty-Seventh Revised Sheet No. 4e
First Substitute Forty-Eighth Revised Sheet No. 4e
First Substitute Forty-Ninth Revised Sheet No. 4e
First Substitute Fiftieth Revised Sheet No. 4e
Substitute Sixth Revised Sheet No. 4e.1
Substitute Fifty-First Revised Sheet No. 4e
Substitute Seventh Revised Sheet No. 4e.1
Substitute Fifty-Second Revised Sheet No. 4e
Substitute Eighth Revised Sheet No. 4e.1
Substitute Fifty-Third Revised Sheet No. 4e
Substitute Ninth Revised Sheet No. 4e.1
Substitute Fifty-Fourth Revised Sheet No. 4e
Substitute Tenth Revised Sheet No. 4e.1
Substitute Fifty-Fifth Revised Sheet No. 4e
Substitute Eleventh Revised Sheet No. 4e.1
Substitute Fifty-Sixth Revised Sheet No. 4e
Substitute Twelfth Revised Sheet No. 4e.1
Substitute Fifty-Seventh Revised Sheet No. 4e
Substitute Thirteenth Revised Sheet No. 4e.1
Substitute Fifty-Eighth Revised Sheet No. 4e
Substitute Fourteenth Revised Sheet No. 4e.1
Substitute Fifty-Ninth Revised Sheet No. 4e
Substitute Fifteenth Revised Sheet No. 4e.1
Substitute Sixtieth Revised Sheet No. 4e
Substitute Sixteenth Revised Sheet No. 4e.1
Substitute Sixty-First Revised Sheet No. 4e
Substitute Seventeenth Revised Sheet No. 4e.1
Substitute Sixty-Second Revised Sheet No. 4e
Substitute Eighteenth Revised Sheet No. 4e.1
Substitute Sixty-Third Revised Sheet No. 4e
Substitute Nineteenth Revised Sheet No. 4e.1
Substitute Sixty-Fourth Revised Sheet No. 4e
Substitute Twentieth Revised Sheet No. 4e.1
Substitute Sixty-Fifth Revised Sheet No. 4e
Substitute Twenty-First Revised Sheet No. 4e.1
Fifth Revised Sheet No. 4e

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 July 3, 1985.

The substitute sheets are being filed to effectuate the PGA rates approved in Docket Nos. TA85–3–59–000, TA85–3–59–001, TA85–2–59–000 and TA85–2–59–001 pursuant to Northern's Flexible Pricing—Larage Volume Contract Service Rate Schedule.

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 the Commission's Rule of Practice (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 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. 85–16820 Filed 7–15–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–5–37–000, 001]

Northwest Pipeline Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

July 10, 1985.

Take notice that on July 3, 1985 Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Twentieth Revised Sheet No. 10
Second Amended Substitute Nineteenth Revised Sheet No. 10

The tendered tariff sheets reflect a reduction of $56,915,093 in Northwest's projected cost of purchased gas resulting from substantial decreases in the cost of Canadian supplies as well as a decline in the price being paid under Northwest's "Market-Out" provisions of its domestic contracts.

Northwest has requested an effective date of July 1, 1985 for the above-referenced tariff sheets.

A copy of this filing has been mailed to all parties of record in Docket No. TA85–3–37–000 and on all jurisdictional customers and affected state agencies.

Any person desiring to be heard or 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 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action, 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 85–16819 Filed 7–15–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–8–002]

South Georgia Natural Gas Co.; Compliance Filing

July 10, 1985

Take notice that on July 2, 1985, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1:

Substitute Thirty-First Revised Sheet No. 4
Substitute Thirty-Second Revised Sheet No. 4
Thirty-Third Revised Sheet No. 4

South Georgia states that these sheets are filed in accordance with Ordering Paragraph (C) of the Commission's June 21, 1985 order issued in Docket No. TA85–2–8–000. South Georgia requests that the proposed tariff sheets be accepted effective, May 1, 1985, June 1, 1985 and July 1, 1985, respectively. If approved as requests, these three tariff sheets will effect a 21.44¢ per Mcf reduction in South Georgia's Current Adjustment effective May 1, 1985, an additional 7.10¢ per Mcf reduction in South Georgia's Current Adjustment effective June 1, 1985, and a 2.53¢ reduction in South Georgia's Surcharge Adjustment effective July 1, 1985.

Copies of the filing were served on all purchasers, state commissions and interested parties shown on the list attached to the filing.

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 July 17, 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. 85–16821 Filed 7–15–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–2865–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solication and the expected impact, and where appropriate includes the actual data collection instrument. For the ICR listed below OMB has waived the public comment period and given approval (OMB #2070–0074; expires 7/31/88). This ICR is available for review.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460; telephone (202) 382–2742) or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

• *Title:* Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection (EPA #1249). (This is a new collection.)

Abstract: Sodium Monofluoroacetate (1080), a previously banned pesticide, has been re-approved for use in a new delivery mechanism, the toxic collar. This recordkeeping requirements will monitor the use effectiveness, and any hazards resulting from the use of the toxic collars. Records will be kept by users of the collars.

Respondents: Certified Pesticide Applicators using 1080 toxic collars for livestock protection.

Dated: July 11, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-16842 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40010; FRL 2604-2]

Designation of Certain Chemicals for Priority Attention; Notice of Availability of Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is making a working document available to the public on section 4(f) of the Toxic Substances Control Act (TSCA). This document contains guidelines on how EPA interprets the requirements of this section.

ADDRESS: Communications to the Agency about his notice should be sent to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street, SW., Washington, D.C. 20460.

Communications should include the document control number OPTS-40010. Communications received on this notice will be available for review and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays, in Room. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edwrd A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll-free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: The document being made available today contains EPA's working interpretation of the requirements of section 4(f) of TSCA. This section requires that EPA designate certain chemicals for priority attention. Under section 4(f), when information indicates that there may be a reasonable basis to conclude that a chemical presents or will present a significant risk of serious or widespread harm to humans from cancer, birth defects, or gene nutations, the chemical must be reviewed on a priority basis. EPA must decide within 180 days of receipt of the information which indicates a section 4(f) priority either that the risk identified is not unreasonable or must initiate appropriate action to reduce or control the risk.

EPA's working interpretation of the section, and criteria for applying it, are contained in the document now available. Persons wishing to have copies of the document should call or write their requests to the telephone number or address listed above, under **"FOR FURTHER INFORMATION CONTACT."** Persons wishing to comment on the document should send their comments to the address given above. The comments will be considered along with public comments received in response to particular section 4(f) designations in the future. Future revisions to the guidance document will reflect both EPA's experience in applying section 4(f) and its considerations of comments received.

Dated: July 2, 1985.

A. James Barnes,

Acting Administrator.

[FR Doc. 85-16844 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51560A/51562B; FRL-2864-8]

Premanufacture Notices; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notices (PMNs) P85-543, P85-544, P85-545, P85-546, and P85-547 under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on October 2, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, D.C. 20460 (202-382-3395).

SUPPLEMENTARY INFORMATION: On February 20, 1985, EPA received PMNs P85-543, P85-544, P85-545, P85-546, and P85-547 for the following new chemical substances:

1. P85-543: 2-Butenedioic acid (*z*)-, mono[2-[(1-oxo-2-propenyl)-oxy]ethyl]ester.

2. P85-544: 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4, 13-dioxo-3, 14-dioxa-5 12-diazo hexandecane-1, 16-diylester.

3. P85-545: 2-Propenoic acid-3-(dimenthylamino)-2,2-dimethyl-propylester.

4. P85-546: 2-Propenoic acid, 2-methyl-, 3,3,5-trimethylcyclohexylester.

5. P85-547: 2-Propenoic acid, 3,3,5-trimethylcyclohexylester.

The submitter claimed the production volume to be confidential business information. Notice of receipt for P85-543, P85-546 and P85-547, was published in the **Federal Register** of March 1, 1985 (50 FR 8390). Notice of receipt for P85-544 and P85-545 was published in the **Federal Register** of March 15, 1985 (50 FR 10536). The original 90-day review period was sheduled to expire on July 4, 1985.

Based on its analysis, EPA finds that there is a possibility that the substances submitted for reveiw in these PMNs may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to October 2, 1985.

PMNs are available for public inspection in Rm. E-107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: July 3, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-16849 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-2864-6]

Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants Delegation of Additional Standards to Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

SUMMARY: On January 23, 1985, the Kentucky Natural Resources and Environmental Protection Cabinet requested that EPA delegate to the State the authority to implement and enforce EPA's new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) for additional categories of air pollution sources (listed below under "Supplementary Information"). Since EPA's review of pertinent Kentucky laws, rules, and regulations showed them to be adequate to implement and enforce these Federal standards, the Agency has delegated authority for them to Kentucky. Affected sources are now

under the jurisdiction of the State rather than EPA.

EFFECTIVE DATE: April 17, 1985.

ADDRESSES: Copies of the State's request and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Kentucky Division of Air Pollution Control, Ft. Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, rather than to EPA Region IV.

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Management Branch at the above address, telephone 404/881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101, 110, 111, and 112 of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS)—Section 111, and National Emission Standards for Hazardous Air Pollutants (NESHAP)—section 112, to any state which had adequate implementation and enforcement procedures.

On April 12, 1977, EPA delegated to Kentucky authority to implement and enforce NSPS and NESHAP in existence at that time. As additional categories have been promulgated, the State has requested authority for them; EPA has responded by making supplemental delegations of authority for NSPS on December 5, 1980, March 26, 1981, January 1, 1982 and July 6, 1982; and for NESHAP on December 5, 1980. On January 23, 1985, the Kentucky Natural Resources and Environmental Protection Cabinet requested a delegation of authority for the following recently promulgated NSPS contained in 40 CFR Part 60, and NESHAP contained in 40 CFR Part 61.

NSPS

Subpart—Source Category

H (Revised)—Sulfuric Acid Manufacturing Plants
T (Revised)—Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U (Revised)—Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V (Revised)—Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W (Revised)—Phosphate Fertilizer Industry: Triple Superphosphate Plants
EE—Surface Coating of Metal Furniture
HH—Lime Manufacturing Plants
QQ—Graphic Art Industry: Publication Rotogravure Printing
RR—Pressure Sensitive Tape & Label Surface Coating Operations
SS—Industrial Surface Coating: Large Appliances
TT—Metal Coil Surface Coating
VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry
WW—Beverage Can Surface Coating Industry
XX—Bulk Gasoline Terminals
GGG—Petroleum Refinery Equipment
HHH—Synthetic Fiber Production Facilities

NESHAP

Subpart—Source Category

J—Equipment Leaks of Benzene
M (Revised)—Asbestos Standard
V—Equipment Leaks

Note.—The word "*revised*" following the subpart indicates the standard was previously delegated to the State, and this delegation action is in recognition of the State's adoption of EPA's revision to the standard.

After a thorough review of the request, the Regional Administrator determined that such delegation was appropriate with the conditions set forth in the original delegation letter of April 12, 1977, and granted the State's request in a letter dated April 17, 1985. Kentucky sources subject to the NSPS listed above are not under the jurisdiction of the State of Kentucky.

(Secs. 101, 110, 111, and 301 of the Clean Air Act (42 U.S.C. 7401, 7410, 7411, and 7601))

Dated: July 5, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85-16846 Filed 7-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-7-MO-1]

The Missouri Emergency Management Plan Site-Specific for the Callaway Nuclear Power Plant; Certification of FEMA Findings and Determinations.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Missouri submitted its plans relating to the Callaway Nuclear Power Plant to the Director of FEMA Region VII on May 21, 1984, for FEMA review and approval. On August 31, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Callaway Nuclear Power Plant, an evaluation of the joint exercise conducted on March 21, 1984, and the April 19, 1984, remedial exercise, in accordance with § 350.9 of the FEMA rule, and a public meeting held on July 25, 1984 to discuss the site-specific aspects of the State and local plans around the Callaway Nuclear Power Plant in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Callaway Nuclear Power Plant are adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG-0654/FEMA REP-1, Rev. 1, and the Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants (FEMA-43).

FEMA will continue to review the status of offsite plans and preparedness associated with the Callaway Nuclear Power Plant in accordance with section 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-7-MO-1 maintained by the Regional Director, FEMA Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106.

Dated: July 10, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-16808 Filed 7-15-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Citizens Dimension Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 7, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Dimension Bancorp, Inc.*, Muskogee, Oklahoma; to acquire 13.4 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, thereby indirectly acquiring Charter National Bank, Oklahoma City, Oklahoma.

2. *Missouri Banc-Management, Inc.*, Kansas City, Missouri; to acquire 91 percent of the voting shares of Union National Bank, Kansas City, Missouri.

3. *Pembroke Bancshares, Inc.*, Kansas City, Missouri; to acquire 100 percent of the voting shares of Missouri Banc-Management, Inc., Kansas City, Missouri, thereby indirectly acquiring Stadium Bank, Kansas City, Missouri.

B. **Federal Reserve Bank of Dallas** (Anthony J. Monterlaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Dalhart Bancshares, Inc.*, Dalhart, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Dalhart, Dalhart, Texas.

Board of Governors of the Federal Reserve System, July 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16865 Filed 7-15-85; 8:45 am]

BILLING CODE 6210-01-M

Grupo Financiero Popular, S.A.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 2, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Grupo Financiero Popular, S.A.*, Santo Domingo, Dominican Republic; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Dominican Bank, New York, New York.

Board of Governors of the Federal Reserve System, July 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16866 Filed 7-15-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Saint Elizabeths Hospital and District of Columbia Mental Health Services Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on May 13, 1985, to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, the authorities delegated to the Assistant Secretary for Health, under Pub. L. 98-621, 98 Stat. 3369, as amended, insofar as those authorities pertain to the functions assigned to the Alcohol, Drug Abuse, and Mental Health Administration. The following authorities were excluded from this delegation:

Section 4(f)(2)(A)—authority to initiate and complete certain repairs and renovations to the physical plant and facility support systems of the Saint Elizabeths Hospital.

Section 8(a)(1)—except as provided in section 8(a)(2), authority to transfer to the District, without compensation, certain real property at the Saint Elizabeths Hospital, together with buildings, improvements, and personal property, as identified pursuant to section 4(c)(7).

Section 8(c)—authority to transfer to the District, without compensation, the J.B. Johnson buildings and grounds.

Section 9(d)—subject to section 4(f)(2), authority for capital improvements to facilities at the Saint Elizabeths Hospital authorized during the service coordination period in accordance with Pub. L. 83-472.

The delegation to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, became effective on July 1, 1985.

Dated: July 1, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-16836 Filed 7-15-85; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

[Docket No. N-85-1543]

Mortgage and Loan Insurance Programs under the National Housing Act—Debenture Interest Rates

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

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1985, is 10-1/8

percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1985, is 11-1/8 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 426–4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury: (1) Has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1985, is 11-1/8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 11-1/8 percent of the six-month period beginning July 1, 1985. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1985.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since July 1, 1976:

	On or after	Prior to
Effective rate (percent):		
7	July 1, 1976	Jan. 1, 1977.
6¾	Jan. 1, 1977	July 1, 1977.
7¼	July 1, 1977	Jan. 1, 1978.
7⅛	Jan. 1, 1978	July 1, 1978.
7⅜	July 1, 1978	Jan. 1, 1979.
8	Jan. 1, 1979	July 1, 1979.
8¼	July 1, 1979	Jan. 1, 1980.
9½	Jan. 1, 1980	July 1, 1980.
9¼	July 1, 1980	Jan. 1, 1981.
11¼	Jan. 1, 1981	July 1, 1981.
12¼	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅝	July 1, 1983	Jan. 1, 1984.
11⅛	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1985, is 10-1/8 percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1986.

The subject matter of this notice falls within the categorical exclusion from HUD's evnironmental clearance procedures set forth in 24 CFR 50.21(a)(15). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 3, 1985.

Janet Hale,

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

[FR Doc. 85–16805 Filed 7–15–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6680-A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Paug-Vik Incorporated, Limited for approximately 3,657 acres. The lands involved are in the vicinity of Naknek.

Seward Meridian, Alaska

T. 17 S., R. 44 W. (Surveyed)
T. 14 S., R. 45 W. (Unsurveyed)
T. 17 S., R. 45 W. (Partially Surveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 15, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–16857 Filed 7–15–85; 8:45 am]

BILLING CODE 4310-JA-M

[M-59763]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of realty action M–59763—Exchange of public and private lands, in Meagher and Teton Counties, Montana.

SUMMARY: This exchange will be between the United States of America and The Nature Conservancy. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the

Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 8 N., R. 7 E.,
Sec. 20, W½NW¼NW¼;
Sec. 28, W½SW¼, and SE¼SW¼.
T. 8 N., R. 7 E.,
Sec. 20, E½NW¼NW¼, and NE¼SE¼.
T. 10 N., R. 11 E.,
Sec. 21, Lots 2, 4, 5, 9, 10, and 11;
Sec. 27, Lot 6;
Sec. 28, Lot 4.
T. 9 N., R. 9 E.,
Sec. 14, SW¼NE¼.
T. 9 N., R. 10 E.,
Sec. 17, NW¼SE¼.

Aggregating 321.49 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 24 N., R. 8 W.,
Sec. 6, Lots 6, and 7, NW¼NE¼NE¼SW¼, and W½NE¼SW¼.

Aggregating 96.98 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM Office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. A $690.00 value equalization by cash payment will be paid by the United States of America to The Nature Conservancy.

5 The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as we are acquiring key grizzly bear habitat, essential gray wolf habitat, and wintering areas for deer and bighorn sheep.

Dated: July 9, 1985.

David E. Little,

Acting District Manager.

[FR Doc. 85–16859 Filed 7–15–85; 8:45 am]

BILLING CODE 4310-DN-M

[M–60998]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M–60998—Exchange of Public and private lands, in Phillips and Blaine Counties, Montana.

SUMMARY: This exchange will be between the United States of America and Larry Matthews. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 29 N., R. 27 E.,
Sec. 8, W½NE¼.
T. 29 N., R. 30 E.,
Sec. 20, S½SW¼.
T. 30 N., R. 27 E.,
Sec. 26, SW¼;
Sec. 35, NW¼.
T. 32 N., R. 26 E.,
Sec. 3, S½NW¼.
T. 32 N., R. 27 E.,
Sec. 20, NE¼.
T. 37 N., R. 32 E.,
Sec. 7, E½E½;
Sec. 22, SW¼ and W½SE¼;
Sec. 27, W½NE¼.
T. 31 N., R. 27 E.,
Sec. 28, SW¼SE¼;
Sec. 33, NW¼NE¼.
T. 36 N., R. 24 E.,
Sec. 21, N½.
T. 27 N., R. 31 E.,
Sec. 18, Lots 1 and 2, W½NE¼, and E½NW¼.
T. 27 N., R. 30 E.,
Sec. 1, SW¼NW¼.
T. 27 N., R. 31 E.,
Sec. 4, SE¼SW¼.
T. 26 N., R. 28 E.,
Sec. 11, E½SE¼;
Sec. 12, S½.
T. 26 N., R. 29 E.,
Sec. 19, Lots 3 and 4, S½NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 20, W½SW¼.
T. 37 N., R. 32 E.,
Sec. 28, E½SE¼;
Sec. 29, SW¼.
T. 36 N., R. 32 E.,
Sec. 15, S½SW¼;
Sec. 22, S½NW¼, and SW¼.
T. 32 N., R. 29 E.,
Sec. 6, Lots 3, 4, 5, 6, and 7, SE¼NW¼, and E½SW¼.
T. 33 N., R. 28 E.,
Sec. 25, SE¼SE¼.
T. 35 N., R. 28 E.,
Sec. 14, S½NE¼, E½SW¼, and SE¼.
T. 26 N., R. 30 E.,
Sec. 4, Lots 3 and 4, and SE¼NW¼.
T. 37 N., R. 32 E.,
Sec. 27, SW¼ and W½SE¼.
T. 30 N., R. 28 E.,
Sec. 4, Lots 3 and4;
Sec. 5, Lots 1, 2, and 3, S½NE¼, and SE¼NW¼.
T. 31 N., R. 28 E.,
Sec. 32, Lot 4;
Sec. 33, Lot 1 and NW¼SW¼.
T. 29 N., R. 27 E.,
Sec. 12, E½, N½NW¼, S½N½SW¼, and S½SW¼.

