

12 Federal Register

Thursday
July 18, 1985

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Air Pollution Control

Environmental Protection Agency

Anchorage Grounds

Coast Guard

Aviation Safety

Federal Aviation Administration

Bridges

Coast Guard

Claims

Treasury Department

Endangered and Threatened Species

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Education of Handicapped

Education Department

Exports

International Trade Administration

Fisheries

National Oceanic and Atmospheric Administration

Food Additives

Food and Drug Administration

Freedom of Information

Interior Department

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

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Securities and Exchange Commission

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Occupational Safety and Health

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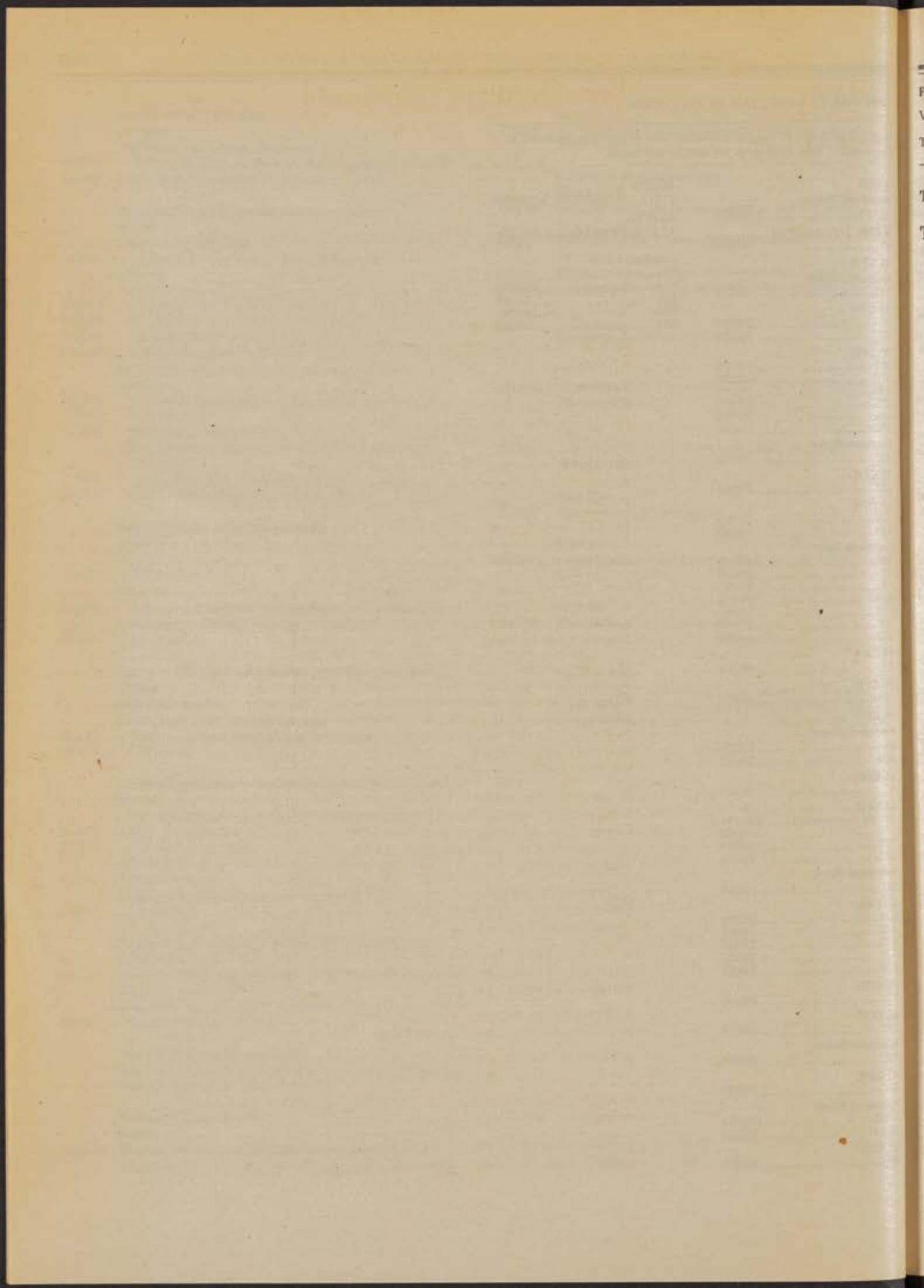
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

Executive Order 12526 of July 15, 1985

The President

President's Blue Ribbon Commission on Defense Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), a Blue Ribbon Commission on Defense Management, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the President's Blue Ribbon Commission on Defense Management. The Commission shall be composed of no fewer than ten and no more than seventeen members appointed or designated by the President.

(b) The composition of the Commission shall include persons with extensive experience and national reputations in commerce and industry, as well as persons with broad experience in government and national defense.

(c) The President shall designate a Chairman from among the members of the Commission. The Chairman shall appoint a professional and administrative staff to support the Commission.

Sec. 2. Functions. (a) The Commission shall study the issues surrounding defense management and organization, and report its findings and recommendations to the President and simultaneously submit a copy of its report to the Secretary of Defense.

(b) The primary objective of the Commission shall be to study defense management policies and procedures, including the budget process, the procurement system, legislative oversight, and the organizational and operational arrangements, both formal and informal, among the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, the Unified and Specified Command system, the Military Departments, and the Congress. In particular, the Commission shall:

1. Review the adequacy of the defense acquisition process, including the adequacy of the defense industrial base, current law governing Federal and Department of Defense procurement activities, departmental directives and management procedures, and the execution of acquisition responsibilities within the Military Departments;
2. Review the adequacy of the current authority and control of the Secretary of Defense in the oversight of the Military Departments, and the efficiency of the decisionmaking apparatus of the Office of the Secretary of Defense;
3. Review the responsibilities of the Organization of the Joint Chiefs of Staff in providing for joint military advice and force development within a resource-constrained environment;
4. Review the adequacy of the Unified and Specified Command system in providing for the effective planning for and use of military forces;
5. Consider the value and continued role of intervening layers of command on the direction and control of military forces in peace and in war;
6. Review the procedures for developing and fielding military systems incorporating new technologies in a timely fashion;
7. Study and make recommendations concerning congressional oversight and investigative procedures relating to the Department of Defense; and

8. Recommend how to improve the effectiveness and stability of resources allocation for defense, including the legislative process.

(c) In formulating its recommendations to the President, the Commission shall consider the appropriate means for implementing its recommendations. The Commission shall first devote its attention to the procedures and activities of the Department of Defense associated with the procurement of military equipment and materiel. It shall report its conclusions and recommendations on the procurement section of this study by December 31, 1985. The final report, encompassing the balance of the issues reviewed by the Commission, shall be submitted not later than June 30, 1986, with an interim report to be submitted not later than March 31, 1986.

(d) The Commission shall be in place and operating as soon as possible. Shortly thereafter, the Commission shall brief the Assistant to the President for National Security Affairs and the Secretary of Defense on the Commission's plan of action.

(e) Where appropriate, implementation of the Commission's recommendations shall be considered in accordance with regular administrative procedures coordinated by the Office of Management and Budget, and involving the National Security Council, the Department of Defense, and other departments or agencies as required.

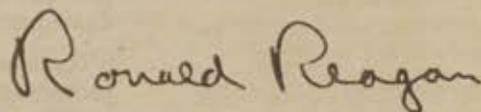
Sec. 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without additional compensation for their work on the Commission. However, members appointed from among private citizens may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707), to the extent funds are available.

(c) The Secretary of Defense shall provide the Commission with such administrative services, facilities, staff, and other support services as may be necessary. Any expenses of the Commission shall be paid from such funds as may be available to the Secretary of Defense.

Sec. 4. General. (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Defense, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 30 days after the submission of its final report.



THE WHITE HOUSE,
July 15, 1985.

Rules and Regulations

Federal Register

Vol. 50, No. 138

Thursday, July 18, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 85-059]

Ports Designated for Exportation of Animals

Correction

In FR Doc. 85-16227, beginning on page 27929, in the issue of Tuesday, July 9, 1985, make the following correction:

§ 91.14 [Corrected]

On page 27930, in the third column, in § 91.14 (a)(3)(i)(A), third line, "97601" should read "96701".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 370, 376, 378, 385, 386

[Docket No. 50578-5078]

Country Name Change From Kampuchea to Cambodia

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the January 2, 1985 decision of the U.S. Board on Geographic Names, the United States Government will use the country name Cambodia in lieu of the formerly approved country name Kampuchea.

EFFECTIVE DATE: July 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Richard Usrey, Exporter Assistance Division, Office of Export Administration, Department of

Commerce, Washington, D.C. 20230
(Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this rule involves a foreign affairs function of the United States, the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable.

2. This rule does not contain a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. This rule is not a major rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 368, 370, 376, 378, 385 and 386

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368, 370, 376, 378, 385, and 386) are amended as follows:

1. The authority citation for 15 CFR Parts 368, 376, 378, 385, and 386 is revised and the authority citation for 15 CFR Part 370 continues to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1628, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13088, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513 March 29, 1985).

PART 368—[AMENDED]

§ 368.2 [Amended]

2. Footnote 1 to § 368.2(a)(9)(i) is amended by revising the three (3) entries of the word "Kampuchea" to read "Cambodia" and the one (1) entry of the word "Kampuchean" to read "Cambodian."

PART 370—[AMENDED]

3. Supplement No. 1 to Part 370 is amended by replacing the word "Kampuchea" with the word "Cambodia" in Country Group Z.

PART 376—[AMENDED]

§ 376.9 [Amended]

4. Section 376.9 is amended by revising in paragraph (c)(4)(i) the phrase "under the control of North Korea or Kampuchea"—to read—"under the control of North Korea or Cambodia"; by revising in paragraph (c)(4)(ii) the phrase "under the control of North Korea or Kampuchea"—to read—"under the control of North Korea or Cambodia"; by revising in paragraph (c)(4)(ii)(a) the phrase "under the control of North Korea or Kampuchea"—to read—"under the control of North Korea or Cambodia"; by revising in paragraph (c)(4)(ii)(b) the phrase "registered in North Korea, Vietnam, Kampuchea"—to read—"registered in North Korea, Vietnam, Cambodia"; and by revising in paragraph (c)(4)(ii)(c) the phrase "a national of North Korea, Vietnam, Kampuchea"—to read—"a national of North Korea, Vietnam, Cambodia", and the phrase "under the control of North Korea, Vietnam, Kampuchea"—to read—"under the control of North Korea, Vietnam, Cambodia".

PART 378—[AMENDED]

5. Supplement No. 2 to Part 378 is amended by replacing the word "Kampuchea" with the word "Cambodia".

PART 385—[AMENDED]

§ 385.1 [Amended]

6. Section 385.1 is amended by revising the section heading "Country Group Z: North Korea, Vietnam, Kampuchea and Cuba"—to read—"Country Group Z: North Korea, Vietnam, Cambodia and Cuba".

PART 386—[AMENDED]**§ 386.6 [Amended]**

7. Section 386.6 is amended by revising in paragraph (d)(2)(i)(b) the phrase "any destination except Soviet Bloc², Laos, Libya, North Korea, Vietnam, Kampuchea,"—to read—"any destination except Soviet Bloc², Laos, Libya, North Korea, Vietnam, Cambodia,".

Dated: May 22, 1985.

John K. Boidock,

Director, Office of Export Administration,
International Trade Administration.

[FR Doc. 85-17050 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 275**

[Release No. IA-983; File No. S7-7-85]

Definition of "Client" of an Investment Adviser for Certain Purposes Relating to Limited Partnerships

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule that specifies certain situations in which a limited partnership, rather than each of its limited partners, may be counted as a "client" of a general partner acting as investment adviser to the partnership, for purposes of an exemption from registration provided by the Investment Advisers Act of 1940. By creating a safe harbor, the rule will provide investment advisers with greater certainty in determining when they may rely on that exemption.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Chief Counsel (202) 272-2030, or Thomas S. Harman, Attorney (202) 272-2030, Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 203(b)(3)-1 under the Investment Advisers Act of 1940 ("Act").¹ The rule specifies certain circumstances in which a general partner or other person acting as investment adviser to a limited partnership (a "general partner") may count the partnership, rather than each of the individual limited partners, as a "client" for purposes of the Act's

registration exemption for any adviser with fewer than fifteen clients who does not hold himself out to the public as an investment adviser (the "private adviser exemption").² By providing a "safe harbor" setting forth circumstances when a general partner may count a limited partnership as a single client, the rule will provide general partners with greater certainty regarding when they may rely on the private adviser exemption.

The rule is available to any general partner, subject to two conditions. First, the limited partnership interests must be securities. Second, the general partner must provide investment advice to the partnership based on the investment objectives of the limited partnership. The rule also defines certain situations under which the safe harbor is unavailable with respect to certain limited partners. Readers are referred to Investment Advisers Act Rel. No. 956 [Feb. 25, 1985] [50 FR 8740, March 5, 1985] ("IA-956" or the "proposing release") for a more detailed discussion of the background and reasons for the rule.

Discussion

The Commission received twenty-seven comment letters on the proposed rule. Nearly all of the commenters supported the general intent of the rule, although three did not support its adoption based on general policy considerations. The Commission believes that the rule will add needed guidance and has determined to adopt it. A number of commenters urging adoption suggested specific modifications in order to clarify application of the rule. These comments, and the Commission's response thereto, are summarized below.

I. General comments**A. The status of a General Partner as an Investment Adviser**

Two commenters urged the Commission to clarify that the rule is not

¹ Section 203(b)(3) [15 U.S.C. 80b-3(b)(3)] exempts from the registration provision of the Act any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act, or a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this title, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner.

intended to address the question of when a general partner is an investment adviser as defined by the Act. This interpretation of the rule is correct, because the rule applies only to a general partner who meets that definition and who seeks to rely on the private adviser exemption.³ The rule does not address the question of whether any general partner in fact meets that definition.⁴

B. The Rule as a "Safe Harbor"

While most commenters endorsed the description of the rule as a "safe harbor," several recommended that the rule itself state that, as a safe harbor, it is not intended to specify the exclusive method for counting clients. This suggestion has been incorporated into a prefatory note to the rule.

C. The Relationship Between the Private Adviser Exemption and the Rule

As previously noted, in order for a general partner to rely on the private adviser exemption, it must satisfy two elements: it must have fewer than fifteen clients and it must not hold itself out to the public as an investment adviser. The safe harbor rule, as proposed, addressed only the former element. One commenter asserted, however, that if a general partner participates in a non-public offering of limited partnership interests, the general partner might be deemed to be holding itself out to the public as an investment adviser. If so, the general partner would not satisfy the latter element of the private adviser exemption and therefore would have to register, notwithstanding its compliance with the safe harbor rule. In this regard, the commenter was particularly concerned by the fact that the disclosure requirements of the federal securities laws would require a private placement memorandum to identify the partnership's investment adviser.⁵ The Commission agrees that this limited activity be a general partner should not—in and of itself—cause a general partner relying on this safe harbor rule to fall outside of the second element of the private adviser exemption. Therefore, the Commission has added a new provision to the rule, paragraph (c), to make this point clear.

² The definition of an "investment adviser" is set forth in section 202(a)(11) of the Act [15 U.S.C. 80b-2(a)(11)].

³ As the Commission noted in the proposing release (see IA-956 at nn. 6-7 & accompanying text), several courts have addressed this question.

⁴ The commenter also asserted that the proviso to paragraph (a)(2) of the proposed rule itself recognized the likelihood that a general partner would participate in the sale of limited partnership interests.

¹ 15 U.S.C. 80b-1 et seq.

D. Safe Harbor for a General Partner of a General Partnership

Several commenters felt that the scope of the rule should be expanded to provide the same safe harbor to a general partner of a general partnership. The Commission has determined not to adopt this suggestion at this time. The rationale for the proposed rule, in large part was to accord limited partnerships the same treatment accorded passive investment vehicles organized as corporations. Because, among other things, general partnerships do not normally involve passive investors, comparable treatment for general partnerships may not be appropriate.

II. The Rule

A. Definition of Investment Advisory Client: Paragraph (a)(2)

One commenter suggested that the rule clarify whether a general partner's report on partnership investments could constitute investment advice and thus make any limited partner receiving such a report an investment advisory client of the general partner as defined in paragraph (a)(2). As such, the safe harbor would not be available with respect to that limited partner because of paragraph (b)(3). Such an interpretation, the commenter believes, is not appropriate because it would make the rule unavailable to the many general partners who desire to periodically report to limited partners on the status of partnership assets. The Commission agrees that this limited activity should not affect the availability of the safe harbor, and it has expanded paragraph (a)(2) of the rule to provide that a limited partner who receives a general partner's report regarding the performance of or plans for partnership assets (or similar matters) would not, by that fact alone, become an investment advisory client of the general partner.

Several commenters asserted that paragraph (a)(2)(ii) of the proposed rule, which deems a limited partner to be an investment advisory client of a general partner if the general partner advises the limited partner about transferring its assets to another partnership, is unnecessarily restrictive and arbitrarily limits the rule's availability. The Commission has determined to retain this provision because it believes it would be inappropriate for a general partner, in reliance on this safe harbor rule, to be able to establish a series of limited partnerships and switch limited partners from one partnership to another to meet their individual investment objectives, thereby, in effect, providing

the limited partners with individualized investment advice.

B. The Rule's Safe Harbor: Paragraph (b)

1. Limited Partnership Interests as Securities: Paragraph (b)(2)(i)

Several commenters questioned the necessity of this provision, which requires that the limited partnership interests must be securities, although others acknowledged its usefulness and supported its retention in the rule as a means of preventing potential abuses. The Commission agrees with the latter commenters and, accordingly, has retained this provision.

2. Providing Investment Advice to the Partnership as a Common Investment Vehicle: Paragraph (b)(2)(ii)

Three commenters suggested that this provision should refer to the "investment objectives of the partnership" rather than the "investment objectives of the limited partners as a group." These commenters asserted that, among other things, such a change would more accurately reflect a typical partnership agreement and would produce the same result. The Commission has modified this provision to incorporate this suggestion.

3. The "Alter Ego" Provision: Paragraph (b)(2)(iii)

A number of commenters addressed this provision of the proposed rule, which made the safe harbor unavailable to a general partner which is the "alter ego" of a registered investment adviser. While commenters generally supported the intent of this provision—to prevent a registered adviser from using the safe harbor rule to circumvent the Act by establishing an unregistered general partner subsidiary to advise a limited partnership—several specifically objected to the use of the phrase "alter ego" on the ground that it is too vague for rulemaking. One commenter suggested that a more effective way to achieve the purpose intended by this condition would be to include in the rule a cross reference to section 208(d) of the Act.⁶ The Commission continues to believe that the concept underlying section 208(d) is particularly relevant to this safe harbor rule, but has determined to delete the alter ego provision from the

⁶Section 208(d) [15 U.S.C. 80b-8(d)] of the Act makes it unlawful for any person indirectly, or through or by any other person, to do any act which it would be unlawful for such person to do directly under the provisions of the Advisers Act or any rule or regulation thereunder.

body of the rule. A reminder about the applicability of section 208(d) to a general partner relying on the rule has been added as a prefatory note.

C. Exclusions From the Safe Harbor: Paragraph (b)(3)

Several commenters objected to paragraph (b)(3), which specifies certain situations in which the safe harbor is not available with respect to a particular limited partner. In particular, the commenters did not agree with the inclusion of paragraph (b)(3)(ii) in the proposed rule, which makes the safe harbor unavailable with respect to any limited partner who is, separate and apart from its status as a limited partner, an investment advisory client of a related person of the general partner. The commenters asserted generally that the purpose of paragraph (b)(3) was unclear or that the alter ego provision adequately solved the problems that this provision sought to address. As the Commission noted in the proposing release, the purpose of paragraph (b)(3) is to make the safe harbor unavailable with respect to a limited partner who has an advisory relationship with the general partner, or a related person, in addition to that arising out of the limited partnership. In such a case, the Commission believes it would be inappropriate to include that limited partner within the safe harbor, although, as previously noted, the fact that a particular limited partner is outside the safe harbor does not automatically mean that the limited partner must be counted as a client. While the alter ego provision may to some extent address the same concerns as paragraph (b)(3), it does not deal with all the concerns this provision addresses. Accordingly, the Commission has determined to retain this provision as proposed.

Two commenters requested that the Commission make clear that even if the safe harbor is not available with respect to a particular limited partner because of paragraph (b)(3), that fact alone would not make the safe harbor unavailable to other limited partners, so long as they otherwise satisfied the rule. A sentence clarifying this point has been added to paragraph (b)(3).

Summary of Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission previously certified that rule 203(b)(3)-(1) will not have a significant economic impact on a substantial number of small entities. No

comments were received on that certification.

Paperwork Reduction Act

The rule is not subject to that act because it does not impose an information collection requirement.

List of Subjects in 17 CFR Part 275

Investment Advisers, Reporting and recordkeeping requirements, Securities.

Text of Rule 203(b)(3)-(1)

Part 275 of Chapter II, Title 17 of the Code of Federal Regulations is hereby amended as set forth below:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended; 15 U.S.C. 80b-3, 80b-4, 80b-11 * * *; Section 275.203b 3-1 also issued under section 206A (15 U.S.C. 80b-6A).

2. By adding § 275.203b 3-1 as follows:

§ 275.203(b)(3)-1 Definition of "Client" of an investment adviser for certain purposes relating to limited partnerships.

Preliminary Notes

1. This rule is a safe harbor and is not intended to specify the exclusive method for a limited partnership, rather than each limited partner, to be counted as a "client" for purposes of section 203(b)(3) of the Act. The rule is not intended to create any presumptions about the status of any person not relying, or unable to rely, on the rule.

2. Any person relying on this rule is reminded that section 208(d) of the Act makes it unlawful generally for such person to do indirectly, or through any other person, any act which it would be unlawful for such person to do directly under the Act or the rules thereunder. The fact that a person relying on this rule is related to a registered investment adviser is not sufficient, in and of itself, to preclude reliance on the rule. However, absent the separate and distinct operation of a registered adviser from a person relying on this rule, section 208(d) requires the two entities to be viewed as a single entity for purposes of section 203(b)(3) of the Act.

(a) As used in this subsection:

(1) A "related person" of another person is any person controlling, controlled by, under common control with, or any employee or employer of, such other person; and

(2) A limited partner is an "investment advisory client" of a general partner or other person acting as investment adviser to the partnership, or any related person of the foregoing persons, if the limited partner receives from any such person

(i) investment advisory services of a

nature that the person providing the services would be an investment adviser, as defined in section 202(a)(11) of the Act, or

(ii) investment advice to transfer its assets from one limited partnership to another one; *Provided, however,* That a limited partner is not an investment advisory client of a person solely because such person offers, promotes, or sells interests in the limited partnership to the limited partner or reports periodically to the limited partners as a group solely with respect to the performance of, or the plans for, the partnership's assets (or similar matters).

(b) For purposes of section 203(b)(3) of the Act:

(1) A limited partnership shall be counted as a client of any general partner or other person acting as investment adviser to the partnership; and

(2) A limited partner of the partnership shall not be counted as a client of the general partner or other person acting as investment adviser to the partnership if:

(i) The limited partnership interests are securities; and

(ii) The general partner or other person provides investment advice to the partnership based on the investment objectives of the limited partnership.

(3) Paragraph (b)(2) of this section shall not be available with respect to any limited partner who is, separate and apart from its status as a limited partner, an investment advisory client of

(i) a general partner or other person acting as investment adviser to the partnership, or

(ii) any related person thereof. The fact that paragraph (b)(2) of this section is not available with respect to a particular limited partner shall not affect the availability of that paragraph with respect to any other limited partner otherwise complying with paragraph (b)(2) of this section.

(c) Any person relying on this rule shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of section 203(b)(3), solely because it participates in a non-public offering of limited partnership interests under the Securities Act of 1933.

By the Commission.

Dated: July 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-17134 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 83F-0324]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aqueous dispersion of small particle-size chloromethylated aminated styrene-divinylbenzene resins for treatment of sugar solutions. This action responds to a petition filed by Rohm and Haas Co.

DATES: Effective July 18, 1985; objections by August 19, 1985.

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

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of October 31, 1983 (48 FR 50170), FDA announced that a petition (FAP 3A3751) had been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that Part 173 (21 CFR Part 173) of the food additive regulations be amended to provide for the safe use of an aqueous dispersion of small particle-size chloromethylated aminated styrene-divinylbenzene resins for treatment of sugar solutions.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any

materials that are not available for public disclosure before making the documents available for inspection.

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 18636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before August 19, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Food processing aids.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for Part 173 is revised to read as follows:

Authority: Secs. 201(a), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In Subpart A by adding new § 173.70 to read as follows:

§ 173.70 Chloromethylated aminated styrene-divinylbenzene resin.

Chloromethylated aminated styrene-divinylbenzene copolymer (CAS Reg. No. 60177-39-1) may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is an aqueous dispersion of styrene-divinylbenzene copolymers, first chloromethylated then aminated with trimethylamine, having an average particle size of not more than 2.0 microns.

(b) The additive shall contain no more than 3.0 percent nonvolatile, soluble extractives when tested as follows: One hundred grams of the additive is centrifuged at 17,000 r/min for 2 hours. The resulting clear supernatant is removed from the compacted solids and concentrated to approximately 10 grams on a steam bath. The 10-gram sample is again centrifuged at 17,000 r/min for 2 hours to remove any residual insoluble material. The supernatant from the second centrifugation is then removed from any compacted solids and dried to constant residual weight using a steam bath. The percent nonvolatile solubles is obtained by dividing the weight of the dried residue by the weight of the solids in the original resin dispersion.

(c) The additive is used as a decolorizing and clarification agent for treatment of refinery sugar liquors and juices at levels not to exceed 500 parts of additive solids per million parts of sugar solids.