Aggregating 5,279.55 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 30 N., R. 32 E.,
Sec. 33, E½E½;
Sec. 34, NE¼SE¼;
Sec. 35, N½SW¼.
T. 29 N., R. 32 E.,
Sec. 2, S½NW¼ and SW¼;
Sec. 3, S½NE¼ and SE¼;
Sec. 8, E½E½;
Sec. 9, All;
Sec. 10, All;
Sec. 11, W½NW¼, NW¼SW¼ and S½S½;
Sec. 13, SW¼SW¼;
Sec. 14, All;
Sec. 15, E½NE¼, NW¼NE¼, NE¼NW¼ and E½SW¼;
Sec. 20, N½NE¼;
Sec. 21, N½, NE¼SW¼ and NW¼SE¼;
Sec. 22, NE¼NW¼ and S½N½;
Sec. 23, N½, N½SW¼ and NW¼SE¼;
Sec. 24, NW¼NW¼.

Aggregating 4,560 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action

and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. All valid existing rights (e.g. rights-or-way, easements, and leases of record).

4. There will be a $700 value equalization by cash payment from Larry Matthews to the United States of America.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

6. The following right-of-way will be reserved to the United States of America—M–58703, Western Area Power Administration.

7. The exchange of these lands will be subject to all valid existing rights and reservations of record including the following rights-of-way: Public roads to Phillips County; Triangle Telephone M–2864, M–42511, M–39347; Big Flat Electric M–57527, M–1614.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as we are acquiring wildlife values associated with riparian habitat and sagebrush and recreational uses of the land.

Dated: July 9, 1985.

David E. Little,

Acting District Manager.

[FR Doc. 85–16860 Filed 7–15–85; 8:45 am]

BILLING CODE 4310-DN-M

[OR 38477]

Realty Action; Direct Sale of Public Land in Crook County, OR

The following lands are suitable for sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

Legal description	Acreage
T. 16 S., R. 16 E., Willamette Meridian:	
Sec. 13: Tract 37	.37
Sec. 24: Tract 38	15.52
Sec. 25: Tract 39	4.64
T. 16 S., R. 17 E., Willamette Meridian:	
Sec. 19: Tract 37	0.86
Total	21.39

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

These (isolated) parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

The tracts were established as a result of a dependent resurvey conducted by BLM Prineville District Office. The survey revealed discrepancies between section corners used in surveying the Prineville Lake Acres Unit I subdivision, and the original established corners.

By selling the four tracts directly to the developer, Central Oregon Sun Country, Inc., the property would automatically be incorporated into each of the affected individual lots.

Direct sale procedures are being used since a competitive sale is not appropriate. The public interest would best be served by direct sale because the four tracts are included within lots which have been sold by the developer.

The parcel identified by Serial No. OR 38477 is being offered to Central Oregon Sun Country, Inc., using direct sale procedures authorized under 43 CFR 2711.3–3. The land will be sold at fair market value to Central Oregon Sun Country, Inc., without competitive bidding. The prospective purchaser is required to render a minimum deposit of 20% of the purchase price by October 1, 1985, and the balance within 180 days of the sale date.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

(1) All minerals in the lands will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

(2) Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

(3) The patent will be issued subject to all valid existing rights and reservations of record.

(4) The sale parcels will be subject to:

(a) The rights of prior permittees or lessees to use so much of the surface of said land as is required for oil and gas operations, without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas lease OR–22582, OR–024157, OR–36405 and any authorized extension of that lease. Section 29 of the Act of February 25, 1920, 41 Stat. 449, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1570, 30 U.S.C. 124.

Further information concerning the sale including the environmental analysis and land report, is available for review at the Prineville District Office.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Prineville District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. (In the absence of adverse comments this realty action will become a final determination of the Department of the Interior.)

Dated: July 3, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85–16863 Filed 7–15–85; 8:45 am]

BILLING CODE 4310-33-M

[OR. 38277, 38796 thru 38803]

Realty Action; Modified Competitive Sale of Public Land in Wheeler and Gilliam Counties, OR

The following lands are suitable for sale under section 203 (and 209) of the Federal Land Policy and Management

Act of 1976, 43 U.S.C. 1713 (and 1719), at no less than the appraised market value.

Serial No. and parcel No.	Legal description	Acreage	Value	Minimum bid deposit	Bidding procedure
OR. 38277, Parcel No. 1.	T. 9 S., R. 23 E., Sec. 13: E½SE¼, Sec. 24: NE¼NE¼. T. 9 S., R. 24 E., Sec. 18: Lot 3	158.95	$11,000	30	Modified, competitive.
OR. 38796, Parcel No. 2.	T. 9 S., R. 24 E., Sec. 8: SE¼SE¼	40	3,000	30	Do.
OR. 38797, Parcel No. 3.	T. 9 S., R. 24 E., Sec. 17: NW¼NE¼	40	3,000	30	Do.
OR. 38798, Parcel No. 4.	T. 11 S., R. 24 E., Sec. 10: NW¼NW¼	40	4,000	30	Do.
OR. 38799, Parcel No. 5.	T. 12 S., R. 21 E., Sec. 10: SW¼NE¼	40	2,800	30	Do.
OR. 38800, Parcel No. 6.	T. 12 S., R. 21 E., Sec. 3: SE¼SE¼	40	2,800	30	Do.
OR. 38801, Parcel No. 7.	T. 6 S., R. 23 E., Sec. 12: NE¼NW¼	40	2,400	30	Do.
OR. 38802, Parcel No. 8.	T. 4 S., R. 22 E., Sec. 3: NE¼SE¼	40	3,000	30	Do.
OR. 38803, Parcel No. 9.	T. 5 S., R. 22 E., Sec. 34: SE¼NE¼	40	3,200	30	Do.

The above described lands are hereby segregated from appropriation under the public land laws, but not from sale under the above cited statute.

The sale will be held on September 18, 1985, at the Bureau of Land Management, Prineville District Office, 185 East 4th Street, Prineville, Oregon. These isolated parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with the BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Sale brochures containing pertinent data on the land offered for sale are available upon request from the District Manager at the above address.

Bidder Qualifications

Bidders must be U.S. Citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Modified Bidding Procedures

Modified bidding procedures are being used to recognize the needs and historical use of the adjoining landowners. Preference to meet the high selling bid is authorized under 43 CFR 2711.3–2.

Each parcel is being offered for sale through modified competitive bidding and the following adjoining landowners have a preference right to meet the high bid:

No.	Serial No.	Parcel
Don Johnson, OR. 38277	1	
Don Johnson, OR. 38796	2	
Don Johnson, OR. 38797	3	
Fran Cherry, OR. 38798	4	
Cole Bros., Inc., OR. 38799	5	
Cole Bros., Inc., OR. 38800	6	
Brooks Resources Corp., OR. 38800	6	
Mr. R. L. Harrison, OR. 38801	7	
Mr. Peter O. Campbell, OR. 38801	7	
Campbell Livestock Co., OR. 38801	7	
J.S. Boyer Estate, OR. 38801	7	
Mr. Delbert Edwards, OR. 38802	8	
Ms. Nancy L. Hardie, et. al., OR. 38803	9	
Mr. Earl E. Hardie, OR. 38803	9	

Sale bidding will be limited to sealed bids and must be for at least the appraised fair market value. Sealed written bids, mailed or delivered, must be received by the Bureau of Land Management, at the aforementioned address prior to 10:00 a.m., Wednesday, September 18, 1985.

A separate written bid must be submitted for each parcel. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to Department of the Interior—BLM, for not less than 30 percent of the amount of the bid. The sealed envelope must be marked in the lower left hand corner "Bid for Public Land Sale," Sale Parcel Number——, September 18, 1985.

Bids will be opened and publicly declared at the sale. If two or more envelopes containing valid high bids of the same amount are received, the tied high bidders will be notified through certified mail to submit supplemental sealed bids within 20 days.

The designated bidders will be notified through certified mail that they have 20 days to meet the high bid. Failure to meet the high bid within the 20 days following the sale shall constitute a waiver of their preference rights. The balance of the purchase price will be due within 180 days of the sale date. Failure to pay the balance will result in forfeiture of the bid deposit and the parcel will be offered to the second highest designated bidder. If there is no other designated bidder, the parcel will be reoffered.

If the designated bidders fail to submit a bid, the sale parcel will be awarded to the party submitting the high bid.

Terms and Conditions of the Sale

1. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, (with the exception of the oil, gas and coal resources which will be reserved to the United States) in accordance with Section 209 of the Federal Land Policy and Management Act 43 U.S.C. 1719. All qualified bidders must include with their bid deposit a non-refundable $50.00 filing fee for the conveyance of the mineral estate. This filing fee will be reimbursed to unsuccessful bidders.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of record.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale, if in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The Sale parcels will be subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for oil and gas operations, without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas leases OR.26540, 37625, 25006 and 25010 on tracts No. 3, 5, 8 and 9 respectively and any authorized extension of that lease, Section 29 of the Act of February 25, 1920, 41 Stat. 449, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1750, 30 U.S.C. 124.

Unsold Parcels

If any of the parcels identified in the notice are not sold on September 18, 1985, the parcels will be offered to the public, using competitive sale procedures 43 CFR 2711.3–1, until sold or withdrawn from the market. Sealed bids will be solicited at the BLM, Prineville District Office, during regular business hours. All bids received will be opened

the first Wednesday of each month, beginning on October 2nd, 1985. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Comments

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Prineville District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. (In the absence of adverse comments this realty action will become a final determination of the Department of the Interior.) Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: July 8, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85-16862 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-33-M

Intent To Prepare a Supplement to the Draft Western Oregon Program-Management of Competing Vegetation Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Supplement to a Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Bureau of Land Mangagement (BLM) in coordination with the U.S. Forest Service, Pacific Northwest Region, will prepare a Supplement to the BLM Draft Western Oregon Program Management of Competing Vegetation Environmental Impact Statement (EIS). The purpose of this supplement is to provide the decisionmaker with more refined information on the possible effects of managing competing vegetation, particularly herbcide use, on human health. The public is invited to submit comments on the scope of the study, including suggestions as to what factors ought to be considered in the supplement.

DATE: Comments should be submitted by August 16, 1985.

ADDRESS: Comments should be sent to: State Director (935) Bureau of Land Mangagement, 825 N.E. Multnomah St. (Box 2965), Portland, Oregon 97208. Comments from the public are available for inspection at the above address during regular business hours (Monday-Friday 7:30 a.m.-4:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Gregg Simmons, (503) 231-6272.

SUPPLEMENTARY INFORMATION: Several U.S. District Court judges have ruled that, in their opinion, enough scientific uncertainity about herbicides and human health exists to require a worst-case analysis (40 CFR 1502.22) be prepared. An injunction halting application of herbicides has been ordered by the Court until preparation and public review of a worst-case analysis as required by the National Environmental Policy Act Implementing Regulations.

There will be no formal public scoping meetings conducted. The Environmental Protection Agency is invited to participate in the analysis.

The worst-case analysis, as part of the programmatic Environmental Impact Statement, will be used for ascertaining risks to human health from methods of managing competing vegetation.

Dated: July 10, 1985.

Paul M. Vetetrick,

Acting Oregon State Director.

[FR Doc. 85-16841 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-33-M

[U-52893]

Realty Action; Sale of Public Lands in Iron County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as NW¼NE¼NE¼SE¼, N½NW¼NE¼SE¼,SW¼NW¼NE¼SE¼, N½NW¼SE¼,N½SW¼NW¼SE¼, SW¼SW¼NW¼SE¼, and the NW¼SE¼NW¼SE¼ of Sec. 23, T. 33 S., R. 16 W., SLB&M., Utah containing 40 acres, is proposed for direct sale to Lehi Wood at the appraised fair market value of $3,200.00. It is further proposed that public land described as the NE¼NE¼NE¼SE¼, S½NE¼NE¼SE¼, SE¼NW¼SE¼, S½NE¼SE¼, SE¼SW¼NW¼SE¼, NE¼SE¼NW¼SE¼, NE¼SE¼NW¼SE¼, S½SE¼NW¼SE¼, and the S½SE¼ of sec. 23, T. 33 S., 16W., SLB&M, Utah, containing 120 acres, be sold by competitive bidding at not less than the appraised fair market value of $9,600.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to the address listed below by September 9, 1985. The sale will be held on September 24, 1985 at 10: a.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Beaver River Resource Area Office, 444 South Main, Cedar City, Utah 84720 (801) 586-2458. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights including Oil and Gas Lease U-32832 and Railroad Right-of-Way Number SL-016921.

4. If the tracts of public land are not sold pursuant to this notice, they will remain available for sale without preference on a continuing basis unitl sold until withdrawn from the market.

Any comments or objection received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: July 5, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-16824 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1608 and 2943, Blocks 60 and 59, respectively, South Pass Area.

offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on July 8, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is availabe for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executive of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 9, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16864 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Initation of National Historic Landmark Theme Studies—Science and Constitution History

AGENCY: National Park Service; Washington Office, Interior.

ACTION: Notice of National Historic Landmark Theme Studies—Sceince and Constitutional History.

SUMMARY: This notice announces the initiation of National Historic Landmark theme studies of the history of American science and constitutional history and solicits comments on them. The purpose of the studies is to identify nationally significant properites that illustrate and commemorate these subjects. Notice of the studies is required by the National Historic Landmarks Program regulations. The History Division of the National Park Service will conduct the studies.

DATE: To be fully considered, comments should be received by the History Division on or before December 1, 1985.

ADDRESS: Written comments should be addressed to the Chief Historian, History Division, National Park Service, P.O. Box 37127, Department of the Interior, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Levy, Senior Historian, History Division, National Park Service, United States Department of the Interior, Washington, DC 20013-7127 (202-343-8164).

SUPPLEMENTARY INFORMATION: The science and invention theme study will survey a wide range of historic properties incuding public and private structures that have had a major impact on American science and invention. Examples of the types of historic resources to be examined include research facilities, laboratories, observatories, and other sites and buildings associated with this theme. Subjects to be studied may include, but are not limited to, astronomy, physics, chemistry, mathematics, geology, paleontology, and biology.

The constitutional history theme study will include a similarly wide range of historic properties, such as court buildings where significant cases were decided and the homes of jurists and litigants whose activities have been crucial in the evolution of the Constitution. The study will also consider sites that commemorate the ratification of the Constitution and the adoption of its Amendments.

The History Division welcomes comments concerning the theme studies and suggestions of properties to be included.

Dated: June 28, 1985.

Bennie C. Keel,

Acting Associate Director, Cultural Resources.

[FR Doc. 85-16802 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 6, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 31, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Tempe, *Ellingson Warehouse (Tempe MRA)*, 24 W. 7th St.

CALIFORNIA

Calaveras County

Angels Camp, *Calaveras County Bank*, 1239 Main St.

Los Angeles County

Pasadena, *Old Fellows Temple*, 175 N. Los Robles Ave.

GEORGIA

Banks County (Also in Hall County)

Gillsville, *Gillsville Historic District*, GA 52

Cherokee County

Ball Ground, *Roberts, Alfred W., House*, GA 372

Franklin County

Canon, *Canon Commercial Historic District*, Depot St. between Bond Ave. & Broad St.

Canon, *Historic Churches of Canon*, Broad St. at Canon Ave.

Hall County

Flowery Branch, *Flowery Branch Commercial Historic District*, Main St. & Railroad Ave.

Gainesville, *Jackson Building*, 112 Washington ST. NE

Lulu, *Lulu Residential Historic*, Cobb, Carter, Chattahoochee and Toombs Sts.

KENTUCKY

Bath County

Owingsville, *Owingsville Commercial District and Courthouse Square (Boundary Increase)*, 122 E. Main St.

Campbell County

Newport, *Mansion Hill Historic District (Boundary Increase)*, Roughly bounded by Washington Ave., Sixth, Saratoga and 3d Sts.

Scott County

Georgetown, *West Main Street Historic District*, 217—600 W. Main St.

MAINE

Androscoggin County

Lewiston, *Cowan Mill*, Island Mill St.

MICHIGAN

Oakland County

Pontiac, *Eastern Michigan Asylum Historic District (Boundary Decrease)*, 140 Elizabeth Lake Rd.

MISSISSIPPI

Harrison County

Gulfport, *Harbor Square Historic District*, Roughly bounded by L & N Railroad, 23rd Ave., 13th St. and 27th Ave.

Pearl River County

Tiger Hammock Site 22 PR 594

MISSOURI

St. Louis (Independent City)

St. Louis, *Tiffany Neighborhood Historic District (Boundary Increase)*, West side 39th St. between Park and Lafayette Aves.

OKLAHOMA

Pontotoc County

Ada vicinity, *Bebee Field Round House*, Off OK 13

Seminole County

Seminole vicinity, *Sinclair Loading Rack*, US 270

Wewoka, *Brown, Silas L., House*, 107 S. Seminole

Wewoka, *Johnson, J. Coody, Building*, 124 N. Wewoka St.

Wagoner County

Tullahassee, *Mason, A. J., Building*, Lincoln St.

TENNESSEE

Summer County

Gallatin, *Gallatin Commercial Historic District*, College, Franklin & E. Main Sts., Public Square & Water St.

VIRGINIA

Charles City County

Holdcroft vicinity, *Piney Grove*, VA 615

Isle of Wight County

Fort Boykin Archaeological Site (44IW20)

WISCONSIN

Oconto County

Oconto, *St. Mark's Episcopal Church, Guild Hall and Vicarage*, 408 Park Ave.

Rock County

Clinton, *Citizens Bank (Clinton MRA)*, Front & Allen Sts.

Clinton, *Clinton Village Hall (Clinton MRA)*, 301 Cross St.

Clinton, *Crosby Block (Clinton MRA)*, 102 Allen St.

Clinton, *DeLong, Homer B., House (Clinton MRA)*, 500 Milwaukee Rd.

Clinton, *Pangborn, J.L., House (Clinton MRA)*, 300 Allen St.

Clinton, *Smith, John, House (Clinton MRA)*, 312 Pleasant St.

Clinton, *Taylor, A.E., House (Clinton MRA)*, 318 Durand St.

[FR Doc. 85-16872 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: July 26, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: July 8, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-16803 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Preparation of a River Management Plan and Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to perpare an environmental impact statement for a proposed river management plan which has been prepared by the Conference of Upper Delaware Townships, in cooperation with the States of New York and Pennsylvania, the Delaware River Basin Commission, county governments and the National Park Service; and to request public comments.

SUMMARY: An environmental impact statement (EIS) is to be prepared for a proposed River Management Plan for the Upper Delaware National Scenic and Recreational River (UPDE), Mid-Atlantic Region, National Park Service. The proposed RMP/draft EIS will be released for a 90-day public comment period with two public hearings in each affected state.

FOR FURTHER INFORMATION CONTACT: Joseph DiBello, Project Leader, or J. Glenn Eugster, Chief, Division of Park and Resource Planning, Mid-Atlantic Regional Office, National Park Service, 600 Arch Street, Room 9428, Philadephia, PA 19106, (215) 597-7386.

SUPPLEMENTARY INFORMATION: The RMP/EIS will be prepared pursuant to the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500 et al.); the Wild and Scenic Rivers Act (Pub. L. 90-542 as amended), and the Upper Delaware Special Provisions of the Wild and Scenic Rivers Act, section 704(b); the Final Revised Guidelines for Eligibility, Classification and Management of River Areas (**Federal Register** Vol. 47, No. 173/Tuesday, September 7, 1982/Notices); and Department of the Interior and National Park Service guidelines.