Dated: July 11, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-17022 Filed 7-17-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 436

[Docket No. 84N-0251]

Antibiotic Drugs; Sterile Cefonicid Sodium; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) corrected a document that provided for the inclusion of accepted standards for a new antibiotic drug, sterile cefonicid sodium (49 FR 44460; November 7, 1984). The document contained an error in an equation. This document corrects that error.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT:

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

§ 436.350 [Corrected]

SUPPLEMENTARY INFORMATION:

In FR Doc. 84-29207, appearing on page 44460, second column, in the issue of Wednesday, November 7, 1984, under § 436.350 *High-performance liquid chromatograph assay for cefonicid*, in paragraph (c)(4), the equation is corrected to read as follows:

$$\frac{S}{R} = \frac{100}{\bar{X}} \left[\frac{\sum_{i=1}^N (X_i - \bar{X})^2}{N-1} \right]^{\frac{1}{2}}$$

Dated: July 11, 1985.

Daniel L. Michels,

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

[FR Doc. 85-17019 Filed 7-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 825

Public Transportation for Nonurbanized Areas; Rescission of Regulation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulation.

SUMMARY: This document rescinds the FHWA regulation on the Public Transportation for Nonurbanized Areas Program (Section 18) because the provisions are obsolete. The Section 18 program is now administered by the Urban Mass Transportation Administration (UMTA).

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Richard A. Torbik, Office of Highway Planning, Program Management Division, 202-426-0233, or Michael J. Laska, Office of the Chief Counsel, 202-426-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The provisions contained in 23 CFR Part 825 were issued to prescribe procedures for States to follow when applying for funds under the section 18 program for public transportation in rural and small urban areas (Section 313 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2748). The Secretary of Transportation transferred the responsibility for administering this program from the FHWA to UMTA on October 1, 1983. To accommodate UMTA's administrative structure and to streamline the application and assurance requirements, UMTA issued new procedures. (Section 18 Program Guidelines and Grant Application Instructions, 9040.1, September 26, 1983). For this reason, Part 825 is no longer operative, and is, therefore, rescinded.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. No economic impacts are anticipated as a result of this action. Accordingly, a full regulatory evaluation is not required.

For the reasons stated above, the FHWA finds good cause to rescind the regulation contained in 23 CFR Part 825 without notice and opportunity for comment and without a 30-day delay in effective date required under the Administrative Procedure Act since public comment is impracticable and unnecessary. In addition, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

PART 825—PUBLIC TRANSPORTATION FOR NONURBANIZED AREAS—[REMOVED]

In consideration of the foregoing, the FHWA hereby removes Part 825 "Public Transportation Program for Nonurbanized Areas" from Title 23, Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research,

Planning, and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR 825

Grant programs—transportation. Highways and roads.

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on: July 11, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-17042 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-010]

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

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

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

SUMMARY: This document amends Subpart O of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Maryland 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 Maryland plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector and employment on military bases. Federal jurisdiction remains in effect with respect to Federal Government employers and employees.

EFFECTIVE DATE: July 18, 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 assurance 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 actual 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 Maryland Plan and its Compliance Staffing Benchmarks

Maryland Plan

On November 30, 1972, Maryland submitted occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on January 22, 1973, a notice was published in the *Federal Register* (38 FR 2188) 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 AFL-CIO and the Construction Industry Safety Advisory Committee. 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. On July 5, 1973, the Assistant Secretary published a notice granting initial approval of the Maryland plan as a developmental plan under section 18(b) of the Act (38 FR 17834). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Commissioner of the Maryland Division of Labor and Industry is designated as having responsibility for administering the plan throughout the State. The plan provides for the adoption by Maryland of standards which are at least as effective as

Federal occupational safety and health standards, including emergency temporary standards. The plan requires employers to do everything necessary to protect the life, safety and health of employees and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by a hearing examiner, whose decision may be reviewed by the Commissioner of Labor and Industry. Decisions of the Commissioner may be appealed to the appropriate State circuit court.

The notice of initial approval noted a few distinctions between the Federal and Maryland programs. The State does not cover private sector maritime employment or employment on military bases. Unlike the Federal Act, citations and penalties under the Maryland plan are first reviewed by the agency with overall responsibility for administering the plan rather than an independent agency. However, those decisions are subject to review by the appropriate circuit courts.

The Assistant Secretary's initial approval of the Maryland developmental plan, 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 O; 38 FR 17834 (July 5, 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 July 5, 1976. These "developmental steps" included amendments to the Maryland Occupational Safety and Health Law, promulgation of State occupational safety and health standards and program regulations, and development of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, field operations manuals, management information system, merit

staffing system, and safety and health posters for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity 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 Maryland subpart of 29 CFR 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.214).

On August 16, 1976, OSHA entered into an operational status agreement with the State of Maryland. 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 Maryland plan.

On February 15, 1980, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Maryland had satisfactorily completed all developmental steps (45 FR 10335). 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 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.

Maryland 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 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 Maryland to allocate 30 safety compliance officers and 43 industrial hygienists to conduct inspections under the plan.

Pursuant to the initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Maryland reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. In September 1984 Maryland in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Maryland. This reassessment resulted in a proposal to OSHA of a revised compliance staffing benchmark of 36 safety and 18 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 Maryland and the resultant eligibility of the Maryland State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2460). 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 Maryland 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 Maryland 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 Maryland 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. 2-10). 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 Maryland. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Maryland was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T-010), Maryland'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., in the OSHA Region III Office in Philadelphia, Pennsylvania, and the office of the Maryland Division of Labor and Industry in Baltimore. Summaries of the January 16 proposal, with an invitation for public comments, were published in Maryland on January 26 and February 1, 1985 (Ex. 4).

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 Maryland 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. Three comments were received in response to these notices. All three comments were from organized labor. 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 Maryland plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and

regarding the proposed revised compliance staffing benchmarks for Maryland.

In response to the January Federal Register notice, OSHA received comments from the United Steelworkers of America (District No. 8), David Wilson, Director (Ex. 3-2); the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Ex. 3-3); and the United Steelworkers of America, AFL-CIO (USWA), Mary Win O'Brien, Assistant General Counsel (Ex. 3-4). Commissioner of the Maryland Division of Labor and Industry, Dominic N. Fornaro, responded to the public comments (Ex. 3-5).

David Wilson, Director of District No. 8 of the United Steelworkers of America, expressed support for final approval of the Maryland occupational safety and health program and praised the program's commitment to occupational health and its cooperative working relationship. However, Mr. Wilson also expressed concern that the State's benchmark calculation did not provide for routine inspections of worksites with fewer than 10 employees in non-manufacturing and other industry groups. He expressed the belief that a reduction in staff could affect the program's efficiency and effectiveness. It should be noted that Maryland's revised benchmarks do not propose a reduction in actual staffing, but merely a reduction in the unrealistic staffing goals set for the program in 1980.

The United Steelworkers of America commented extensively on the benchmark revision process, with particular reference to Maryland's proposed revision, and therefore opposed the granting of final approval to any State.

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

The evaluation of the Maryland 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. These comments are addressed in the appropriate sections of the Findings and conclusions portion of this notice. The Maryland State designee, Dominic N. Fornaro, responded to the concerns expressed by the AFL-CIO and the United Steelworkers on both the benchmark issue and State-specific performance (Ex. 3-5).

Comments by the AFL-CIO and Steelworkers addressing the proposed revised benchmarks for Maryland 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 Maryland 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 Maryland'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 universal 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 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 Maryland 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 on Kentucky.

The comments filed by the AFL-CIO also addressed several specific issues relating to calculation of the benchmarks for Maryland. The union commented that although Maryland added both hazardous non-manufacturing and small high hazard establishments to its initial safety inspection universe, the specific Standard Industrial Classification (SICs) added were not identified. Rather than specifying the number of establishments in each industry group to be added, Maryland added a percentage of all non-manufacturing establishments based on the degree of hazardousness (proportion of not-in-compliance inspections) found during State inspections. For example, historically State inspections in SICs 52-59 produced 40% of the total number of not-in-compliance inspections in all non-manufacturing SICs. Therefore, provision is made in the benchmark estimates for staffing sufficient to inspect 40% of these establishments biennially.

It must be remembered that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in scheduling specific employers for an enforcement visit. The initial 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 same principles and methodology were used for estimating the proportion of workload to be devoted to small high hazard establishments. As the State indicated in its response, benchmark estimates do not intend that "inspections won't be done in these areas" (Ex. 3-5).

The AFL-CIO also objected to the State's exclusion of firms in low rate industries but with high hazard experience, regardless of size, and stated that any firm with a lost workday case incidence rate (LWCIR) higher than the State average should be included in the State's inspection universe. As the AFL-CIO is aware, BLS injury/illness incidence rates are not available on an establishment level basis. As an alternative, Maryland conducted a full analysis of its establishment inspection history and found that there was no incidence of significantly high violation rates in any of the low rate SICs. The State reasonably determined that the comparatively lower likelihood of identifying and correcting violations in this group of establishments did not justify inclusion in the universe of general schedule inspections. All such worksites will receive coverage in response to complaints and accidents.

Both the AFL-CIO and the Steelworkers expressed concern that the State has not allocated general schedule health inspection resources to many industries with serious health hazards, such as meat packing, auto repair, secondary non-ferrous metals, and hospitals. Most of the industries listed by the AFL-CIO are already included in the State's safety inspection universe and would receive wall-to-wall inspection coverage by safety compliance personnel cross-trained in the recognition of health hazards. Where complex health hazards are identified, a health inspection would result. Moreover, in these industry groups, as in all workplaces covered by the Maryland plan, the State responds to employee complaints of unsafe or unhealthful conditions. OSHA concurs that inclusion of these industries in the initial health universe is not required for proper program coverage.

The AFL-CIO asserted that Maryland's allocation of enforcement resources to health inspections in the public sector and the construction industry, which the State based on past experience, is inadequate. The State responded that its experience reflects the State's concerns regarding health hazards in the construction industry and the public sector. Maryland devotes a high percentage (21.8%) of its health inspection resources to construction and has promulgated a unique standard regarding lead in construction. The State also devotes 7% of its health inspection resources to the public sector and has instituted a Public Sector Asbestos Program.

Finally, both the AFL-CIO and the Steelworkers allege that the number of

enforcement personnel now found appropriate for a fully effective program in Maryland 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. (It should be noted that Maryland's proposed revised safety benchmark is actually higher than the 1980 estimate.) 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 comparison, 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 the majority of enforcement preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Maryland.

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

Findings and Conclusions

Maryland Benchmarks

As provided in the 1978 Court Order in *AFL-CIO v. Marshall*, Maryland, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Maryland. 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 36 safety and 18 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Maryland 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 Maryland 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 Maryland 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 Maryland plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2-2 and 2-3), 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, Maryland has generally adopted standards which are identical to Federal standards and additionally has adopted State standards for conditions, not covered by Federal standards, such as confined spaces, kepone, and lead in construction. The Maryland General Assembly enacted and subsequently amended, in response to OSHA comments, legislation on hazard communication which is comparable to the Federal standard.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Maryland also adopts standards interpretations which are identical to the Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Maryland.

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 Maryland 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) *Variations.* A State plan is expected to have the authority and procedures for the granting of variations comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Maryland 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 variations 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, the one permanent variance granted by the Maryland plan was deemed to provide equivalent protection. No temporary variances were requested during this evaluation period [Evaluation Report, p. 5]. However, past years' experience indicates that the State's procedures were properly applied when granting permanent and temporary variances.

Accordingly, OSHA finds that the Maryland 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 Maryland Occupational Safety and Health Law (Annotated Code of Maryland, Article 89, Sections 28-49D) 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" data show 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)). As noted in the January 16, 1985 Federal Register notice, Maryland follows a policy of responding to all employee complaints by conducting inspections. Data contained in the 18(e) Evaluation Report indicates that 57.8% of the safety complaints and 53.2% of the health complaints resulted in inspections (Evaluation Report, p. 14). The AFL-CIO in its written comments alleged that the State had insufficient staff to adequately respond to

complaints, citing the fact that the Evaluation Report showed that only 27.4% of the complaints alleging serious violations were responded to within five days (Ex. 3-3). The Report explained that the low percentage of complaints responded to in a timely manner was caused by the State's having incorrectly classified a large number of complaints as serious. Had the complaints been correctly classified as other-than-serious, all serious complaints would have been responded to in a timely manner. In its response, the State reports that it has improved its implementation of complaint handling procedures and that the timeliness of its response to complaints is now comparable to Federal performance (Ex. 3-6).

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)). The 18(e) Evaluation Report indicates that 90.9% of State programmed safety and 97.2% of programmed health (general schedule) inspections during October 1982 through March 1984 were conducted in high-hazard industries which compares favorably with Federal performance. During the evaluation period Maryland utilized a high-hazard list to schedule programmed inspections, as does OSHA. Maryland supplements its safety lists with information from injury reports and prior establishment history data. The State does not conduct records inspections.

(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 State's procedures require compliance officers to provide this opportunity. The 18(e) Evaluation Report indicates that employee representatives accompanied Maryland's compliance officers in 5% of the State's initial inspections (Evaluation Report, p. 18). There was no data available on the number of employees interviewed. However, previous evaluation reports show that the State utilizes employee interviews extensively and OSHA has concluded that employee representation is properly provided in State inspections.

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, Maryland requires that a poster, which was previously approved by OSHA (40 FR 25207) for employers in the private sector and a separate poster for State and local government employers, 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. Federal OSHA evaluation concluded that the State 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)). The Maryland law and regulations provide for discrimination protection which is at least as effective as the Federal. The State received 14 complaints and investigated 10 complaints during the evaluation period. The State settled administratively the one complaint found meritorious. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results by the State was 117 days. The AFL-CIO commented that the State took more than 90 days to notify a complainant of the results of a discrimination investigation in 80% of the cases and that this contributed to the fact that only 10% of the discrimination complaints were found meritorious during the evaluation period (Ex. 3-3). The Evaluation Report noted that the delay in discrimination complaint response was attributable to delays within the Attorney General's office and that the problem had been resolved at the close of the evaluation period. The State response indicated that the State has reorganized its system for the investigation of discrimination cases and that newly opened discrimination cases are now being processed within 50 days (Ex. 3-5).

Further, the union provides no evidence of a correlation between the State's lapse time and the percentage of discrimination complaints found meritorious, a correlation OSHA finds irrelevant considering the nature of discrimination cases. Federal evaluation of the cases indicates that the State action was satisfactory (Evaluation Report, p. 25).

(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 problems with Maryland's imminent danger procedures. No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets (Evaluation Report, p. 18).

(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)). Section 35(a) of the Maryland Occupational Safety and Health Law authorizes the Commissioner of Labor and Industry to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. In addition, section 2A authorizes the Commissioner to petition the Maryland district courts for an order to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The Maryland law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected 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. The 18(e) Evaluation Report shows that Maryland received 24 denials of entry and warrants were obtained for 12 of these refusals. Entry was gained in the other 12 cases after negotiation with the employers. The 18(e) Evaluation Report shows that there was one instance of advance notice. The State's use of its

procedures was found to be proper (Evaluation Report, p. 18).

(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 Maryland 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 prompt issuance of 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)). As discussed in the 18(e) Evaluation Report, the State finds an average of .8 violations per initial inspection. Additionally, data showed that the State percentage of not-in-compliance programmed inspections for safety (42.3%) was lower than Federal OSHA whereas health (49.5%) exceeded Federal OSHA (Evaluation Report, p. 12). The report attributed the lower averages primarily to the State's high safety penetration rate, with establishments on the State's high hazard safety list being inspected on an average of once every three years, and to the State's effective voluntary compliance program. In addition, monitoring has indicated that the State does effectively identify and cite violations, and that inspectors recognize and properly classify violations (Evaluation Report, p. 19).

The AFL-CIO's written comments suggest that a shortage of adequate staff is a factor in the State's longer lapse time from inspection to issuance of citation and proposed penalty (23 days for safety; 59 days for health) (Ex. 3-3).

The 18(e) Evaluation Report attributed the longer safety citation issuance time to the fact that inspection reports are prepared in the State's four regional offices and all citations are issued from the Baltimore central office. Maryland in its written response agreed that the health citation issuance time was excessive and has implemented procedures whereby the State Attorney General's office no longer reviews most health cases prior to citation issuance (Ex. 3-5). Maryland concluded that although each of the aforementioned issues has some bearing on its lapse time, the size of its compliance staff, as purported by the AFL-CIO, has no significant bearing on this issue. The 18(e) Evaluation Report concludes that the States' overall performance relative to this area is satisfactory and as effective as the Federal OSHA program (p. 20).

Neither the data nor any comments suggest that the State has any problem in adequately documenting inspections to support citations.

During the 18(e) evaluation period penalty levels for serious violations were higher than Federal (\$357 safety, \$389 health). Maryland conducts a higher proportion of follow-up inspections than does Federal OSHA (14.4% of not-in-compliance inspections). Abatement periods are generally shorter than Federal (3 days for safety, 9.3 days for health). Maryland attempt to document abatement within 30 days for all serious, willful and repeat violations. The 18(e) Evaluation Report indicates acceptable performance (pp. 20-21).

(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)). Maryland's procedures for 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. Unlike the Federal system of review, citations and penalties are first reviewed by the agency with overall responsibility for administering the plan rather than by an independent agency. Appeals of citations, penalties and abatement periods are first heard by a hearing examiner, whose decision may be

reviewed by the Commissioner of Labor and Industry. The Commissioner's decision may be appealed to the appropriate circuit court. One hundred ninety-three (193) inspections resulted in contests during October 1982 through March 1984. OSHA evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. 23).

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)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the Maryland plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Maryland 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.

Maryland's plan provides a program in the public sector which is comparable to that in the private sector, with the exception that the State does not propose penalties and that the State supplements its compliance personnel with Public Sector Self Inspectors (PSSI's). The PSSI's are employed by State agencies or political subdivisions and are empowered to conduct inspections of their employers. There are 30 PSSI's in the 24 State agencies or political subdivisions participating in the program. During the evaluation period, the State conducted 188 inspections in the public sector and cited 242 violations. The proportion of inspections dedicated to the public sector (5% of total inspections during the evaluation period) was considered appropriate to the needs of public employees (Evaluation Report, p. 8). Injury and illness rates in the public sector in Maryland are higher than those in the private sector (8.8 combined State

and local government all case rate and 5.7 combined State and local government lost workday case rate in 1982). The Evaluation Report notes that the differences in the public and private sector rates are explained by the unique character of public employment as well as the lower number of hours worked in the public sector (p. 11). The AFL-CIO commented on the fact that the State's lost workday case rate for the private sector is higher than the State's private sector rate (Ex. 3-3). In its response the State noted that the public sector rate reflects correctional institutions, police, fire and mental hospitals, which have working conditions not comparable to the private sector, and that current safety and health standards do not address many of the unique conditions found in these workplaces (Ex. 3-5). In addition, the Evaluation Report notes that the Maryland public sector rates are somewhat inflated by the more liberal leave policies of State and local governments which may serve as incentive for claims of illness or injury (p. 10).

Because the State treats the public sector in a manner comparable to the private sector, 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 Maryland 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.

Maryland has committed itself to funding the State share of salaries for 42 safety inspectors and 19 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2-6). In its subsequent FY 1985 application, the State has committed itself to the funding of 40 safety and 20 health enforcement officers. These compliance staffing levels exceed the revised benchmarks proposed for Maryland.

As noted in the Federal Register notice announcing certification of the completion of developmental steps for Maryland (45 FR 10335) 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 State provides continuing training for its staff. The 18(e) Evaluation Report noted that the State provided formal training for all professional employees (Evaluation Report, p. 8).

Because Maryland 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 in *AFL-CIO v. Marshall*, supra, are being met by the Maryland plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Maryland plan was funded at \$4,652,462 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, Maryland's funding appears sufficient in absolute terms; moreover, the State compares favorably to Federal OSHA with respect to expenditures per covered employee (Evaluation Report, p. 27). On this basis, OSHA finds that Maryland 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)).

Maryland'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 Maryland 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 plan 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, Maryland provided training to 2420 employers and supervisors and 9500 employees. Of the employees trained, 27.4% were in high hazard industries (Evaluation Report, p. 8).

Maryland provides public sector on-site consultative services to employers under its approved State plan. During the 18(e) evaluation period, 118 public sector on-site consultative visits were conducted in Maryland. In the private sector, Maryland provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to section 7(c)(1) of the Act and 29 CFR Part 1908.

Accordingly, OSHA finds that Maryland 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, Maryland's injury and illness all case rate was lower than the Federal average while the State's lost workday case rate was higher than the Federal average. It should be noted, however, that this comparative difference existed at the time of the inception of the Maryland plan in 1973. The overall trend in worker safety and health injury and illness rates since the State began enforcement of its plan compares favorably to that under the Federal program. For example, from 1973 through 1982, the injury and illness all case rate declined 27.7% for all industry, and the lost workday rate for all industry declined 2.6%.

The AFL-CIO's comments expressed concern regarding Maryland's higher injury and illness lost workday case rate (Ex. 3-3). The Evaluation Report noted that Maryland had an overall lost workday case rate of 3.7 in all industries which does slightly exceed the Federal rate. However, an overall decreasing trend is evident as noted above.

Maryland, in its response to the AFL-CIO's comments, noted that the difference between the State and Federal lost workday case rates was very small and not significant. In addition, the State pointed out that the State's average lost workdays per lost workday case (16) was almost identical to the Federal average.

Considering the State's overall substantial decline in injury and illness

rates, OSHA finds a favorable comparison between Maryland's trends in injury and illness statistics and those in States with Federal enforcement.

Decision

OSHA has carefully 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 Maryland 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) that the Maryland 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 36 safety and 18 health are approved and the Maryland State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective

Under this 18(e) determination, Maryland will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing 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, Maryland 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 Maryland plan terminates OSHA authority for Federal enforcement of its standards in Maryland, 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 Maryland 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 August 1976.)

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 Maryland 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 since these issues are excluded from coverage under the Maryland 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) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart O of Part 1952 to reflect the final approval of the Maryland plan.

A new § 1952.213, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Maryland.

A new § 1952.214, 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.

Newly redesignated § 1952.215, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.212, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on August 16, 1976. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Maryland, and the Operational Status Agreement is no longer in effect. § 1952.215 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 O 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 § 1952.210, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.216.

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 Maryland 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. Certification to this effect was previously 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.

(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))

Signed at Washington, D.C., this 18th day of July 1985.

Patrick R. Tyson,
Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart O 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).

2. Section 1952.210 is amended by revising the heading to read:

§ 1952.210 "Description of the plan as initially approved."

§§ 1952.211, 1952.212, 1952.213, and 1952.214 [Redesignated as 1952.216, 1952.215, 1952.211, and 1952.212 Respectively].

3. Section 1952.211 [Redesignated as § 1952.216] Section 1952.211 is redesignated as § 1952.216.

4. Section 1952.212 [Redesignated as § 1952.215] Section 1952.212 is redesignated as § 1952.215.

5. Section 1952.213 [Redesignated as § 1952.211] Section 1952.213 is redesignated as § 1952.211.

6. Section 1952.214 [Redesignated as § 1952.212] Section 1952.214 is redesignated as § 1952.212.

7. The Table of Contents for Part 1952, Subpart O is revised to read as follows:

Subpart O—Maryland

Sec.	
1952.210	Description of the plan as initially approved.
1952.211	Developmental schedule.
1952.212	Completion of developmental steps and certification.
1952.213	Compliance staffing benchmarks.
1952.214	Final approval determination.
1952.215	Level of Federal enforcement.
1952.216	Where the plan may be inspected.

8. New §§ 1952.213 and 1952.214 are added to read as follows:

§ 1952.213 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 Maryland, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 36 safety and 18 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary

approved these revised staffing requirements on July 18, 1985.

§ 1952.214 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 Maryland State plan for a period of at least one year following certification of completion of developmental steps (45 FR 10335). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Maryland's occupational safety and 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 Maryland plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 18, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Maryland except for private sector maritime and on military bases.

(c) Maryland 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.

9. Newly designated §§ 1952.215 and 1952.216 are revised to read as follows:

§ 1952.215 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Maryland plan under section 18(e) of the Act, effective July 18, 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 Maryland 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(b) 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 Maryland 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) and employment on military bases. Federal jurisdiction is also retained with respect to 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 Maryland 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.

§ 1952.216 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; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Gateway Building—Suite 2100, and Office of the Commissioner, Maryland Division of Labor and Industry, Department of Licensing and Regulation, 501 St. Paul Place, Baltimore, Maryland 21202.

[FR Doc. 85-16832 Filed 7-17-85; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

31 CFR Part 4

Amendment to Implementing Regulations Military and Civilian Employees' Claims Act

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending 31 CFR 4.1 to conform those regulations to a recently enacted amendment to the Military and Civilian Employees' Claims Act.

EFFECTIVE DATE: July 18, 1985.

FOR FURTHER INFORMATION CONTACT: Alexandra B. Keith, Attorney-Advisor, Office of the Assistant General Counsel (Administration, Legislation and Regulations), Department of the Treasury, Room 1414, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220, (202) 566-2327.

SUPPLEMENTARY INFORMATION:

Background

The Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721 *et seq.* (formerly 31 U.S.C. 240-243) authorizes the Secretary of the Treasury to settle and pay claims of officers or employees of the Department of the Treasury, for damage to or loss of, personal property incident to their service.

On January 12, 1963, Pub. L. 97-452, an act to codify without substantive changes recent laws related to money and finance and to improve the United States Code, was signed into law. Section 17 of the Act substituted \$25,000 for \$15,000 in 31 U.S.C. 3721(b). This substitution raised the amount which the Secretary of the Treasury is authorized to settle employee claims.

Section 4.1 of 31 CFR is hereby amended to reflect these changes in the law.

Notice and Comment; Delayed Effective Dates

Because this rule relates to agency management and personnel, notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) and a delayed effective date pursuant to 5 U.S.C. 553(d) are not required. Moreover, the amended regulations are necessitated by, and are in conformity with, a Federal statute. There is no discretion vested in, or exercised by, the Secretary in implementing the statutory provisions they are incorporated into the regulations without change. Accordingly, the Department of the Treasury finds that notice and public

procedure and a delayed effective date are impracticable and unnecessary.

Special Analysis

Because this rule relates to agency management and personnel, it is not subject to Executive Order 12291. Because no notice of proposed rulemaking is required for this final rule, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Authority and Issuance

The Department of the Treasury issues this rule under the authority of the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721 *et seq.* (formerly 31 U.S.C. 240-243), and subsection 17 of Pub. L. 97-452 (January 12, 1963).