The Upper Delaware River was one of twenty-seven rivers designated for study under the Wild and Scenic Rivers Act and included in the National Wild and Scenic Rivers System by the National Parks and Recreation Act of 1978 (Pub. L. 95-625). Special provisions specify that the RMP include (a) a map showing detailed final landward boundaries and upper and lower termini; (b) a program for management of existing and future land and water use including the application of available management techniques; (c) an analysis of the economic and environmental costs and benefits of implementing the RMP; (d) a program providing for coordinated implementation and administration of the plan; and (e) other such recommendations or provisions as appropriate.

A previous Draft EIS/RMP was completed in October 1982 (DES 82-64) and a Revised Draft River Management Plan was issued in October 1983. Considerable controversy upon release of the documents led to a decision by the National Park Service that a new RMP was needed for this project, to be prepared by the Conference of Upper Delaware Townships in cooperation with the riparian landowners, the State of New York, the Commonwealth of Pennsylvania, the Delaware River Basin Commission, county governments, NPS, and citizen's groups. Because of this, the 1983 RMP and the Draft EIS (DES 82-64) of October 1982 will be superceded by this planning effort.

A new draft EIS will be prepared by NPS. The draft EIS will address the proposed RMP as well as other reasonable alternatives developed through the scoping process described below. Alternatives in the draft EIS are likely to deal with river corridor resources, recreational use, public recreation facility development, and the overall management responsibilities for the river corridor.

This notice is intended to inform the public of the planning effort, and to solicit participation and input on the scope of issues and alternatives to be covered in the EIS. NPS invites participation and consultation by federal and state agencies, local governments, riparian landowners, individuals and private groups that have special expertise, legal jurisdiction, or interest in the preparation of the EIS. Meetings will be scheduled with the Council of Upper Delaware Townships, the Citizen Advisory Council, and others to discuss the scope of the issues and alternatives to be addressed in the draft EIS. The times and locations of these meetings will be announced in area newspapers. Notice will also be mailed to any person requesting to be placed on a mailing list currently being prepared (contact Joseph DiBello, (215) 597-7386). All members of the Conference of Upper Delaware Townships, Citizens Advisory Council, the Plan Oversight Committee and the Land and Water Use Guidelines Committees will automatically be placed on the mailing list.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 85-16801 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-125 (Sub-7X)]

Rail Carriers; Carolina and Northwestern Railway Co.—Abandonment Exemption at Belhaven, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempt from the requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Carolina and Northwestern Railway Company of approximately 0.03 miles of railroad at Belhaven, NC, subject to employee protective conditions.

DATES: This exemption will be effective on August 15, 1985. Petitions to stay must be filed by July 26, 1985, and petitions for reconsideration must be filed by August 5, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-125 (Sub-No. 7X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, Norfolk Southern Corporation, 1050 Connecticut Avenue, NW, Suite 740, Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-16876 Filed 7-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30692]

Rail Carriers; Grand Trunk Western Railroad Co.; Trackage Rights; Consolidated Rail Corp.

Consolidated Rail Corporation has agreed to grant and to renew its prior grant of bridge ("overhead") trackage rights to Grand Trunk Western Railroad Company between Detroit and Ecorse, Michigan, on the one hand, and on the other, a point on the International Boundary line between the United States and Canada, at or near the middle of the Detroit River. The trackage rights became effective April 29, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: July 9, 1985.

By the Commission, Heber P. Hardy, Director Office of Proceedings.

James H. Bayne,

Secretary.

FR Doc. 85-16877 Filed 7-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that three proposed consent decrees with Conoco, Inc., Vista Chemical Company and Vista Polymers, Inc., were lodged in the respective United States District Courts. A proposed consent decree in *United States* v. *Conoco, Inc.*, Civil Action No. 83-1916 was lodged on July 9, 1985, with the United States District Court for the Western District of Oklahoma; a proposed Consent Decree in *United States* v. *Conoco, Inc.*, Civil Action No. 83-2518 was lodged on July 3, 1985, with the United States District Court for the Western District of Louisiana; and a third consent decree in *United States* v. *Conoco, Inc.*, Civil Action No. EC-37-LS-P was lodged on July 3, 1985, with the United States District Court for the Northern District of Mississippi. The three complaints filed by the United States alleged that Conoco, Inc., violated the National Emission Standard ("NESHAP") for Vinyl Chloride at its polyvinyl chloride plants in Aberdeen, Mississippi, and Oklahoma City, Oklahoma and its ethylene dichloride/vinyl chloride plant in Westlake, Louisiana. The complaints against the Louisiana and Mississippi facilities sought injunctive relief requiring Conoco, Vista Chemical Company and Vista Polymers, Inc., to comply with the NESHAP for Vinyl Chloride and to implement a program to prevent discharges of vinyl chloride to the

atmosphere. All three of the complaints sought civil penalties against Conoco, Inc. for past violations. The proposed Consent Decrees require compliance with the NESHAP for Vinyl Chloride, Submission of a compliance plan, stipulated penalties, and civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Conoco, Inc.*, with the applicable D.J. Reference No. 90-5-2-1-309 (N.D. Miss.); 90-5-2-1-622 (W.D. La.); and 90-5-2-1-614 (W.D. Okla.).

The proposed Consent Decree in *United States* v. *Conoco*, (W.D. Okla.) may be examined at the Office of United States Attorney, Room 4434, U.S. Courthouse and Federal Office Building, Oklahoma City, Oklahoma 73102. The proposed Consent Decree in *United States* v. *Conoco*, (W.D. La.) may be examined at the Office of the United States Attorney, Room 3B12, Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101. Both of these proposed Consent Decrees may also be examined at the Region VI Office of the Environmental Protection Agency, Office of Regional Counsel, interfirst Two Building, 1201 Elm Street, Dallas, Texas 75270. The proposed consent decree in *United States* v. *Conoco*, (N.D. Miss.) may be examined at the Office of United States Attorney, Room 255, Federal Building, 911 West Jackson Avenue, Oxford, Mississippi 38655, and at the Region IV Office of the Environmental Protection Agency, Office of Regional Counsel, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the three Consent Decrees may be examined at the Department of Justice, Land and Natural Resources Division, Environmental Enforcement Section, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of each proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 for the Western District of Oklahoma Decree; $1.60 for the Western District of Louisisna; and $1.80 for the Northern District of Mississippi Decree (ten cents per page reproduction costs) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16856 Filed 7-15-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Revised 1985 Aggregate Production Quota for Phencyclidine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a proposed revised 1985 aggregate production quota for phencyclidine.

SUMMARY: This notice proposes a revision in the aggregate production quota for phencyclidine, a Schedule II controlled substance, which will be used to produce a diagnostic product for drug screening.

DATE: Comments or objections should be received on or before August 15, 1985.

ADDRESS: Send comments or objections in quintuplicate to the Acting Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, an application for a manufacturing quota for phencyclidine was received by the Drug Enforcement Administration. The amount of substance requested is to be used to produce a diagnostic product for use in drug screening.

The Acting Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Acting Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following change in the aggregate production quota for phencyclidine, expressed in grams of anhydrous base:

Basic class	Previously established 1985 aggregate production quota	Proposed revised 1985 aggregate produciton quota
Phencyclidine	100	120

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by August 15, 1985. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manfuacturers of the affected controlled substances.

Dated: June 17, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-16838 Filed 7-15-85; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed 1985 Aggregate Production Quota for 1-Piperidinocyclohexanecarbonitrile

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a proposed 1985 aggregate production quota.

SUMMARY: This notice proposes a 1985 aggregate production quota for 1-piperidinocyclohexanecarbonitrile, a Schedule II controlled substance and an immediate precursor to phencyclidine.

DATE: Comments or objections should be received on or before August 15, 1985.

ADDRESS: Send comments or objections in quintuplicate to the Acting Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, application has been made for a manufacturing quota for 1-piperidinocyclohexanecarbonitrile, a Schedule II substance. This substance is to be manufactured for use as a precursor in the synthesis of phencyclidine.

The Acting Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Acting Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1985 aggregate production quota for 1-piperidinocyclohexanecarbonitrile, expressed in grams of anhydrous base.

Basic class	Proposed 1985 aggregate production quota (grams)
1-piperidinocyclohexanecarbonitrile	32

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Acting Admininstrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by August 15, 1985. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regultory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 17, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85–16839 Filed 7–15–85; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

REVISION

Bureau of Labor Statistics
Employee Benefits Survey
1220–0084; BLS 3111
Annually
Businesses or other for-profit; Non-profit institutions
1,500 responses; 2,250 hours; 1 form

The Employee Benefits Survey is the only statistically valid source of information on detailed provisions of employee benefits. It is used to determine policy affecting benefits of all workers; also by private sector in benefits administration, union negotiations, and research.

Signed at Washington, D.C., this 11th day of July 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-16873 Filed 7-15-85; 8:45 am]

BILLING CODE 4510-24-M

[Secretary of Labor's Order 2-85]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Employment and Training for the Job Training Partnership Act

June 18, 1985.

1. Purpose

This Order amplifies the delegation of authority vested in the Secretary of Labor to the Assistant Secretary for Employment and Training for organizing and conducting programs under the Job Training Partnership Act (Pub. L. 97-300) and assigns commensurate responsibilities to other officials in the Department.

2. Directives Affected

Section 4a. of Secretary's Order (S.O.) 4-75, which remains in effect and is amplified and supplemented by this Order, is the general delegation and assignment of responsibility to the Assistant Secretary for Employment and Training for carrying out the employment and training policies, programs, and activities of the Secretary of Labor. S.O. 4-75 will be updated to reflect the provisions of this Order.

3. Background

This Order consolidates into one Order authority and responsibilities under the Job Training Partnership Act. Except as provided herein, general authority and responsibilities for programs under the Job Training Partnership Act are delegated and assigned to the Assistant Secretary for Employment and Training.

4. Delegation of Authority and Assignment of Responsibilities

a. *The Assistant Secretary for Employment and Training* is hereby delegated authority and assigned responsibility, vested in the Secretary of Labor, for carrying out the policies, programs, and activities under the Job Training Partnership Act, except:

(1) Section 436(b) (29 U.S.C. 1706(b)), relating to claims for damages to persons resulting from the operation of the Job Corps, which is the responsibility of the Solicitor of Labor.

(2) Part C of Title IV (29 U.S.C. 1721 et seq.), relating to veterans' employment programs, which is the responsibility of the Assistant Secretary for Veterans' Employment and Training.

(3) Sections 461 and 462 (20 U.S.C. 1751 and 1752), relating to the comprehensive system of labor market information and the cooperative labor market information program, respectively, to the extent that those duties are delegated to the Commissioner of Labor Statistics.

(4) Sections 463 and 464 (U.S.C. 1753 and 1754), relating to special Federal responsibilities and to duties of the National Occupational Information Coordinating Committee, respectively, (however the Assistant Secretary for Employment and Training retains authority as a member of the National Occupational Information Coordinating Committee, pursuant to the Vocational Education Act of 1963 (20 U.S.C. 2391), as amended by the Carl D. Perkins Vocational Education Act of 1984.

(5) Part F of Title IV (29 U.S.C. 1771 et seq.), relating to the National Commission for Employment Policy.

(6) Part G of Title IV (29 U.S.C. 1781), relating to training programs to assist Federal contractors in meeting affirmative action obligations, which is the responsibility of the Deputy Under Secretary for Employment Standards.

(7) Section 167 (29 U.S.C. 1577), relating to enforcement of equal opportunity and nondiscrimination requirements in programs and activities undertaken pursuant to the Job Training Partnership Act, which is the responsibility of the Assistant Secretary for Administration and Management working through the Director, Office of Civil Rights, as delegated in Secretary's Order 2-81 and provided for at 20 CFR (626.2).

(8) The adjudicatory authority contained in section 166 (29 U.S.C. 1576) is reserved to the Secretary.

b. *The Solicitor of Labor*, in addition to 4a.(1) above, shall have responsibility for providing legal advice and assistance to all officers of the Department relating to the delegation of authority and assignment of responsibilities referenced, and applicable laws, Executive orders, and regulations pertaining thereto.

5. Redelegation of Authority

The authority delegated and responsibilities herein assigned may be further redelegated and reassigned.

6. Effective Date

This Order is effective immediately.

William E. Block,

Secretary of Labor.

[FR Doc. 85-16870 Filed 7-15-85; 8:45 am]

BILLING CODE 4510-23-M

Special Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1985

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veterans' employment and training programs in the State of Alaska in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 CFR Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA is available for issuance as of the date of this notice.

The closing date for receipt of grant applications in response to the SGA is August 16, 1985.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mail labels, to the following address: U.S. Department of Labor, Office of Procurement Service, Frances Perkins Building, Room S-5526, 200 Constitution Avenue NW., Washington, D.C. 20210, RE. SGA-VI-C.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue NW., Room S1316, Washington, D.C. 20210, Telephone (202) 523-9110, or the State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: On March 1, 1985, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued SGA #4 for the Job Training Partnership Act Title IV, Part C, Program Year 1985. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on March 12, 1985.

The March 1, 1985 SGA limited eligible applicants to (1) State Governors utilizing the JTPA administrative entity in each State and (2) service delivery area administrative entities as described in section 101 and 103 of JTPA including single statewide service delivery areas. The SGA also stated that if in any State no eligible

applicant applied for funds, the difinition of eligible applicant would be broadened in those states and a special solicitation would be issued to provide service to targeted veterans in those states.

On May 10, 1985, a notice was published in the **Federal Register** soliciting applications in five states in which no eligible applicant applied for funds. A June 21, 1985 due date for applications was established. In response to that notice, applications were received from of the five States. No application was received from the state of Alaska.

Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs as follows:

State	Amount available
Alaska	$55,000

Applications for funds based on the SGA will be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions; and private for profit and nonprofit organizations. Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State of Alaska. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for funds must be received by the State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address cited below on August 16, 1985: SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3-7000, Juneau, Alaska 99802, (907) 465-2723.

It is anticipated that grant awards will be made by November 30, 1985.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the State Director for Veterans' Employment and Training.

Signed at Washington, D.C., this 10th day of July 1985.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85-16871 Filed 7-15-85; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 1, 1985–July 5, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,924; Tennford Weaving Co., Wartburg, TN

TA-W-15,880; Avondale Mills, Lafayette, AL

TA-W-15,870; Thomaston Mills, Griffin Div., Griffin, GA

TA-W-15,871; Thomaston Mills, Thomaston, GA

TA-W-15,874; Century Brass Products, Inc., Waterbury, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,798; Hoffmann-LaRoche, Inc., Nutley, NJ

Aggregate U.S. imports of pharmaceuticals and vitamins are negligible.

TA-W-15,799; Hoffmann-La Roche, Inc., Belvedere, NJ

Aggregate U.S. imports of pharmaceuticals and vitamins are negligible.

Affirmative Determinations

TA-W-15,930; Arno Moccasin, Lewiston, ME

A certification was issued covering all workers of the firm separated on or after May 1, 1984 and before April 15, 1985.

TA-W-15,923; Stride Rite, Presque Isle, ME

A certification was issued covering all workers of the firm separated on or after April 5, 1984 and before September 1, 1984.

TA-W-15,894; General Electric, Cathode Ray Tube, Syracuse, NY

A certification was issued covering all workers of the firm separated on or after March 25, 1984.

TA-W-15,888; Snappy Garment, East Newark, NJ

A certification was issued covering all workers of the firm separated on or after March 6, 1984 and before December 19, 1984.

TA-W-15,873; Albion Cooperative, Albion, NY

A certification was issued covering all workers of the firm separated on or after August 15, 1984 and before February 24, 1985.

TA-W-15,875; Cotter Corporation, Uranium Mill, Canon City, CO

A certification was issued covering all workers of the firm separated on or after February 21, 1984.

TA-W-15,879; Cotter Corporation Schwartz Walder Mine, Golden, CO

A certification was issued covering all workers of the firm separated on or after February 21, 1984.

TA-W-15,805; SKF Industries, Inc., Altoona, PA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-15,802; Jumping-Jacks Shoes, Inc., Monett #2, Monett, MO

A certification was issued covering all workers of the firm separated on or after June 15, 1984 and before June 19, 1985.

TA-W-15,817; Margaret Fashions, Act II Div. of Jonathan Logan, Inc., Panama City, FL

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before April 30, 1985.

I hereby certify that the aforementioned determinations were issued during the period July 1, 1985–July 5, 1985. Copies these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Streets, NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: July 9, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-16669 Filed 7-15-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

1. Date: August 1, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for the "Constitutional Fellowship (Independent Study & Research)" program, for projects beginning after January 1, 1986.

2. Date: August 2, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications submitted for the "Constitutional Fellowship (College Teachers)" program, for projects beginning after January 1, 1986.

3. Date: August 1-2, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, for projects beginning after January 1, 1986.

4. Date: August 5-6, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14
Program: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, for projects beginning after January 1, 1986.

5. Date: August 2, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

6. Date: August 4, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

7. Date: August 5, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Art and Music, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

8. Date: August 5, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Music, Dance, and Theatre, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

9. Date: August 6, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in American Literature and American studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

10. Date: August 7, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

11. Date: August 11, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Foreign Languages and Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

12. Date: August 12, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in American History I and History of Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

13. Date: August 13, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in American History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

14. Date: August 13, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in American History II and Film History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

15. Date: August 14, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

16. Date: August 15, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Political Science, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

17. Date: August 15, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Social Sciences, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

18. Date: August 16, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Romance and Classical Languages and Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

19. Date: August 18, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in World History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

20. Date: August 19, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Latin American and Non-Western History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

21. Date: August 20, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

22. Date: August 20, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

23. Date: August 21, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Germanci, Oriental, and Slavic Languages and Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

24. Date: August 22, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for Independent Study and Research applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

25. Date: August 23, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for Independent Study and Research applications in Political Sciences and Related Areas, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

26. Date: August 25, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.

Program: This meeting will review Fellowships for College Teachers applications in American Literature and Studies, Film, TV, and Theater, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

27. Date: August 26, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.

Program: This meeting will review Fellowships for College Teachers applications in British Literature; Literary Criticism; Composition and Rhetoric, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

28. Date: August 26, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for Independent Study and Research applications in Composition Literature; Literature Criticism and Theory; and Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

29. Date: August 28, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.

Program: This meeting will review Fellowships for College Teachers applications In Anthropology, Sociology, Education, and Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1986.

30. Date: August 1–2, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

31. Date: August 12–13, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

32. Date: August 1–2, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review applications submitted for the Youth Projects Program, Division of General Programs, for projects beginning after January 1, 1986.

33. Date: August 5–6, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review applications submitted for the Youth Projects Program, Division of General Programs, for projects beginning after January 1, 1986.

34. Date: August 5–6, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.

Program: This meeting will review Challenge Grants applications from Large Colleges, for projects beginning December 1, 1985.

35. Date: August 12–13, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.

Program: This meeting will review Challenge Grants applications from MA/PhD. Universities, for projects beginning after December 1, 1985.

36. Date: August 15–16, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.

Program: This meeting will review Challenge Grants applications from Large Museums, for projects beginning December 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 85–16882 Filed 7–15–85; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on July 31, 1985, Room 1046, at 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 31, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will: continue the review of the proposed revision to Appendix K of 10 CFR 50.46; discuss implementation of the GE Appendix K analysis effort; discuss RCP trip issue resolution; and discuss NRR's ECCS-related issues of ongoing concern.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-16887 Filed 7-15-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on August 1, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 1, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue its discussion of the draft NUREG–0956, "Source Term Reassessment" with the NRC Staff.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-16888 Filed 7-15-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on August 2, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to the public attendance.

The agenda for the subject meeting shall be as follows:

Friday, August 2, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss with the NRC and IDCOR the status of programs related to extending the results of the reference plants and how this relates to the ACRS recommended search for outliers program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-16889 Filed 7-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co., (H. B. Robinson Steam Electric Plant Unit No. 2); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Carolina Power and Light Company (CP&L), (the licensee) is the holder of Facility Operating License No. DPR–23 which authorizes the operation of the H. B. Robinson Steam Electric Plant Unit No. 2 (the facility) at steady-state power levels not in excess of 2300 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Darlington County, South Carolina.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees

and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phase implemenatation and integration of emergency response activities including training.

III

CP&L responded to Generic Letter 82–33 by letter dated April 15, 1983. By letter dated August 24, 1983, CP&L modified several dates as a result of negotiations with the NRC staff. CP&L made commitments to supply schedules and plans (items (1) and (2) of Section II above) by December 1984. On February 21, 1984, the NRC issued "Order Confirming Licensee's Commitments on Emergency Response Capability" which confirmed CP&L's Commitments. By letter dated December 31, 1984, CP&L made commitments to complete the basic requirements. CP&L commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements.

IV

The February 21, 1984, Order stated that for those requirements for which CP&L committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the February 21, 1984 Order, as implemented by CP&L letter dated December 31, 1984, CP&L provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).

1b. SPDS fully operational and operators trained.

2. Detailed Control Room Design Review (DCRDR).

2b. Submit a summary report to the NRC including a proposed schedule for implementation.

3. Regulatory Guide 1.97 Application to Emergency Response Facility.

3b. Implement (installation or upgrade) requirements.

5. Emergency Response Facilities.

5a. Technical Support Center fully functional.

5b. Operational Support Center fully functional.

5c. Emergency Operations Facility fully functional.

The attached Table summarizing CP&L's schedular commitments for the above items was developed by the NRC staff from the information provided by CP&L. The staff reviewed CP&L's August 24, 1984 and December 31, 1984 letters and discussed the dates with the licensee.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements, the NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CP&L's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161p and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effectively immediately, that license DPR–20 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in CP&L's submittals noted in section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated in Bethesda, Maryland, this 9th day of July, 1985.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S ADDITIONAL COMMENTS ON SUPPLEMENT 1 TO NUREG-0737

LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS).	1b. SPDS fully operational and operators trained.	Scheduled to be fully operational 12 months after RO #10.
2. Detailed Control Room Design Review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Summary report and proposed implementation schedule—scheduled for 6 months after RO #10.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.	Full compliance to RG 1.97 scheduled from 3 months after RO #11.
4. Upgrade Emergency Operating Procedures (EOPs).	4a. Submit a Procedures Generation Package to the NRC.	Complete.
	4b. Implement the upgraded EOPs	Complete.
5. Emergency Response Facilities	5a. Technical Support Center fully functional.	Fully functional scheduled for 12 months after RO #10.
	5b. Operational Support Center fully functional.	Complete.
	5c. Emergency Operations Facility fully functional.	Fully functional schedule for 12 months after RO #10.

[FR Doc. 85–16885 Filed 7–15–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c) to the Florida Power Corporation (the licensee) for the Crystal River Unit No. 3 Nuclear Generating Plant (CR–3) located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action: The exemption would grant the licensee a schedular deferment from the provisions

of 10 CFR Part 50, Appendix R, Section III.G, fire protection of the equipment used for safe shutdown capability, from the end of Refuel V (July 1985) to the first quarter of 1986 (March 31, 1986) for CR–3. The exemption is responsive to the licensee's application for exemption dated October 5, 1984, as superseded March 1, 1985.

The Need for the Proposed Action: 10 CFR Part 50, Appendix R, Section III, identifies specific fire protection required to be provided by a licensee authorized to operate a nuclear power reactor. 10 CFR 50.48(c) identifies the schedules for the completion of fire protection modifications for which a plant shutdown is required. The deadline for those modifications at CR–3 requiring plant shutdown was startup following the refueling outage scheduled to commence in the Spring of 1985.

In a submittal dated October 5, 1984, as superseded March 1, 1985, the licensee requested that the implementation schedules for the proposed fire protection modification in certain areas at CR–3 requiring plant shutdown for installation, be extended to the first quarter of 1986 (March 31, 1986).

The magnitude of the program associated with the fire protection modifications and with an equipment qualification program and other improvement programs with which the fire protection work must interface does not allow the present schedule requirements to be met. As an alternative to implementation of the required modifications before startup following the refueling outage discussed above, the licensee has proposed interim compensatory fire protection measures to be instituted until the modifications have been completed. These measures are being evaluated by the Commission's staff.

Environmental Impacts of the Proposed Action: By using reasonable interim compensatory measures, the proposed exemption will provide a degree of fire protection such that there is no significant increase in the risk of fire at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in connection with the Final Environmental Statement (construction and operating license) for the Crystal River Unit No 3. Nuclear Generating Plant.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated October 5, 1984, as superseded March 1, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 3rd day of July 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85–16886 Filed 7–15–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–29]

Yankee Atomic Electric Co., (Yankee Nuclear Power Station); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Yankee Atomic Electric Company (YAEC) (the licensee) is the holder of Facility Operating License No. DPR–3 which authorizes the operation of the Yankee Nuclear Power Station (the facility) at steady-state power levels not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Franklin County, Massachusetts.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

YAEC responded to Generic Letter 82–33 by letter dated April 19, 1983. By letters dated August 1, September 1, October 21, December 16, 1983, March 28 and April 3, 1984, YAEC modified some of the dates as a result of schedular changes. In these submittals, YAEC made commitments to complete the basic requirements. YAEC commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and

achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed YAEC's Commitments. By letter dated January 7, 1985, YAEC requested that the completion date for submission of the Detailed Control Room Design Review Summary Report (Item 2b. of the table attached to the June 12, 1984, Order) be extended. By letter dated January 11, 1985, the NRC granted this extension.

IV

The June 12, 1984, Order stated that for those requirements for which YAEC committed to a schedule for providing implementation dates, those dates woud be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, as modified by NRC letter dated August 23, 1984, YAEC's letters dated July 27, 1984 provided a completion schedule for the following requirement:

4. Upgrade Emergency Operating Procedurs (EOPs) 4b. Implement the upgraded EOPs.

The attached Table summarizing YAEC's schedular commitment for the above item was developed by the NRC staff from the information provided by YAEC. The staff reviewed YAEC's July 27, 1984 letter and discussed the date with the licensee.

The NRC staff finds that this date is a reasonable and achievable date for meeting the Commission requirement. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of YAEC commitment is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, That license DPR–3 is modified to provide that the licensee shall:

Implement the specific item described in the Attachment to this order in the manner described in YAEC's submittals noted in section IV herein no later than the date in the Attachment.

Extension of time from completing this item may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A Request for Hearing Shall not stay the Immediate Effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this, 5th day of July 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

YANKEE NUCLEAR POWER STATION LICENSEE'S ADDITIONAL COMMITMENT ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
4. Upgrade Emergency Operating Procedures (EOPs).	4b. Implement the upgraded EPOs	Prior to startup for Cycle 19 operation.

[FR Doc. 85–16884 Filed 7–15–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Granting of Exemption From Appendix R to 10 CFR Part 50; Fire Protection Program

The U.S. Nuclear Regulatory Commission (the Commission) has granted an Exemption from certain requirements of Appendix R to 10 CFR Part 50 to Omaha Public Power Company (the licensee). The Exemption relates to the fire protection program for the Fort Calhoun Station, Unit No. 1 (the facility) located in Washington County, Nebraska. The Exemption is effective as of July 3, 1985.

The Exemption waives certain requirements of Subsection III.G of Appendix R to 10 CFR Part 50 as follows: Certain cables in containment beneath the pressurizer need not have 20-foot separation and other cables in containment having at least 20-foot separation may have some intervening combustibles between them. An area-wide automatic fire suppression system will not be required for the intake structure and fire detectors around the pull boxes near the intake structures will not be required. Regarding the air compressor room, cables and components of redundant shutdown divisions need not be separated by a continuous 1-hour fire-rated barrier. A complete fixed fire suppression system will not be required in the electrical penetration room. In regard to the switchgear room, redundant shutdown divisions need not be separated by a complete 3-hour fire-rated barrier.

Lastly, an area-wide fixed fire suppression system will not be required for the control room. The Exemption is granted mainly on the basis that the existing fire protection, coupled with proposed modifications at Fort Calhoun, is the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability. Details are provided in the Exemption.

The requests for the Exemption comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations which are set forth in the Exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 20156).

For further details with respect to this action, see (1) the applications for exemptions dated August 30, 1983, December 3, 1984, and January 9 and March 8, 1985, (2) the Commission's letter dated and (3) the Exemption dated July 3, 1985. All of these items are available for public inspection at the

Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this July 3, 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-16822 Filed 7-15-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection, SF 2809, "Health Benefits Registration Form."

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a proposed form that collects information from the public. SF 2809, "Health Benefits Registration Form," will be used by former spouses of employees who elect to enroll in the Federal Employees Health Benefits (FEHB) Program, under the authority of the Spouse Equity Act of 1984 (Pub. L. 98-615). This form will be used by former spouses that are eligible for the FEHB Program so they can enroll or change enrollment. For copies of this proposal call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, D.C. 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472).

U.S. Office of Personnel Management.

Loretta Cornelius

Acting Director.

[FR Doc. 85-16804 Filed 7-15-85; 8:45 am]

BILLING CODE 6325-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Revew; Submission of Public Use Form

AGENCY: Peace Corps.

ACTION: Notice of Submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve an extension to use the HOTLINE Employer Follow-up Questionnaire through September 30, 1988. This form is completed voluntarily by employers who have placed announcements in the HOTLINE job bulletin and provides information on number of returned Peace Corps Volunteers who applied, were interviewed and/or were hired. The information is necessary for Peace Corps to determine the effectiveness of HOTLINE. No revisions have been made to the questionnaire.

Information About the Questionnaire

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.
Title and Agency Number: HOTLINE Employer Follow-up Questionnaire, Form Number PC-1510.
Type of request: Form extension approval.
Frequency of collection: On occasion.
General description of respondents: Employers who have placed announcements in HOTLINE.
Estimated number of respondents: 1,080 annually.
Estimated hours for respondents to furnish information: 0.20 hours each.
Respondents obligation to reply: Voluntary.
Comments: Comments on this form should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

Comments should be received on or before August 15, 1985. A copy of the form may be obtained from Leslie Wexler, Office of Special Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526; telephone (202) 254-8326. This notice is issued in Washington, DC on July 10, 1985.

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 85-16815 Filed 7-15-85; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

[Order No. 616; Docket No. A85-20]

Little Norway, California 95721 (Mr. and Mrs. Dingwell, petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: July 9, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket No.: A85-20.

Name of affected Post Office: Little Norway, California 95721.

Name(s) of petitioner(s): Mr. and Mrs. Dingwell.

Type of determination: Consolidation.

Date of filing of appeal papers: July 3, 1985.[1]

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule (39 U.S.C. 404(b)(5)) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(a) The record in this appeal shall be filed on or before July 18, 1985.

(b) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

[1] Petitioners request an extension of time to permit other patrons to express their views regarding the Postal Service's Determination. No extension of time is necessary because patrons have until July 29, 1985 to intervene in this case. The procedural schedule provides ample time for interested persons to present their views for the Commission's consideration.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 3, 1985, Filing of Petition
July 9, 1985, Notice and Order of Filing of Appeal
July 29, 1985, Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
August 7, 1985, Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
August 27, 1985, Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
September 11, 1985, (1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
September 18, 1985, (2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
October 31, 1985, Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-16853 Filed 7-15-85; 8:45 am]
BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance and final notices of records systems changes.

SUMMARY: The purpose of this document is to publish final notice of a previously published proposed routine use and the deletion of a routine use to one system of records, and also to publish advance notice of several systems of records descriptions changes.

DATE: Part 1 is effective July 16, 1985. Comments on the proposed routine uses in Part 2 and the modifications to several systems in Part 3 must be received on or before August 15, 1985.

ADDRESS: Comments may be mailed to the Records Officer, U.S Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-5010 or delivered to room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 1821.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office (202) 245-5568.

SUPPLEMENTARY INFORMATION: In accordance with provisions of the Privacy Act Implementation Guidelines issued by the Office of Management and Budget (40 FR 28961), the Postal Service has determined it necessary to: (1) Publish final notice of a proposed routine use and the deletion of a routine use; (2) provide advance notice of two proposed routine uses; and (3) make modifications to several systems of records descriptions in order that they more accurately reflect the way in which the systems operate. Postal Service regulations concerning the privacy of information appear in 39 CFR Part 266. The Postal Service systems of records which are exempt from certain provisions of the Privacy Act are listed in 39 CFR 266.9(b).

Part 1—Final Notice—Routine Uses

a. On May 1, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 18589) advance notice of its intention, in connection with the direction set by the President's Council on Integrity and Efficiency (PCIE) Long Range Computer Matching Group, to disclose certain Postal Service employee information in connection with computer matching operations conducted either by the Postal Service or by requesting Federal agencies or non-Federal entities, through written agreements. No comments were received regarding this proposal. Accordingly, this constitutes the final notice of routine use No. 28 to system USPS 050.020, Finance Records—Payroll System, as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

ROUTINE USES OF RECORDS MAINTAINED IN THIS SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

28. Disclosure of information about particular current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Postal Service; to improve program integrity; and to collect debts and overpayments owed under those program.

* * * * *

b. In accordance with the above mentioned final notice regarding routine use No. 28 to system USPS 050.020, two computer matching programs were announced on May 1, 1985 in 50 FR 18591, between the Postal Service and the U.S. Department of Agriculture, and the State of Indiana Employment Security Division. These matching program notices called for comments by May 31, 1985. No comments were received and this constitutes final notice of these computer matching programs.

c. Temporary routine use number 29 to system 050.020 was published in 49 FR 24835, June 15, 1984, to be in effect for a period of one year from date of publication. While in effect, this routine use allowed for the disclosure to the City of New Orleans, Louisiana, of information about particular postal employees for comparison with the New Orleans' Department of City Civil Service time/attendance payment files. The effective period of one year elapsed June 15, 1985, and the routine use is being deleted.

Part 2—Proposed Modifications to Routine Uses to Two Systems of Records

(a) The Postal Service proposes to modify routine use No. 1 to system USPS 010.010, Collection and Delivery Records—Address Change and Mail Forwarding Records, and routine use No. 4 to system USPS 010.020, Collection and Delivery Records—Boxholder Records, for the following reasons:

The Postal Service recently revised Form 3575, Change of Address Order, allowing for the entry of family member names on the form. However, public requests for permanent change of address information are received and processed on a specific individual basis only. Therefore, in order that only information that is relevant to a request is released, copies of permanent change of address orders (Forms 3575) will no longer be disclosed to the public; rather, address information will be extracted from them. Furthermore, it has been the longstanding practice of the Postal Service not to disclose to the public temporary change of address orders (Forms 3575) since such orders are filed for brief periods of time such as when an individual or family is vacationing, and disclosure of the temporary order would not fully meet the purpose for which change of address records are maintained, and conceivably could be construed as being an invasion of the filer's privacy. System 010.010 was last published at 48 FR 10963, March 15, 1983. Accordingly, it is proposed that routine use No. 1 to system 010.010 be changed to read as follows:

USPS 010.010

SYSTEM NAME:

Collection and Delivery Records—Address Change and Mail Forwarding Records, 010.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

1. Disclosure of the address of any named individual may be made from a permanent address change record to the public, upon request. Note: Temporary changes of address will not be furnished except by the postmaster upon a showing of a compelling emergency situation, or to a Federal, State, or local government agency showing proper identification and providing proper certification that the information is required in the course of a criminal investigation.

* * * * *

(b) In regard to the disclosure of Form 1093, Application for Post Office Box or Caller Number, it has been the longstanding practice and the intent of Postal Service regulations to disclose to the public, upon request, the name, address, and telephone number from Form 1093 in cases where the box is used for the purpose of doing or soliciting business with the public. The intent of this regulation never has been that copies of the form itself would be disclosed since other information of a more personal nature is collected on the form for use in verification of the applicant's identity. System 010.020 was last published at 48 FR 31128, July 6, 1983. Accordingly, it is proposed that routine use No. 4 to system 010.020 be modified to clarify its original intent, as follows:

USPS 010.020

SYSTEM NAME:

Collection and Delivery Records—Boxholder Records, 010.020.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

4. Disclosure of the name, address, and telephone number may be made from the post office box application form, to the public, upon request, when the box is being used for the purpose of doing or soliciting business with the public.

* * * * *

Part 3—Proposed Modifications to Several Systems of Records

The purpose of this document is to modify the descriptions of several systems of records for which fuller descriptive information is needed. For comparison purposes, Systems 050.005 was last published in 47 FR 1199, January 11, 1982; Systems 120.151, 120.152 and 140.020 were last published in 48 FR 10966, March 15, 1983; and System 120.035 was last published in 48 FR 31128, July 6, 1983. A review of the operations of these systems has indicated that the previously published notices of their existence and character do not present an adequate description of their functions. Accordingly, the Postal Service presents in this document proposed revisions to systems 050.005, 120.035, 120.151, 120.152 and 140.020 for the purpose of clarity, as follows:

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable File Maintenance 050.005.

RETRIEVABILITY:

Change to read: "Records are normally retrieved by social security number. When necessary, they may be retrieved by invoice number or by name of employee, contractor, vendor, or other indebted individuals."

USPS 120.035

SYSTEM NAME:

Personnel Records—Employee Accident Records, 120.035.

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read: "Occupational accident injury and illness logs, forms, reports, and summaries. Name, address, sex, age, and type of accident."

PURPOSE:

Change to read: "To assist postal managers in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. To provide for the uniform collection and compilation of occupational safety and health data, for proper evaluation and necessary corrective action."

USPS 120.151

SYSTEM NAME:

Personnel Records—Recruiting, Examining and Appointment Records, 120.151

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read: "Personal and professional resumes, personal applications, test scores, medical assessment, academic transcripts, letters of recommendation, employment certifications, medical records, and registers of eligibles. Restricted medical records are accumulated and temporarily maintained by personnel offices prior to transmittal to medical facilities."

USPS 120.152

SYSTEM NAME:

Personnel Records—Career Development, Training, and Training Evaluation Records, 120.152

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read: "Career development records, applications for and record of postal and non-postal training, and records containing student and manager evaluations of training received. Also contains examination and skills bank records, including records of special qualifications, skills or knowledge, career goals, education, and work histories or summaries."

PURPOSE:

Change to read: "To provide managers, supervisors, and training and development professionals with decision-making information for employee career development, training, and assignment."

USPS 140.020

SYSTEM NAME:

Postage—Postage Meter Records, 140.020.

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read: "Customer name and address, license application, and transaction documents."

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal Data Centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding, allowances, FICA taxes, salary, name, social security number, payments to

financial organizations, dates of appointment or status changes, designation codes, position titles, occupation code, addresses, records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003.5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handling all necessary payroll functions and for use by employee supervisors for the performance of the managerial duties.

2. To provide information to USPS management and executive personnel for use in selection decisions and evaluation of training effectiveness. These records are examined by the Selection Committee and Regional Postmasters General.

3. To compile various lists and mailing list, i.e., Postal Leader, Women's Programs, Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W–2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FICA Deductions—The Social Security Act requires that FICA deductions be made for those employees not eligible to participate in the Civil Service Retirement System (casuals). In addition, the Tax Equity and Fiscal Responsibility Act of 1982 requires that contributions to the Medicare program be deducted from all employees' earnings. (These statutes do not apply to employees in the Trust Territories who are not U.S. citizens.) Accordingly, records of earnings (i.e., W–2 information) must be disclosed to the Social Security Administration in order that it may account for funds received and determine individual's eligibility for benefits. Information disclosed includes name, address, SSN, wages paid subject to withholding, Federal, state, and local income tax withheld, total FICA wages paid and FICA tax withheld, occupational tax, life insurance premium and other information as reported on an individual's W–2 form.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees, Group Life Insurance Program and the Federal Employees Health Benefits program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Ages Survivors and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system for use in determining an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies, may also be utilized to respond to general requests for statistical information (without personal identification of Individuals) under the Freedom of Information Act or to locate specific individual for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service computation date, retirement system, and FEGLI status) for use by OPM's Compensation Group collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission upon his request, when that investigator is properly engaged in the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint

24. Records in this system ae subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approval computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the states (and by those states to local governments); to improve program integrity; and to collect debts and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purposes of determining eligibility for coverage and payments of benefits under union-sponsored non-Federal insurance plans and transferring related records as appropriate.