List of Subjects in 31 CFR Part 4

Claims, Government employees.
1. The authority citation for 31 CFR Part 4 is revised to read as follows:

Authority: Sec. 3(b), 78 Stat. 767, as amended; 31 U.S.C. 3721(b).

2. Section 4.1 of Title 31 of the Code of Federal Regulations is proposed to be amended as set forth below:

§ 4.1 General. [Amended]

1. Section 4.1 is amended by striking "\$15,000" and inserting in lieu thereof "\$25,000".

Dated: July 5, 1985.

D. Edward Wilson, Jr.,

Deputy Assistant Secretary for Departmental Management.

[FR Doc. 85-17119 Filed 7-17-85; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-08]

Regatta; Night in Venice, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Annual Night in Venice Boat Parade sponsored by the City of Ocean City, New Jersey. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATE: This regulation becomes effective on July 27, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 25, 1985, the Coast Guard published a notice of proposed rule making in the Federal Register for this regulation (50 FR 16315). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this notice are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Annual Night in Venice Boat Parade is a Marine Parade to be held on Great Egg Harbor Bay. It is sponsored by the City of Ocean City, New Jersey and is well known to the boaters and residents of this area. This event is traditionally held each year on the fourth Saturday in July. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Thereafter the Coast Guard will provide the public with full and adequate notice of this annual boat parade by publication in the Third District Local Notice to Mariners. Approximately 800 spectator craft are expected to watch the 125 participating vessels in the boat parade. The sponsor is providing in excess of 6 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the marine parade area and will establish spectator anchorages for what is expected to be a large spectator fleet.

Discussion of Comments

One comment was received from the City of Ocean City, New Jersey. The event sponsor requested to change the start time for this event from 8:00 p.m. to 7:00 p.m. The later start time would give those vessels which had been decoratively lighted a better chance of being seen later in the day. The Coast Guard is concerned about the safety of both participants and spectators. Over the years some problems have developed with this event involving the drinking of alcohol. The New Jersey Marine Police intends to enforce the New Jersey boating-while-intoxicated law this year during the event. The Coast Guard feels that the later start time will only add to the problem of trying to control a large spectator fleet during and after this event. Accordingly,

no changes have been made in the regulation as proposed.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the parade. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.303 to read as follows:

§ 100.303 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ.

(a) *Regulated Area:* The southwest side of Ship Channel from Buoy C, seaward to Board Thorofare Buoy No. 17 (black can) to Ocean City Longport Bridge, thence south to Great Egg Waterway Daybeacon 28.

(b) *Effective Period:* This regulation will be effective from 4:30 p.m. to 11:45 p.m. on July 27, 1985 and thereafter annually on the fourth Saturday in July unless otherwise specified in the Third District Local Notice to Mariners and in a Federal Register notice.

(c) *Special Local Regulations:*

(1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel may enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area prior to the start of the parade in such a way that they shall not interfere with mariners transiting Great Egg Harbor Bay. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Northwestward of a line marked by a patrol vessel in position 39 degrees 17 minutes 45 seconds North latitude; 074 degrees 33 minutes 45 seconds West longitude to the 9th Street Route 52 Bridge in Ocean City, New Jersey, including Great Egg Waterway Red Buoy No. 2, but shall not extend northwestward of the Great Egg Waterway Point Buoy.

(ii) Westward of a line of buoys between Great Egg Waterway Buoys 10 and 14.

(iii) Within the area around the shoals and islands in Beach Thorofare between Great Egg Waterway Buoys 15 and 21. This area shall at no point be closer than 150 yards from the line of bulkheads and lagoon entrances in Ocean City, New Jersey.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) \$500 for any person in charge of the navigation of a vessel.

(ii) \$500 for the owner of a vessel actually on board.

(iii) \$250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 20, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-17089 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-85-16]

Special Local Regulations: Stroh Signature Classic, Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Stroh Signature Classic. This event will be held on 3 August 1985 at Sandusky Bay, Lake Erie. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective and terminate on 3 August 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until July 2, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and Lcdr A.R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh Signature Classic will be conducted on Sandusky Bay on 3 August 1985. This event will have an estimated 30 powerboats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, Coast Guard Station Marblehead, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(c)(5) and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 Stroh Signature Classic, Lake Erie.

(a) *Regulated Area:* (1) That portion of Sandusky Bay from position 41 degrees 26.9 minutes North 082 degrees 45.5 minutes West to 41 degrees 29.6 minutes North 082 degrees 48.6 minutes West to 41 degrees 30.1 minutes North 082 degrees 48.2 minutes West to 41 degrees 28.8 minutes North 082 degrees 42.7 minutes West.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation or anchorage from 1030 (local time) until 1300 on 3 August 1985.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol in the performance of their assigned duties.

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

Dated: July 10, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff,
Ninth Coast Guard District.

[FR Doc. 85-17091 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD3 85-18]

Regatta; Connecticut River Raft Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Annual Connecticut River Raft Race being sponsored by the Connecticut River Raft Race Inc., of Norwich, Connecticut. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on August 3, 1985.

FOR FURTHER INFORMATION CONTACT:

Lt. D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On May 16, 1985, the Coast Guard published a Notice of Proposed Rulemaking in the *Federal Register* for this regulation (50 FR 20444). Interested persons were requested to submit comments and no comments were received. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Annual Connecticut River Raft Race is a marine event to be held on the Connecticut River between Hurd and Haddam Meadows State Parks. It is sponsored by the Connecticut River Raft Race Inc., of Norwich, CT, and is well known to the boaters and residents of this area. This event is traditionally held each year on the first Saturday in August. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Thereafter the Coast Guard will provide the public with full and adequate notice of this annual event by publication in the Third District Local Notice to Mariners. Over 100 self-propelled homemade rafts will cruise down a 2.5 mile section of the Connecticut River. Vessels provided by the State of Connecticut State Police, and Department of Environmental Protection will work in conjunction with approximately 12 vessels provided by the sponsor to patrol this event. Specific requirements have been imposed upon the sponsor to ensure that all participants wear personal flotation devices throughout the event for their own safety. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event on this section of the river. A Coast Guard patrol vessel will be located at strategic locations on the river both above and below the regulated area to stop vessel traffic.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.305 to read as follows:

§ 100.305 Connecticut River Raft Race.

(a) *Regulated Area:* That section of the Connecticut River between the Salmon River (Marker no. 48) and Middle Haddam (Marker no. 72).

(b) *Effective Period:* This regulation will be effective from 9:00 a.m. to 2:00 p.m. on August 3, 1985 and thereafter annually on the first Saturday in August unless otherwise specified in the Third District Local Notice to Mariners and in a *Federal Register* Notice.

(c) *Special Local Regulations:*

(1) The regulated area shall be closed to all vessels in excess of 20 meters (65.6 feet) in length during the effective period.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) All spectator vessels shall be moored or anchored prior to the start of the event in such a way as to not interfere with the passage of the race participants. They shall remain

anchored or moored until the end of the race or until directed by a patrol vessel.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) \$500 for any person in charge of the navigation of a vessel.

(ii) \$500 for the owner of a vessel actually on board.

(iii) \$250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: July 8, 1985.

P.A. Yost,

*Vice Admiral, U.S. Coast Guard, Commander,
Third Coast Guard District.*

[FR Doc. 85-17088 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD9-85-01]

Anchorage Grounds; Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two new commercial vessel anchorages and disestablishing one existing commercial vessel anchorage in Chicago Harbor. The existing anchorage known as "Anchorage F Filtration Plant Slip" conflicts with plans for a large recreational vessel marina. The effect of this rule will be accommodation of the marina development and continued availability of anchorage areas suitable for lakegoing barge tows without anchors.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign G.H. Burns, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, Telephone number (216) 522-3919.

SUPPLEMENTARY INFORMATION: On 18 April, 1985, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (50 FR 15460). Interested persons were requested to submit comments and 3 comments were received.

Drafting Information: The drafters of these regulations are Ensign G.H. Burns, project officer, Marine Port and Environmental Safety Branch, and Lieutenant Raymond A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were three comments received concerning this regulation. Two of the comments received were from the developer of the proposed marina, and the association that represents the commercial towing industry in this area. Both organizations were supportive of the Notice of Proposed Rulemaking and had no objections to the proposal.

A third comment was received from the local Park District. This commenter objected to the proposal based upon their view that the area north of the locks (anchorage E) could restrict access to future recreation boating developments south of the Navy pier, and secondly that they also had plans to develop the slip north of Navy pier which is in the same location of the proposed marina. The first objection of this commenter is viewed as unlikely. The old Dime pier structure is located between anchorage E and Navy pier. The three hundred feet of channel separating anchorage E and Dime Pier should provide more than adequate navigational access for any boating development in the area. Additionally, the waters of Chicago Harbor are not for the exclusive use of recreational boating needs. The needs of commercial vessels must be considered in any development. These needs are addressed by this regulation.

In the second objection the Park Authority also states their desire to develop the area north of Navy Pier. The development of the area north of Navy pier is what creates the need to accommodate commercial vessels in new Anchorage areas E and D. This is the case regardless of who controls the development.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The proposed action simply relocates an existing anchorage. The new locations will provide a slight transit time advantage to the marine towing industry. The cost of establishing the protective pile clusters for each

anchorage will be borne by the commercial marina interests benefiting from this relocation. The marine towing industry's cost of compliance with the continual surveillance requirements will be negligible. Anchorages D and E will be utilized as temporary mooring areas for towing vessels and tows during inclement weather or while awaiting a change of towing vessels. These towing vessels are normally manned while moored and would provide the surveillance required by the rule. This corresponds with current practice and the inclusion of this requirement in the rule will insure a rapid response to breakaways which might damage the adjacent lock structure or passing vessels. Preliminary discussions with industry personnel confirm that the formal surveillance requirement will not impose significant additional costs.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority Citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1 (g).

§ 110.205 [Amended]

2. Part 110, § 110.205 is amended by removing paragraph (a)(6), adding paragraphs (a)(4) and (a)(5), and revising paragraph (b)(7), to read as follows:

(a) * * *

(4) Anchorage D, Chicago Harbor Lock South, Beginning at a point 35.5 feet South (16 feet South of the South face of the Southeast guidewall) and 28.0 feet West of the SE Guide Wall Light; thence Westerly and parallel to the guidewall 800 feet to a point that is 16 feet South of the South face of the Southeast guidewall; thence Southerly 80 feet to a point that is 96 feet South of the South face of the Southeast guidewall; thence Easterly 800 feet to a point that is 96 feet South of the south face of the southeast guidewall; thence Northerly 80 feet to the point of beginning.

(5) Anchorage E, Chicago Harbor Lock North, Beginning at a point 156.75 feet

North (16 feet North of the North face of the Northeast guidewall) and 590 feet West of the SE Guidewall Light; thence Westerly and parallel to the guidewall 600 feet to a point that is 16 feet North of the North face of the Northeast guidewall; thence Northerly 80 Feet to a point that is 96 feet North of the North face of the Northeast guidewall; thence Easterly 600 feet to a point that is North of the North face of the Northeast guidewall; thence Southerly 80 feet to the point of beginning.

(b) * * *

(7) No vessel may use anchorages A, B, D, and E except commercial vessels operated for profit. No person may place floats or buoys for making moorings or anchors in place in anchorages A and B. No person may place fixed moorings piles or stakes in anchorages A and B. (Mooring facilities are available adjacent to the lakeside guidewalls of the Chicago Harbor Lock in anchorages D and E.) All vessels using anchorages D and E shall moor against pile clusters adjacent to the respective anchorage.

Any time barges are moored in anchorage D or E, a manned towing vessel shall be present in one of these anchorages. Exceptions to this surveillance requirement are allowable for periods not to exceed one hour.

Dated: July 5, 1985.

A. M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander,
Ninth Coast Guard District.

[FR Doc. 85-17090 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Miami, Florida Regulation CCGD7-85-36]

Safety Zone Regulations: On the Intracoastal Waterway (ICW) at Ft. Lauderdale, FL, at a Position Approximately 800 Feet North of Dry Marina Canal and Extending to The Dania Cut Off Canal

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the drilling, blasting and dredging operations in an area starting from approximately 800 feet north of Dry Marina Canal extending south to the Dania Cut Off Canal on the Intracoastal Waterway (ICW) at Ft. Lauderdale, Florida and extending 750 feet into the Dry Marina Canal and 800 feet into the Dania Cut Off Canal. The zone is needed to protect swimmers, pleasure boaters, commercial traffic and

construction personnel from safety hazards associated with the drilling, blasting and dredging operations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 9 July 1985. It terminates on 20 September 1985 unless completion of the drilling, blasting and dredging operation occurs first.

FOR FURTHER INFORMATION CONTACT:

CWO3 P.J. MacDonald, c/o
Commanding Officer, U.S. Coast Guard,
Marine Safety Office, Miami, FL 33130,
Tel (305) 350-5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to personnel and vessels involved.

Drafting Information:

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and Lcdr K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the drilling, blasting and dredging operation on the Intracoastal Waterway between a position approximately 800 feet north of Dry Marina Canal and extending to the Dania Cut Off Canal on the Intracoastal Waterway (ICW) at Ft. Lauderdale, Florida and 750 feet into Dry Marina Canal and 800 feet into the Dania Cut Off Canal. Operations will commence on 9 July 1985 and continue until 20 September 1985 unless completion of the drilling, blasting and dredging operation occurs first. This operation is necessary to effect deepening and widening of the Intracoastal Waterway in the aforementioned area. During the period of 9 July 1985 through 20 September 1985, between sunrise and sunset, Monday through Saturday, blasting operations will be conducted. Five minutes prior to each blast, the drilling rig will signal its intention to blast with a series of 10 long horn signals. At this time the Intracoastal Waterway will be closed to all traffic between a position approximately 800 feet north of Dry Marina Canal and extending to the Dania Cut Off Canal on the Intracoastal Waterway (ICW) at Ft. Lauderdale, Florida and 750 feet into Dry Marina Canal and 800 feet into the Dania Cut Off Canal. One minute prior to blasting,

the drilling rig will signal its intention to blast with a series of 3 long horn signals. After the blast, 1 long horn signal will be given as an "All Clear". During the same period (9 July 1985 through 20 September 1985) drilling and dredging operations will be conducted seven days a week, twenty-four hours a day. All vessels are restricted from penetrating a fifty foot radius of the dredge Illinois and the barge Drill 8. There will be approximately 3000 feet to 6000 feet of floating pipeline behind the dredge which will be marked with yellow flashing lights. Vessels transiting this area should minimize the effects of their wake.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: (33 U.S.C. 11225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5).

2. A new § 165.T-07-36 is added to read as follows:

§ 165.T-07-36 Safety Zone: On the Intracoastal Waterway (ICW) at Ft. Lauderdale, Florida, from a position approximately 800 feet north of Dry Marina Canal and extending to the Dania Cut Off Canal and 750 feet into Dry Marina Canal and 800 feet into the Dania Cut Off Canal.

(a) *Location:* The following area is a Safety Zone: During the period of 9 July 1985 through 20 September 1985, between sunrise and sunset, Monday through Saturday, blasting operations will be conducted. Five minutes prior to each blast, the drilling rig will signal its intention to blast with a series of 10 long horn signals. At this time the Intracoastal Waterway will be closed to all traffic between a position approximately 800 feet north of Dry Marina Canal and extending to the Dania Cut Off Canal on the Intracoastal Waterway (ICW) at Ft. Lauderdale, Florida and 750 feet into Dry Marina Canal and 800 feet into the Dania Cut Off Canal. One minute prior to blasting, the drilling rig will signal its intention to blast with a series of 3 long horn signals. After the blast, 1 long horn signal will be given as an "All Clear". During the same period (9 July 1985 through 20 September 1985) drilling and dredging operations

will be conducted seven days a week, twenty-four hours a day. All vessels are restricted from penetrating a fifty foot radius of the dredge Illinois and the barge Drill 8. There will be approximately 3000 feet to 6000 feet of floating pipeline behind the dredge which will be marked with yellow flashing lights.

(b) *Regulations:*

(1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(2) Vessels transiting this area should minimize the effects of their wake.

Dated: July 9, 1985.

R.N. Rousset,

Commander, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 85-17085 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 1

Security at VA Facilities

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration in consultation with the Department of Justice, is amending its general series of regulations (38 CFR Part 1) to implement provisions of Pub. L. 98-528, the Veteran's Health Care Act of 1984. These regulation amendments provide for increased security and protection of persons and property at VA facilities, grant authority to the Administrator of Veterans Affairs to increase rates of pay for police officers when needed to enhance recruitment and retention, and provide police officers with an allowance for uniforms.

EFFECTIVE DATE: These regulation amendments are effective July 10, 1985.

FOR FURTHER INFORMATION CONTACT: James Fasone, Director, Security Service (132), Department of Medicine & Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202-376-8859.

SUPPLEMENTARY INFORMATION: Pub. L. 98-528 makes extensive modifications to section 218, Title 38, United States Code, to clarify the scope of authority of VA police officers. These modifications include an increase in the maximum penalty for violations of rules prescribed for the protection of persons and property from a \$50 fine and one month imprisonment to a \$500 fine and imprisonment not to exceed six months. The law also requires the VA to

prescribe regulations which include law enforcement policies to be followed by VA police officers in their exercise of this authority, the scope and duration of their training with particular emphasis on dealing with situations involving patients, and rules limiting the carrying and use of weapons. The law also authorizes an initial uniform allowance of \$400 for VA police officers and a recurring annual allowance of \$200. It amends section 4107(g) of Title 38, U.S.C. to authorize the Administrator to increase the rates of pay of VA police officers on a nationwide, local or other geographic basis in order to recruit or retain police officers. These regulation amendments clarify and update the rules governing the standards of conduct on property under the charge and control of the VA and increase the penalties for their violation. Penalty increases are based on the gravity of the respective offenses and their anticipated effect towards deterring violations of the rules of conduct. These regulation amendments also provide the authority for VA police officers to enforce these rules and other Federal laws in accordance with the policies and procedures issued by respective VA Department Directors and requires that VA police officers successfully complete required training courses. These regulations are fully contained in § 1.218, and Part 17 is amended by removing §§ 1.219 and 1.220. Remaining provisions of Pub. L. 98-528 such as increasing the police officer uniform allowance; including the police officer occupation under section 4107(g) of Title 38, U.S.C.; defining law enforcement and weapon use policies and procedures; and specifying police officer training requirements will be implemented through appropriate internal VA policy manuals.

These amendments conform the existing regulations to the requirements of Pub. L. 98-528. Since these regulation amendments simply complete statutory changes to the internal VA security program, the VA is not seeking public participation in promulgating these regulation amendments. The intent of the legislation is clear, and prior publication for public comment is unnecessary. Accordingly, these changes come within exceptions to the general VA policy of prior publication of proposed regulatory development as set forth in 38 CFR 1.12.

Because a proposed notice is not necessary and will not be published, these amendments do not come within the definition of the term "rule" under the Regulatory Flexibility Act (5 U.S.C. 601(2)), and are not subject to the requirements of that Act. In any case

these amendments will not have a significant economic impact on a substantial number of small entities as defined in that Act because they deal with internal VA security matters at VA facilities.

These amendments have been reviewed under Executive Order 12291, Federal Regulation, and are not considered major as defined therein. The regulations will not impact on the public or private sectors as a major rule would. They will not have an annual effect on the economy of \$100 million or more, cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or have 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.

There is no Catalog of Federal Domestic Assistance Number involved.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Employment, Government employees, Government property, Security, Law enforcement.

Approved: July 10, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

§ 1.219 [Removed]

38 CFR Part 1, GENERAL, is amended by removing §§ 1.219 and 1.220 and by revising the undesignated center heading and § 1.218 to read as follows:

Security and Law Enforcement at Veterans Administration Facilities

§ 1.218 Security and law enforcement at VA facilities.

(a) *Authority and rules of conduct.* Pursuant to 38 U.S.C. 218, the following rules and regulations apply at all property under the charge and control of the VA (and not under the charge and control of the General Services Administration) and to all persons entering in or on such property. The head of the facility is charged with the responsibility for the enforcement of these rules and regulations and shall cause these rules and regulations to be posted in a conspicuous place on the property.

(1) *Closing property to public.* The head of the facility, or designee, shall establish visiting hours for the convenience of the public and shall establish specific hours for the transaction of business with the public.

The property shall be closed to the public during other than the hours so established. In emergency situations, the property shall be closed to the public when reasonably necessary to ensure the orderly conduct of Government business. The decision to close a property during an emergency shall be made by the head of the facility or designee. The head of the facility or designee shall have authority to designate areas within a facility as closed to the public.

(2) *Recording presence.* Admission to property during periods when such property is closed to the public will be limited to persons authorized by the head of the facility or designee. Such persons may be required to sign a register and/or display identification documents when requested to do so by the VA police, or other authorized individual. No person, without authorization, shall enter upon or remain on such property while the property is closed. Failure to leave such premises by unauthorized persons shall constitute an offense under this paragraph.

(3) *Preservation of property.* The improper disposal of rubbish on property; the spitting on the property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from a building; the climbing upon the roof or any part of the building, without permission; or the willful destruction, damage, or removal of Government property or any part thereof, without authorization, is prohibited. The destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited.

(4) *Conformity with signs and emergency conditions.* The head of the facility, or designee, shall have authority to post signs of a prohibitory and directory nature. Persons, in and on property, shall comply with such signs of a prohibitory or directory nature, and during emergencies, with the direction of police authorities and other authorized officials. Tampering with, destruction, marring, or removal of such posted signs is prohibited.

(5) *Disturbances.* Conduct on property which creates loud or unusual noise; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; which prevents one from obtaining medical or other services provided on the property in a timely manner; or the use of loud, abusive, or

otherwise improper language; or unwarranted loitering, sleeping, or assembly is prohibited. In addition to measures designed to secure voluntary terminations of violations of this paragraph the head of the facility or designee may cause the issuance of orders for persons who are creating a disturbance to depart the property. Failure to leave the premises when so ordered constitutes a further disturbance within the meaning of this rule, and the offender is subject to arrest and removal from the premises.

(6) *Gambling.* Participating in games for money or for tangible or intangible things, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited.

(7) *Alcoholic beverages and narcotics.* Operating a motor vehicle on property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering property under the influence of any narcotic drug, hallucinogen, marijuana, barbiturate, amphetamine, or alcoholic beverage (unless prescribed by a physician) is prohibited. The use on property of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The introduction or possession of alcoholic beverages or any narcotic drug, hallucinogen, marijuana, barbiturate, and amphetamine on property is prohibited, except for liquor or drugs prescribed for use by medical authority for medical purposes. Provided such possession is consistent with the laws of the State in which the facility is located, liquor may be used and maintained in quarters assigned to employees as their normal abode, and away from the abode with the written consent of the head of the facility which specifies a special occasion for use and limits the area and period for the authorized use.

(8) *Soliciting, vending, and debt collection.* Soliciting alms and contributions, commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on property is prohibited. This rule does not apply to (i) national or local drives for funds for welfare, health, or other purposes as authorized under Executive Order 12353, Charitable Fund Raising (March 23, 1982), as amended by Executive Order 12404 (February 10, 1983), and regulations issued by the Office of Personnel Management implementing these Executive Orders; (ii) concessions or personal notices posted by employees on authorized bulletin boards; and (iii)

solicitation of labor organization membership or dues under 5 U.S.C. chapter 71.

(9) *Distribution of handbills.* The distributing of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere on property is prohibited, except as authorized by the head of the facility or designee or when such distributions or displays are conducted as part of authorized Government activities.

(10) *Photographs for news, advertising, or commercial purposes.* Photographs for advertising or commercial purposes may be taken only with the written consent of the head of the facility or designee. Photographs for news purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or designee.

(11) *Dogs and other animals.* Dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or designee.

(12) *Vehicular and pedestrian traffic.* Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of police and all posted traffic signs. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited; parking in unauthorized locations or in locations reserved for other persons or contrary to the direction of posted signs is prohibited. Creating excessive noise on hospital or cemetery premises by muffler cut out, the excessive use of a horn, or other means is prohibited. Operation of a vehicle in a reckless or unsafe manner, drag racing, bumping, overriding curbs, or leaving the roadway is prohibited.

(13) *Weapons and explosives.* No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(14) *Demonstrations.* (i) All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited. Jogging, bicycling, sledding and other forms of physical recreation on cemetery grounds is prohibited.

(ii) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to,

picketing, or similar conduct on VA property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on VA property unless approved by the head of the facility or designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities, i.e., those involving commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United States, or any private group, association, or enterprise.

(15) *Key security.* The head of the facility of designee, will determine which employees, by virtue of their duties, shall have access to keys or barrier-card keys which operate locks to rooms or areas on the property. The unauthorized possession, manufacture, and/or use of such keys or barrier cards is prohibited. The surreptitious opening or attempted opening of locks or card-operated barrier mechanisms is prohibited.

(16) *Sexual misconduct.* Any act of sexual gratification on VA property involving two or more persons, who do not reside in quarters on the property, is prohibited. Acts of prostitution or solicitation for acts of prostitution on VA property is prohibited. For the purposes of this paragraph, an act of prostitution is defined as the performance or the offer or agreement to perform any sexual act for money or payment.

(b) *Schedule of offenses and penalties.* Conduct in violation of the rules and regulations set forth in paragraph (a) of this section subjects an offender to arrest and removal from the premises. Whomever shall be found guilty of violating these rules and regulations while on any property under the charge and control of the VA is subject to a fine as stated in the schedule set forth herein or, if appropriate, the payment of fixed sum in lieu of appearance (forfeiture of collateral) as may be provided for in rules of the United States District Court. Violations included in the schedule of offenses and penalties may also subject an offender to a term of imprisonment of not more than six months, as may be determined appropriate by a magistrate or judge of the United States District Court:

(1) Improper disposal of rubbish on property, \$200.

(2) Spitting on property, \$25.

(3) Throwing of articles from a building or the unauthorized climbing upon any part of a building, \$50.

(4) Willful destruction, damage, or removal of Government property without authorization, \$500.

(5) Defacement, destruction, mutilation or injury to, or removal, or disturbance of, gravemarker or headstone, \$500.