28. Disclosure of information about particular current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Postal Service; to improve program integrity; and to collect debts and overpayments owned under those programs.

29. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Service (DC-DHS) for comparison with the DC-DHS welfare program files.

Note.—This routine use will be in effect for a period of one year ending September 24, 1985.

30. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of five years ending September 24, 1989.

31. To provide to the Department of Defense (DOD) upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purposes of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

32. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

33. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) and on the employment rolls of the City of Philadelphia (CP) may be made to the PSD and CP for a one-time comparison with the PSD'S and CP's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending February 13, 1986.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also protected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

See USPS Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Department of the Controller and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed, giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURE:

See Notification above.

CONTESTING RECORD PROCEDURES:

See Notification Procedure above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

[FR Doc. 85-16722 Filed 7-15-85; 8:45 am]
BILLING CODE 7710-12-M

SYNTHETIC FUELS CORPORATION

Solication for Projects To Produce Synthetic Fuels by Mining and Surface Processing Tar Sands

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Issuance of Solicitation for Projects to Produce Synthetic Fuels by Mining and Surface Processing Tar Sands.

SUMMARY: Notice is hereby given that effective on June 24, 1985 the United States Synthetic Fuels Corporation issued a Solicitation for Projects to Produce Synthetic Fuels by Mining and Surface Processing Tar Sands soliciting proposals for synthetic fuel projects to

be assisted under Title I, Part B, of the Energy Security Act of 1980 (Pub. L. 96–294).

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Shanklin, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822–6463.

For Copies of the Solicitation Contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822–6460.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

July 11, 1985.

[FR Doc. 85–16830 Filed 7–15–85; 8:45 am]

BILLING CODE 0000–00–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–48]

Initiation of Investigation Under Section 301; Semiconductor Industry Association

On June 14, 1985 the Semiconductor Industry Association (SIA) filed a petition under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411 et seq.) seeking relief from the effects of certain policies and practices of the Government of Japan and its instrumentalities. SIA alleges that through a series of policies which existed until 1974–75 the Government of Japan created a market structure in which the semiconductor industry is dominated by as small number of major semiconductor consuming companies that have strong, interlocking ties with respect to research and development, production and sales, and that this market structure constitutes a major barrier to the sale of foreign semiconductors in Japan. The practices which allegedly created this market structure included: (1) Restrictions on entry into the semiconductor industry by all but large, established electronic producers; (2) concentration of semiconductor subsidies and research and development aid to the largest electronic producers; (3) pressure on semiconductor consumers to "buy Japanese"; and (4) formal restrictions on foreign imports and investment.

SIA maintains that even with the phasing out of the Japanese government's official restrictions, the market barriers have persisted. The U.S. share of the Japanese market has shown virtually no improvements. In 1984, U.S. firms accounted for 11.4 percent of Japanese consumption, virtually the same share which they held in 1973 when the market was formally protected.

SIA claims that Japan's market structure not only causes lost export sales to Japan, resulting in diminished revenues for research and development and capital investment, but also contributes to capacity expansion races—surges of low-priced semiconductor exports from Japan during recessionary periods. Finally, SIA alleges that the import restricting effect of Japan's market structure is in violation of its GATT agreements, inconsistent with the Semiconductor Recommendations and the commitments made when Japan adopted the 1983 Recommendations on High Technology, and an unreasonable burden on U.S. commerce.

On July 11, 1985, the United States Trade Representative decided to initiate an investigation based on the petition filed by SIA in accordance with the provisions of 19 U.S.C. 2412(b).

Interested parties are invited to submit written comments with respect to issues raised in the petition. Such comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223 600 17th Street NW., Washington, D.C. 20506 no later than August 26, 1985. Copies of the Petition are available at the above address.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 85–16881, Filed 7–15–85; 8:45]

BILLING CODE 3190–0–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

East Asia Security Tour (EAST): An International Affairs Study Program: The United States Information Agency is interested in supporting a two to three week study program which will introduce approximately 10 Asian parliamentarians, scholars and journalists to US military facilities in East Asia and the Pacific. This pilot project will expose younger East Asian leaders to America's defense commitment, regional policies and sensitivities. In addition to installation briefings, participants will receive background presentations by accompanying American scholars and local experts on U.S. policies, bilateral relations, and on each country's military, economic, social and strategic concerns. They will also witness the extent of America's preparedness and defense commitment. For the initial pilot project, Southeast Asian participants will visit U.S. installations in Northeast Asia and the Pacific. A reciprocal follow-on program for Northeast Asian participants visiting Australia and the South Pacific is envisioned. The initial program will begin in the Philippines with subsequent visits to Korea, Japan, Hawaii and possibly the West Coast of the U.S. The final stop will include a two or three day summary seminar/workshop. USIA posts in East Asia will cover intra-regional transportation and per diem costs for Asian participants, and the Office of Private Sector Programs will fund subsequent international travel, per diem and administration costs.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above proejct.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which

will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW. Washington, DC 20547.

Dated: July 11, 1985.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 85-16855 Filed 7-15-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Propsed Amendment of Systems Notice; Addition of New Routine Use Statements

Notice is hereby given that the Veterans Administration is adding two new routine use statements in the system of records entitled: Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA (34VA11) as set forth on page 1156 of the **Federal Record** publication, "Privacy Act Issuances, 1982–1983 Compilation, Volume V" and on page 36188 of the **Federal Register** of September 14, 1984. Routine use statements numbered 7 and 8 are being added to provide for the release of information stored in the Research and Development Information System (RDIS) related to research being conducted within the VA Research and Development program. These data are released in response to inquiries from the general public including governmental and non-governmental agencies and commercial organizations.

Interested persons are inivited to submit written comments, suggestions, or objections regarding the proposed system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Ave., NW Washington, D.C. 20420. All relevant meterial received before August 14, 1985 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 28, 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 proposed routine use statement is effective August 14, 1985.

Approved: July 8, 1985.

By direction of the Administrator.

Everett Avlarez, Jr.,

Deputy Administrator.

Notice of System of Records

The system of records identified as 34VA11, "Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA", appearing on page 1156 of the **Federal Register** publication "Privacy Act Issuances, 1982–1983 Compilation, Volume V" and 49 FR 36188 is revised as follows:

34VA11

SYSTEM NAME:

Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATAGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

7. Upon request for research project data, the following information will be released to the general public including governmental and non-governmental agencies and commercial organizations: Project title and number, name and educational degree of principal investigator, Veterans Administration medical center location, type (initial, progress, or final) and date of last report, name and educational degree of associate investigators and project summary. In addition, upon specific request, keywords and indexing codes will be included for each project.

8. Upon request for information regarding VA employees conducting research, the following information will be released to the general public including governmental and non-governmental agencies and commercial organizations: Name and educational degree of investigator, Veterans Administration title, academic affiliation and title, hospital service, primary and secondary program areas, primary and secondary specialty areas, and subspecialty.

* * * * *

[FR Doc. 16823 Filed 7-15-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 136
Tuesday, July 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, July 17, 1985.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Part Open/Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. FY 87 Priorities

The Commission will consider Fiscal Year 1987 Priorities.

Closed to the Public

2. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary

[FR Doc. 85-16868 Filed 7-11-85; 4:31 pm]

BILLING CODE 6355-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 15, 22, 29, and August 5, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTER TO BE CONSIDERED:

Week of July 15

Wednesday, July 17

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 22—Tentative

Tuesday, July 23

2:30 p.m.
Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Wednesday, July 24

10:00 a.m.
Briefing on Accident Source Term Reassessment (Public Meeting)
1:30 p.m.
Briefing on Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, July 26

10:00 a.m.
Briefing by Georgia Power (Vogtle) on Operational Readiness Review Pilot Program (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of July 29—Tentative

Monday, July 29

2:00 p.m.
Discussion of DOE High Level Waste Management Program (Public Meeting)

Tuesday, July 30

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Diablo Canyon-2 (Public Meeting)

Wednesday, July 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)
2:00 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

Thursday, August 1

10:00 a.m.
Briefing on Safety Goal Evaluation Plan (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of August 5—Tentative

Thursday, August 8

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing by Executive Branch (Closed—Ex. 1) was held on July 10. Affirmation of "Denial of Request for Rulemaking" (Public Meeting) was held on July 11.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

July 11, 1985.

[FR Doc. 85-16986 Filed 7-12-85; 4:00 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
July 16, 1985

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Cordylanthus Palmatus (Palmate-Bracted Bird's-Beak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Cordylanthus palmatus* (palmate-bracted bird's beak), as an endangered species. This action is being taken because population numbers have declined in historic times, and the range of the palmate-bracted bird's beak has been reduced as a result of conversion of land to agricultural use, intensive livestock grazing, urban development, and other land use activities that have altered the natural plant communities that once supported the species. Historically, the species is known from scattered locations in Fresno and Madera Counties in the San Joaquin Valley, north into the Sacramento Valley from San Joaquin to Colusa Counties, and in the Livermore Valley, Alameda County. *Cordylanthus palmatus* presently is known from only three small populations. Habitat modification from urban and agricultural development and ncontrolled off-road vehicle (ORV) use of one area pose the most serious and immediate threats facing the species. Low population numbers may also threaten this annual plant through genetic depletion and reduced reproductive potential. Federal listing would provide the protection of the Endangered Species Act of 1973, as amended, for the three remaining populations of this species. The Service seeks comments and data related to this proposal.

DATES: Comments from all interested parties must be received by September 16, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESS: Comments and material concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE, Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE, Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cordylanthus palmatus, an annual herb of the snapdragon family (Scrophulariaceae), was originally collected by Ferris in 1916 and described by her in 1918 under the name *Adenostegia palmata*. Macbride (1919) recognized the species under the genus *Cordylanthus* (a conserved name).

Plants of *C. palmatus* are from 4 to 12 inches tall with several to many ascending-spreading branches from the base of the stem or above. The stems are sparsely to densely hairy with some of the shorter hairs glandular. The leaves and stems are grayish green. The small pale whitish flowers, ½-inch to 1-inch long, are arranged in dense spikes. Each flower is surrounded by a small lobed floral bract.

Little is known of the ecology of *Cordylanthus palmatus* aside from its occurrence in and possible confinement to a particular soil type named saline-alkali (black alkaline) of lowland flats and plains. This habitat was historically rare in much of cis-montane California and is now much reduced in extent. Like other members of the genus and related genera in the family, *C. palmatus* is hemiparasitic on the roots of various seed plants (Chuang and Heckard 1971).

Historically the species was collected from seven scattered locations in Fresno, Madera, San Joaquin, Yolo, and Colusa Counties, California. A recent collection (1982) extended the known range into the Livermore Valley in Alameda County, California. The range of this species coincides with a region of California that has been intensively developed for agriculture, livestock grazing, and urbanization. These activities are the principal factors responsible for the destruction of much of California's pristine valley habitats (Heady 1977), and they undoubtedly contributed to the decline of *Cordylanthus palmatus*. The extirpation of five previously known populations of this plant in Colusa, San Joaquin, Yolo, Madera, and Fresno Counties has been attributed largely to soil reclamation and conversion of lands for agricultural use (Heckard 1977). Prior to destruction of one population, five and one-half air miles east-southeast of Mendota in Fresno County, seed was collected by Dr. L.R. Heckard (University of California, Berkeley). Ten cultivated seedlings from greenhouse stock established from the Mendota site were transplanted to the Mendota State Wildlife Management Area. The new site is less than one mile from the now extirpated donor site. At present, three populations are known, two are on private and city-owned lands near the cities of Livermore, Alameda County, and Woodland, Yolo County; and the third, the transplanted colony, exists within the Mendota State Wildlife Management Area near Mendota, Fresno County.

In the late 1970's and early 1980's searches of likely habitats within the range of the species by local botanists, personnel from the California Department of Fish and Game, and the U.S. Fish and Wildlife Service failed to locate any additional colonies of this species. The rarity of the saline-alkaline soils occupied by this species and the intensive argicultural and urban development within its range make the likelihood of finding additional colonies remote.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94-51), which included the palmate-bracted bird's-beak, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including the palmate-bracted bird's-beak. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including the palmate-bracted bird's-beak, to be endangered species pursuant to Section 4 of the Act. In 1978, amendments to the Endangered Species Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Cordylanthus palmatus* as a candidate plant. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of this species may be warranted in

accordance with section 4(b)(3)(A) of the Act as amended in 1982. On October 13, 1983, and again on October 12, 1984, further findings were made that the listing of *Cordylanthus palmatus* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes a finding that the listing is warranted. The Service proposes to implement the petitioned action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; revised in 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cordylanthus palmatus* (Ferris) Macbride (palmate-bracted bird's-beak) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Specimens of *Cordylanthus palmatus* have been collected from eight sites in six counties in California. Only two of these sites, and one site where a transplanted population is found, presently support the species. Habitat loss resulting from soil reclamation and urban and agricultural developments are responsible for the extirpation of populations at the six sites no longer supporting *Cordylanthus palmatus*. The remaining three populations have declined in the past and face present and potential threats of further habitat loss.

At the transplant site near Mendota, plants are so few in numbers that any disturbance to the habitat could threaten the population with extirpation. Population numbers have fluctuated probably due to the annual nature of the plant and destruction by off-road vehicles (ORV's). Of the ten transplanted specimens, five were destroyed in 1973 by ORV's even though the plants were protected by wire coverings. In 1981 only one plant was observed on the preserve, but in 1982 the population had grown to about 20 to 30 plants (Dr. L.R. Heckard, University of California, Berkeley, telephone comm.). In 1983 between 20 and 30 plants were observed by Peggy Smith, a local botanist (John Stebbins, California State University, Fresno, telephone comm.). The manager of the wildlife area is aware of the population and is attempting to protect the site from encroachment by ORV's (Bob Huddleston, California Department of Fish and Game, telephone and written communication). It is likely that without active protection and management the population will decline and disappear. Active management such as seed dispersal in likely habitats and fencing will be necessary to prevent additional population declines.

The population near Woodland, California, originally occupied about 10 acres, but a large portion (approximately 8 acres) was plowed in 1982 (Rick York, California Native Plant Society, telephone communication) and has been plowed in subsequent years. Plowing eliminated the largest portion of the colony (probably 75 percent or more). The remaining population consists of about 100–200 plants along a nearby drainage ditch and open field. This site is being considered for use as a sewage treatment facility by the City of Woodland.

The Livermore Valley population consists of about 2,000 to 5,000 plants scattered over approximately 180–200 acres within an area zoned for residential and/or agricultural development. Several developments have been proposed for the entire area. In January of 1983 approximately 40 acres of the Livermore site (about 20 percent of the area) was bulldozed and a portion of associated wetlands illegally filled (U.S. Army Corps of Engineers, letter, 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Historically, cattle grazing affected many of the areas once supporting this species. In some areas the plant species composition was undoubtedly altered significantly by grazing animals. At present, however, grazing does not appear to be a threat in those areas still supporting *Cordylanthus palmatus*.

D. *The inadequacy of existing regulatory mechanisms.* Although the State of California lists the palmate-bracted bird's-beak as endangered, State law does not provide adequate protection for this species in its natural habitat. The law provides that a land owner who has been notified by the State Fish and Game Commission that a State listed plant is growing on his/her property must notify the Department of Fish and Game ". . . at least 10 days in advance of changing the land use to allow salvage of such plant." Although State law also provides for such measures as research and land acquisition, provisions of the Endangered Species Act would offer additional protection for this species and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Population numbers, especially at the Mendota site, are low for an annual plant. Genetic depletion and reduced reproductive potential may further threaten the palmate-bracted bird's-beak.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cordylanthus palmatus* as endangered. Endangered status appears most appropriate considering the past and present declines in the species' range and populations, and the current threats faced by the species. Only three populations are known to exist and all three have suffered recent damage. Plants on private and municipally owned lands are imminently threatened by proposed developments. The depauperate transplanted population on the Mendota State Wildlife Area will likely disappear without active management. The designation of critical habitat is discussed in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor A in the preceding section, *Cordylanthus palmatus* is threatened by taking in the form of destruction due to ORV activity and agricultural conversion. Taking is not regulated by the Act with respect to plants except for a prohibition against removal and reduction to possession of endangered plants on land under Federal jurisdiction. Because of a substantial possibility of vandalism, publication of critical habitat descriptions could make this species more vulnerable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species, that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No Federal activities are known which may affect *Cordylanthus palmatus;* however, the Army Corps of Engineers has permit jurisdiction over some wetlands where the species occurs and developments proposed for these areas may require section 7 consultation to ensure protection for the species and its habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Cordylanthus palmatus* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to the palmate-bracted bird's-beak. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. Because this species is not known to occur on Federal land, it is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to *Cordylanthus palmatus;*

(2) The location of any additional populations of *Cordylanthus palmatus;* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Cordylanthus palmatus.*

Final promulgation of the regulations on *Cordylanthus palmatus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Chuang, T.I., and L.R. Heckard. 1971. Observations on root parasitism in *Cordylanthus* (Scrophulariaceae). Amer. J. Bot. 58:218–228.

Ferris, R.S. 1918. Taxonomy and distribution of *Adenostegio.* Bull. Torrey Bot. Club 45:399–423.

Heady, H.F. 1977. Valley grassland. *In* M.G. Barbour and J. Major (eds.). Terrestrial Vegetation of California, pp. 491–514. John Wiley and Sons, New York.

Heckard, L.R. 1977. Rare Plant Status Report for *Cordylanthus palmatus.* California Native Plant Society, Berkeley, California. Unpubl. report. 4 pp.

Macbride, J.F. 1919. Reclassified or new spermatophytes, chiefly North American. Contrib. Gray Herb. 59:28–39.

Author

The primary author of this proposed rule is Monty Knudsen, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scrophulariaceae—Snapdragon family:						
*	*	*	*	*	*	*
Cordylanthus palmatus	Palmate-bracted bird's-beak	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	*

Dated: April 25, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–16794 Filed 7–15–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule to Determine Endangered Status for Hibiscadelphus Distans (Kauai hau kuahiwi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Hibiscadelphus distans* (Kauai hau kuahiwi). Only 10 individuals of this endemic tree remain in the wild, occurring in the State-owned Pu'u Ka Pele Forest Reserve, on the island of Kauai, Hawaii. Imminent threats to this species and its habitat exist from feral goat grazing, fire, competition with exotic species, and human disturbance. Protective measures are needed to ensure the plant's continued existence and to provide for its recovery. Determination of *Hibiscadelphus distans* as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments.

DATES: Comments from all interested parties must be received by September 16, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The plant species *Hibiscadelphus distans* was discovered by L. Earl Bishop and Derral Herbst in 1972 and later described by them (Bishop and Herbst, 1973). It likely was at one time more abundant and more widely distributed, but only 10 individuals are presently known to exist. It occurs on State-owned land within the Pu'u Ka Pele Forest Preserve, Koai'e Valley, Waimea Canyon, Island of Kauai, Hawaii.

This species is a small tree, up to 5.45 meters (18 feet) tall, with green heart-shaped leaves and smooth bark. Its flowers are approximately 2.5 centimeters (1 inch) long and are greenish yellow, turning darkish red with age. The plants live within an area of approximately 0.018 hectare (2,000 square feet) on a steep rock bluff at an elevation of about 300 meters (1,000 feet). This area is a remnant of a native, open, dryland forest and receives approximately 150 centimeters (60 inches) of rain annually. The area's yearly mean temperature ranges from 18.5 to 25.7 degrees Centigrade (65 to 78 degrees Fahrenheit). Associated species include *Sapindus oahuensis, Erythrina sandwicensis, Diospyros ferrea,* and *Melia azedarach.* The ground cover is sparse and consists chiefly of exotic grasses and forbs (Herbst, 1978).