(6) Failure to comply with signs of a directive and restrictive nature posted for safety purposes, \$50.

(7) Tampering with, removal, marring, or destruction of posted signs, \$150.

(8) Entry into areas posted as closed to the public or others (trespass), \$50.

(9) Unauthorized demonstration or service in a national cemetery or on other VA property, \$250.

(10) Creating a disturbance during a burial ceremony, \$250.

(11) Disorderly conduct which creates loud, boisterous, and unusual noise, or which obstructs the normal use of entrances, exits, foyers, offices, corridors, elevators, and stairways or which tends to impede or prevent the normal operation of a service or operation of the facility, \$250.

(12) Failure to depart premises by unauthorized persons, \$50.

(13) Unauthorized loitering, sleeping or assembly on property, \$50.

(14) Gambling-participating in games of chance for monetary gain or personal property; the operation of gambling devices, a pool or lottery; or the taking or giving of bets, \$200.

(15) Operation of a vehicle under the influence of alcoholic beverages or nonprescribed narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, \$500.

(16) Entering premises under the influence of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines, \$200.

(17) Unauthorized use on property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, \$300.

(18) Unauthorized introduction on VA controlled property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or the unauthorized giving of same to a patient or beneficiary, \$500.

(19) Unauthorized solicitation of alms and contributions on premises, \$50.

(20) Commercial soliciting or vending, or the collection of private debts on property, \$50.

(21) Distribution of pamphlets, handbills, and flyers, \$25.

(22) Display of placards or posting of material on property, \$25.

(23) Unauthorized photography on premises, \$50.

(24) Failure to comply with traffic directions of VA police, \$25.

(25) Parking in spaces posted as reserved for physically disabled persons, \$50.

(26) Parking in no-parking areas, lanes, or crosswalks so posted or marked by yellow borders or yellow stripes, \$25.

(27) Parking in emergency vehicle spaces, areas and lanes bordered in red or posted as EMERGENCY VEHICLES ONLY or FIRE LANE, or parking within 15 feet of a fire hydrant, \$50.

(28) Parking within an intersection or blocking a posted vehicle entrance or posted exit lane, \$25.

(29) Parking in spaces posted as reserved or in excess of a posted time limit, \$15.

(30) Failing to come to a complete stop at a STOP sign, \$25.

(31) Failing to yield to a pedestrian in a marked and posted crosswalk, \$25.

(32) Driving in the wrong direction on a posted one-way street, \$25.

(33) Operation of a vehicle in a reckless or unsafe manner, too fast for conditions, drag racing, overriding curbs, or leaving the roadway, \$100.

(34) Exceeding posted speed limits:

(i) By up to 10 mph, \$25.

(ii) By up to 20 mph, \$50.

(iii) By over 20 mph, \$100.

(35) Creating excessive noise in a hospital or cemetery zone by muffler cut out, excessive use of a horn, or other means, \$50.

(36) Failure to yield right of way to other vehicles, \$50.

(37) Possession of firearms, carried either openly or concealed, whether loaded or unloaded except by Federal or State law enforcement officers on official business, \$500.

(38) Introduction or possession of explosives, or explosive devices which fire a projectile, ammunition, or combustibles, \$500.

(39) Possession of knives which exceed a blade length of 3 inches; switchblade knives; any of the variety of hatchets, clubs and hand-held weapons; or brass knuckles, \$300.

(40) The unauthorized possession of any of the variety of incapacitating liquid or gas-emitting weapons, \$200.

(41) Unauthorized possession, manufacture, or use of keys or barrier card-type keys to rooms or areas on the property, \$200.

(42) The surreptitious opening, or attempted opening, of locks or card-operated barrier mechanisms on property, \$500.

(43) Soliciting for, or the act of, prostitution, \$250.

(44) Any unlawful sexual activity, \$250.

(45) Jogging, bicycling, sledding or any recreational physical activity conducted on cemetery grounds, \$50.

(c) *Enforcement procedures.* (1) VA Department Directors will issue policies and operating procedures governing the proper exercise of arrest and other law enforcement actions, and limiting the carrying and use of weapons by VA police officers. VA police officers found qualified under respective VA department directives and duly appointed heads of facilities for the purposes of 38 U.S.C. 218(b)(1), will enforce these rules and regulations and other Federal laws on VA property in accordance with the policies and operating procedures issued by respective VA Department Directors and under the direction of the head of the facility.

(2) VA Department Directors will prescribe training for VA police officers of the scope and duration necessary to assure the proper exercise of the law enforcement and arrest authority vested in them and to assure their abilities in the safe handling of situations involving patients and the public in general. VA police officers will successfully complete prescribed training in law enforcement procedures and the safe handling of patients as a condition of their retention of statutory law enforcement and arrest authority.

(3) Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.

(38 U.S.C. 218; Pub. L. 98-528)

[FR Doc. 85-17037 Filed 7-17-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2866-9]

Approval and Promulgation of Implementation Plans, Connecticut; RACT Regulations for Gasoline Tank Trucks and External Floating Roof Storage Vessels; and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions require reasonably available control technology (RACT) for gasoline tank trucks and external floating roof storage vessels in order to reduce volatile organic compound (VOC) emissions. This action also approves revisions to exempt seven nonreactive compounds from the definition of VOC, and revisions to remove restrictions on certain materials used in cutback asphalt. The intent of this action is to approve revisions adopted pursuant to Part D of the Clean Air Act in accordance with Section 110 of that Act.

EFFECTIVE DATE: August 19, 1985.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2311, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460; Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408; and the Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (617) 223-4868, FTS 223-4868.

SUPPLEMENTARY INFORMATION: On December 19, 1984 (49 FR 49310), EPA published a Notice of Proposed Rulemaking (NPR) for draft revisions to the Connecticut SIP. Those revisions have been adopted by the State, and on April 22, 1985 were formally submitted to EPA by the Department of Environmental Protection (DEP). The revisions and EPA's rationale for approving them were explained in the NPR, and will not be restated here. No public comments were received on the NPR.

Final Action:

EPA is approving the following revisions to the Connecticut SIP as submitted April 22, 1985:

1. Changes to Section 22a-174-20(a) requiring gasoline storage facilities equipped with external floating roofs to install secondary seals.
2. Changes to Section 22a-174-20(b) requiring gasoline tank trucks to be tested yearly.
3. Changes to Section 22a-174-1 exempting from the definition of "volatile organic compounds" seven chlorofluorocarbons and fluorocarbons determined by EPA to be nonreactive.

4. Changes to Section 22a-174-20(k) removing restrictions on certain materials used in cutback asphalts which EPA has determined do not evaporate at or above 500 °F.

5. A narrative requirement that only persons who attended the Gasoline Tank Truck Certification Workshop conducted in Hartford on September 14, 1984 will be permitted to certify test results; and a related narrative requirement that if a persons did not attend the workshop and wants to perform such tests, the DEP will provide a copy of the Workshop Manual and will oversee the test to insure that it is being conducted correctly. (A copy of the Workshop Manual has been submitted for approval as part of the SII narrative.)

6. A narrative requirement that the procedures outlined in Appendix B of *Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System* (EPA-450/2-78-051) be used to confirm continued leak tight conditions in tank trucks as required by Section 22a-174-20(b)(11)(D)(ii). (A copy of Appendix B has been submitted for the SIP narrative.)

7. A narrative requirement that sources notify the DEP thirty days prior to conducting a test in accordance with *Source Test Guidelines and Procedures*. (A copy of that document has been submitted for approval as part of the SIP narrative.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 1985. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by Reference.

Note.—Incorporation by Reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 11, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370, paragraph (c) is amended by adding subparagraph (34) as follows:

§ 52.370 Identification of plan.

(c) . . .

(34) Revisions to the Ozone Attainment Plan were submitted by the Commissioner of the Connecticut Department of Environmental Protection on April 22, 1985.

(i) Incorporation by Reference

(A) Amendments to Regulation 22a-174-1, Definitions; Regulation 22a-174-20(a), Storage of Volatile Organic Compounds; Regulation 22a-174-20(b), Loading of Gasoline and Other Volatile Organic Compounds; and Regulation 22a-174-20(k), Restrictions on Cutback Asphalt, effective December 17, 1984.

(ii) Additional Material

(A) *Source Test Guidelines and Procedures*

(B) *Workshop Manual for Gasoline Tank Truck Certification*

(C) Appendix B of *Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems* (EPA-450/2-78-051).

[FR Doc. 85-17079 Filed 7-17-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act; Fee Schedule Changes

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department is amending its fee schedule for processing Freedom of Information Act requests in order to depict the current costs of such services.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Stephan, (202) 343-6191.

SUPPLEMENTARY INFORMATION: The Department's uniform fee schedule for making records available to the public

under the Freedom of Information Act (FOIA) was last revised in 1981. The schedule, published as Appendix A to 43 CFR Part 2, as it presently exists does not accurately reflect the cost of making records available to the public. Therefore, on January 3, 1985 (50 FR 286; correction notice published January 9, 1985; 50 FR 1072), the Department published a proposed rule to amend its fee schedule.

One comment from the public was received in response to the proposed rule. In that comment, the view was expressed that no fees should be waived under any circumstance. However, the FOIA itself provides, in part, that "[d]ocuments shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest . . ." (5 U.S.C. 552(a)(4)(A)). Therefore, the suggestion that fees never be waived has not been adopted in this final rule.

The commenter also felt that copying fees should be considerably higher than those proposed; again, the Department is bound by the language of the FOIA, which provides in part, that ". . . fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication" (5 U.S.C. 552(a)(4)(A)) (Emphasis added). Accordingly, the fee schedule, which was designed to meet the statutory requirement, has been adopted as proposed.

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. This document merely reflects an effort by the Department to recover some of the increased costs of administering the FOIA, as permitted by the FOIA. We do not perceive any significant economic effect upon any small entity resulting from the relatively small increase in fees.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The principal author of this document is Richard A. Stephan, Office of Information Resources Management.

List of Subjects in 43 CFR Part 2

Freedom of information, Privacy.

PART 2—[AMENDED]

Accordingly, 43 CFR Part 2 is amended as set forth below.

1. The authority citation for 43 CFR Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460, unless otherwise noted.

2. In § 2.19, paragraph (c)(3) introductory text is revised and a new paragraph (f) is added to read as follows:

§ 2.19 Fees.

(c) . . .

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests shall be waived if the total amount of the fee does not exceed \$15.00 or may be waived or reduced if the request involves:

(f) *Billing procedures.* A Bill for

Collection, Form DI-1040, shall be prepared for each request which requires the collection of search and duplication costs. The requester shall be provided the first sheet of the DI-1040. The Accounting Copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI-1040 to the finance office.

3. Appendix A to 43 CFR Part 2 is revised to read as follows:

Appendix A—Fees

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for and duplicating records in connection with requests made under the Freedom of Information Act. The fees are also applicable to services provided in duplicating and making available records in response to requests made under the Privacy Act. It also states the fees to be charged for certification of documents.

(1) *Copies, basic fee.* For copies of documents reproduced on a standard office copying machine in sizes up to 8½" x 14", the charge will be \$0.13 per copy.

Examples: For one copy of a three-page document, the fee would be \$0.39. For two copies of a three page document, the fee would be \$0.78. For one copy of a 60-page document, the fee would be \$7.80.

(2) *Copies, documents requiring special handling.* For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.

(3) [Reserved]

(4) [Reserved]

(5) *Clerical searches.* For each quarter hour, or portion thereof, spent by clerical personnel in locating a requested record or records: \$2.25

(6) *Nonclerical searches.* For each quarter hour, or portion thereof, spent by professional or managerial personnel in locating a requested record or records where the search

cannot be performed by clerical personnel;
\$4.50

(7) [Reserved]

(8) *Certification.* For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.

(9) [Reserved]

(10) *Computerized records.* Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

(a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(c) Material costs (i.e., paper, cards, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

(11) *Postage/ mailing costs.* Return postage/ mailing fees may be added to charges for records if the postage/ mailing fee exceeds \$1.00.

(12) [Reserved]

(13) [Reserved]

(14) *Other services.* When a response to a request requires services or materials other than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) *Effective date.* This schedule applies to all requests made under the Freedom of Information Act and Privacy Act after August 19, 1985.

Dated: July 11, 1985.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary—Policy, Budget and Administration.

[FR Doc. 85-17116 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[PR Docket No. 84-1298; RM-4825; FCC 85-337]

Medical Advisory Communications With Ships at Sea

Correction

In FR Doc. 85-16293 beginning on page 27968 in the issue of Tuesday, July 9, 1985, make the following corrections:

1. On page 27969, in the first column, in the section heading now reading "§ 81.351 . . ." should read "§ 83.351 . . .".

2. Also on page 27969, in the first column, in § 83.351(e), in the fourth line, "share" should read "shared".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

Board of Contract Appeals; Rules of Procedure

48 CFR Part 6101

AGENCY: GSA Board of Contract Appeals.

ACTION: Final rule and interim rule; correction.

SUMMARY: This document corrects the General Services Administration Board of Contract Appeals rules of procedure.

FOR FURTHER INFORMATION CONTACT: James J. Regan, General Services Administration Board of Contract Appeals, (202) 566-0890.

In FR Doc 85-878 beginning on page 1756 in the issue of Friday, January 11, 1985, make the following corrections:

1. On page 1760, in 6101.5(b)(3)(iii), in the first column, second paragraph, next-to-the-last line, add "s" to the word "limit".

2. On page 1761 in 6101.8(c)(4), in the third column, first paragraph, add "and" after semi-colon at the end of the paragraph.

3. On page 1765, in 6101.16(c)(3)(i)-(iii), in the first and second columns, remove "or" at end of each paragraph after each semi-colon.

4. On page 1765, in 6101.17(d), in the third column, fourth paragraph, remove "." after "service" in the next to the last line.

5. On page 1766, in 6101.18(b)(2)(v), in the first column, last paragraph, add "and" after semi-colon at the end of the paragraph.

6. On page 1770, in 6101.35(b), in the second column, in the seventh paragraph line six, add "." after the word "accuracy".

In FR Doc 85-15351 beginning on page 26764 in the issue of Friday, June 28, 1985, make the following corrections:

1. On page 26765, in 6101.19 (Rule 19), in the second column, add a semi-colon after the word "notice" in the title.

2. On page 26766, in 6101.5, in the first column, "(n) * * *" should read "(b) * * *".

3. On page 26766, in 6101.5(b)(3)(i), in the second column, remove "; and" and replace with "." at the end of the paragraph.

4. On page 26766, in the second column, in 6101.5(d), in the twenty-first line, "(XMA)" should read "(KMA)".

In the FR correction beginning on page 27969 in the issue of Tuesday, July 9, 1985, make the following correction:

1. On page 27970, the Subpoena form, in the upper left hand side under the title heading, remove the line "Appeal/Protest/Petition of : " from the form in its entirety.

Dated: July 12, 1985.

Leonard J. Suchanek,

Chairman, Board of Contract Appeals.

[FR Doc. 85-17187 Filed 7-17-85; 8:45 am]

BILLING CODE 6820-RW-M

Proposed Rules

Federal Register

Vol. 50, No. 138

Thursday, July 18, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1985-10]

Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of Hearing on Proposed Rules.

SUMMARY: On April 17, 1985 the Federal Election Commission published a Notice of Proposed Rulemaking to revise its regulations governing contributions by persons and multicandidate political committees at 11 CFR 110.1 and 110.2 (50 FR 15189). The Commission will hold a public hearing on these proposed rules.

DATES: The hearing will be held on October 16, 1985 at 10:00 a.m. Persons or organizations wishing to testify at the hearing should notify the Commission and should submit written comments by October 1, 1985, if they have not previously submitted comments on these proposed rules.

ADDRESSES: The hearing will be held in the Commission's fifth floor meeting room, 1325 K Street, NW., Washington, D.C. Those wishing to testify at the hearing should address their requests and comments to Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 523-4143 or (800) 424-9530.

Dated: July 12, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-17038 Filed 7-17-85; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 50691-5091]

Watch Duty-Exemption Program

AGENCY: Import Administration, International Trade Administration, Commerce, Office of Territorial and International Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposed revision to 15 CFR Part 303, which governs the allocation of duty-free benefits among watch producers in the insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands pursuant to Pub. L. 97-446.

The proposed revision is necessary in order to provide a territorial share of the duty exemption for the Northern Mariana Islands ("NMI"). Pub. L. 94-241, which prescribes among other things that NMI shall be entitled to the same tariff privileges afforded to Guam, authorizes the establishment of such a share. We are proposing to take this action now in response to a request from the Governor of the NMI and to an expression of interest in receiving an allocation by a potential producer in the NMI.

We also propose to change § 303.14 by raising the maximum value of components for watches (from \$40 to \$80) and watch movements (from \$20 to \$30). This change will afford producers increased flexibility in producing and marketing insular watches and watch movements.

Section 303.12(a)(1) requires producers to certify that they intend and shall be able to continue operations beyond the current calendar year prior to issuance of their production incentive certificates. When we adopted this requirement in 1983 we were concerned that producers might use the certificates but nevertheless cease operations, i.e., take advantage of the incentive without fulfilling its purpose. In our judgment, the additional incentives have been

effective and there is no longer any reason for this transitional safeguard.

Finally, we are proposing minor editorial changes in §§ 303.1 (a) and (b), 303.6 (c) and (d), and 303.7(b)(6).

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Address comments to: Statutory Import Programs Staff, Rm. 1523, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291 dated February 17, 1981, the Departments of Commerce and the Interior have determined that these rules do not constitute a "major rule" as defined by section 1(b) of the Order. They are not likely to result in:

- (1) Annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices in either the public or private sector; or
- (3) Significant adverse impact on the domestic economy or on the ability of U.S. enterprise to compete with foreign enterprises.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than \$10 million per year.

Pursuant to the requirements of the Paperwork Reduction Act of 1980, the Departments have determined that the proposed amendment will not significantly increase the information collection burden on the public. The collections of information involved with this rule have been approved by the Office of Management and Budget under control numbers 9625-0040 and 0625-0134.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American

Samoa, Guam, Virgin Islands, Northern Mariana Islands.

PART 303—[AMENDED]

For reasons set forth above, the following amendments of Part 303 are made:

1a. The authority section is revised to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329 (19 U.S.C. 1202); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C.A. 1681, note)

1b. Section 303.1 (a) and (b) are revised to read as follows:

§ 303.1 Purpose.

(a) This part implements the responsibilities of the Secretaries of Commerce and the Interior ("the Secretaries") under Pub. L. 97-446, enacted on 12 January 1983, which substantially amended Pub. L. 89-805, enacted 10 November 1966, amended by Pub. L. 94-88, enacted 8 August 1975, and amended by Pub. L. 94-241, enacted 24 March 1976. The law provides for exemption from duty of watches and watch movements produced or manufactured in a United States insular possession, without regard to the value of the foreign materials they contain, if they conform with the provisions of Headnote 6, Schedule 7, Part 2, Subpart E of the Tariff Schedules of the United States ("Headnote 6"). Headnote 6 denies this benefit to articles containing any material which is the product of any country with respect to which Column 2 rates of duty apply; authorizes the Secretaries to establish the total quantity of such articles, provided that the quantity so established does not exceed 10,000,000 units or one-ninth of apparent domestic consumption, whichever is greater, and provided also that the quantity is not decreased by more than ten percent nor increased by more than twenty percent (or to more than 7,000,000 units, whichever is greater) or the quantity established in the previous year.

(b) The law directs the International Trade Commission to determine the apparent domestic consumption for the preceding calendar year in the first year U.S. insular imports of watches and watch movements exceed 9,000,000 units. Headnote 6 authorizes the Secretaries to establish territorial shares of the overall duty-exemption within specific limits; and provides for the annual allocation of the duty-exemptions among insular watch producers equitably and on the basis of allocation criteria, including minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

2. Section 303.2 is amended by revising paragraph (a)(8).

§ 303.2 Definitions and forms.

(a) * * *
(8) *Territories, territorial, and insular possessions* refer to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

§ 303.2, 303.3, 303.5, 303.7, 303.9, 303.10, 303.14 [Amended]

3. The terms "insular possession" and "insular possessions" are changed to read "territory" and "territories," respectively, each time they appear in §§ 303.2(a)(14); 303.3 (b)(3) and (c)(1); 303.5(b)(7); 303.7(b)(1); 303.9(b)(4); 303.10(a)(2); and 303.14(b)(2).

§ 303.6 [Amended]

4. Section 303.6 is amended by changing the word "initial" to "interim" each time it appears in paragraphs (c) and (d).

§ 303.7 [Amended]

5. Section 303.7 is amended by taking out the words "as prescribed in the annual rules" in the first sentence of paragraph (b)(6).

6. Section 303.12 is amended by revising paragraph (a)(1).

§ 303.12 Issuance and use of Production incentive certificates.

(a) *Issuance of certificates.* (1) Certificates of Entitlement, Form ITA-360, shall be issued before March 1 of the current year.

7. Section 303.14 is amended by revising paragraph (b)(3), (d)(1), and (e).

§ 303.14 Allocation factors and miscellaneous provisions.

(b) * * *
(3) The maximum value of components referred to in Section 303.10(a)(1) shall be \$30 for watch movements and \$80 for watches.

(d) *New Entrant Invitations.* (1) Applications from new firms are invited for the territorial shares of American Samoa and the Northern Mariana Islands.

(e) *Territorial shares.* The shares of the total duty exemption are 3,500,000 for the Virgin Islands, 1,000,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

(Approved by the Office of Management and Budget under control numbers 0625-0040 and 0625-0134.)

Dated: July 10, 1985.

John L. Evans,

Deputy to the Deputy Assistant Secretary for Import Administration.

Kittie Baier,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 85-17107 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DS 4310-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 109, 110, 225, 226, 500, and 509

[Docket No. 80N-0128]

Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.
ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposed rule that would have prohibited or limited the amount of polychlorinated biphenyls (PCB's) in sealed electrical transformers or capacitors used or stored in or around food, feed, and food- and feed-packaging materials plants or storage facilities. FDA has concluded that a final rule recently published by the Environmental Protection Agency (EPA) adequately protects the public health in this area, and that, therefore, the proposed rule is no longer necessary.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION:

Background

The industrial uses of PCB's are subject to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605(e)), which is administered by EPA, as well as the Federal Food, Drug, and Cosmetic Act (the act), which is administered by FDA. TSCA authorizes EPA to allow PCB's to be used in a "totally enclosed manner." On May 31, 1979, EPA issued a rule that designated PCB-containing industrial transformers as totally enclosed and thus not subject to the TSCA prohibition.

In light of the EPA rule, FDA published in the *Federal Register* of May 9, 1980 (45 FR 30984), a proposed rule that would have prohibited or limited the amount of PCB's in sealed electrical transformers and capacitors used or stored in or around food, feed, and food-and feed-packaging materials plants or storage facilities (21 CFR 109.15, 110.40, 225.1, 226.1, 500.45, and 509.15). FDA requested that comments submitted in response to that proposal include information regarding: (1) The number, types, and location of PCB-containing transformers or capacitors used or stored in or around FDA-regulated food, feed, or food-packaging materials plants and storage materials plants and storage facilities; (2) a reasonable time estimate for replacing such electrical equipment or replacing the PCB fluid in such equipment; and (3) an estimate of the cost involved.

Interested persons were requested to submit comments by July 7, 1980. After receiving a number of requests for extensions, FDA extended the comment period to November 4, 1980, by notice published in the *Federal Register* of July 1, 1980 (45 FR 44325); to December 4, 1980, by notice published in the *Federal Register* of October 28, 1980 (45 FR 71364); and to March 4, 1981, by notice published in the *Federal Register* of December 2, 1980 (45 FR 79856).

On October 30, 1980, the U.S. Court of Appeals for the District of Columbia ruled, in relevant part, that regulations issued by EPA that characterized intact, nonleaking transformers, capacitors, and electromagnets containing PCB's as "totally enclosed" for purposes of TSCA were unsupported by the rulemaking record and remanded the regulations to EPA for further consideration [see *Environmental Defense Fund v. Environmental Protection Agency*, No. 79-180 (D.C. Cir., October 30, 1980)].

In response to a motion by EPA and certain other parties to the case, the court issued an order on February 12, 1981, requiring EPA to undertake rulemaking concerning the use of PCB's. Because FDA's proposal was based in large part on EPA's regulation, and because of the uncertainties concerning the impact of the actions of the Court of Appeals on FDA's proposal, FDA decided to hold in abeyance the May 9, 1980 proposal. A notice of abeyance of the proposed rule was published in the *Federal Register* of March 6, 1981 (46 FR 15518).

In response to the court order of February 12, 1981, EPA published a final rule in the *Federal Register* of August 25, 1982 (47 FR 37342), that, among other things, prohibits the use of PCB transformers with a dielectric fluid PCB

concentration of 500 parts per million (ppm) or greater posing an exposure risk to food or feed, after October 1, 1985, and requires a weekly inspection of this equipment for leaks of dielectric fluid until that date. The record compiled during the EPA rulemaking establishes that the 500 ppm limitation is reasonable and protective of the public health. The final rule also prohibits the use of large PCB capacitors after October 1, 1988, unless they are located in restricted-access electrical substations or in contained and restricted-access indoor installations for the remainder of their useful lives.

Comments Received by FDA

FDA received 160 comments in response to the May 9, 1980 proposal from utility companies, suppliers, manufacturers and processors, trade associations, consumers, and other interested persons. Most of the comments from industry said that the proposed regulations would have an adverse impact on their businesses. Several comments asserted that the proposal was overly broad. The food-packaging materials industry asked that their plants be excluded from the coverage of the proposed rule because, in the industry's view, there is no reason to believe that food or feed would be contaminated from any leak in such a plant. Many consumers, however, supported: (1) A ban on installation of any equipment containing PCB's in any plants that process food and (2) a prohibition of the use of currently installed equipment that contains PCB's.

Withdrawal of the Proposal

FDA has considered the comments and has carefully reviewed EPA's final rule of August 25, 1982. EPA's requirements apply to the uses and conditions that FDA sought to regulate in its proposed rule. FDA believes that EPA's new requirements place reasonable limitations on the industrial use of electrical transformers and capacitors and provide adequate safeguards against the risk of contamination of the food and feed supply from PCB-containing electrical equipment. Accordingly, FDA believes that the revisions to §§ 109.15, 110.40, 110.80(k), 225.1, 226.1, 500.45, and 509.15 proposed in the *Federal Register* of May 9, 1980, are no longer necessary and is withdrawing its proposal.

List of Subjects

21 CFR Part 109

Contaminants, Polychlorinated biphenyls (PCB's).

21 CFR Part 110

Good manufacturing practices, Umbrella good manufacturing practice.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers.

21 CFR Part 226

Animal feed premixes, Labeling, Packaging and containers.

21 CFR Part 500

Animal drugs, Animal feeds, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 509

Animal food contaminants, Animal foods, Packaging and containers, Polychlorinated biphenyls (PCB's).

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKAGING, OR HOLDING HUMAN FOOD

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED PREMIXES

PART 500—GENERAL

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIALS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a), 406, 409, 701(a), 52 Stat. 1046 as amended, 1049 as amended, 1055, 72 Stat. 1785-1788 as amended (21 U.S.C. 342(a), 346, 348, 371(a))), the Public Health Service Act (sec. 361, 58 Stat. 703 (42 U.S.C. 264)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the proposal published in the *Federal Register* of May 9, 1980 (45 FR 30984), is hereby withdrawn, and the rulemaking proceeding initiated by the proceeding is terminated.

Dated: July 8, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-17018 Filed 7-17-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 170

[Docket No. 84N-0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe*Correction*

In FR Doc. 85-15787 beginning on page 27294 in the issue of Tuesday, July 2, 1985, make the following correction:

§ 170.30 [Corrected]

On page 27297, second column, § 170.30(c)(2), second line, "January 1, 1985" should read "January 1, 1958".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 917****Consideration of Amendments to the Kentucky Program Under the Surface Mining Control and Reclamation Act 1977**

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

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on certain amendments submitted by the Commonwealth of Kentucky to its program for the regulation of surface coal mining and reclamation in the State. The amendments related to Kentucky's revised regulations pertaining to use of explosives and the blaster training and certification program.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m. August 2, 1985 to be considered. Comments not received by this date will not necessarily be considered.

ADDRESSES: Comments should be sent or hand-delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION: by a letter dated December 4, 1984, OSM received, pursuant to the 30 CFR 732.17

State program amendment procedures, revised regulations amending the Kentucky program. On January 3, 1985, OSM published a notice in the Federal Register (50 FR 283) announcing receipt of the amendments to the Kentucky program and inviting public comment thereon. The public comment period closed February 4, 1985. A public hearing scheduled for January 28, 1985, was not held because no one expressed a desire to testify.

On May 22, 1985, OSM received additional material from Kentucky pertaining to use of explosives and the blaster training and certification program. This material consists of further revisions to the Kentucky Administrative Regulations (KAR) at 405 KAR 7:070, 16:120 and 18:120.

OSM is reopening the comment period for an additional 15 days to allow the public sufficient time to review and comment on the above Kentucky amendments. Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations of why the commenter believes or does not believe that the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations. Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under "ADDRESSES."

List of Subjects in 30 CFR Part 917

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

Dated: July 11, 1985.

Charles B. Kenahan,
Assistant Director, Program Operations and Inspection.

[FR Doc. 85-17051 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 926**Permanent State Regulatory Program of Montana**

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

ACTION: Proposed rule.

SUMMARY: OSM is seeking comment on Montana's request to further extend the deadline for Montana: (1) To promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who

are directly responsible, for the use of explosives in a surface coal mining operation. On March 6, 1984, Montana requested an extension of time, until May 31, 1984, for the development of a blaster certification program. On May 14, 1984, the Director, OSM announced his decision to extend Montana's deadline to May 31, 1984 (49 FR 20286). On June 18, 1985, Montana requested an additional extension of time, until October 31, 1985, to develop the training portion of its blaster certification program.

DATE: Comments not received by August 19, 1985 the address below, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328-5830.

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

On January 3, 1984, the State of Montana submitted to OSM two amendments to its permanent regulatory program. One amendment was intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification.

OSM announced in the February 6, 1984 Federal Register (49 FR 4385), receipt of the proposed program amendment and procedures for the public comment period and public hearing on the adequacy of the proposed amendments.

The State of Montana conducted on February 2, 1984, a public hearing to receive comments on the adequacy of Montana's proposed regulations. As a result of substantive comments received at the hearing, the State decided to revise its amendment package and reopen the comment period until April 13, 1984.

To accommodate the revised schedule, the State submitted to OSM on March 6, 1984, a request for an extension until May 31, 1984, to submit final rules addressing the blaster certification program. On May 25, 1984, the State on Montana submitted to OSM a proposed blaster certification program amendment. OSM published notification of receipt of the State's submission and announced a public comment period on the proposed amendment in the June 14, 1984 *Federal Register* (49 FR 24542). On August 20, 1984, the State of Montana was notified of deficiencies that were identified as a result of OSM's review of the May 25, 1985 submission. Montana responded, on September 20, 1984, to OSM's concerns by providing additional material that appeared to adequately address the issues raised in OSM's letter of August 20, 1984.

On October 29, 1984, the Director of OSM's Casper Field Office informed the State of Montana that he was prepared to recommend to the Director that he approve Montana's blaster certification program pending review and approval of the State's blaster training course and blaster certification examination as required by 30 CFR Part 850.

OSM evaluated the State's blaster certification examination and blaster training program and identified deficiencies in the training program. As a result, the State of Montana requested on June 18, 1985 an additional extension of time, until October 31, 1985, to develop the training portion of its blaster certification program.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August

28, 1981, the Officer of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

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

List of Subjects in 30 CFR Part 926

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

Dated: July 11, 1985.
 Ted O. Christensen,
 Acting Director, Office of Surface Mining.
 [FR Doc. 85-17052 Filed 7-17-85; 8:45 am]
 BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-13]

Drawbridge Operation Regulations; Vermilion River, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD) and Vermilion Parish, the Coast Guard is considering a change to the regulations governing the operation of four state owned drawbridges and one parish owned drawbridge over the Vermilion River, Louisiana, as follows:

(1) The lift span bridge, mile 22.4, on LA82 at Perry, Vermilion Parish.

(2) The lift span bridge, mile 25.4, on LA14 at Abbeville, Vermilion Parish.

(3) The lift span bridge, mile 26.0, on LA14 Bypass at Abbeville, Vermilion Parish.

(4) The swing span bridge, mile 34.2, near Milton, Vermilion Parish, (parish owned).

(5) The lift span bridge, mile 37.6, on LA92 at Milton, Lafayette Parish.

This proposed change would require that the draw of the bridge at Perry, mile 22.4, open on at least four hours advance notice from 9 p.m. to 5 a.m., and that the draws of the other four bridges open on at least four hours advance notice from 6 p.m. to 10 a.m. The draws would open on signal outside these hours. Presently, the draws are required to open on at least 12 hours advance notice from 9 p.m. to 5 a.m. and to open on signal from 5 a.m. to 9 p.m.

This proposal to extend the advance notice period for four bridges from eight to 16 hours (6 p.m. to 10 a.m.) is being made because of the infrequent requests for opening the draws during that period. This proposal does not change the existing advance notice period for the Perry bridge, but it does reduce the advance notice time to be given for an opening for that bridge from 12 to four hours, to be consistent with the other bridges. This action should relieve the bridge owners of the burden of having a person constantly available at each of the four bridges from 6 p.m. to 10 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before September 3, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all

communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulations

Vertical clearance of the bridges in the closed position range from 4.0 to 15.0 feet above high water and 9.0 to 18.0 feet above low water. Navigation through the bridges consists of commercial and pleasure boats. Data submitted by the LDOTD show that this traffic is infrequent during the proposed advance notice period as reviewed below:

(1) *Perry bridge (mile 22.4)*. In 1984, between 9 p.m. and 5 a.m., the existing advance notice period, there were 138 bridge openings—an average of 11.5 openings per month or an average of one opening every three days. In 1983, for the same period, there was 98 bridge openings. No change is being proposed to the existing eight hour period during which the bridge opens on advance notice. However, the amount of advance notice time to be given for an opening is being reduced from 12 to four hours.

(2) *Abbeville bridge (mile 25.4)*. In 1984, between 6 p.m. and 10 a.m., the proposed advance notice period, there were 254 bridge openings—an average of 21.0 openings per month or an average of two openings every three days. In 1983, for the same period, there were 216 bridge openings.

(3) *Abbeville by-pass bridge (mile 26.0)*. In 1984, between 6 p.m. and 10 a.m., the proposed advance notice period, there were 230 bridge openings—an average of 19.0 openings per month or an average of two openings every three days. In 1983, for the same period, there were 198 bridge openings.

(4) *Vermilion Parish bridge (mile 34.2)*. In 1984 and 1983, between 6 p.m. and 10 a.m., the proposed advance notice period, there were as many bridge openings each year as for the Milton bridge upstream at mile 37.6.

(5) *Milton bridge (mile 37.6)*. In 1984, between 6 p.m. and 10 a.m., the proposed advance notice period, there were 225 bridge openings—an average of 19.0 openings per month or an average of two openings every three days. In 1983, for the same period, there were 181 bridge openings.

Considering the few openings involved for each bridge, the Coast Guard feels that the current on site attendance at the four bridges (mile 25.4 through mile 37.6) between 6 p.m. and 10 a.m. is not warranted, and that the

bridges can be placed on four hours advance notice for an opening. This will allow relief to the bridge owners, while still reasonably providing for the needs of navigation. Outside this period, the bridges will continue to open on signal. The only change to the operation of the Perry bridge (mile 22.4) is to reduce the advance notice time to be given for an opening from 12 to four hours.

The advance notice for opening the draws would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233-7304, for state bridges; and, to Vermilion Parish at Abbeville, Louisiana (318) 893-0108, for the parish bridge. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD and Vermilion Parish recognize that there may be an unusual occasion to open the bridges on less than four hours notice for an emergency or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass the bridges during the proposed advance notice periods, as evidenced by the bridge openings for 1984 and 1983. In those years, each bridge averaged well below one opening per day for those periods. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at any of the bridges at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117

of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.509 is amended by revising paragraph (a), designating existing paragraph (b) as paragraph (c), and adding new paragraph (b) and (d) to read as follows:

§ 117.509 Vermilion River.

(a) The draw of the S82 bridge, mile 22.4 at Perry, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given.

(b) The draws of the following bridges shall open on signal; except that, from 6 p.m. to 10 a.m. the draws shall open on signal if at least four hours notice is given:

(1) S14 bridge, mile 25.4 at Abbeville.

(2) S14 Bypass bridge, mile 26.0 at Abbeville.

(3) Vermilion Parish bridge, mile 34.2 near Milton.

(4) S92 bridge, mile 37.6 at Milton.

(c) * * *

(d) During the advance notice periods, the draws of the bridges listed in this section shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: July 10, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-17092 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket Numbers AM064/065 MD]

Approval and Promulgation of Implementation Plans, Correction to the Maryland State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Correction to proposed rulemaking notice.

SUMMARY: This notice announces a correction to the proposed rulemaking notice regarding a revision to the Maryland State Implementation Plan

(SIP) under the Clean Air Act. On May 3, 1985, EPA published a proposed rulemaking notice (50 FR 18889), proposing approval of a generic visible emissions exception rule (AM064-MD). EPA inadvertently stated that this generic visible emissions exception rule would not be applicable in Air Quality Control Regions III and IV (Baltimore and Washington). The sentence should read, "The proposed revision is only applicable in Air Quality Control Regions III and IV (Baltimore and Washington metropolitan areas.)" This Federal Register Notice also extends the comment period for this proposed SIP revision.

EFFECTIVE DATE: Comments must be submitted on or before August 2, 1985.

ADDRESSES: Written comments on the proposed rule should be addressed to Mr. David L. Arnold at the EPA Region III address shown below. Copies of Maryland's request for amendments to their visible emissions regulations are available for public inspection during business hours at the following location: U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), 841 Chestnut Building, Philadelphia, PA 19107, Attn: Ms. Patricia Gaughan (3AM11) Maryland Office of Environmental Programs, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: Mr. George P. Ferreri.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, 215/597-9337, at the EPA Region III address above.

Authority: 42 U.S.C. 7401-7642.

Dated: July 8, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 85-17127 Filed 7-17-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and status review.

SUMMARY: The Service announces 90-day findings on two petitions to add species to the List of Endangered and Threatened Wildlife. A petition to list six cave-adapted invertebrate species

has presented substantial information that the requested action may be warranted. Review of the status of those six species begins herewith. A petition to list the Spruce Creek king's crown snail has not presented substantial information that the requested action may be warranted. The Service also announces its 12-month findings with respect to five pending petitions to add species to the List of Endangered and Threatened Wildlife. Petitioned actions to list the blackside dace, orangefin madtom and Roanoke logperch, flattened musk turtle, Concho water snake, and Florida scrub jay were found to be warranted but precluded by other efforts to revise the lists. The petition to list the Concho water snake included a request to list also a related subspecies, the Brazos water snake, an action found not to be warranted.

DATES: The findings announced in this notice were made between October 12, 1984, and April 28, 1985. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, DC 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or

commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are also published promptly in the Federal Register.

Initial 90-day findings were announced for the blackside dace on September 4, 1984 (49 FR 34878); for the orangefin madtom and Roanoke logperch on January 16, 1984 (49 FR 1919); for the flattened musk turtle on April 5, 1984 (49 FR 13558); for the Concho and Brazos water snakes (as Harter's water snake) on May 18, 1984 (49 FR 21089); and for the Florida scrub jay on July 13, 1984 (49 FR 28583). The Concho water snake (*Nerodia harteri paucimaculata*) and Brazos water snake (*Nerodia harteri harteri*) have been referred to together in the previous notices as Harter's water snake (*Nerodia harteri*). Status review for the flattened musk turtle began with a notice of review on June 6, 1977 (42 FR 28903). Status review for the other species mentioned commenced with the December 30, 1982, vertebrate notice of review (47 FR 58454).

Findings

1. A petition from Travis Audubon Society, dated February 8, 1985, and received by the Service on February 12, 1985, requested listing as endangered species the following six cave organisms: *Microcreagris texana*, *Leptoneta myopica*, *Texella reddelli*, *Rhadine persephone*, *Texamaurops reddelli*, and *Cylindropsis* species (Tooth Cave blind rove beetle, undescribed species). These animals are found only in a limited set of caves in northwest Travis County and adjacent Williamson County, Texas, within or near an area known as the Parke that has been proposed for commercial and residential development. The Service has made the finding that this petition does present substantial information that the requested action may be warranted.

2. A petition from Mr. John K. Tucker, dated January 22, 1985, and received by the Service on January 28, 1985, requested listing as an endangered species an undescribed *Melongena* (king's crown) snail he considers a

distinct species that lives only in the Spruce Creek estuarine system of Volusia County, Florida. The Service found that the petition did not present substantial information that the requested action may be warranted.

3. A pending petition to list the blackside dace, *Phoxinus cumberlandensis*, dated May 11, 1984, was received by the Service on May 16, 1984, from Mr. George Burgess on behalf of the Southeastern Fishes Council. The blackside dace is a rare minnow restricted to small upland streams of the upper Cumberland River drainage in Kentucky and Tennessee, above and just below Cumberland Falls. On the basis of the best scientific information available the Service has found that the action requested by this petition is warranted, but precluded from immediate proposal because of other pending proposals to list, delist, or reclassify species.

4. A pending petition to list two fish species, the orangefin madtom, *Noturus gilberti*, and the Roanoke logperch, *Percina rex*, as threatened species, dated September 29, 1983, was received by the Service on October 6, 1983, from Mr. Noel M. Burkhead. The orangefin madtom is known only from the Roanoke River drainage in Virginia and North Carolina and one tributary of the James River in Virginia. The Roanoke logperch is known only from the Roanoke River drainage, including the Dan and Chowan Rivers, all within the State of Virginia. On October 12, 1984, the Service made the 12-month finding that both actions requested are warranted, but precluded from immediate proposal because of other pending proposals to list, delist or reclassify species. Through an oversight, the announcement of this finding was omitted from the notice of petition findings published May 10, 1985 (50 FR 19761).

5. A pending petition to list the flattened musk turtle as threatened, dated November 30, 1983, was received by the Service on December 1, 1983, from Mr. Michael Bean and Mr. Bruce Manheim on behalf of the Environmental Defense Fund. The flattened musk turtle is known only from the upper Black Warrior River system above Bankhead Dam in Alabama. Status surveys have been conducted under contract with the Service and separately under the sponsorship of Alabama Coal Association. The Service's review of the best scientific and commercial information available indicates that the action requested by this petition is warranted. An immediate proposal to implement listing is

precluded because of other pending proposals to list, delist, or reclassify species.

6. A pending petition to list the Concho water snake, *Nerodia harteri paucimaculata*, as threatened, dated February 14, 1984, was received by the Service on February 28, 1984, from Mr. Ted L. Brown of the New Mexico Herpetological Society. The Concho water snake is known only from the Concho and upper Colorado Rivers of west central Texas. An earlier survey of its status was conducted under cooperative agreement with John W. Flury and Terry C. Maxwell of Angelo State University and supplemented with additional information from surveys by Norman J. Scott and Lee A. Fitzgerald of the Service's Denver Wildlife Research Center. After review of the best scientific information available, the Service has found that the action requested by the petitioner in respect to the Concho water snake is warranted. An immediate proposal to implement listing is precluded because of other pending proposals to list, delist, or reclassify species.

7. The pending petition just described dated February 14, 1984, and received by the Service on February 28, 1984, from Mr. Ted L. Brown of the New Mexico Herpetological Society, also requested listing as threatened the Brazos water snake, *Nerodia harteri harteri*. This snake is known from the Brazos River of central Texas. On the basis of the scientific information available in 1982, the Brazos water snake was considered with the Concho water snake (as Harter's water snake) in the comprehensive vertebrate notice of review. Additional information secured in recent surveys indicates the Brazos water snake is neither as rare nor as patchy in distribution as originally believed. The Service has found that the action requested by the petitioner with respect to the Brazos water snake is not warranted by its present status.

8. A pending petition to list the Florida scrub jay as threatened, date March 16, 1984, was received by the Service on March 22, 1984, from Dr. Jeffrey A. Cox. The supporting data, with population estimates and past and present distribution, was developed in his University of Florida doctoral dissertation, "Conservation and Ecology of the Florida Scrub Jay." This bird is known only from pockets of scrub oak on sand ridges in central and coastal Florida, isolated from other scrub jay subspecies by about 1000 miles of unsuitable habitat. The Service has found that the action requested by this petitioner is warranted, but precluded

from immediate proposal by other pending proposals to list, delist, or reclassify species.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the Federal Register. The most recent progress report was published on May 10, 1985 (50 FR 19761).

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the six Texas cave invertebrate species under status review. They include: (1) *Microreagris texana* Muchmore (Arachnida; Pseudoscorpionida; Neobisiidae), (2) *Leptoneta myopica* Gertsch (Arachnida; Araneae; Leptonetidae), (3) *Texella reddelli* Goodnight and Goodnight (Arachnida; Opilionida; Phalangodidae), (4) *Rhadine persephone* Barr (Insecta; Coleoptera; Carabidae), (5) *Texamaourops reddelli* Barr and Steeves (Insecta; Coleoptera; Pselaphidae), and (6) *Cylindropsis* species undescribed, Tooth Cave blind rove beetle (Insecta; Coleoptera, Staphylinidae). The sixth species represents the first New World blind staphylinid beetle, and apparently the first North American record of a genus previously known only from Europe.

Author

This notice was prepared by Dr. George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (730/235-1975 or FTS 235-1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.; 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).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 9, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-17039 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted to the Secretary of Commerce for his review Amendment #9 to the fishery management plan for the Bering Sea and Aleutian Islands groundfish fishery (FMP) and is requesting comments from the public.

DATE: Comments on the amendment should be submitted on or before September 27, 1985.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained from North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230; or the Council staff (Jim Glock), 907-274-4563.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act requires that when a fishery management plan or plan amendment is submitted by a regional fishery management council to the Secretary for review, he must publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 9 to the FMP proposes three measures to better manage and protect groundfish stocks in the Bering Sea and Aleutian Islands area as follows:

1. Prohibit foreign trawling within 20 miles of the Aleutian Islands.

This measure would greatly reduce the foreign incidental catch of near-shore species which are fully utilized by the U.S. fishing industry. Its effect on the ability of foreign nations to harvest their groundfish allocations would be insignificant.

2. Establish a system for domestic catcher/processor vessels to submit a written catch report within one week of the date of catch and to check in and check out of fishing areas.

This measure would provide timely catch data to fisheries managers to assure that optimum yields are not exceeded. It was not needed before onboard processing and freezing, when small boats landed their catch within a few days.

3. Implement the NMFS habitat conservation policy. In addition to implementing broad new policy, this measure would require fishing vessel operators not to discard or abandon fishing gear or other items in the sea and to make a reasonable attempt to retrieve such items if encountered or report the location to an appropriate official.

An environmental assessment, required under the National Environmental Policy Act, and a regulatory impact review/initial regulatory flexibility analysis, required under Executive Order 12291 and the Regulatory Flexibility Act, were prepared for this amendment and are available from the Council at the address above.

Regulations proposed by the Council and based on this amendment are scheduled to be published in 30 days.

List of Subjects in 50 CFR Parts 611 and 675

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: July 15, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-17136 Filed 7-16-85; 9:08 am]

BILLING CODE 3510-22-M

50 CFR Part 650

Atlantic Sea Scallop Fishery

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council has submitted an amendment (Amendment 1) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery for review by the Secretary of Commerce, and is requesting comments from the public. The amendment proposes to replace the current maximum average meat count/

minimum shell height with a four-ounce standard corresponding to a minimum scallop size of 40 meat count. The amendment also proposes to eliminate the adjustable meat count standard, and extend enforcement of the four-ounce standard beyond the point of first transaction in the United States. Copies of the amendment may be obtained from the address below.

DATE: Comments on the amendment should be submitted on or before September 30, 1985.

ADDRESS: All comments should be sent to Mr. Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930. Clearly mark, "Comments for Sea Scallop Amendment 1" on the envelope.

Copies of the amendment are available upon request from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Scallop Management Coordinator, 617-281-3600, ext. 244.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether or not to approve the plan or amendment.

The proposed amendment establishes a four-ounce standard for Atlantic sea scallops, which becomes the minimum that the smallest tens sea scallops in a one-pound sample may weigh. Enforcement of this measure will be accomplished through a prohibition against the possession of non-conforming sea scallops at all times. The amendment is intended to improve the conservation program for Atlantic sea scallops by reducing the mortality of small, immature sea scallops which now occur when those scallops are mixed with larger scallops in technical compliance with the maximum average meat count.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: July 15, 1985.

Richard B. Roe,

*Director, Office of Protected Species and
Habitat Conservation, National Marine
Fisheries Service.*

[FR Doc. 85-17135 Filed 7-16-85; 9:08 am]

BILLING CODE 3510-22-M

50 CFR Part 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder)

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

ACTION: Notice of availability of a
Secretarial Amendment to the Interim
Fishery Management Plan for Atlantic
Groundfish and request for comments.

SUMMARY: NOAA issues this notice that
the Secretary of Commerce has
submitted to the New England Fishery
Management Council a Secretarial
Amendment to the Interim Fishery
Management Plan for Atlantic
Groundfish (FMP) and is requesting
comments from the public. The
Secretarial Amendment would extend
the FMP which is currently effective

until September 30, 1985, for an
additional year (September 30, 1986) or
until the FMP is replaced by an
approved Northeast Multi-Species
Fishery Management Plan; whichever
time period is shorter. Copies of the
Secretarial Amendment may be
obtained from the address below.

DATE: Comments on the Amendment
should be submitted on or before
September 30, 1985.

ADDRESS: All comments should be sent
to Richard B. Roe, Director, Office of
Fisheries Management, 3300
Whitehaven St. NW., Washington, D.C.
20235. Mark the outside of the envelope
"Comments on Atlantic Groundfish
Secretarial Amendment."

Copies of the Secretarial Amendment
to the Interim Fishery Management Plan
for Atlantic Groundfish are available
from W.P. Jensen, Chief, Fisheries
Management Operations, 3300
Whitehaven St. NW., Washington, D.C.
20235.

FOR FURTHER INFORMATION CONTACT:
Mark Millikin, 202-634-7449.

SUPPLEMENTARY INFORMATION: The
Magnuson Fishery Conservation and
Management Act (16 U.S.C. 1801 *et seq.*)

requires that the Secretary of Commerce
prepare a fishery management plan or
amendment, in accordance with the
national standards and any other
applicable law, if the appropriate
council fails to develop and submit to
the Secretary, after a reasonable period
of time, a fishery management plan for
such fishery. Since the current FMP
remains effective until September 30,
1985, a continuation of management
measures prescribed by the FMP is
necessary for regulating harvest of these
species while preparation and review of
a new management plan is underway.

No new regulations are proposed by
the Secretary to implement this
Amendment. The regulations for the
FMP are described in 50 CFR Part 651 at
47 FR 43709 (October 4, 1982).

(16 U.S.C. 1801 *et seq.*)

Dated: July 15, 1985.

Richard B. Roe,

*Director, Office of Protected Species and
Habitat Conservation, National Marine
Fisheries Service.*

[FR Doc. 85-17137 Filed 7-16-85; 9:08 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 50, No. 138

Thursday, July 18, 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

Montana; Deerlodge National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Deerlodge National Forest Plan Draft Environmental Impact Statement.

SUMMARY: The period of public review for the Deerlodge National Forest Draft Environmental Impact Statement has been extended until September 3, 1985.

ADDRESSES: Requests for further information should be addressed to: Frank Salmons, Supervisor, Deerlodge National Forest, Federal Building, P.O. Box 400, Butte, MT 59703.

Tom Coston,

Regional Forester.

[FR Doc. 85-17027 Filed 7-17-85; 8:45 am]

BILLING CODE 3410-11-M

Medicine Bow National Forest Grazing Advisory Board; Meeting

The Medicine Bow National Forest Grazing Advisory Board will meet August 5, 1985, at 7:30 a.m. at the Vee-Bar Ranch on Highway 130 six miles east of Centennial, Wyoming. The Board, Forest Service personnel and interested public will then proceed to review range improvements, range condition and allotment management on the Laramie Ranger District.