Although goats are not known to browse on the present plant population, browsing by an existing large feral goat population was probably responsible for the species' decline and could threaten the continued existence of the remaining plants. Other threats come from fire, competition with exotic species, and human disturbance. A cooperative effort between Federal and State agencies is needed to protect the remaining plants and to provide for the species' recovery.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Endangered Species Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including *Hibiscadelphus distans.* As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Hibiscadelphus distans,* to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), including *Hibiscadelphus distans.* On October 13, 1983, a further finding was made that listing of *Hibiscadelphus distans* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. This proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in

accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Hibiscadelphus distans* is subject to disturbance from several sources. Large herds of feral goats graze within the canyon and have destroyed surrounding vegetation. Goats may also dislodge stones from the ledges above the species, potentially damaging the trees and destroying the seedlings (Herbst, 1978). The large goat herds result from specific game management practices aimed at maintaining high goat population levels for hunting.

Human disturbance also presents a serious threat to the species. A hiking trail passes below the ledge where *Hibiscadelphus distans* is found, and activity by hikers straying off this path may impact the species by dislodging stones and increasing erosion of the friable soil. Trees may suffer additional damage by being used as "hand-holds" by hikers scaling the steep embankment.

The habitat disturbances created by people and feral goats have favored the introduction and spread of exotic vegetation. Today, small pockets of native plants can be found, but much of the canyon has been taken over by exotic species. Competition with exotic species and environmental changes brought about by changes in the vegetation have had a serious impact on many of the area's native species of plants and animals.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The area where *Hibiscadelphus distans* exists is easily accessible to people and has already experienced incidents of unauthorized taking and vandalism. When the Hawaii State Department of Forestry and Game labeled plants along the trail system adjacent to the species' habitat, many of the labeled plants were dug up or damaged by people using the trail. Removal of or damage to any of the few remaining individuals of *Hibiscadelphus distans* could seriously jeopardize the chances of the species' survival.

C. *Disease or Predation.* Browsing by feral goats upon *Hibiscadelphus distans* probably responsible for the species' currently depleted status. Although the remaining plants are apparently free from grazing pressure, the situation is still precarious. Should this grazing pressure increase, through either environmental changes or game management practices, goats may be driven into areas they usually avoid, imperiling the few remaining trees.

D. *The inadequacy of existing regulatory mechanisms. Hibiscadelphus distans* of found in an area within the State-owned Pu'u Ka Pele Forest Reserve. State regulations prohibit the removal, destruction, or damage of plants found on State forest land. However, these regulations are difficult to enforce due to limited personnel. The Endangered Species Act will offer additional protection to this species.

E. *Other natural or manmade factors affecting its continued existence.* The small, extant population (10 individuals) remaining makes *Hibiscadelphus distans* vulnerable to any catastrophe, natural or man-caused, that may impact the area. Reduction of the gene pool and genetic variability, resulting from a small population size, could have detrimental effects on the continued existence of the species. The presence of a trail rest shelter with a small fire pit near this lone population adds a potential threat of destruction by fire during the dry season.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hibiscadelphus distans* as endangered. Only 10 individuals remain in the wild, and these face threats from feral goats, fire, competition with exotic species, and human disturbance. Given these circumstances, the determination of endangered status seems warranted. See the following "Critical Habitat" section for a discussion of why critical habitat is not being proposed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *Hibiscadelphus distans* is subject to taking and vandalism. Plants along a trail near the area where the species occurs have already experienced incidents of unauthorized taking and vandalism. Publication of a critical habitat description in the **Federal Register** would subject those few remaining individuals to an increased risk of taking and vandalism. In addition, since the plant only occurs on State land, and the State of Hawaii is aware of its status, no net benefit would accrue to the species from the designation of critical habitat. Therefore it would not be prudent to designate critical habitat for *Hibiscadelphus distans* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since *Hibiscadelphus distans* is known only to occur on State land, cooperation between Federal and State agencies is necessary to ensure its continued existence and provide for its recovery. The protection required of Federal agencies and the prohibitions against trade and collecting are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, section7 (a)(2) requires

Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated to affect *Hibiscadelphus distans* at this time.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hibiscadelphus distans*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Due to the numerous threats experienced and its depleted state in the wild, it may be necessary to propagate this species in nurseries. Several specimens are presently found in cultivation and seeds have been sent to Dr. P. Fryxell at Texas A&M University. Requests for trade permits for scientific purposes and enhancing the propagation of the species, allowed under § 17.62, may result if an artificial propagation plan is pursued. Otherwise it is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new provision would apply to *Hibiscadelphus distans* should it be found on land under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. Currently, the species is known only to occur on State land not under Federal jurisdiction. It is anticipated that few, if any, permits for collecting this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particulary are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hibiscadelphus distans*;

(2) The location of any additional populations of *Hibiscadelphus distans* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Hibiscadelphus distans*.

Final promulgation of the regulation on *Hibiscadelphus distans* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing to the Service's Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Bishop, L.E., and D. Herbst. 1973. A new *Hibiscadelphus distans* (Malvaceae) from Kauai. Brittonia 25:290–293.

Herbst, D. 1978. Unpublished status survey of *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwi). U.S. Fish and Wildlife Service. 21 pp.

Author

The primary author of this proposed rule is Mr. Derral Herbst, Office of Endangered Species, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 5302, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Malvaceae-Mallow family:						
* * * *		*		*		*
Hibiscadelphus distans	Kauai hau kuahiwi	U.S.A. (HI)	E		NA	NA
* * * *		*		*		*

Dated: June 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-16795 Filed 7-15-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Abutilon Menziesii (Ko'oloa 'ula)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Abutilon menziesii* (ko'oloa 'ula) as an endangered species. This plant is known from only three small populations located on the islands of Lanai, Maui, and Oahu, in the State of Hawaii. These populations are vulnerable to any substantial habitat alteration and face the potential threats of fire, flood, overgrazing by feral animals, and predation by the Chinese rose beetle. A determination that *Abutilon menziesii* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. Comments and related materials on this proposal are solicited.

DATES: Comments from all interested parties must be received by September 6, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Abutilon menziesii was first collected by Dr. Archibald Menzies while in Hawaii with Capt. George Vancouver aboard the "Discovery" in 1790-1794. In 1865, B.C. Seemann found Menzies' collection in the British Museum of Natural History, London. Seemann described the plant and named it for Dr. Menzies. The exact locality of Menzies' collection is unknown. The collection site was listed simply as "The Sandwich Islands." The plant is a shrub, 6-8 feet (2-2.5 m) tall, with coarsely-toothed, silvery, heart-shaped leaves 1-3 inches (2-8 cm) long. The flowers are dark red, about 0.8 inch (2 cm) across. The capsules are hairy, five- to eight-parted, with about three seeds per cell.

The species formerly grew on the islands of Hawaii, Maui, and Lanai; today there are fewer than 25 plants growing naturally in the wild. The principal population is on Lanai. There is a very small remnant population on Maui, and one plant on Oahu is probably an escape from cultivation. The extant populations are threatened by exotic animals (e.g., axis deer, Chinese rose beetle), soil erosion, fire, flood, and commercial development.

Federal actions involving *Abutilon menziesii* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) of the Act, and of its intention to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Abutilon menziesii* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was allowed for proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the pending portion of the June 16, 1976, proposal, along with four other proposals that had expired. *Abutilon menziesii* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service has sufficient biological information on hand to support their being proposed for listing as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Findings were made on October 13, 1983, and again on October 12, 1984, that listing *Abutilon menziesii* was warranted, but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes the additional required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abutilon menziesii* Seemann (ko'oloa 'ula) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Abutilon menziesii* has been described by collectors from several localities. A recorded population of this species on the island of Hawaii has disappeared completely. The species is now reduced to fewer than 25 individuals on the islands of Lanai, Maui, and Oahu. The Lanai population is now found only at one very small peripheral site, whereas it previously had been recorded from at

least six different localities. Only two plants are found on Maui, and the Oahu population consists of a single individual, thought to have escaped from cultivation.

Much of the land where *Abutilon menziesii* had occurred has been cleared for cultivation (pineapple and sugar cane) or pasture, with the land often abandoned in later years. Erosion has been and continues to be a major threat to *Abutilon menziesii*. The Lanai population is in an area that is quite heavily eroded and the Maui population maintains a tenuous existence in a gulch subject to erosion and grazing. All known populations are frequently exposed to severe drought and periodic flooding. Flooding increases the erosion and threatens the existing populations. Also, the drought conditions often lead to wildfires that could destroy any of the existing populations. Overgrazing by axis deer, cattle, and goats also aggravates the erosion problems. Development for housing and commercial use is a continuing threat. The site where the Oahu population grows will almost certainly be developed in the future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although *Abutilon menziesii* is not greatly sought after by collectors, the species is occasionally used in ornamental plantings. Since the population has been reduced to fewer than 25 individuals, any collecting for commercial or scientific use would be significant.

C. *Disease or predation.* Browsing by cattle, goats, and axis deer is primarily responsible for decline of *Abutilon menziesii* and may prevent reestablishment of the species. Cattle browsing has been the major problem and is evidently responsible for the disappearance of the plant from the island of Hawaii. Axis deer and feral goats apparently pose the major threat to the plants currently existing on Lanai.

The Chinese rose beetle (*Adoretus sinicus*) has also been documented to defoliate the plants. Since the plants produce new leaves only during a flush growth period in the wet season, such defoliation has a significant negative impact on the survival of the species.

D. *The inadequacy of existing regulatory mechanisms.* There are no State laws or existing regulatory mechanisms at the present time to protect *Abutilon menziesii* or prevent its further decline. Federal listing would automatically invoke listing under State law, which prohibits taking and encourages conservation by the State government.

E. *Other natural or manmade factors affecting its continued existence.* The small number of surviving plants in such small areas makes this species very susceptible to extinction because small fluctuations in any of several environmental factors could have a devastating effect. A single fire or flood on Lanai could wipe out the principal population of *Abutilon menziesii*. Loss of genetic variability is likely in a population of such low numbers. The decline of many native insect pollinators, especially *Nesoprosopis* bees, probably poses an additional threat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Abutilon menziesii* as endangered. Its decline in numbers to approximately 25 individuals and reduction in range to 3 sites indicate the appropriateness of listing this species as endangered.

It is not prudent to proposed critical habitat because doing so would increase risk for the species, as detailed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *Abutilon menziesii* has been reduced to three populations and fewer than 25 individuals in a limited geographical range. Any publication of critical habitat descriptions giving the localities of these populations could result in collecting or vandalizing at the sites. All populations are on private land and minimal benefit to the species would result from designating critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There is no known Federal involvement affecting *Abutilon menziesii*, since all populations occur on private land. Voluntary or mandatory protection of this species and its habitat will require cooperation among private landowners, the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Abutilon menziesii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits involving the species

would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply in *Abutilon menziesii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Abutilon menziesii* occurs solely on private lands, so requests for taking permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Abutilon menziesii*;

(2) The location of any additional populations of *Abutilon menziesii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the areas mentioned and their possible impacts on *Abutilon menziesii*.

Final promulgation of the regulations on *Abutilon menziesii* will take into consideration any comments and any additional information received by the Service, and such communications may lead to adoption of a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Char, W., and N. Balakrishnan. 1979. 'Ewa Plains botanical survey. Dept. of Botany, Univ. of Hawaii at Manoa. 119 pp. + appendices and maps.

Funk, E., and C.W. Smith. 1982. Status report on *Abutilon menziesii*. U.S. Fish and Wildlife Service contract 14–16–0001–79096. 30 pp.

Hillebrand, W. 1965. Flora of the Hawaiian Islands (Facsimile of the Edition of 1888). Hafner Publishing, New York. xcvi + 673 pp., frontispiece + 4 maps.

Seeman, B.C. 1865–1873. Flora Vitiensis: A description of the plants of the Viti or Fiji Islands, with an account of their history, uses, and properties. London: L. Reeve and Co. xxxiii + 453 pp., 100 color plates.

Author

The primary author of this proposed rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530). This rule is largely based upon a status report and other research by Ms. Evangeline J. Funk and Dr. Clifford W. Smith, University of Hawaii. Mr. Richard P. Ingram and Dr. George Drewry served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Theatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
* * * *						
Abutilon menziesii	Ko'oloa 'ula	U.S.A. (HI)	E		N/A	N/A
* * * *						

Dated: June 20, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–16796 Filed 7–15–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine Endangered Status for Scaevola Coriacea (Dwarf Naupaka)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Scaevola coriacea* (dwarf naupaka). Populations, once prevalent throughout the major Hawaiian Islands, are now limited to four small areas of State and privately owned land in Maui County, Hawaii. The only significant population, near Waiehu Point, is threatened by imminent residential development. Approximately two-thirds of the plant's remaining habitat will be impacted by this action. Protective measures for the remaining plants are needed. Determination of *Scaevola coriacea* as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments.

DATES: Comments from all interested parties must be received by September 16, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and

Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Division Chief, Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Scaevola coriacea is a sparsely branched, prostrate shrub found in close proximity to the ocean. It was first collected by David Nelson in 1779, and later described by T. Nuttall (1843), based on specimens collected on "Atooi" (Kauai) in 1835. Its leaves are thick and succulent, light green, and about 2.5 centimeters (1 inch) in length. Cream-colored flowers, 1.9 centimeters (0.75 inch) long, may open at any time during the year. The flower is typical of the genus *Scaevola*, with a corolla split down the upper side so that it resembles half of a radially symmetrical flower that has been divided longitudinally. This is sometimes referred to as a "half-flower." The fruit is purplish black and approximately 1.3 centimeters (0.5 inch) in length, and contains 2 seed cells (Carr, 1981). Single plants may cover up to 10 square meters (108 square feet) of surface area.

Sites occupied by *Scaevola coriacea* are mostly on low, consolidated sand dunes near the ocean. The habitat is relatively dry and hot, averaging arounf 79 centimeters (31.5 inches) of precipitation per year (Carr, 1981). The sites receive high insolation and most of the vegetation is at or near ground level. Associated species include *Scaevola taccada* (a common, shrubby member of the same genus), *Bidens mauiensis*, *Nama sandwicensis*, *Boerhavia diffusa*, and *Lipochaeta integrifolia* (Herbst, 1972).

Historically, populations of *Scaevola coriacea* were present on all the major Hawaiian islands, with Maui supporting the most extensive populations. Presently, only four small populations remain in Maui County, Hawaii: At Waiehu Point, West Maui; at Kaupo, East Maui; on the islet of Moke'ehia, off West Maui; and on the islet of Mokuho'oniki, east of Molokai. The islets are part of the Hawaiian State Seabird Sanctuary and are under the jurisdiction of the State Department of Land and Natural Resources. The Waiehu Point population is split between State and private ownership. The State-owned land is under the jurisdiction of the County of Maui. The Kaupo population is entirely on private land. Loss of current and suitable habitat to development represents the major threat to the species. Protection of the remaining habitat from degradation, through a cooperative State, Federal, and County effort, is needed to ensure the species' continued existence.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Scaevola coriacea* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Scaevola coriacea* was included in this notice as a category–1 species, indicating that existing data warranted proposal to list as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. *Scaevola coriacea* was subject to this provision, so that a finding was required within one year as to whether its listing was warranted. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Scaevola coriacea* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scaevola coriacea* (dwarf naupaka) Nutt. are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, *Scaevola coriacea* was present on all the major Hawaiian islands, with Maui supporting the largest populations. Presently, the species only exists in four small areas of Maui County, Hawaii: Waiehu Point, West Maui; Kaupo, East Maui; the islet of Moke'ehia off West Maui; and Mokuho'oniki, east of Molokai. The entire known population consists of approximately 350 individuals, 300 of which are found at Waiehu Point (Carr, 1981).

The Waiehu Point pouplation occurs on four sand dunes, both on State land, as part of Waiehu Golf Course, and on private land, owned by a realty company. The latter is scheduled for development in the near future. Loss of nearly two-thirds of the species' remaining habitat will result from this action. Habitat degradation of the remaining fraction of public land by the activity of golfers off the fairway is a potential, but probably minimal, threat to the plant.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Scaevola coriacea* is subject to taking and vandalism due to the accessiblity of its habitat and current unprotected status. The flowering plant is attractive and has been noted as being ". . . a worthwhile plant for homes by the beach" (Degener and Greenwell, 1950).

C. *Disease or Predation.* No such threats to *Scaevola coriacea* are known to occur at this time.

D. *The inadequacy of existing regulatory mechanisms.* A special permit is required to land on Mokuho'oniki islet. No additional

protection is now provided to *Scaevola coriacea*.

E. *Other natural or manmade factors affecting its continued existence.* Further reductions of the breeding population may have adverse effects on the reproductive capacity and survival ability of this species (Carr, 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Scaevola coriacea* as endangered. The low number of individuals in the wild and the imminent loss of two-thirds of its remaining habitat warrant this decision. Critical habitat is not being designated because of the reasons described below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requries that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered to threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *Scaevola coriacea* is potentially subject to collecting, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. The plant currently occurs on State and private land outside Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable to taking and vandalism. In addition, there would be no net benefit to this species from such a designation. Therefore, it is not prudent to designate critical habitat for *Scaevola coriacea* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Section 6 of the Endangered Species Act of 1973, as amended, details conditions for cooperative action between the Service and State agencies. Such actions as the establishment of conservation programs, acquisition of land, scientific research, and funding are provided for under section 6(b), management, and 6(c), cooperative agreements. The State of Hawaii has entered into a cooperative agreement with the Service. Since much of the remaining habitat of *Scaevola coriacea* occurs on State land, cooperation among Federal, State, and County officials will be necessary to ensure the continued survival of the species. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to areas proposed or designated as critical habitat. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Scaevola coriacea*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Scaevola coriacea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Cultivated specimens of *Scaevola coriacea* can be found at several sites in Hawaii, including the Maui Zoo and Botanical Garden and the courtyard of the Plant Science Building at the University of Hawaii. However, it is anticipated that few trade permits would ever be sought or issued since the species is not otherwise common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This provision would apply to *Scaevola coriacea* should it be found on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Scaevola coriacea* is known only to occur on State and privately owned land. It is anticipated that few, if any, collecting permits would ever be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scaevola coriacea;*

(2) The location of any additional populations of *Scaevola coriacea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Scaevola coriacea.*

Final promulgation of the regulation on *Scaevola coriacea* will take into consideration the comments and any additional information received by the Service, and such communications may

lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **"ADDRESSES"** section, above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G.D. 1981. Unpublished status survey of *Scaevola coriacea*. U.S. Fish and Wildlife Service. Honolulu, Hawaii, 40 pp.

Degener, O., and A. Greenwell. 1950. *Scaevola coriacea* Nutt. *In: Flora Hawaiiensis*. Honolulu, Hawaii.

Herbst, D.R. 1972. Botanical survey of the Waiehu sand dunes. The Bulletin, Pacific Tropical Botanical Garden 2:6–7.

Nattall, T. 1843. Descriptions and notices of new or rare plants. Transactions of the American Philosophical Society, N.S. 8:251–272.

Author

The primary author of this proposed rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975). Preliminary documentation was prepared under contract by Dr. Gerald D. Carr and Laurence Torok.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Goodeniaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Goodeniaceae—Goodenia family:						
Scaevola coriacea	Dwarf naupaka	U.S.A. (HI)	E		NA	NA

Dated: June 10, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–16797 Filed 7–15–85; 8:45 am]

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Tuesday
July 16, 1985

Part III

Department of Housing and Urban Development

Office of the Secretary

Fund Availability and Solicitation of Proposals for Project Self-Sufficiency; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-85-1536; FR-2122]

Fund Availability and Solicitation of Proposals for Project Self-Sufficiency

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability and solicitation of proposals from eligible communities to participate in project self-sufficiency.