The Board will make recommendations concerning range analysis development of Allotment Management Plans, utilization of Range Betterment Funds and discuss Advisory Board By-laws.

The meeting will be open to the public. Persons who wish to attend and participate should notify Range Staff Officer, Ladd G. Frary, Medicine Bow

National Forest [307/745-8971] prior to the meeting date. Public members may participate in discussions during the tour at any time or may file a written statement following the meeting.

Dated: July 8, 1985.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 85-17109 Filed 7-17-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA)

Title: Application for Financial Assistance—Lender's Request for Guarantee

Form Number: Agency—ED-201; OMB—0610-0025

Type of Request: New collection
Burden: 50 respondents; 8,000 reporting hours

Needs and Uses: This application is intended to provide EDA with a more comprehensive analysis of the borrower's financial condition and its ability to repay the proposed loan
Affected Public: Businesses or other for-profit institutions, non-profit institutions, small businesses or organizations

Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-17030 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Census of Tampa—AHS Match Reconciliation Record

Form Number: Agency—TACM-3; OMB—NA

Burden: 200 respondents; 27 reporting hours

Type of Request: This questionnaire will be used to assess and resolve differences in household reporting for three basic housing characteristics between the pretest of the Census being conducted in Tampa, Florida, and the American Housing Survey.

Affected Public: Individuals or households

Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: 1986 Census of Central Los Angeles County and East Central Mississippi

Form Number: Agency—DC-102A-R, DC-102-A-U; OMB—NA

Type of Request: New collection
Burden: 100,000 respondents; 3,333 reporting hours

Needs and Uses: This survey will be a precanss before the enumeration and consists primarily of verifying and updating address listings.

Affected Public: Individuals or households

Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622.

14th and Constitution Avenue, NW.,
Washington D.C. 20230.

Written comments and
recommendations for the proposed
information collections should be sent to
Timothy Sprehe, OMB Desk Officer,
Room 3235, New Executive Office
Building, Washington D.C. 20503

Dated: July 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-17031 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Western Research Institute et al.

Pursuant to section 6(c) of the
Educational, Scientific and Cultural
Materials Importation Act of 1966 (Pub.
L. 89-651; 80 Stat. 897; 15 CFR Part 301),
we invite comments on the question of
whether instruments of equivalent
scientific value, for the purposes for
which the instruments shown below are
intended to be used, are being
manufactured in the United States.

Comments must comply with
§ 301.5(a)(3) and (4) of the regulations
and be filed within 20 days with the
Statutory Import Programs Staff, U.S.
Department of Commerce, Washington,
D.C. 20230. Applications may be
examined between 8:30 A.M. and 5:00
P.M. in Room 1523, U.S. Department of
Commerce, 14th and Constitution
Avenue, NW., Washington, D.C.

Docket number: 84-279R. Applicant:
Western Research Institute, Laramie,
WY 82070. Instrument: Data System,
Pyrolysis Probe & Desorption Chemical
Ionization Probe. Original notice of this
resubmitted application was published in
the Federal Register of September 7,
1984.

Docket number: 85-213. Applicant:
U.S. Army Institute of Dental Research,
Walter Reed Army Medical Center,
Washington, DC 20307-5300. Instrument:
Mass Spectrometer, Model 8230B and
Accessories. Manufacturer: Finnigan
MAT, West Germany. Intended use: The
instrument is intended to be used for the
following research objectives:

- (1) Structure elucidation of biological
compounds.
- (2) Characterization of degradation
mechanisms of organic compounds.
- (3) Elucidation of fragmentation
mechanisms of novel organic
compounds.
- (4) Detection of and the application of
item (2), above, to analysis of trace
levels of compounds in biological
samples

Application received by
Commissioner of Customs: May 31, 1985.

Docket number: 85-215. Applicant:
The Pennsylvania State University,
Purchasing Services, 152 Davey
Laboratory, University Park, PA 16802.
Instrument: Interferometric
Spectrophotometer, Model: 1ZMO5 with
Accessories. Manufacturer: Bomem, Inc.,
Canada. Intended use: The instrument is
intended to be used to perform high
resolution spectroscopy of gases
including: (1) Resonance studies of
rovibrational levels of polyatomic
molecules, (2) infrared studies of small
clusters, (3) Spectroscopy of light
polyatomic molecules, (4) overtone
spectroscopy and intramode
interactions and (5) infrared laser
photochemistry of silanes, germanes and
phosphines. The instrument will also be
used for intermediate resolution studies
of condensed phase systems where its
high sensitivity and signal averaging
capabilities will be utilized. The gas
phase studies will make it possible to
extend the research programs of a
number of faculty into new areas that
are not accessible with present
instrumentation. In addition, students in
Chemistry 600—Research will use the
instrument to learn how to do research.
Application received by Commissioner
of Customs: June 4, 1985.

Docket number: 85-216. Applicant:
University of Pittsburgh, Chemistry
Department, 219 Parkman Avenue,
Pittsburgh, PA 15260. Instrument: GC/
Mass Spectrometer, Model MM7250E
with Accessories. Manufacturer: VG
Instruments, United Kingdom. Intended
use: Studies of organic compounds
having molecular weights from about
100 amu to about 3000 amu. The organic
synthetic intermediates and products
such as pseudomonic acid, rubradirins,
polymixin B, chuangxinmycin, antitumor
agents (jatrophatrione, bactobolin), cell
enzyme agents (Vitamin B₁₂, methyl
malonyl coenzyme A), and important
natural products (mitosene,
rugulovasine, guaiazulene, chamazulene,
(±)-B-methylene-aspartic acid, etc.) are
to be analyzed using mass spectrometry.
In addition, the instrument will be used
in conjunction with the course CHEM
271, Graduate Research and CHEM 171,
Undergraduate Research for the training
of students in the use and understanding
of the techniques of chemical research.
Application received by Commissioner
of Customs: June 4, 1985.

Docket number: 85-223. Applicant:
David Taylor Naval Ship Research and
Development Center, Annapolis, MD
21402-1198. Instrument: Electron
Microscope-STEM System.
Manufacturer: N.V. Philips, The
Netherlands. Intended use: The

instrument is intended to be used to
evaluate the metallurgical aspects of
microstructures, defect structures,
chemical composition and lattice
structure of a variety of metals and alloy
systems. Application Received by
Commissioner of Customs: June 11, 1985.

Docket number: 85-224. Applicant:
Oakland University, Rochester, MI 48063.
Instrument: Electron Microscope, Model
EM 410LS with Accessories.
Manufacturer: N.V. Philips, The
Netherlands. Intended use: The
instrument is intended to be used for the
following research projects:

- (1) Morphological studies in
experimental cataracts, (2) control of
cell division in the ocular lens, (3)
regulation of cell proliferation in
mammalian heart, cell biology of aging
fat body in *Drosophila*, the role of
ethylene in abscission, studies on the
cytoskeleton and cell membrane in
regenerating corneal endothelium,
hormonal control of $\alpha\zeta\mu$ globulin
synthesis. In addition, the instrument
will be used for educational purposes in
a graduate program. Application
received by Commissioner of Customs:
June 11, 1985.

Docket number: 85-225. Applicant:
Hospital of the University of
Pennsylvania, 3400 Spruce Street/G1,
Philadelphia, PA 19104. Instrument:
Extracorporeal Shock Wave Lithotripter.
Manufacturer: Dornier-System GmbH,
West Germany. Intended use: The
instrument is intended to be used for
studies to determine its usefulness for
the following:

- (1) Treatment of lower ureteral stones
and bladder stones.
- (2) The effects of extracorporeal shock
waves on benign and malignant renal
tumors.
- (3) The evaluation of side effects of
extracorporeal shock wave on the
kidney through the use of magnetic
resonance imaging.
- (4) Testing and developing new
anesthesia techniques. In addition, the
instrument will be used for educational
purposes in the course Surgery 200 and
for instructing medical, surgical and
radiological house staff and established
practitioners, in the current management
of urinary tract stone disease.
Application received by Commissioner
of Customs: June 13, 1985.

Docket number: 85-226. Applicant:
University of Utah, Salt Lake City, UT
84112. Instrument: Mass Spectrometer,
Model VG 7070F with Accessories.
Manufacturer: Vacuum Generators
Analytical, Ltd., United Kingdom.
Intended use: The instrument is
intended to be used for investigation of
the collision-induced dissociation (CID)

properties of positive and negative ions. Specifically, the energy and collision gas dependencies, angular-scattering properties of productions, identities of daughter ions, and kinetic energy distributions of the CID event (and competing scattering and charge transfer phenomena) are to be investigated. In addition, the instrument will be used in the course Chemistry 797. The objectives of the course are to give students an understanding of how one does research and to prepare them to engage in future research activities in some area which may or may not be closely related to their thesis research. Application received by Commissioner of Customs: June 13, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-17032 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-05-M

[Case No. 669]

Order Temporarily Denying Export Privileges; Anton Elzar et al.

In the Matter of: Anton Elzar, individually and doing business as Development and Consultant Elzar ECO AB Grinnekullegatan 160, Goteborg, Sweden; Helmut Keck, individually and doing business as OTC Mess-und Videoteknik GmbH, Eifferstra 598, Hamburg, Federal Republic of Germany; Paul Nurminen OY, Posylank 2, Helsinki, Finland; Metrab, Mellen Trading AB, Fridkullagatan 19, Goteborg, Sweden.

The United States Department of Commerce (the Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Parts 368-399 (1985)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to: Anton Elzar of Goteborg, Sweden; Helmut Keck of Hamburg, Federal Republic of Germany; Development and Consultant Elzar of Goteborg, Sweden; OTC Mess-und Videoteknik GmbH of Hamburg, Federal Republic of Germany; Paul Nurminen OY of Helsinki, Finland; and Metrab, Mellen Trading AB of Goteborg, Sweden (hereinafter collectively referred to as respondents).

The Department states that respondents are under investigation for violating the Regulations. The Department states further that the investigation gives it reason to believe: (1) That respondents have engaged in a continuing conspiracy to reexport U.S.-

origin commodities for the Federal Republic of Germany, through Sweden and Finland, with an ultimate destination of the U.S.S.R. without the proper authorization from the Department; (2) that respondents misrepresented, on export control documents, the ultimate destination of U.S.-origin vibration test equipment, claiming that the equipment was being export from the United States of resale in the Federal Republic of Germany, when respondents knew the equipment was intended for an ultimate destination in the U.S.S.R.; (3) that respondents failed to obtain the validated export license necessary to export U.S.-origin equipment to the U.S.S.R.; and (4) that respondents may seek in the future to divert U.S.-origin goods and technical data to the U.S.S.R. without the required authorization.

Based on the showing made by the Department, I find that an order temporarily denying all export privilege to respondents, and to parties related to them, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982)),¹ and the Regulations, and to permit completion of the investigation.

Anyone who is now or may in the future be dealing with any of the above-named respondents, or with anyone who is now or may be subsequently named as a related party, in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. Respondents, their successors or assigns, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such

transactions, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or

¹The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by virtue of E.O. 12470, 49 FR 13099, April 3, 1984, and Presidential Notice of March 28, 1985, 50 FR 12513, March 29, 1985, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 15th Street and Constitution Avenue, NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the ongoing investigation. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon each respondent.

Dated: July 11, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-17105 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 668]

Order Temporarily Denying Export Privileges; Rudolphe Agnese et al.

In the Matter of Rudolphe Agnese, individually and doing business as Developing Engineering and Electronics S.A.R.L., 91 Rue du Faubourg St. Denis, Paris 75010, France and Allimex A.G., Poststrasse 30, 5201 Zug, Switzerland, Respondents.

The United States Department of Commerce (Department), pursuant to the provisions of § 388.019 of the Export Administration Regulations (15 CFR Parts 368-399) (1985) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Allimex A.G. and Rudolphe Agnese, individually and doing business as Development Engineering and Electronics S.A.R.G.

The Department states that an investigation has shown that Rudolphe Agnese, at the direction of and using money provided by Allimex A.G., a Swiss company, established a French company, Development Engineering and Electronics S.A.R.L. (DEE), in Paris, France, DEE, on behalf of Allimex A.G., purchased a U.S.-origin integrated circuit test system for export from the

United States to France. To support that export, Agnese informed the U.S. exporter that the test system was ultimately destined for a French company. The exporter applied for an export license indicating the French company as the ultimate consignee, and the Department issued the export license based on the representations made by the exporter. Based on the investigation, the Department believes that the test system was ultimately destined for Suin, S.A., a Spanish firm which is currently denied all U.S. export privileges (47 FR 46976, (October 21, 1982)). The Department states that, at its request, the test system was seized as Allimex attempted to reexport it, without the required reexport authorization, from French territory to Swiss territory at the Mulhouse/Basel Airport.

Based on the representations made by the Department, I find that an order temporarily denying all export privileges to the respondents, and to parties related to them, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (1982)),¹ and the Regulations, and to permit completion of the investigation and of any subsequent judicial or administrative proceeding that might result from the investigation.

Anyone who is not or may in the future be dealing with any of the above-mentioned respondents, or with anyone who is now or may be subsequently named as a related party, in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, Officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any transaction involving commodities or technical data exported from the United

States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any respondent is not or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Those parties now known to be affiliated with one or more of the respondents, and which are accordingly subject to the provisions of this order, are:

Saba Agnese, a/k/a Saba Ambaye, 37 Rue de la Quintine, Paris 75015, France

Andree Agnese, 22 Rue du 11 November 1918, Pantin, France

Helene Agnese, 37 Rue de la Quintinie, Paris 75015, France

Yarra Anstalt A.G., Gagostrasse 863, Fl 9496 Balzers, Liechtenstein.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any

¹ The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by virtue of Executive Order 12470, 49 FR 13099, April 3, 1984, and Presidential Notice of March 28, 1985, 50 FR 12513, March 29, 1985, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-17006 (1982)).

manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

B. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the ongoing investigation. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon each respondent and each above-named related party.

Dated: July 11, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-17104 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 670]

Order Temporarily Denying Export Privileges; Sandor Ivady et al.

In the matter of: Sandor Ivady, individually and doing business as Electronic Products GmbH Sankt Johanngasse 1-5 A-1050 Vienna, Austria Stefan Ludwig Borbas, individually and doing business as Austro-Montan Warenhandelsgesellschaft Trattnerhoff 1 A-1010 Vienna, Austria and Friedrich Roedler, individually and doing business

as Austro-Montan Warenhandelsgesellschaft Trattnerhoff 1 A-1010 Vienna, Austria

The United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (currently codified at 15 CFR 368-399 (1985)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Sandor Ivady, individually and doing business as Electronic Products GmbH, and Stefan Ludwig Borbas and Friedrich Rodler, both individually and doing business as Austro-Montan Warenhandelsgesellschaft (herein collectively referred to as respondents).

The Department states that the respondents are under investigation for violating the Regulations. The Department states further that its investigation gives it reason to believe: (1) That the respondents conspired and acted in concert to violate the Regulations; (2) that the respondents indirectly caused the filing of false and misleading information with the Department for the purpose of effecting exports from the United States; (3) that Ivady made false and misleading statements of material fact to the Department in the course of an investigation being conducted by the Department; (4) that the respondents reexported U.S.-origin equipment, including fiber optic data transmissions systems, a semiconductor test system, a laser trimming system, and a computer and related parts and components, to proscribed destinations without authorization from the Department; and (5) that the respondents may seek in the future to reexport U.S.-origin equipment to proscribed destinations without the required authorization.

Based on the showing made by the Department, I find that an order temporarily denying all export privileges to the respondents, and to parties related to them, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982)), and the Regulations,¹ and to permit completion of the investigation.

Anyone who is now or may in the future be dealing with the above-named respondents, or with anyone who is now or may be subsequently named as a related party, in transactions that in any way involve U.S.-origin commodities or

technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors, or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the respondents are not or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Business organizations and individuals now known to be owned by or affiliated with the one or more of the above-named respondents, and which are accordingly subject to the provisions of this order, are:

¹The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by virtue of E.O. 12470, 49 FR 13099, April 3, 1984, and Presidential Notice of March 28, 1985, 50 FR 12513, March 29, 1985, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

Maria Ivady, c/o Electronic Products GmbH, Sankt Johanngasse 1-5, A-1050 Vienna, Austria
 Klemens Urpani, c/o Seigfried Einoehrl, Trattnerhoff 1, A-1010 Vienna, Austria

and

Seigfried Einoehrl, Trattnerhoff 1, A-1010 Vienna, Austria

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, an appropriate motion for relief, and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the ongoing investigation. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon each respondent and each above-named related party.

Dated: July 11, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-17106 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-D7-M

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification No. 1; the West Coast Whale Research Foundation (P349)

Notice is hereby given that The West Coast Whale Research Foundation, Applied Sciences 273, Center for Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 has requested a modification to Permit No. 493 issued on February 28, 1985 (50 FR 9481), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Part 217-222).

The Permit Holder is requesting to change the authorized location of humpback whale (*Megaptera novaeangliae*) research from Hawaii to Alaska.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries,
 National Marine Fisheries Service,
 3300 Whitehaven Street, NW.,
 Washington, D.C.;

Regional Director, Alaska Region,
 National Marine Fisheries Service,
 P.O. Box 1668, Juneau, Alaska 99802;
 Regional Director, Northwest Region,
 National Marine Fisheries Service,
 7600 Sand Point Way, NE., BIN
 C15700, Seattle, Washington 98115;
 and

Regional Director, Southwest Region,
 National Marine Fisheries Service, 300
 South Ferry Street, Terminal Island,
 California 90731.

Dated: July 15, 1985.

Richard B. Roe,

Director, Office of Protected Species and
 Habitat Conservation, National Marine
 Fisheries Service.

[FR Doc. 85-17138 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan; Correction

July 15, 1985.

On January 25, 1985 a notice was published in the *Federal Register* (50 FR 3565) which established specific limits for certain wool and man-made fiber textile products in Categories 659 pt. (bodysuits and bodyshirts in T.S.U.S.A. numbers 383.1815 and 383.8022) and 438 (knit shirts and blouses), produced or manufactured in Taiwan and exported during 1985. The restraint limits in the letter to the Commissioner of Customs which followed that notice should have been stated in pounds for Category 659 pt. and dozens for Category 438.

Walter C. Lenahan,

Chairman, Committee for the Implementation
 of Textile Agreements.

[FR Doc. 85-17126 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of Korea, Effective on January 1, 1985; Correction

July 15, 1985.

On December 27, 1984 a notice was published in the *Federal Register* (49 FR 50237) which established import restraint limits for certain cotton, wool and man-made fiber textiles and textile products, including cordage in Category 605pt. (only T.S.U.S.A. numbers 316.5500 and 316.5800), produced or manufactured in the Republic of Korea

and exported during 1985. In the letter to the Commissioner of Customs of December 21, 1984, which followed that notice, the limit for Category 605pt. (cordage) should have been 2,382,032 pounds instead of 2,303,380 pounds.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-17125 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DR-M

Changes in Officials of the Government of Thailand Authorized To Issue Export Visas for Certain Cotton, Wool, and Man-Made Fiber Textile Products

July 15, 1985.

The Government of Thailand has notified the United States Government under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 27, and August 8, 1983, that the following officials have been authorized by the Government of Thailand to issue export visas for textile and apparel products produced or manufactured in Thailand and exported to the United States. These officials will replace those previously designated (48 FR 44605).

Boontipa Simaskul
Kumnung Phutasiri
Patom Punpatanavicha
Prapis Tantisira
Arbchit Nukulrak

The purpose of this notice is to advise the public of this change.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR. Doc. 85-17124 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations on Trade in Categories 352, 360, 361, 363, 369pt., 436 and 611 from Taiwan

July 15, 1985.

In June 1985, the American Institute in Taiwan (AIT), under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of underwear (Cat. 352), pillowcases (Cat. 360), sheets (Cat. 361), terry and other pile towels (Cat. 363), luggage in TSUSA numbers 706.3200, 706.3650, and 706.4111 (Cat. 369 pt.), dresses (Cat. 436), and woven fabrics (Cat. 611), produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile and apparel products in these categories, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of these Categories 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. Since the exact timing of the consultations 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 Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or 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.

[FR. Doc. 85-17123 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Policy Board Advisory Committee (DPB)

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Defense Policy Board Advisory Committee (DPB) has been found to be in the public interest in connection with the performance of

duties imposed on the Department by law

The Defense Policy Board will review and assess: (a) The long-term, strategic implication of defense policies in various regions of the world; (b) the policy implications of current and prospective weapons/weapons classes; (c) the impact of our defense policies on alliance military issues; and (d) other major areas as identified by the Under Secretary for Policy. They will also analyze selected, short-term policy issues identified by the Secretary of Defense, Deputy Secretary or Under Secretary for Policy and present the results to the requesting official, and serve as individual advisors to the Under Secretary for Policy as required.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

July 15, 1985.

[FR Doc. 85-17145 Filed 7-17-85; 8:45 am]

BILLING CODE 3510-01-M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Kahului Small Boat Harbor, Kahului, Maui, HI

July 9, 1985.

AGENCY: U.S. Army Corps of Engineers, DOD Honolulu District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY:

1. The US Army Corps of Engineers is studying improvements for small boat navigation in the Kahului area, Kahului, Maui, Hawaii.

2. The Corps is studying six alternative plans including no action which provides for an improved boating launching ramp with a protected area for temporary mooring of approximately 10-20 boats. The plans generally include an entrance channel, mooring area, turning area, and parking and shoreside facilities.

3. On June 13, 1985, a public workshop was held at Kahului Public Library to discuss the proposed action. Local, State and Federal agencies were contacted as well as local interest groups and private organizations and parties. At this time, the draft EIS will address the impacts of the project on fish and wildlife resources, historic resources, aesthetic values and lifestyles. Coordination with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, State of Hawaii Department of Land and

Natural Resources, State Department of Health, State Department of Planning and Economic Development, State Department of Transportation and other local agencies will be done.

4. A scoping meeting is not planned at this time.

If there are any questions regarding the draft EIS, please contact: Dr. James E. Maragos, Chief, Environmental Resources Section, US Army Engineer District, Honolulu, Building T-1, Ft. Shafter, Hawaii 96858-5440. Telephone: (808) 438-2263/2264.

Dated: July 10, 1985.

John French,

Major Corps of Engineers, Deputy District Engineer.

[FR Doc. 85-17026 Filed 7-17-85; 8:45 am]

BILLING CODE 3710-MN-M

U.S. Army Training and Doctrine Command; Artificial Intelligence and Robotics Symposium

AGENCY: Department of the Army, DOD.

ACTION: Notice of a Symposium and a Call for Papers.

SUMMARY: A Symposium will be held on artificial intelligence and robotics.

DATE: November 6 and 7, 1985; Papers are due NLT August 23, 1985.

ADDRESS: Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Colonel Bruce Holt, USAF (Ret) or Beth Jacobson, American Defense Preparedness Association, Rosslyn Center, Suite 900, 1700 N. Moore Street, Arlington, VA 22209, (703) 522-1820.

Peter J. Ladzinski,

Alternate, Department of the Army, Liaison with the Federal Register.

[FR Doc. 85-17078 Filed 7-17-85; 8:45 am]

BILLING CODE 3710-92-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Technology Base Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Base Task Force will meet August 6-7, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for

the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 766-1205.

Dated: July 11, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-17017 Filed 7-17-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Defense Acquisition Regulatory Council, 703-697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This request covers the collection of information to be used to

invite offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous will be invited to (a) recommend an economic purchase quantity, and quote a recommended unit and total price, and (b) identify the different quantity points where significant price breaks occur.

The information will be used by contracting officers, inventory managers, and requirements development activities to avoid acquisitions in disadvantageous quantities and to develop a data base for future acquisitions of the items of supply. This information is required by sec. 205 of Pub. L. 98-577 "Small Business and Federal Procurement Competition Enhancement Act of 1984", and sec. 1233 of Pub. L. 98-525 "Defense Procurement Reform Act of 1984".

b. *Annual reporting burden:* This is estimated as follows: Respondents, 2,252; responses, 78,820; and reporting and recordkeeping hours, 65,421.

Obtaining Copies of Proposals: Requestors may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405.

Dated: July 11, 1985.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 85-17106 Filed 7-17-85; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Defense Acquisition Regulatory Council, 703-697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This request covers the collection of information to be used to require offerors who have met the qualification requirement to identify the offeror's name, the manufacturer's name, the item name, and the test number. This information will be used by contracting officers to identify those offerors who have already met the qualification requirement. The solicitation provision and the contract clause addresses how agencies will establish and enforce qualification requirements, encourage additional sources and products to become qualified, bear the costs under certain circumstances for small businesses to become qualified, and periodically examine the need to continue the use of each qualification requirement. This information is required by sec. 202(a) of Pub. L. 98-577 "Small Business and Federal Procurement Competition Enhancement Act of 1984", and sec. 2319 of Pub. L. 98-525 "Defense Procurement Reform Act of 1984".

b. *Annual reporting burden:* This is estimated as follows: Respondents, 7,882; responses, 788,200; and reporting and recordkeeping hours, 66,209.

Obtaining Copies of Proposals: Requestors may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405.

Dated: July 11, 1985.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 85-17121 Filed 7-17-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services****Training Personnel for the Education of the Handicapped; Proposed Annual Funding Priority**

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priority.

SUMMARY: The Secretary proposes to establish an annual priority for the Training Personnel for the Education of the Handicapped—Preparation of Regular Educators.

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Comments should be addressed to: Dr. Max Mueller, Division of Personnel Preparation, Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Dr. Max Mueller, Telephone (202) 732-1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped program, authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act, provides financial assistance through grants to State educational agencies, institutions of higher education, and other appropriate nonprofit agencies or organizations to increase the quantity and improve the quality of personnel available to educate handicapped children and youth. This Notice of Funding Priority, however, addresses awards for Fiscal Year 1986 only under Section 632 of the Act which limits eligible applicants to State educational agencies. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), and subject to available funds, the Secretary proposes to give an absolute preference to each application under this priority which provides satisfactory assurance that the recipient will use the funds made available for these projects to conduct the activities in paragraph 2 below.

1. *Eligible applicants.* In accordance with Section 632 of the Act, awards under this priority are limited to State educational agencies.

2. *Activities.* The Preparation of Regular Educators priority supports projects for training regular educators to assist with the identification and delivery of special education and related services to children with learning disabilities. The objective of these projects is to develop personnel training programs for regular educators which will facilitate the Statewide delivery of comprehensive educational services to learning disabled children and youth. Projects must provide regular education teachers with innovative approaches to referral, assessment, placement, service delivery, and placement review processes for learning disabled children and youth. Projects will also provide training designed to improve the accuracy of the identification of learning disabled children. The content and scope of the training models is limited only by a focus on State-wide efforts to improve identification of learning disabled children, and by emphasis on innovative approaches to serving this population through improved training of regular educators. Further, such training will enhance regular educators' ability to maintain in the regular classroom those children who are in need of educational

assistance but who are not classified as handicapped.

This notice of an annual priority is necessary to allow for the implementation of the OSERS' initiative on regular education. This initiative addresses the need to improve the quality of education for learning disabled children and youth in the least restrictive environment, see 34 CFR 300.550-300.558, and train regular education personnel in the skills, techniques, and strategies that will assist them in addressing the educational needs of children with mild learning problems who are referred to special education programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period, in Room 4628, Switzer Building, 330 C Street SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed funding priority would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)
(20 U.S.C. 1432)

Dated: July 15, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-17059 Filed 7-17-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**National Petroleum Council; Worldwide Refining Trends Task Group; Meeting**

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in July 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will address previous Council refining studies and

evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its sixth meeting on Thursday, July 25, 1985, starting at 9:00 a.m., in the Conroe Room of the Four Seasons Hotel, Houston Center, 1300 Lamar Street, Houston, Texas.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Discuss the individual study assignments of the Worldwide Refining Trends Task Group.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provisions will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 10, 1985.

Jeremiah E. Walsh, Jr.,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-17141 Filed 7-17-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; U.S. Refinery Capability Task Group; Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in August 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will address previous

Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its eighth meeting on Thursday, August 1, 1985, starting at 9:00 a.m., in the Harris Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review of the work of the Task Group.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provisions will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 10, 1985.

Jeremiah E. Walsh, Jr.,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-17142 Filed 7-17-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; U.S. Petroleum Refining; Coordinating Subcommittee on U.S. Petroleum Refining; Meeting Cancellation

The seventh meeting of the Coordinating Subcommittee on U.S. Petroleum Refining, (50 FR 27652, 7-5-85) scheduled for July 18, 1985, at the Four Seasons Hotel, Houston, Texas, has been cancelled. The meeting will be rescheduled for late August.

Issued at Washington, DC, July 8, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-17143 Filed 7-17-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-016; OFP Case No. 67043-9280-20-22]

Acceptance of Petition for Exemption and Availability of Certification From the City of Santa Clara, CA for a Peaking Facility

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On May 28, 1985, the city of Santa Clara (Santa Clara) California, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ((FUA or the Act) 42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the *Federal Register* at 46 FR 59872 (December 7, 1981).

Santa Clara requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of one 29.4 MW gas turbine, generator auxiliaries and associated facilities. The proposed unit is to be installed in the northwest portion of the city of Santa Clara, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from Santa Clara at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the

SUPPLEMENTARY INFORMATION section below.

As provided for in section 70.1 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before September 3, 1985. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-FC-85-016 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585. Telephone (202) 252-4523.

Steve E. Ferguson, Esq., Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585. Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Santa Clara has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed simple-cycle combustion turbine installation facility.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify the ERA that the use by the powerplant of any available alternate fuel as a primary energy source will not cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the Santa Clara petition.

Santa Clara submitted a certified statement by a duly authorized officer to the effect that the proposed oil or gas fired combustion turbine generator will be operated solely as a peakload powerplant.

Santa Clara stated in its petition that the manufacturer of the proposed combustion turbine will be General Electric. The net rating of the unit is 29.4 MW and the maximum generation will be 29,400 MW hours during any 12-month period. Annual natural gas consumption is not expected to exceed 3.6×10^9 cubic feet. The maximum fuel input will be approximately 380×10^6 Btu/hr with a heat rate of 12,550 Btu/kilowatt hour (LHV).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, including the permanent exemption for peakload powerplants, is among the classes of action that DOE had categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environment Assessment pursuant to NEPA (categorical exclusion).

The classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. Santa Clara has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist

submitted by Santa Clara pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on Santa Clara's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Santa Clara is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on July 11, 1985.
Richard Ransom,

*Acting Director, Coal & Electricity Division,
Office of Fuels Programs, Economic
Regulatory Administration.*

[FR Doc. 85-17140 Filed 7-17-85; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals**Red Triangle Oil Co.; Implementation of Special Refund Procedures**

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of \$45,354.76 ultimately to be obtained as a result of a consent order which the DOE entered into with Red Triangle Oil Company, a reseller of petroleum products located in Fresno, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Red Triangle consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0162 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Red Triangle Oil Company, which settled possible pricing violations in Red Triangle's sales of motor gasoline to its customers during the consent order period, November 1, 1973, through December 31, 1978.

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of the escrow account funded by Red Triangle pursuant to the consent order. The DOE has decided that a portion of the consent order funds should be distributed to 46 wholesale customers which the DOE's audit of Red Triangle indicated may have been overcharged, after each has filed an application for refund. These purchasers were identified by the DOE audit and allotted funds based on findings and presumptions of injury which the DOE has used in past proceedings. Applications for refund will also be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Red Triangle consent order funds was issued on April 2, 1985. 50 FR 14148 (April 20, 1985).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Red Triangle during the consent order period. Applications will be accepted provided they are filed in duplicate and are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: July 5, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.
July 5, 1985.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Red Triangle Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0162.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Red Triangle Oil Company (Red Triangle).

I. Background

Red Triangle is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Fresno, California. A DOE audit of Red Triangle's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and December 31, 1978, Red Triangle committed possible pricing violations amounting to \$91,345.68 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Red Triangle and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Red Triangle and the DOE entered into a consent order on March 24, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Red Triangle does not admit that it violated the regulations.

Under the terms of the consent order, Red Triangle agreed to make refunds amounting to \$59,993. Separate processes were established by which Red Triangle would refund money to injured parties. First, \$2,043, representing alleged overcharges on sales to Red Triangle's Bulk Retailer class of purchasers, was to be refunded directly to those purchasers. Second, Red Triangle was to refund \$21,834, representing alleged overcharges on sales of motor gasoline at company-

owned service stations, by reducing the price of gasoline at those stations by two cents per gallon until the full amount had been refunded. On January 23, 1982, Red Triangle remitted \$9,238.76 to the DOE. This sum represents the amount Red Triangle was unable to refund to its retail customers due to the decontrol of gasoline.¹ See Memorandum of Telephone Conversation of June 6, 1985, between Eugene Guzewicz of ERA's Settlements Division and Douglas Friedman, OHA Staff Analyst. Finally, to account for alleged overcharges to service stations, Red Triangle was supposed to deposit \$36,116 into an interest-bearing escrow account for ultimate distribution by the DOE. The payments were to be made quarterly with each payment equal to \$.005 per gallon of motor gasoline sold by Red Triangle during the quarter. Red Triangle did not make any of the required payments. However, on December 5, 1984, the firm remitted \$10,000 to the DOE and agreed to pay \$2,000 per month until it has discharged its liability. The agreement stipulates that interest will continue to accrue on the unpaid balance of the settlement and that part of each \$2,000 payment will represent accrued interest. See Memoranda of Telephone Conversations of December 26, 1984, and June 6, 1985, between Eugene Guzewicz and Douglas Friedman. Thus far, Red Triangle has remained current in its payments. This decision concerns the \$45,354.76 plus interest that should ultimately be available for distribution.²

On April 2, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties who are injured by Red Triangle's alleged violations in the sale of motor gasoline during the consent order period, November 1, 1973, through December 31, 1978. 50 Fed. Reg. 14,148 (April 20, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of actual or alleged violations of the DOE

¹ Motor gasoline was decontrolled effective January 27, 1981. Executive Order 12,287 (January 28, 1981).

² Once we have analyzed all applications for refund, we will authorize disbursement of whatever funds are in escrow. In the event that valid claims exceed the amount in escrow at the time, each successful claimant will receive a pro rata share and will receive the remainder of its refunds if and when additional funds are received by the DOE. See Appalachian Flying Service, Inc., Case No. HEF-0028 (May 10, 1985) (proposed decision), slip op. at 4, n.4.

regulations. In order to effect restitution in this proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's product are identified in the audit file. See, e.g., *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination regarding the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured by Red Triangle's pricing practices during the audit period who would also be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

A copy of the PD&O was published in the *Federal Register* and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various service station dealers' associations. None of Red Triangle's customers submitted comments on the proposed procedures. Comments were submitted by the State of California and, collectively, on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Both sets of comments concern the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Red Triangle refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. See *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address the issues raised by the states' comments at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received through enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process is used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such

persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

A. Refunds to Wholesale Customers

In the PD&O we stated that during the DOE's audit of Red Triangle, 46 first purchasers were identified as having allegedly been overcharged. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. See *Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit and/or their downstream customers. See, e.g., *Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices 1 and 2.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we will adopt a presumption in order to determine the level of a purchaser's injury and thereby distribute funds in the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. § 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we will adopt in this case is used to permit

claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we will adopt a presumption that claimants seeking small refunds were injured by Red Triangle's pricing practices.

There are a variety of reasons for adopting this presumption. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a refund dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, \$5,000 is a reasonable value for the threshold. See

Texas Oil & Gas Corp.: Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that 45 of the 46 identified customers made small purchases. The one firm whose potential refund falls above the threshold bought almost four times as much fuel as the second-largest purchaser.

A reseller or retailer which claims a refund in excess of \$5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through its own customers, and to show that market conditions would not permit it to pass through those increased costs.³

As in previous cases, only claims for at least \$15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than \$15 outweighs the benefits of restitution in those situations. *See, e.g., Urban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

Finally, as indicated in the PD&O, if additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after all appropriate claims have been analyzed.⁴

B. Refunds to Retail Customers

Since the PD&O was issued, it has come to our attention that the \$9,238.76 payment Red Triangle made on January 23, 1982, represents the amount it was unable to refund to its customers and not the first installment of its other obligations as we had originally thought. We will use a volumetric system to distribute this portion of the escrow account to individuals and firms who purchased motor gasoline from Red Triangle's service stations. Under a volumetric system, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel purchased by

the claimant.⁵ The volumetric refund amount is the average per gallon refund and in this case equals \$0.005300 per gallon.⁶ Potential applicants may use this figure to estimate the refunds to which they may be entitled. We will not require any evidence of injury beyond purchase volumes for customers in this group. Since the fuel was pumped into the gasoline tanks of consumers' automobiles, these customers would have absorbed the effects of the alleged overcharges. *See Thorntorn Oil Corp.*, 12 DOE ¶ 85,112 (1984).

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Red Triangle consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Red Triangle between November 1, 1973, and December 31, 1978. As we proposed, the consent order funds will be distributed to those firms listed in Appendices 1 and 2 who file applications for refund providing they make any necessary demonstrations of injury.⁷ We will also grant refunds to any other eligible customers of Red Triangle's which apply for a refund.

No valid addresses are available for those firms listed in Appendix 2. In some cases no addresses at all are available; in others, copies of the PD&O sent to the firms' last known addresses were returned by the Post Office. In an attempt to locate those firms, we will provide Red Triangle and various petroleum dealers' associations in California with copies of this Decision and will publish a notice in the *Federal Register*. We will accept information regarding the identity and present location of these firms for a period of 90 days from the date of publication of this

³ A volumetric approach is appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury in the treatment of overcharged claimants who are unable to quantify their alleged injury, thereby allowing applicants to recover a meaningful refund for the volumes of product they have purchased.

⁴ This figure is obtained by dividing \$9,238.76 by the 1,743, 016 gallons of motor gasoline sold by Red Triangle through its service stations during the consent order period.

⁵ The share of the escrow fund allocated to each firm listed in Appendices 1 and 2 represents 80 percent of the amount each was allegedly overcharged. This is consistent with the terms of the consent order, which settled for 80 percent of the total amount of alleged overcharges to service stations.

Decision and Order in the Federal Register.⁸

In order to receive a refund, each claimant will be required to submit either a schedule of its monthly purchases of motor gasoline from Red Triangle or a statement verifying that it purchased motor gasoline from Red Triangle and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide specific information as to the date, place, price, and volume of motor gasoline purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged.

In addition, all applications must state:

- (1) whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;
- (2) whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;
- (3) whether the applicant is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and
- (4) the name and telephone number of person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the *Federal Register*. A copy of each application will be available for public inspection in the Public Docket Room of the Office of

⁸ If we are unable to locate any firm listed in Appendix 2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

³ Resellers or retailers who claim a refund in excess of \$5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the \$5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to \$5,000 in order to avoid having to prove their injury. *See* *Vickers*, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*).

⁴ Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0162 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Red Triangle Oil Company pursuant to the consent order executed on March 24, 1980, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: July 5, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

APPENDIX 1—FIRST PURCHASERS

First purchaser	Share of settlement ¹
William Aubuchon, Bill's Service, 2510 Whitson, P.O. Box 232, Selma, CA 93662	\$1,466.31
Black's Gulf, 3551 East Lowe, Fresno, CA 93702	72.23
H. Bohannon, 959 Clovis Avenue, Clovis, CA 93612	884.84
Clore Gulf, 4520 East Redlands, Fresno, CA 93726	828.42
J.F. Crowell, c/o Rose & Connolly, 5100 North Sixth Street, Fresno, CA 93704	86.66
Ben Farmer, 2102 Vine Street, Sanger, CA 93657	516.46
Fresno, A.N.G., 5425 East McKinley, Fresno, CA 93705	50.56
Louis J. Gennuso, Sr., Gennuso's Service, 1350 Fresno St., Fresno, CA 93706	1,173.77
Ebert A. Hendrix, 317 South Peach, Fresno, CA 93727	1,357.96
Louie Hernandez, 2559 South Chestnut Avenue, Fresno, CA 93725	325.05
Jesse's Gulf, P.O. Box 489, Firebaugh, CA 93622	1,155.71
Liberty Auto, 1008 C Street, Fresno, CA 93702	707.87
Alfred G. Marmolejo, 3827 East Liberty, Fresno, CA 93706	964.30
Raul Marmolejo, Sunset Gulf, 4035 East Fico, Fresno, CA 93702	1,238.78
J. McBee, 2937 D Street, Selma, CA 93662	617.59
Horst Pakora, General Delivery, Oakhurst, CA 93644	195.03
John Patterson, 2240 Tuolumne, Fresno, CA 93721	7,544.41
William W. Perry, 3770 West McKinley, Fresno, CA 93711	111.96
Ruth Reese, Lane's Gulf, 1107 Lincoln, Madera, CA 93637	505.62
Udom Ruengsom, C & N Service, 6753 Blackstone, Fresno, CA 93710	877.62
J. Salazar, 7011 North Van Buren Avenue, Herndon CA 93721	61.40
Stone's Gulf, 215 East Estate, Tulare, CA 93274	1,014.86
Ted and Lil 16614 West Gettysberg, Kernan, CA 93800	552.57
Ben Valles, 1210 Academy, Sanger, CA 93657	393.66
Dan Vargas, P.O. Box 932, San Joaquin, CA 93860	848.73
Ralph Waldrum, Senior Citizens, 1917 South Chestnut, Building 15E, Fresno, CA 93702	379.22
Gleen N. Ward, 215 West Shaw, Clovis, CA 93612	906.51

APPENDIX 1—FIRST PURCHASERS—Continued

First purchaser	Share of settlement ¹
Williams Gulf, 12650 Second Drive, Cutler, CA 93615	906.51
Zip and Go, 485 Barstow Avenue, Fresno, CA 93706	715.10

¹ Not including accrued interest.

APPENDIX 2—FIRST PURCHASERS, NO ADDRESS AVAILABLE

First purchaser	Share of settlement ¹
James W. Askew	\$1,325.46
Twain Bankston	144.66
R. Brown	985.97
D. Davis	137.24
Don's Gulf	61.40
Bill Hensley	1,932.20
Herring	426.17
Paul Lindsay	310.60
B. Malthrop	137.24
Herbert R. McCarty	130.02
D. McComas	50.56
L. McDonnell	509.00
Vincent Rio Frio	671.76
Schultz Gulf	812.61
Judith Ann Tweedy c/o Robert J. Cook, Esq.	155.30
W.W. Gulf	169.75
P. Walker	494.79

¹ Not including accrued interest.

[FR Doc. 85-17139 Filed 7-17-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding \$33,199.83 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Peterson Petroleum, Inc. a reseller-retailer of petroleum products located in Hudson, N.Y.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0149.

FOR FURTHER INFORMATION CONTACT: Angela Foster, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 109 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Peterson Petroleum, Inc. (Peterson) and the DOE. The Peterson consent order settled alleged pricing violations in the firm's sales of motor gasoline to customers during the period May 1, 1979 through June 30, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Peterson pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed in two stages. In the first stage, funds will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Peterson's alleged pricing violations. Although the information available to us at this time regarding the firm's operations provides the names and addresses of potential claimants, that information does not indicate the amount of gallons purchased by them. We will also accept information regarding the identity and present locations of purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding. In the event money remains in the escrow account after all first stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted with 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 9, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 9, 1984.

PROPOSED DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Name of Firm: Peterson Petroleum,
Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0149.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the DOE Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, see *Office of Enforcement*, 9 DOE § 82,508 (1982), and *Office of Enforcement*, 8 DOE § 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Peterson Petroleum, Inc. (Peterson). Peterson is a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31, and is located in Hudson, N.Y. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of motor gasoline during the period May 1, 1979 through June 30, 1979 (audit period). In order to settle all claims and disputes between Peterson and the DOE regarding the firm's sales of motor gasoline during the audit period, Peterson and the DOE entered into a consent order on October 27, 1980. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Peterson does not admit that it committed any such violations. Finally, according to the Peterson consent order, the firm agreed to deposit \$32,816.16, plus interest, into an interest-bearing escrow account for ultimate distribution

by DOE.¹ This decision concerns the distribution of the consent order amount plus accrued interest to date.

II. Proposed Refund Procedures

We have considered ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Peterson consent order fund. Since the ERA indicated in its petition that it is unable to readily identify persons who were injured or to ascertain the degree of their injury, we find the use of Subpart V procedures appropriate. Therefore, we will grant ERA's petition and assume jurisdiction over the distribution of the Peterson consent order funds.

As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. See generally *Office of Enforcement*, 8 DOE § 82,597 (1981) (hereinafter cited as *Vickers*.) Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Peterson's pricing practices during the audit period. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. See generally *Office of Special Counsel*, 10 DOE § 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Injured Purchasers: We propose that the Peterson consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Peterson's alleged pricing violations. The information available to us at this time regarding the firm's operations does not provide the names, addresses or sales figures of the firm's customers during the audit period.² Our experience

¹ Due to the accumulated interest on late deposits, however, Peterson paid \$33,199.83 into the escrow account. The amount of money in the Peterson escrow account was \$50,397.24 as of May 31, 1985.

² We do, however, have the names of some customers who may have purchased gasoline from Peterson during the audit period. Their names appear in the Appendix to this Decision. In addition to publishing this Proposed Decision in the Federal Register, we will attempt to contact these customers directly. We will also accept information regarding the identity and present locations of these purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding.

with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) resellers (including retailers) of Peterson motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of gasoline purchased from Peterson. The products purchased by these claimants were purchased either directly from Peterson or from other firms in a chain of distribution leading back to the firm.

As in many prior special refund cases, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, in this case we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Peterson during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. In addition, we propose to adopt a presumption of injury with respect to small claims.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered

disproportionate injury as a result of Peterson's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. See, e.g., *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the method we are proposing, a successful refund applicant will receive a refund amount which is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is \$.007235 per gallon (\$33,199.83 received from Peterson divided by 4,588,620 gallons of motor gasoline sold by the firm during the audit period).

Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the escrowed funds. Consequently, a successful claimant who purchased, for example, 100,000 gallons of motor gasoline from Peterson during each of the months of the consent order period will receive a refund of \$1,447 (100,000 gallons times 2 months times \$.007235), plus interest.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Peterson consent order is based on a number of considerations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may exceed the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and to use its limited resources more

efficiently. Finally, these smaller claimants did purchase covered products from Peterson and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the presumptions we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the threshold value below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order fund is small, and the time period of the consent order is many years past, establishing a presumption of injury for all claims of \$5,000 would be reasonable.³ See *Texas Oil & Gas Corp.; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

If a reseller or retailer made only spot purchases from Peterson, however, we propose that it should not receive a refund because it presumably suffered no injury. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

³ Resellers who claim a refund in excess of \$5,000, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for up to the \$5,000 threshold amount without being required to submit evidence of injury. See *Vickers at 85,396; see also Office of Enforcement*, 10 DOE ¶ 85,029 at 88,122 (1982).

Vickers at 85,396-97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Peterson motor gasoline. See *Amoco at 88,200.*

In addition to the presumptions we propose to adopt, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See *Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069, and cases cited therein. We have therefore concluded that end-users of Peterson petroleum products need only document their purchase volumes from Peterson to make a sufficient showing that they were injured by the alleged overcharges.

Finally, we propose to establish a minimum refund amount of \$15.00 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15.00 outweighs the benefits of restitution in those situations. See, e.g., *Uban, supra at 85,225.* See also 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of covered products from Peterson for the period May 1, 1979 through June 30, 1979. If the products were not purchased directly from Peterson, the claimant will be required to include a statement setting forth his or her reason for believing the product originated with the firm. See, e.g., *Standard Oil Co. (Indiana)/Union Carbide Comp.*, 11 DOE ¶ 85,007 (1983). In addition, a reseller or retailer of refined petroleum products that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" of unrecovered increased product costs in

order to demonstrate that it did not subsequently recover those costs by increasing its prices. See *Conoco* at 88,388. In addition, it will have to demonstrate that, at the time it purchased covered products from Peterson, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

B. Distribution of the Remainder of the Consent Order Funds. In the event that money remains in the Peterson escrow account after all first stage claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining refunds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Peterson Petroleum, Inc., pursuant to the consent order executed on October 27, 1980, will be distributed in accordance with the foregoing decision.

Appendix

- Golub Service Stations, Inc., 501 Duaneburg Road, Schenectady, New York 12301
 - Stewarts Ice Cream, 210 Broadway, Saratoga Springs, New York 12866
 - Good Hope Industries, Post Office Box 3190, Springfield, Massachusetts 01101
 - Highway Oil Company, 12th Floor, First National Bank Tower, Topeka, Kansas 66603
 - Johnson Products, Post Office Box 851, Boston, Massachusetts 01230
 - Lehigh Oil Company, One Terminal Way, Norwich, Connecticut 06360
 - Midway Oil Company, Post Office Box 8, Rutland, Vermont 05701
- [FR Doc. 85-17063 Filed 7-17-85; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration

Conrad-Shelby 230-kV Transmission Line Project, Montana; Intent To Prepare Environmental Impact Statement

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that in accordance with the National

Environmental Policy Act of 1969 (NEPA), the Western Area Power Administration (Western) intends to prepare an Environmental Impact Statement (EIS) regarding a proposed action to construct, operate, and maintain a new high voltage 230-kV electric transmission line from Conrad to Shelby, Montana, including a new 230/115-kV substation near Shelby, in Pondera and Toole Counties.

The objectives of the subject EIS and related environmental activities will be to study and assess the possibilities of locating structures within floodplains or wetlands, impacting Federal or State listed or proposed threatened or endangered species or critical habitats, esthetic impacts, crossing irrigated or irrigable land, and possibly causing adverse effects on historic or cultural properties that are included or eligible for inclusion on the National Register of Historic Places.

Public scoping meetings will be held during October or November of 1985. Notice will be given in the Federal Register, and local news media via press releases and paid advertisements at least 15 days prior to the meetings. Federal and State agencies, and local government units will also be requested to provide Western their concerns and issues which should be addressed in the EIS.

A draft EIS is tentatively scheduled to be released to the public for review and comment in November 1986. The final EIS is tentatively scheduled for release in August 1987.

FOR FURTHER INFORMATION CONTACT:

Stephen A. Fausett, Assistant Area Manager for Engineering, Billings Area Office, Western Area Power Administration, Department of Energy, P.O. Box EGY, Billings, MT 59101, (406) 657-6042.

Issued in Golden, Colorado, July 1, 1985.

William H. Clagett,
Administrator.

[FR Doc. 85-17064 Filed 7-17-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

**Senior Executive Service—
Performance Review Board Updated
Membership**

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are S.G. Frank Haas, III (Chairman), Lawrence W. Hayes, Robert J. Moore, Richard L. Petrocci, Richard C. Pickering and Jean C. Chabot.

For Further Information Contact: Doris H. McGhee, Director of Personnel, Federal Home Loan Bank Board, (202) 377-6050.

Jeff Sconyers,

Secretary to the Board, Federal Home Loan Bank Board.

[FR Doc. 85-17114 Filed 7-17-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

**Ocean Freight Forwarder License;
Revocations**

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2624

Name: Chem Group, Inc.

Address: 30 Lincoln Plaza, #25M, New York, NY 10023

Date Revoked: June 27, 1985

Reason: Surrendered license voluntarily

License Number: 2665

Name: Katherine J. Segall dba K. J.

Segall Customhouse Broker

Address: 623 Switzer Street, San Diego, CA 92101

Date Revoked: June 28, 1985

Reason: Failed to maintain a valid surety bond

License Number: 778

Name: F. B. Wilcon Company, Inc.

Address: 148 State Street, Boston, MA 02109

Date Revoked: July 1, 1985

Reason: Voluntarily requested revocation

License Number: 2709

Name: Midwest Eastern Transport, Inc.

Address: 731 S. Main, P.O. Box 1614, Elkhart, IN 46514

Date Revoked: July 5, 1985

Reason: Voluntarily requested revocation

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-17061 Filed 7-17-85; 8:45 am]

BILLING CODE 6730-01-M

**Ocean Freight Forwarder License;
Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the

Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission Washington, D.C. 20573.