SUMMARY: HUD is soliciting proposals from units of general local government including county governments to participate in Project Self-Sufficiency. The Department is interested in encouraging local governments to develop and implement programs to enable unemployed or underemployed very low-income single parents with young children to become economically self-sufficient through the cooperative efforts of the public and private sectors. This demonstration, which involves the resources of several offices within the Department of Housing and Urban Development, will be coordinated by the Office of the Assistant Secretary for Policy Development and Research.

DATES: Application Deadline: Proposals for participation must be received by HUD at the address for application no later than 5:15 p.m. Eastern Daylight Savings Time on August 21, 1985. Letters of Intent will not be accepted. Please refer to § 4.4(b) for the deadline for submission of the section 8 Existing Housing application for this demonstration.

ADDRESS: There is *no application form.* Application is by written proposal only. An original and 5 copies of the proposal should be sent to: Dr. June Q. Koch, Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, Attention: Project Self-Sufficiency, Room 8126, 451 Seventh Street SW., Washington, D.C. 20410.

The proposal must contain the typed or printed name, mailing address, including zip code and telephone number of the local government's chief exeuctive officer, and the Director of the local Public Housing Agency (PHA), and the person to be contacted locally regarding the contents of the proposal.

FOR FURTHER INFORMATION CONTACT: Regarding Project Self-Sufficiency and proposal matters, contact: Francetta J. White, Telephone: (202) 755-5561. Regarding section 8 Existing Housing Program matters, contact Gwen Carter, Telephone: (202) 755-6887. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. General

"Project Self-Sufficiency" is designed to aid unemployed or underemployed very low-income single parents with young children make the transition from public assistance to productive employment and economic self-sufficiency. Activities to be carried out by local governments selected to participate in this demonstration will include, but are not limited to, housing assistance, child care, adult basic education where necessary, personal and career counseling, transportation, and job training and placement.

Any unit of general local government (e.g. city, county, or town) may apply for Project Self-Sufficiency. Joint applications by units of general local government are permitted.

Project Self-Sufficiency is an effort to encourage communities to develop effective mechanisms for integrating the various support services—both public and private—that exist in the community into a personal development program for single parents to enable them to make the transition from welfare dependency to productive employment. Communities are expected to coordinate and commit the use of all the necessary local public resources, which may include Community Development Block Grant funds (CDBG), to support the components of the self-sufficiency program. In addition, communities are expected to secure commitments from the local private sector to provide additional resources and opportunities for employment for Project Self-Sufficiency participants.

Under Project Self-Sufficiency, communities will be able to use a special allocation of section 8 Existing Housing Certificates to help single parent participants obtain decent, safe, sanitary and affordable housing as a part of a comprehensive and coordinated program. Communities may also encourage single parents to obtain housing in areas close to support services if doing so would facilitate the coordination of the other support services. Decent and affordable housing is a first step in creating the stable environment necessary to allow these single parents to develop their capabilities to become self-sufficient members of the community.

Accordingly, the Department will provide the Public Housing Agency (PHA) administering a section 8 Existing Housing Program in a community selected for participation in this demonstration with a special allocation of section 8 Existing Housing Certificates to be used in conjunction with the local Self-Sufficiency project. Up to 5000 section 8 Certificates will be made available nationwide for this demonstration. Certificates will be awarded according to the criteria set forth in this Notice. The Department reserves the right to reallocate, subject to applicable law, the section 8 allocation to other participating communities if the requirements of sections 4.3 and 5.4 of this Notice are not fulfilled.

For currently approved PS-S demonstration sites, the Department will consider the progress achieved, as described in section 6.9 of this Notice, in implementing Project Self-Sufficiency and the community's capacity to carry out this demonstration. No more than 50 percent of the Section 8 authority to be allocated in this demonstration may be awarded to communities currently participating in Project Self-Sufficiency.

HUD will also provide, to the maximum extent possible, technical assistance by HUD staff or by private consultants to assist participating communities in implementing effective Self-Sufficiency Programs. No separate funds will be provided to local governments for the implementation of Project Self-Sufficiency.

Each participating community will have the flexibility to design a Self-Sufficiency Program to meet its local needs, priorities and government structures within the guidelines established in this Notice.

Communities are invited to apply for participation in this program in accordance with the requirements established in this Notice. The application, in the form of a written proposal, must be signed and submitted by the chief executive officer. The chief executive officer is defined as the chief elected official, or the legally designated official who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government are: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of general local government; or the chairman, governor, chief, or president (as the case may be) of and Indian tribe or Alaskan native village.

2. Background

In 1982, almost 11 percent of the more than 61 million families in the United

States were single parent families, according to data available from the U.S. Census Bureau. These families inlcuded 6.8 million children under the age of twelve or approximately six percent of all children under twelve in the country. More than one-half of those families with at least two children had incomes below the poverty level.

Single parent families with very low incomes face many difficult problems. Many single parents are unemployed or underemployed and lack resources such as adequate child care services, transportation or a stable housing environment necessary to enable them to acquire skills to obtain employment.

The Department of Housing and Urban Development has determined that the widespread and multifaceted problems of very low-income families require that the Department test new and innovative techniques to assist those who live below the poverty level to become part of the economic mainstream. To further this objective, the Department of Housing and Urban Development has developed a number of demonstrations which are collectively known as the Quality of life Initiatives. These initiatives share the following features:

- They emphasize the coordination of resources already available from Federal, State, and local sources rather than the funding of new programs.
- They stress local autonomy in design and implementation. Broad program objectives must be met but communities tailor individual programs to meet their own unique needs.
- They require the commitment of all major local sectors; private business, local elected officials, the Public Housing Agency, educational, philanthropic and community organizations, and the residents themselves.

Project Self-Sufficiency is a demonstration developed and implemented within these broad guidelines to improve the quality of life of single parent families.

Over the years a variety of local, State and Federal programs, including welfare, housing assistance and job training, have been established to deal wth specific needs of lower-income families. However, these programs are generally administered separately by different agencies at varying levels of government. Additionally, charitable organizations that can and do provide assistance to needy families exist in every community but rarely are these private efforts coordinated with that of the public sector. Thus, even though their clientele may be the same, there is often no effective mechanism established within the community to integrate these services and programs.

On May 21, 1984, the Department published in the **Federal Register** (49 FR 21433) a Notice of Fund Availability to initiate the Project Self-Sufficiency Demonstration.

A comment period was provided. Listed below is a summary of the comments received:

Two comments recommended that organizations other than PHAs administer the Section 8 certificates. This recommendation is contrary to HUD regulations and could not be implemented.

One comment requested increases in rent allowance. Rental assistance limits are reviewed on a regular basis and adjusted in accordance with HUD regulations.

One comment recommended allowing a longer response time. The Department attempted to allow a greater response period; however, budgetary and time restrictions do not allow for a longer response period.

One comment recommended that HUD provide additional funds for staffing and coordination. Project Self-Sufficiency is designed to emphasize the coordination of existing services rather than funding of new programs, to build private-public partnerships and to determine the capability of leveraging private resources with Section 8 assistance. To provide additional funds for administering Project Self-Sufficiency would undermine the purposes of the demonstration.

Two comments dealt with combining all PS–S activities into one facility or building a new facility to house all PS–S activities. There are no restrictions to providing all service activities at one facility provided it can be accomplished within the time frame of the demonstration. Housing may be offered in one facility, but housing choice may not be restricted to that facility.

As a result of the original announcement of Project Self-Sufficiency in 1984, the Department received over 220 proposals from communities. Seventy-eight (78) of these communities were selected for participation. The Demonstration sites have successfully established task forces, developed Action Plans, and leveraged private resources using the Section 8 housing assistance provided by HUD. Single-parent participant selection and job-training programs are underway, and in some cases employment has begun.

In view of these experiences and the continuing interest of local governments in Project Self-Sufficiency as exhibited by inquiries from individuals and communities not participating in the current demonstration, the Department is, with this Notice, reaffirming its continuing commitment to improving the quality of life for single parents by announcing an additional allocation of section 8 Existing Housing authority for Project Self-Sufficiency. The Department has determined that it would be particularly useful in the Demonstration to emphasize assistance to single parents who are motivated but have long-standing problems, such as lack of adequate, basic education, long-term unemployment, and other special problems that severely limit their ability to become self-sufficient. In an effort to better serve the "hard to serve" segment of the very low-income single parent population, the guidelines for communities selected in Fiscal Year 1985 to receive section 8 Authority for the Project Self-Sufficiency Demonstration are being clarified to encourage communities to target the local demonstration to single parents with special long-standing needs. For example, this Notice adds adult basic education to the list of service needs that should be addressed in the mutually agreed upon plan for the delivery of a coordinated program of housing, counseling, child care, transportation, job training and placement assistance to single parent participants.

Other major refinements to the demonstration which are being implemented in this Notice for communities selected in Fiscal Year 1985 to receive section 8 units under Project Self-Sufficiency are:

- The active and continued involvement of the local chief executive officer in the operation of the demonstration is being given added emphasis. Preliminary experience from the current demonstration indicates that the involvement of the CEO throughout the demonstration is a key factor in generating effective public/private partnerships.
- Appointment/confirmation of the task force, as discussed in section 4.3 below, must be completed within 60 days of date of the official announcement of demonstration awards.
- An acceptable Action Plan must be submitted to HUD no later than 60 days following the local approval of the task force.
- The Department reserves the right to reallocate, subject to applicable law, the section 8 allocation to other participating communities if the requirements of sections 4.3 and 5.4 are not fulfilled.

• A program completion date for the local demonstration must be specified and must be within 30 months from the date of public announcement of demonstration awards, unless prior approval for a longer period is given by HUD. This change is being made to allow consideration of adult basic education, and training courses that might extend beyond the usual 12 to 18 months; e.g., trades or other non-traditional occupations, and training programs for certain career-ladder positions that require more extensive training. However, all section 8 Certificates must be issued within 12 months of the execution of the ACC.

• If *prior to the issuance* of the section 8 Certificate the single-parent participant fails to actively participate in stated activities in the mutually agreed upon Individual Action Plan, the task force may reconsider his/her candidacy and allocate the Certificate to another candidate, in accordance with requirements discussed in section 4.1 below.

No more than 50 percent of the PS–S Fiscal Year 1985 section 8 authority provided under this Notice will be made available to currently approved Demonstration sites.

3. Goals of the Program

The overall goal of Project Self-Sufficiency is to enable very low-income single parents to become economically self-sufficient. Specific objectives of the program are:

(a) To create an awareness in local communities of the problems faced by single parent, very low-income families and to mobilize community support for an effort to help them become self-sufficient and productive members of the community;

(b) To demonstrate the capacity of local communities to assist very low-income single parents to become self-sufficient by the efficient and innovative use of existing public and private resources;

(c) To develop a range of effective strategies for generating private sector involvement and integrating these private sector resources with public assistance programs; and

(d) To document the experiences of implementation of successful Self-Sufficiency Programs that can be adopted in other communities.

4. Resources to be Committed by HUD and Other Participants

4.1 *HUD.*

4.1 (a). HUD will provide a special allocation of section 8 Existing Housing Certificates for use in communities selected for participation in this demonstration. These Certificates will be provided to the local Public Housing Agency by HUD. The PHA shall be responsible for the administration of the Certificates in the community in accordance with the Annual Contributions Contract (ACC) and with the local Self-Sufficiency Program approved by HUD as incorporated into the Administrative Plan. The Certificates are to be made available to very low-income single parents selected for participation in the community's Self-Sufficiency Program to enable them to locate decent safe and affordable housing of their choice. Use of the Certificates may not be restricted to particular housing units, although as discussed in section 5.7, some communities may find it feasible to encourage single parent participants to obtain housing in a single building or area if doing so would facilitate the coordination of the other support services. Up to 5000 Certificates will be made available for this demonstration. The number of Certificates to be provided by HUD to each PHA in a participating community will be within the limits of overall availability and will be based, among other things, on the PHA's performance in running the section 8 Existing Housing program and its capacity to handle an additional allocation, and the number of Certificates requested in relation to the number of very low income single parent families currently on the section 8 waiting list. The Assistant Secretary for Housing-Federal Housing Commissioner will issue a waiver of 24 CFR 882.207 as necessary to permit implementation of Project Self-Sufficiency. A single parent selected for participation must be on the PHA's section 8 waiting list at the time the Certificate is issued. The Task Force (discussed in 4.3 below) may determine at what stage of the program the section 8 Certificate will be given. The PS–S program shall indicate the general criteria which the Task Force will consider with respect to the timing of the issuance of the section 8 Certificate. These criteria shall be reasonably related to the accomplishment of the goals of the PS–S program and must be incorporated into the PHA's Administrative Plan. The timing of the section 8 assistance for each participant in the program must be reflected in the participant's Individual Action Plan (discussed in 5.6 below) and must be related to the specific needs of the participant. However, all PS–S section 8 Certificates must be issued within 12 months of the date of the execution of the Annual Contributions Contract.

If, *prior to the issuance* of the section 8 Certificate, a single parent selected for Project Self-Sufficiency fails to actively participate in one of the stated activities in the mutually agreed upon Individual Action Plan, the Task Force may reconsider his or her candidacy and terminate the single parent from Project Self-Sufficiency. The Task Force must establish a policy for termination of participants from PS–S. The policy must include reasonable and specific criteria for assessing the progress and participation of participants in PS–S, and must be contained in the community's Action Plan and the Administrative Plan of the PHA.

Upon termination of a participant from Project Self-Sufficiency prior to the issuance of a section 8 Certificate, the Task Force may consider another single parent for Project Self-Sufficiency and section 8 assistance. The termination of a single parent from Project Self-Sufficiency prior to the issuance of the section 8 Certificate, will not affect his or her eligibility for regular section 8 assistance and his or her place on the existing waiting list.

Once a Certificate has been issued to a Project Self-Sufficiency participant it cannot be withdrawn (except as provided in 24 CFR 882.210), and any turnover of the Certificate becomes a part of the PHA's regular section 8 Existing Housing Program.

4.1 (b). To the extent possible, HUD will provide technical assistance to communities selected for participation in the demonstration.

4.2 *Local Governments.*

4.2 (a). The chief executive officer is expected to provide the necessary support of the local government for the Self-Sufficiency Program. In addition, the chief executive officer must commit him or herself to continued involvement in and leadership of Project Self-Sufficiency for the duration of the demonstration as specified in the community's Action Plan.

4.2 (b). Each participating community must commit its local service agencies to provide the necessary resources as may be appropriate for the program. Such resources may include, but are not limited to, local government staff, labor and equipment, and general revenues; block grant funds; transportation; and the use of publicly-owned buildings and property.

4.2 (c). Each participating local government must also commit itself to generating private sector commitments for the program. Evidence of private sector commitments will be the willingness of such businesses and private organizations to provide the

local Self-Sufficiency program with such assistance as:

—Volunteers or loaned executives
—Donations of equipment, supplies or space
—Monetary contributions
—Employment skills training
—On-the-job training
—Child care support services
—Counseling—personal and career
—Employment opportunities and placement
—Employment information/referrals

4.3 *The Task Force*

The chief executive officer of the participating community shall appoint a Task Force of representatives from the local public and private sectors to oversee the planning and implementation of the local Self-Sufficiency Program. The chief executive officer is strongly urged to chair the Task Force. Current experience has demonstrated that the sustained involvement of the local chief executive officer is a key factor in generating effective private-public partnerships. Although the Task Force may identify a Project Director or administrator to administer the day-to-day activities of the project, the Task Force shall be the over-seeing body and shall be responsible for pulling together the various public and private resources necessary for program implementation. The Task Force must include representatives from the Public Housing Agency, local public and private agencies that have resources or programs available to assist unemployed single parents, local businesses, private employers, the Private Industry Council (where it exists), educational institutions and the single parent population. Communities are encouraged to involve members of the medical, religious, and financial communities in the Task Force. The final approval of the Task Force by the local legislative body, if required, must be completed within 60 days of the date of the official announcement of the demonstration awards.

4.4 *PHA.*

4.4 (a). The PHA must agree in writing, as part of the proposal submitted by the community, to administer the section 8 Certificates on behalf of the local Self-Sufficiency Program and to serve as a member of the local Task Force.

4.4 (b). The cooperating PHA must submit the necessary section 8 Existing Housing application to the HUD Field Office by August 7, 1985. HUD is required by section 213(a) of the Housing and Community Development Act of 1974 to provide the unit of general local government an opportunity to object to HUD's approval of an application for housing assistance on the grounds that the application is inconsistent with the local Housing Assistance Plan. Accordingly, the Chief Executive Officer is encouraged to submit a section 213 letter with the PHA's Application. To avoid any delay in HUD's approval of the PHA's Application, the section 213 letter must indicate that approval of the Application for the section 8 Existing Housing Program is consistent with the community's Housing Assistance Plan, that the letter can be considered the final comments, and that no additional comments will be submitted by the unit of local government. The section 213 letter must be received by the HUD Field Office no later than August 29, 1985.

4.4 (c). Once communities have been selected for participation in this demonstration, the participating PHAs will be required to submit a revised Administrative Plan and Equal Opportunity Housing Plan to the appropriate HUD Field Office before execution of the Annual Contributions Contract (ACC). The Administrative Plan and the Equal Opportunity Housing Plan must include the following: The participant selection process; the criteria to be used to select participants for the demonstration; the policy on the timing of the issuance of section 8 Certificates; and the policy, including the criteria, for removal of participants from PS–S prior to the issuance of a section 8 Certificate. If the section 8 waiting list is to be opened for Project Self-Sufficiency, the criteria and process to be used in opening the waiting list must be included in the revised Administrative Plan.

5. Local Self-Sufficiency Program Design

Each participating community should design a Self-Sufficiency Program that reflects local needs and priorities, available resources, and the existing local government structure. Activities that are required to be undertaken in all local Self-Sufficiency Programs are described in the following paragraphs:

5.1 *Establishment of a Local Task Force.* Each program should begin with the establishment of a local Task Force as described in section 4.3 above. A strong local Task Force will be the motivating force to help the community plan, develop and implement its Self-Sufficiency Program. The Task Force will be responsible for updating and expanding, if necessary, the Needs Assessment (described below), developing community objectives for the program and an Action Plan to meet those objectives, identifying and securing commitments of local public and private resources, developing the selection process and the criteria to be used to select the single parent participants for the program, and overseeing the administration and final evaluation of the program. The single most important role of the local Task Force must be that of identifying and harnessing overall community resources into commitments for specific program support activities.

5.2 *Generating Private Sector Resources.* The Task Force must identify and recruit an active group of local private businesses, employers, and organizations willing to commit funds, staff, equipment, use of buildings and property, training assistance, housing, employment opportunities, and other services to the program. These may include private:

—Employers;
—Businesses;
—Financial institutions;
—Employee organizations;
—Religious organizations;
—Neighborhood organizations;
—Schools and colleges;
—Medical institutions;
—Cultural and civil organizations;
—Voluntary and non-profit service groups;
—Foundations and corporate philanthropies; and
—Individual givers.

5.3 *Needs Assessment.* The purpose of the local Needs Assessment is to identify the particular problems faced by local single parents and the activities and services needed to remove obstacles to their economic independence. The Need Assessment should identify both specific needs of the single-parent population, and availability of specific resources within the community to meet these needs. It should identify areas of potential employment in the community, including non-traditional occupations and occupations having career ladder potential, and the resources, training and other activities that will be needed to help single parents obtain jobs in these areas. Subjects to be covered in addition to employment opportunities and job training shall include, but need not be limited to, housing, child care, basic education where necessary, personal and career counseling, and transportation.

5.4 *Action Plan.* Each community, through its local Task Force, must develop an Action Plan outlining the program services and activities necessary to meet the needs of program

participants as determined by the Needs Assessment.

The preparation of the local Action Plan should begin with review and updating, as necessary, of the Needs Assessment. Any revisions and updating of the Needs Assessment must be submitted with the Action Plan. An acceptable Action Plan must be completed and received by HUD no later than 60 days following the local approval of the Task Force.

The plan must describe specific steps that will be taken to deliver all program services and activities, including, among other things, job placement, participant follow-up after placement and program evaluation; specify a time schedule for each step; indicate the procedures to be used to assure that public and private resources will be integrated to implement the program, and indicate the organization responsible for each activity and for program service implementation. The Action Plan must specify a program completion date when the entire HUD sponsored self-sufficiency demonstration will be completed, including participant follow-up and local program evaluation. This date may not extend beyond 30 months after the date of official announcement of demonstration award without previous approval by HUD.

Although the Self-Sufficiency Action Plan developed by the Task Force in each community should be tailored to meet program participant needs and to make full use of community resources unique to the community as identified by the Needs Assessment, each Action Plan shall include, at a minimum, the following program services and activities:

—A selection process and selection criteria to be used;
—The policy for timing the issuance of the section 8 Certificates;
—The policy for termination of participants from PS–S including the criteria for assessing the progress and participation of participants.
—Provision of adequate case management including: the development of Personal Needs Assessments and Individual Action Plans for program participants; and monitoring of individual progress so problems can be identified early enough to make adjustments to reduce the potential for drop-outs.
—Housing assistance;
—Child care;
—Personal and career counseling;
—Basic education, where necessary, such as general education (GED) training, literacy training and English as a second language;
—Transportation access;
—Development of job skills including on-the-job training where appropriate;
—Job placement through private sector job commitments;
—Follow up after job placement;
—Program evaluation.

Other suggested, though not required, program elements include:

—Support group discussions;
—Medical care;
—Preventive health care training; and
—Home maintenance training.

5.5 *Selection of Program Participants.* The local Task Force, in consultation with the PHA, local service agencies and others as may be designated by the Task Force, will select program participants who are motivated to become self-sufficient. Those selected for participation must be very low-income single parent families as defined in section 3(b)(2) of the United States Housing Act of 1937, and must be on the section 8 waiting list at the time their Certificates are issued.

5.6 *Personal Needs Assessment and Individual Action Plan.* A Personal Needs Assessment must be prepared for each participant. This assessment should identify the specific needs of the participant and any special problems, including the lack of basic educational skills, that could inhibit the participant from achieving self-sufficiency. A recent GAO evaluation of job training programs confirmed that a significant relationship exists between participant education level completed, employment, and Aid for Families with Dependent Children (AFDC) status. The study indicated that the proportion of participants who obtained and kept jobs which enabled them to provide for their families without AFDC benefits was significantly higher for those having completed 12th grade as compared with those having an 8th grade education. Consequently, the Task Force should consider giving primary consideration to assisting those participants who lack a high school diploma to obtain one or to obtain a general education development (GED) equivalent. An Individual Action Plan, mutually agreed upon by the participant and the Task Force, also must be prepared for each participant. It must be based on the information developed in the Personal Needs Assessment and must identify specific activities and services which will help the program participant to become self-sufficient.

The Personal Needs Assessment and the Individual Action Plan are developed in cooperation with the participant, and should clearly specify the resources to be made available to the participant as well as the responsibilities of the participant.

5.7 *Housing Assistance.* The local Public Housing Agency shall be responsible for issuing section 8 Certificates to single parents selected and actively participating in this program. Housing assistance must be assimilated into the larger purpose of helping to create a stable environment for these single parents to allow them to participate in job training programs without undue concern for the welfare and safety of their families. The issuance of the section 8 Certificate should be coordinated with the provisions of the Individual Action Plan. Within these parameters, and in accordance with the Administrative Plan of the PHA, the Task Force has the authority to determine at what stage of the program the section 8 Certificates will be issued. However, all PS–S section 8 Certificates must be issued within 12 months of the execution of the ACC.

To the extent possible, the PHA should assist program participants in locating suitable housing by providing them with a list of available units that facilitate participation in the Self-Sufficiency Program, such as easy access to public transportation and/or job training sites, or place of employment. The community may find it feasible to encourage program participants to utilize their section 8 Certificates to obtain housing in a particular area if doing so would facilitate the coordination of other support services. However, a community may not mandate that utilization of the Certificates be restricted to any particular building or area. All housing must meet the program requirements for the section 8 Existing House Program (See 24 CFR Part 882). Once a Certificate has been issued to a Project Self-Sufficiency participant, it cannot be withdrawn unless termination is consistent with grounds identified in 24 CFR Part 882. Any turnover of the Certificate becomes a part of the PHA's regular section 8 Existing Housing Program.

5.8 *Child care.* The availability of quality child care services is considered an essential element of a successful Self-Sufficiency Program. Single parents must feel assured that their children are in an adequate child care environment. Lack of quality child care or unreliable child care services can contribute to the failure of participants to take full advantage of the range of support services which have been identified for them and may result in absenteeism rates that preclude satisfactory

completion of job training programs. Single parent participants should receive guidance in the selection of appropriate child care services. Communities may wish to consider establishing, with the help of the private sector, a centralized child care facility for the children of Project Self-Sufficiency participants if doing so would facilitate access by participants to other elements of the self-sufficiency program such as evening support group meetings.

5.9 *Basic Education.* Where necessary, as determined by the Personal Needs Assessment and Individual Action Plan, participants who lack a high school diploma should be encouraged to enroll in classes to obtain a high school diploma or a general education development (GED) equivalent. Those participants lacking basic English language skills should be considered for additional assistance such as literacy training and English as a second language course to improve their ability to communicate in the work place and to carry out the responsibilities of their jobs.

5.10 *Transportation.* Attention should be paid to the transportation needs of program participants since experience indicates a high correlation between the availability of transportation and the degree to which program participants avail themselves of the full range of other support services, such as evening education classes and support group meetings.

5.11 *Personal and Career Counseling.* Counseling can be a critical element in the package of services provided under Project Self-Sufficiency, and it is likely that may PS–S participants will need extensive counseling in order to achieve the goal of self-sufficiency. With proper counseling, participants will be encouraged and trained to assume responsibility for their own needs and to learn how to make basic life decisions—a major part of becoming self-sufficient; and to identify career areas and to set short and long term career goals.

5.12 *Job Development and Placement.* It is important to identify potential employers early in the planning process, so that the job training programs can be tailored to the needs of the job providers. The involvement of private sector members of the Task Force is especially critical at this stage or program implementation. A placement officer must be thoroughly familiar with the program participant's skills and personality so that an appropriate match can be made to match individual program participants with employment opportunities. Job placement must be the cornerstone and expected outcome of any training program that is undertaken.

5.13 *Program Requirements.* Communities participating in Project Self-Sufficiency must comply with all applicable section 8 Existing Housing regulations. If funds are used for the local Self-Sufficiency Program from any other source of Federal assistance, the regulations and requirements of those programs also must be followed. Communities participating in Project Self-Sufficiency must comply with all requirements of this Notice.

6. Application Requirements

A proposal submitted must contain the following:

6.1 A narrative on why a Self-Sufficiency Program is needed in the community.

6.2 A Needs Assessment which identifies the particular problems faced by the target population and the program services, employment opportunities, and activities and resources needed to address these problems.

6.3 A statement of the number of section 8 Existing Housing Certificates requested to support the local Self-Sufficiency Program, and a statement of justification for the request which, at a minimum, provides information on the number of single parents with young children currently on the section 8 waiting list relative to the number of Certificates requested and other documentation of need.

6.4 An explanation of how the community will provide for housing, employment training and employment opportunities, transportation, counseling, and child care for the number of participants for which the community is requesting section 8 Certificates.

6.5 A specification of the local public and private resources which would be needed to support the number of participants anticipated; and the amount of resources which will be made available to this demonstration. This section of the proposal will receive particular consideration in the selection process.

6.6 A letter from the chief executive officer specifying his or her involvement and commitment to the local Project Self-Sufficiency Program. This section of the proposal will receive particular consideration in the selection process.

6.7 A description of the local Task Force (if established by the date of proposal submission, include the names, titles, and organizations they represent) and the types of commitments they could contribute to perform the functions outlined in section 5. It is encouraged that letters from Task Force members or prospective members agreeing to serve be submitted with the proposal. Since the Task Force shall be responsible for marshalling resource commitments from local public agencies, private organizations and individuals to support the program, this section of the proposal will also receive particular consideration in the selection process.

6.8 A letter from the Public Housing Agency authorized to administer a section-8 Existing Housing Program in the community agreeing to participate in the demonstration and stating its willingness to administer the Certificates being requested for that community's Self-Sufficiency Program under the conditions set forth in this Notice. The letter should also indicate the PHA's willingness to cooperate as a member of the local Task Force in the overall planning and implementation of the project. PHAs not currently administering a section 8 Existing Housing Program will not be considered.

6.9 In addition to the above, a community currently participating in the PS–S demonstration, must provide an up-to-date status report on the community's progress in implementing the first demonstration including, among other things, the date when the Task Force was established, the Action Plan was submitted, participants were selected; the status of job training or job placement of current participants, and the status of the issuance of section 8 Certificates.

6.10 Please note that the proposal process does not require that the community have a completed Action Plan, described in section 5.4, at the time of the proposal.

7. Selection and Approval Procedures

7.1 Proposals will be reviewed by HUD Headquarters. HUD Field office comments will be solicited concerning the PHA's past performance in administering the section 8 Existing Housing Program, and the capacity of the PHA to absorb this additional section 8 allocation. There is no requirement that a Task Force be selected, and public and private resources be committed to the PS–S program, prior to submission of the PS–S application. However, particular consideration will be given to applications which indicate that a PS–S program is further along in development. In this regard note 6.5 and 6.7 above. Key factors to be taken into consideration in assessing each application will include:

—Extent of the CEO's involvement in and commitment to the local Project Self-Sufficiency Program;
—Extent to which the composition of the Task Force represents a broad spectrum of the community capable of marshalling the necessary public and private sector resources;
—Extent of local public sector resources committed to the program;
—Extent of local private sector resources committed to the program;
—Extent to which the application reflects an understanding of the Project Self-Sufficiency concept;
—Capacity of the local private employment sector to provide employment opportunities for Project Self-Sufficiency participants; and
—Ability of the applicant to implement the program within the deadlines established in this Notice.
—For currently approved Project Self-Sufficiency demonstration sites, progress achieved in implementing Project Self-Sufficiency and the community's capacity to carry out an additional allocation.

The Department will also seek diversity in its selection of participating communities according to geographical location, population and type of government (city, county, or other locality).

7.2 Preliminary selection of communities will be made by the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretary for Housing-Federal Housing Commissioner. Final selection will be by the Secretary.

8. Other Matters

8.1 This Notice affects the following Federal program listed in the Catalog of Federal Domestic Assistance at the specified number: Low-Income Housing Assistance Programs, section 8 (14.156);

8.2 Periodically, communities selected for participation in this demonstration will be asked to provide information for purposes of program evaluation to HUD or HUD's designee.

8.3 The information collection requirements contained in this Notice has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and has been assigned OMB control number 2528–0112.

8.4 An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Certificate Program is part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), and Title V, United States Housing Act of 1970 (12 U.S.C. 1701z–1).

Dated: July 5, 1985.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 85–16858 Filed 7–15–85; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
July 16, 1985

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Aviation Security; Coordination and Training; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 24719; Amdt. No. 108-3]

Aviation Security; Coordination and Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Because of the current level of threat, this emergency regulation requires each certificate holder to whom the airplane operator security rules apply to have employees identified and trained as Security Coordinators for international and domestic flights, in accordance with its approved security program. It also requires certificate holders to provide security training for all crewmembers to the extent necessary to prepare each crewmember to respond adequately to various levels and types of threats. This regulation is needed to respond to recent terrorist attacks against U.S. civil aviation. It is intended to protect U.S. civil aviation against international terrorism.

DATES: Effective date of this amendment is July 11, 1985. Section 108.27 does not become effective until notice of approval of the reporting requirement therein by the Office of Management and Budget is published in the **Federal Register**. Comments must be received on or before August 30, 1985.

ADDRESSES: Send comments on this amendment in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24719, 800 Independence Avenue SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:

Comments invited

Because of the emergency need for this amendment, it is being adopted without notice and public comment. However, the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity for the public to comment on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, Docket No. 24719, 800 Independence Ave. SW., Washington, DC 20591. All comments submitted will be available in the Rules Docket for examination by interested persons. This amendment may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24719." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder, torture, and kidnapping of U.S. citizens is the latest in a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe, the Middle East, and throughout the world during the 1980's. Accordingly, it has become necessary to undertake certain actions to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, it is necessary that the FAA immediately undertake certain actions to protect U.S. civil aviation and U.S. citizens in high-risk areas and throughout the world.

Security Coordination

One action effected by this amendment is to enhance the coordination and supervision of the security provided for domestic and international flights. In view of the current level of threat, this amendment requires each certificate holder to whom the airplane operator security rules apply to provide a ground and an inflight Security Coordinator for each international and domestic flight, in accordance with its approved security program. This amendment further requires that the pilot in command (PIC) be designated as the inflight Security Coordinator.

The function of the Security Coordinators will be to ensure that all necessary security requirements are met prior to departure and while in flight. The duties of the ground Security Coordinator will be specified in the certificate holder's approved security program and will include monitoring the security requirements in effect for the following: (1) Screening for the flight; (2) access to the airplane; (3) airplane servicing (including fueling and catering); (4) ground support for inflight emergency response; (5) air operations area security; and (6) baggage and cargo acceptance and loading. The duties of the inflight Security Coordinator will also be specified in the security program and will include: (1) Reviewing, with the ground Security Coordinator, pertinent security information for the specific flight; (2) prior to beginning a flight or a series of flights with a particular crew, briefing the crew on the specific manner in which the PIC wants inflight incidents to be managed; (3) prior to each flight segment, briefing the crew on any significant irregularities or occurrences that may affect the security of the flight; and (4) on completion of a flight or series of flights, briefing the certificate holder on any significant incidents or occurrences, in accordance with the procedures established by the certificate holder.

New § 108.23(a) requires that each designated Security Coordinator satisfactorily complete the training as specified in the certificate holder's approved security program, within the preceding 12 calendar months. New § 108.7(b)(7) requires the curriculum for all required security training for ground and inflight Security Coordinators to be specified in the certificate holder's approved security program which is approved by the Principal Security Inspector. Based on the present level of threat, the air carrier's security program will require a maximum of 40 hours of initial training, as well as a minimum of 8 hours of annual recurrent training, for the ground Security Coordinator.

Pilots in command designated as inflight Security Coordinators will receive substantial training on inflight Security Coordinator duties during initial and recurrent training. As with other crewmembers, the pilot in command will be required to receive a minimum of 8 hours of initial training, including training directed at the functions and responsibilities of the inflight Security Coordinator, as well as annual recurrent training.

Crewmember Security Training

The second action considered essential is to provide all crewmembers with expanded security training. In particular, this amendment will result in all air carrier crewmembers having a significantly increased capability of responding to hijack attempts and other criminal acts. To that end, significantly enhanced initial and recurrent training is being required for crewmembers.

New § 108.23(b) prohibits the use by a certificate holder of any person as a crewmember unless, within the preceding 12 calendar months, that person has satisfactorily completed the training as specified in the certificate holder's approved security program. All required security training for crewmembers must be specified in the certificate holder's approved security program and integrated in the certificate holder's approved training program which is approved by the Principal Operations Inspector in coordination with the Principal Security Inspector. For the crew member training provisions of an air carrier security program to be approved by the FAA, the training program must provide 8 hours of initial security training, as well as annual recurrent training. Where the trainee is to act as pilot in command, this training will include significant emphasis on Security Coordinator duties and responsibilities. Each certificate holder is required to submit a separate curriculum for each type of training.

Evidence of Compliance

In order to ensure effective compliance with these amendments and other provisions, new § 108.27 provides that, on request of the Administrator, each certificate holder shall provide evidence of compliance with this part and its approved security program. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this new reporting provision will be submitted for approval to the Office of Management and Budget (OMB). New § 108.27 will not become effective until OMB approval has been received and notice of that approval is published in the **Federal Register**. Comments on this provision should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone: 202–395–7313). A copy should be submitted to the FAA Docket.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to civil aviation from terrorist hijackings and sabotage, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this same reason and in accordance with section 8(a)(1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

Conclusion

In accordance with section 8(a)(1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

List of Subjects in 14 CFR Part 108

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Airports, Airplanes, Airlines, Law enforcement officers, Police, Security measures, Training.

The Amendment

PART 108—[AMENDED]

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended as follows, effective July 11, 1985:

1. The authority citation for Part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 108.7 by adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 108.7 Security program: Form, content, and availability.

* * * * *

(b) * * *

(6) The procedures used to comply with the applicable requirements of § 108.10.

(7) The curriculum used to accomplish the training required by § 108.23.

* * * * *

3. By adding a new § 108.10 to read as follows:

§ 108.10 Prevention and management of hijackings and sabotage attempts

(a) Each certificate holder shall—

(1) Provide and use a Security Coordinator on the ground and in flight for each international and domestic flight, as required by its approved security program; and

(2) Designate the pilot in command as the inflight Security Coordinator for each flight, as required by its approved security program.

(b) *Ground Security Coordinator.* Each ground Security Coordinator shall carry out the ground Security Coordinator duties specified in the certificate holder's approved security program.

(c) *Inflight Security Coordinator.* The pilot in command of each flight shall carry out the inflight Security Coordinator duties specified in the Certificate holder's approved security program.

4. By revising § 108.23 to read as follows:

§ 108.23 Training.

(a) No certificate holder may use any person as a Security Coordinator unless, within the preceding 12 calendar months, that person has satisfactorily completed the security training as specified in the certificate holder's approved security program

(b) No certificate holder may use any person as a crewmember on any domestic or international flight unless within the preceding 12 calendar months that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter and as specified in the certificate holder's approved security program

4. By adding a new § 108.27 to read as follows:

§ 108.27 Evidence of Compliance.

On request of the Administration, each certificate holder shall provide evidence of compliance with this part and its approved security program.

Issued in Washington, D.C., on July 11, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-16867 Filed 7-11-85; 4:44 pm]

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H.R. 2800/Pub. L. 99–62

To provide authorization of appropriations for activities under the Land Remote-Sensing Commercialization Act of 1984. (July 11, 1985; 99 Stat. 118) Price $1.00

S. 822/Pub. L. 99–63

To extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1986. (July 11, 1985; 99 Stat. 119) Price: $1.00

S. 883/Pub. Law 99–64

To reauthorize the Export Administration Act of 1979, and for other purposes. (July 12, 1985; 99 Stat. 120) Price: $1.00

S. 1141/Pub. Law 99–65

Relating to certain telephone services for Senators. (July 12, 1985; 99 Stat. 163) Price: $1.00

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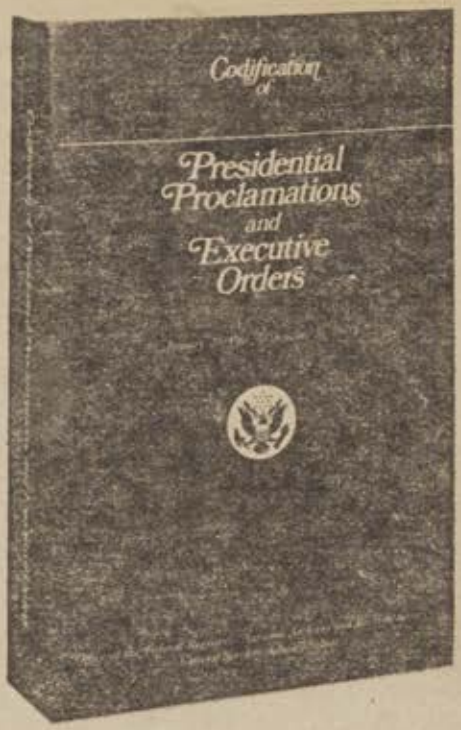

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