Steve Zamarripa Inc. dba Air/Ocean International Inc., 700 West Carob Street, Compton, CA 90220

Reynaldo Camacho, 21-18 33rd Avenue, Long Island City, NY 11106

Fracht Fwo Inc., 175-01 Rockaway Blvd, #308, Jamaica, NY 11434. Officers: Ruedi Reisdorf, President, Roland Meier, Vice President, Tahera (Tara) S. Thaver, Secretary

Baillie Lumber Co., Inc., 4002 Legion Drive, Hamburg, NY 14075. Officers: Donald L. Meyer, President/Treasurer/Director, Anthony Dutton, Assistant Secretary, Earl E. Statler, Vice President/Director, Doris C. Meyer, Vice President/Director, Donald A. Eichler, Vice President

Great World Express Corp., 1305 Grandview Drive, So. San Francisco, CA 94080. Officers: Judy Ting, President, Therese Lu, Secretary/Treasurer/Director, Debbie Lee Bresee, Manager/Vice President, John Ting, Vice President/General Manager

International Express Cargo, c/o 2511 SW 102nd Avenue, Miami, FL 33165. Officers: Nelson S. Martinez,

President/Treasurer, Maggie P. Martinez, Vice President/Secretary
New York Customs Brokers, Inc., 148-02 Guy R. Brewer Blvd., Jamaica, NY 11434. Officers: Larry Lieberman, President/Director, Regina Cretella, Vice President

Arrow World-Wide Forwarders, Inc., 1012 Shary Circle, P.O. Box 5366, Concord, CA 94518. Officers: Richard Templeton, President, James H. Ferrell, James P. McCullough

By the Federal Maritime Commission.

Dated: July 15, 1985

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-17062 Filed 7-17-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-18]

Member Lines of the Transpacific Westbound Rate Agreement—Possible Violations of the Shipping Act of 1984; Order of Investigation and Hearing

The Transpacific Westbound Rate Agreement (TWRA or Agreement) became effective on January 5, 1985.¹

¹FMC Agreement No. 202-010689.

Since that date, issues have been raised as to whether the TWRA lines have been operating in a manner inconsistent with or outside the scope of the terms of their Agreement, contrary to sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984 (1984 Act or the Act) (46 U.S.C. app. 1709), and whether the operation of TWRA has produced or threatens to produce an unreasonable increase in transportation costs, contrary to the injunctive standard set forth in section 6(g) of the Act (46 U.S.C. app. 1705).

By this Order, issued pursuant to section 11(c) of the Act (46 U.S.C. app. 1710), the Commission sets down for investigation certain issues raised under sections 10(a)(2) and 10(a)(3) regarding the relationship between the TWRA lines' establishment and maintenance of minimum tariff and service contract rates and the lines' right of independent action, and the lines' authority under their Agreement to agree on minimum rates applying to service contracts between an individual carrier, or a combination of carriers, and a shipper. In addition, by this Order the Commission advises that it has decided not to seek at this time an injunction against TWRA under the standard of section 6(g). The reasons for that determination are set forth briefly below.

Background

I. The Filing of TWRA

TWRA was filed with the Commission for processing under the 1984 Act on November 21, 1984. The Agreement represented a major restructuring of liner common carrier service in the United States westbound Pacific trades. In addition to replacing the Pacific Westbound Conference, which had disbanded on November 1, 1984, TWRA replaced the Far East Conference, the Atlantic & Gulf/Singapore, Malaya & Thailand Conference, the Atlantic & Gulf/Indonesia Conference, the Pacific-Straits Conference and the Pacific/Indonesia Conference. TWRA gives its members broad authority to agree on rates, rules and practices covering the movement of liner cargo from points and ports in the United States and Canada, from or via ports on the Atlantic, Gulf and Pacific Coasts (including Alaska) of the United States, or via ports on the Atlantic and Pacific Coasts of Canada, and destined to a wide range of ports and points in the Far East, including Japan, Korea, Taiwan, Hong Kong and the Philippines. As of the effective date of the Agreement, there were 20 signatory lines. Barber Blue Sea Line subsequently submitted its resignation on January 15, 1985, effective March 16, 1985.

Notice of TWRA's filing with the Commission had been widely discussed in the industry press and was formally published in the *Federal Register* on November 30, 1984.² No comments or protests were received from any person. Nevertheless, in analyzing the Agreement and the extensive supporting material provided by the parties, the Commission's staff was aware that the member lines controlled among them a substantial share of the total liner capacity in the relevant market areas and an even greater share of the total container capacity. For that reason, TWRA required and received careful scrutiny under the standard of section 6(g).³

According to the parties, there are several purposes to TWRA. One objective is to reduce materially the administrative costs of the old conference structure and associated costs of the member lines by combining separate structures, simplifying the duties of the Agreement's employees, eliminating neutral body and cargo inspection programs and reducing regulatory and legal costs. A second stated objective is to permit more individual line competitive flexibility than the predecessor conference structures could. A third objective is to stabilize rates in the westbound trades, which the parties characterized as having deteriorated to below-cost levels as a result of excess capacity. The parties also hoped to reduce the proliferation of overlapping tariffs by an evolution to common tariffs. Finally, the parties hope that TWRA could provide a stable long-term competitive structure in the Pacific trades, which would help some carriers avoid business failure during a period of anticipated severe overtonnaging.

In explaining how TWRA would achieve these objectives, the parties gave central importance to the competitive flexibility and responsiveness to shipper demands permitted to the individual lines by the Agreement. The old conferences were described as too inflexible and slow moving to permit the members to operate with the quick response to market conditions that the parties

²49 FR 47113.

³Section 6(g) provides in relevant part: (g) Substantially Anticompetitive Agreements.— If, at any time after the filing or effective date of an agreement, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief. . . .

characterized as necessary in the westbound trades. Also, according to the parties, it was necessary to guarantee maximum price flexibility in order to attract enough carriers into the Agreement so that stabilization of rates was a reasonable goal. Rate flexibility was also necessary to achieve the desired reduction in administrative and regulatory costs.

There are three primary articles in TWRA that provide rate flexibility to the individual members. First, Article 13 gives the parties their statutory right to take independent action on ten days' notice "on any rate or service item within the scope of [TWRA]."⁸ No limit on this right is stated in the Article. Article 13 also states that "[p]rior to giving notice of any independent action hereunder, each party is encouraged, but is not required, first to propose to the Agreement that the Agreement itself take the action and to permit the Agreement to act thereon at a meeting." Second, Article 5(c) of the Agreement permits the members to negotiate and adopt their own service contracts at whatever rate levels they choose. By the terms of Article 13, the independent action provisions of TWRA also apply to service contracts. Third, Article 8(a) provides for a procedure known as "rate initiative." According to the parties, this procedure is designed to produce the same result as independent action, only faster (three to five days) and with less work and expense. Its stated purpose is to provide even more market responsiveness than independent action and to give shipper added assurance that a rate negotiated with a carrier will actually be "delivered" by the carrier.

The parties argued that the rate initiative feature of TWRA, together with TWRA's provisions permitting members total freedom with regard to service contracts, provides for substantially more individual member competitive freedom and flexibility than the provisions of the Shipping Act of 1984 require. The Agreement in Article 12 also makes provision for "promptly

and fairly" considering shippers' requests and complaints and for meeting with shippers "to promote the commercial resolution of disputes,"⁹ and otherwise expresses the parties' intention to promote and develop "close communications and working relationships with shippers and consignees."

The Commission took note of these provisions and of the present and anticipated rate and tonnage conditions in the Pacific trades. We determined that the Agreement members' response to shipper rate needs should be kept under surveillance. Accordingly, the Commission obtained the parties' agreement to file quarterly reports on their use of the rate initiative and independent action procedures. Otherwise, the Commission determined that the information before us at that time did not provide a basis for contending to a federal district court that TWRA would likely result in unreasonable reductions in service or increase in costs to shippers. Accordingly, no injunction against TWRA was sought and the Agreement went into effect on January 5, 1985, 45 days after filing with the Commission, as provided by section 8(c)(1) of the Act (46 U.S.C. app. 1705(c)(1)).

II. The TWRA Rate Actions

The TWRA members met in Vancouver, British Columbia, on January 30-31, 1985. At that meeting, the nineteen member lines¹⁰ agreed to a "Revenue Stabilization Program" that provided for a general rate increase of per container rate on nonrefrigerated cargoes by amounts ranging from \$150 to \$300, the precise figure dependent on container size and destination. Rates for refrigerated cargoes were scheduled to increase by ten percent. Further, all tariffs of all members were to be amended to reflect the establishment of minimum charges scaled from \$750 to \$5,000 per container. Tariffs were subsequently filed at the Commission that reflected both the agreed-upon general rate increase and minimum per container rate levels, to become effective March 6, 1985.

The member lines also agreed that effective January 31, 1985, there would be a minimum charge established for any new service contract or renewal of existing contracts entered into by any individual line, any combination of

lines, or the TWRA itself. These minimum charges ranged from \$2,250 to \$5,000 per container. Finally, the TWRA lines filed minimum boxcar rates, effective March 22, 1985.

The Commission began to receive complaints and inquiries from shippers almost immediately after the TWRA meeting on January 30-31. The complaints generally were from shippers in the Pacific Northwest of low-rated commodities, such as lumber, hay and wastepaper. With some exceptions, they focused on the minimum revenue requirements rather than on the general rate increase. Some protests contended that the container minimums constituted *de facto* rate increases of 35 to 150 percent. Some shippers stated that such increases might cause the bankruptcy of segments of the lumber industry. Others stated that imposition of the rate charges as scheduled would force them to break existing contracts with overseas buyers or face huge losses. Cotton shippers based in Texas complained that previous ocean freight increases had always been scheduled by the carriers to allow for the fact that cotton export contracts generally expire in late August of each year.

In addition to complaints regarding the specific rate levels announced by TWRA, there were widespread shipper allegations that the TWRA members had reached certain tacit understandings designed to reinforce their agreed-upon minimum rates. These were alleged to include understandings that TWRA members would not enter into any service contracts for a period of 90 days from January 30, 1985; that the members would not grant shipper requests for independent action or rate initiatives that would result in rates below the minimums; that any such action by a member must be "approved" by the entire Agreement; that the members similarly would not negotiate service contracts for rates below the minimums; and that negotiations on service contracts were broken off after the TWRA January 30-31 meeting because the particular carriers involved felt themselves bound by the minimums.

In response to the shippers' complaints, the Commission sent a telex on February 21, 1985 to the Agreement's representatives requesting a postponement of the tariff increases pending further discussion of them. After several meetings on February 26 involving Commission personnel, carrier representatives and shippers, TWRA announced a postponement of the increases until March 20. Further, after meeting in Honolulu, Hawaii, on March 6-8, the TWRA lines informed the

⁸Section 5(b) of the 1984 Act (46 U.S.C. app. 1704(b)) requires, *inter alia*, that:

Each conference agreement must—

(8) Provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

⁹The consultation and shipper requests and complaints provisions are mandated by sections 5(b) (6) and (7) of the 1984 Act (46 U.S.C. app. 1704(b)).

¹⁰Barber Blue Sea Line did not attend the meeting, having resigned from TWRA two weeks earlier.

Commission that further adjustments in the per-container minimums had been made. Effective March 20, the minimums for nonrefrigerated cargo moving from West Coast ports were to be \$600 per 20-foot container and \$800 per 40-foot container (reduced from \$750 and \$1,000, respectively). Corresponding adjustments were made to the other minimums. The full minimums were to go into effect on June 20, 1985. No action was taken at that meeting on the minimum charges on service contracts.

On March 12, 1985, the Commission issued an Order pursuant to section 15 of the 1984 Act (46 U.S.C. app. 1714) to TWRA and its member lines.⁷ The section 15 order noted that while the postponement by the TWRA lines of the minimums might ease the difficulties some shippers apparently would have faced in meeting current contracts, the postponement did not resolve the issue whether the minimum rates represented an unreasonable increase in transportation cost or whether the establishment and maintenance of the minimums were consistent with the terms of TWRA and otherwise lawful under the 1984 Act. The section 15 Order therefore directed TWRA and the member lines to respond on or before April 2, 1985 to a series of detailed questions and demands for documents concerning the minimum rates and the lines' responses to shippers' complaints and requests for service contracts and independent rate actions. The purpose of the Order was to develop a factual record sufficient to permit the Commission to determine the appropriate regulatory course of action, if any, to be taken regarding TWRA and its members. In addition, in early April the Commission's Bureau of Agreements and Trade Monitoring contacted approximately 40 shippers in the TWRA trades by letter, soliciting their views on the TWRA rate actions. The letter was designed to help the Commission develop a reasonably complete picture of shipper attitudes regarding TWRA, particularly of those shippers who had not thus far commented on the Agreement and its rate actions.

In the meantime, on March 27, 1985, the TWRA lines again made

adjustments to the minimums. The imposition of the full minimums was postponed until September 1. A minimum of \$700 on 40-foot nonrefrigerated containers from the West Coast went into effect on March 27, which was to increase to \$800 on July 1 and to \$1,000 on September 1. The TWRA lines also voted on March 27 to reduce the minimums on service contract rates to not less than the rate that is provided for in the TWRA tariffs at the time the contract is entered into, but still subject to specified minimums. The lines noted that the service contract minimums agreed to at the Vancouver meeting on January 30-31 were, in some instances, actually higher than present tariff rates.

Finally, according to recent press reports, the TWRA lines have decided in a meeting in Hong Kong to make still more adjustments to the minimums. For 40-foot containers of eight historically low-rated commodities—lumber, woodpulp, kraft liner board, scrap metal, raw cotton, wastepaper, hay cubes and hides—bound for North Asia destinations, the current minimum of \$700 was suspended. An \$800 minimum previously postponed to July 1 will now go into effect on November 1. The \$1,000 minimum previously scheduled for September 1 was postponed until January 1, 1986. For containers of the same eight commodities bound for South Asia destinations, the current \$700 minimum was suspended until November 1. An \$800 minimum will go into effect on January 1.

For all other dry commodities bound for North Asia, the \$800 per-container minimum scheduled for July 1 was reportedly postponed until September 1 and the previously scheduled \$1,000 September 1 minimum will be delayed until December 1. Similar postponements were applied to the rates applicable to other dry commodities bound for South Asia destinations.

As noted above, complaints regarding the minimums have come mainly from West Coast shippers of low-rated cargo such as wastepaper, hay cubes and woodpulp. According to the TWRA members, the average revenue per forty-foot container of such cargo realized before their rate actions had dropped below \$500. The lines first proposed to establish a minimum on such containers of \$1,000, an increase of more than 100 percent, effective March 6, 1985, on slightly more than thirty days' notice. After the various postponements and adjustments, the full increase to \$1,000 will not go into effect for any such cargo until December 1, *i.e.*, over ten months rather than one.

In addition, by Agreement No. 202-010689-005, filed June 19, 1985, the lines propose to amend their Agreement to prohibit the further offering of new service contracts or renewals of existing contracts either on an Agreement-wide basis or by individual carriers.

Discussion

All of the persons addressed by the section 15 Order submitted responses; these include the TWRA chairman, its executive director and the nineteen member lines.⁸ The material submitted is voluminous and includes many internal company documents. In addition, in late April counsel for the TWRA lines submitted an unsolicited package of materials that they requested also be considered by the Commission. This package consisted of tabulations of independent rate actions taken under the Agreement, a memorandum of counsel on certain issues of law and statements of various persons employed by TWRA lines.

As discussed below, the information before the Commission does not establish that there have been no violations of the 1984 Act by the TWRA lines; on the contrary, the record justifies a formal adjudicatory investigation of certain of the lines' actions at Vancouver and afterwards. However, before discussing the TWRA responses to the section 15 Order, the Commission will address briefly the question of an injunction under section 6(g) of the Act.

I. TWRA's Rate Action Under Section 6(g)

The determination whether a particular concerted rate action by the parties to an agreement has violated the standard contained in section 6(g) involves two distinct tests: (1) Whether the agreement is one that can be categorized as substantially

⁷ Section 15 provides, in relevant part, that: The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission.

⁸ As noted above, the due date for responses to the Section 15 Order was Tuesday, April 2, 1985. On the evening of April 2, TWRA's attorneys filed pleadings in U.S. District Court in San Francisco seeking an extension until April 9. At a hearing held on Wednesday, April 3, the court denied TWRA's request but retained jurisdiction over the case for the apparent purpose of reviewing any assessment by the Commission of civil penalties against TWRA for failure to comply with the April 2 deadline. *Transpacific Westbound Rate Agreement v. Dombrowski*, N.D. Cal. Civ. No. C-85-2888. The responses by TWRA and its members to the section 15 Order were submitted in a series of mailings. The first batch of material was mailed by air courier from San Francisco on April 2; it arrived at the Commission on April 4. The remaining material arrived over the following week. Notwithstanding the fact that the responses to the section 15 Order were not all timely filed, the Commission has determined, given the circumstances, not to assess penalties.

anticompetitive; and (2) if so, whether such an agreement is likely to produce (or has produced) an unreasonable increase in transportation cost or an unreasonable reduction in transportation services.⁹

Clearly, only agreements that pass the first test are subject to the second. The existence of substantially anticompetitive conditions in a trade requires a finding that the parties to an agreement have acquired significant market power. Market power means that a firm, or group of firms acting in concert, control a sufficient share of the market for their product so that it is theoretically possible for them to set a price for their product in excess of the price that would be set by the interaction of supply and demand in a competitive market. The traditional antitrust concern with market power is sharpened where, as in ocean transportation regulated by the 1984 Act, the act of agreeing on prices is protected from antitrust attack (assuming the procedures required by the Act have been followed). In such circumstances, rate and service actions by carriers that collectively control a major market share in their trades must be scrutinized carefully so that shippers are not subjected to behavior that deviates significantly from that which could be expected in the absence of market power. At the same time, the Commission must be mindful of Congress's instructions to us, expressed in the legislative history of section 6(g), that a negative impact on shippers caused by an agreement rate increase or service reduction may be offset by the agreement's benefits, including the agreement's ability "to address problems of overcapacity and rate instability."¹⁰

⁹In this regard the Conference Report states in relevant part as follows:

As suggested by the title of subsection (g), a likely reduction in competition should be substantial before triggering Commission intervention under the general standard. Unless the competitive threat is substantial, any reduction in service or increase in cost would not be unreasonable, as required by the general standard.

Even if an agreement is likely to cause the requisite reduction in competition, the Commission can obtain injunctive relief only if the likely net result will be an unreasonable increase in costs of shippers, or an unreasonable reduction in the frequency or quality of service available to shippers.

Committee of Conference, *Shipping Act of 1984*, H.R. Rep. 98-600, 98th Cong., 2d Sess. 34, 35 (1984).

¹⁰Committee of Conference, *Shipping Act of 1984*, H.R. Rep. No. 600, 98th Cong., 2d Sess. 35 (1984). The Conference Committee recognized that combined market share would be major, though not sole, determinant of whether an agreement was substantially anticompetitive. *Id.* at 34-35.

It seems clear that the TWRA carriers hold as a group significant market power in nearly all of the TWRA subtrades, measured by tonnage as applied to U.S. coastal districts. In fact, in their original submissions to the Commission in November 1984 in support of the Agreement, the parties argued that it was necessary for them to hold a large market share in order to achieve the Agreement's goals. The Commission's own calculations, based upon Bureau of Census data, show that the TWRA lines control 75 percent or more of liner tonnage in nearly all the subtrades they serve; the exceptions are largely confined to U.S. Gulf ports at which few of the parties call. For this reason, TWRA demonstrably passes the application of the first test. The Agreement is therefore a potential candidate for a section 6(g) injunction. Whether such an injunction is actually called for depends upon whether the TWRA carriers have used or are likely to use the market power conferred by their Agreement to unreasonably increase the rates that they charge.

It is the Commission's opinion that a section 6(g) injunctive action at this time would be inappropriate. While it does appear that TWRA was, in its January rate hike, attempting to take full advantage of its considerable market power, a number of mitigating circumstances led us to decide against invoking section 6(g). Among these circumstances was the fact that even if the TWRA carriers manage to maintain the rate increase they are currently phasing in (which is by no means certain in view of the continuing problems of overtonnaging and trade imbalance they face), they will only be returning to the levels of ten years ago.¹¹ Furthermore, as noted above, the TWRA lines have stretched out the increases so that they will go into effect over ten months rather than one. As a result, any possible adverse impact of the originally filed rate increases has been considerably ameliorated. Recent shipper communications to the Commission confirm that this action by the carriers has facilitated the shippers' adjustment to the increases.

In light of these facts and Congress's generally favorable view of agreements designed to combat overtonnaging and rate instability, we believe that section 6(g) injunctive action at this time is not

¹¹In 1984, the rates published by the Pacific Westbound Conference (PWC), TWRA's predecessor, fell so precipitously that even in absolute terms, the rates were lower by the end of the year than they had been in 1976. This decline, caused by excess capacity and depressed U.S. exports, appears to have been the proximate cause of the dissolution of PWC.

justified. However, we reiterate that TWRA remains a potential target of a section 6(g) action by virtue of its market power. The Agreement's rate activities will be monitored closely so that the Commission will be in a position to seek an injunction expeditiously, if evidence appears of abuse of market power by the TWRA lines.

II. The Establishment and Maintenance of the Minimum Tariff Rates

The responses to the section 15 Order raise serious issues as to whether the establishment and subsequent maintenance of the minimum tariff rates by the TWRA lines were products of an unfiled agreement in violation of section 10(a)(2) of the 1984 Act, or represent conduct inconsistent with the provisions of the Agreement providing for unfettered independent action by individual members, in violation of section 10(a)(3) of the Act. The documents indicate that the January 30-31 TWRA meeting in Vancouver followed a pre-arranged agenda and that the establishment of minimum rates was part of that agenda. A carrier telex dated January 11, 1985 states in part:¹²

[R]evenue improvement is most important to the carriers and has been the prime objective for the principals . . . Two items will be discussed to achieve revenue improvement, GRI [general rate increase] and minimum rates. . . .

The minimum rates will be established with the aid that a certain minimum rate level will be observed strictly by members so that neither conference actions or independent actions will bring rates below such agreed minima . . .

To the same effect, a telex dated January 22 from a carrier's overseas headquarters to its United States offices states in part:

TWRA owners meeting in Vancouver: although final agenda not yet available Gottshall has in previous telex indicated a number of items which will be docketed. . . . Consider most important items for all members will be rate structure, general rate levels, minimum rates on major commodities, reefer rates and establishment of separate TWRA tariff. . . .

At the Vancouver meeting, the senior executives of each line formed an "Owners Special Committee." These persons have been identified by the TWRA response to the section 15 Order.

¹²In quoting from telexes, some editing and punctuation has been provided to make them easier to read.

A telex of February 4 provides the details of the Committee's work:

The establishment of minimums, GRI and freight forwarders compensation was discussed at a one-to-one meeting with highest executives of each line attending. The lines committed not to invoke I.A. against the minimums (even if so-called commitments are involved). Exception: existing service contracts (which considering the number of lines and tonnage involved in TWRA are minimal). However, renewal of such service contracts or new service contracts must take the agreed minimums into account. . . . It was felt that TWRA carrying 90 percent of available cargo . . . is now in a position to not only prevent further deterioration of rates (which presently very depressed) but to improve the revenue position of the participants. Some lines * * * stated that if there are deviations from established minimums they will resign from TWRA. We understand that the established minimums are a considerable increase over the present going market rate and while we anticipate market's pressure (although the market expected high increase) and difficulties our sales personnel will encounter, it is hoped that this action will improve the westbound revenue to more profitable levels. So good luck to all of us.

A telex of February 1 pointed out that the approval of the minimums was unanimous and stated that "even though basic Agreement requires a simple majority to carry, it was the consensus of all members that any revenue improvement would not be successful unless all members were in agreement."

The TWRA carriers appear to have taken a number of steps to enforce the minimums. A February 1 telex from a carrier's headquarters to all U.S. and Far East agents stated: "It is a prerequisite for the future existence/survival of the TWRA that the minima . . . are strictly adhered to. . . ." The carriers had agreed at Vancouver that a carrier proposing independent action or "rate initiative" should be "encouraged" (though not required) to include in its proposal the name of the shipper and a justification for the proposal. It appears that in responding to actual shipper requests for rates below the minimums, the carriers usually declined, often with specific reference to the TWRA action at Vancouver but sometimes with more vague reference to "internal guidelines." The carriers' headquarters were under intense pressure for relief from the minimums from their regional sales offices, which in turn were under pressure from shippers. The carriers' submissions include many letters, telexes and memoranda of conversations with shippers protesting the announced rate actions. An exchange of telexes between a carrier's headquarters and its Boston office appears to provide a sample of the

atmosphere prevailing at this time. On February 6, the Boston office wrote to headquarters:

As you are aware during past couple of months we have received substantial support from [shipper X]. . . . This due to [our] aggressive pricing and service capabilities in Boston. . . . Shipper has learned of proposed March 5 rate increase and is extremely upset with lack of rate sensitivity to their business. . . . We have worked too hard to capture and protect his business to see it discarded so easily. . . . We strongly recommend that we exempt this commodity for [sic] the March 5th increase. . . .

On February 7, headquarters replied:

Your concern appreciated and understood. Precondition for future existence of TWRA is that minima . . . are being strictly adhered to and in such circumstances regret unable deviate from set minima. . . .

On February 14, a carrier sent a telex to its offices in New York and Oakland reminding its agents that the minimums applied to exempted commodities:

Minimum charges is [sic] the key to the stability of rate levels. The trade stability will be impaired and thus the whole TWRA will break once the [minimum] is violated. It was the unanimous determination of the senior executives of all members in the [Vancouver] meeting that the minimum charge would be strictly observed and no one would take exceptions to the minimums, even on exempted commodities and service contracts. In this regard, we cannot agree or compromise to any suggestion on exceptions to the minimums.

As noted above, the package of additional materials submitted by TWRA counsel to the Commission in late April included several statements by persons employed by TWRA lines. One of those statements addresses the February 4 telex quoted above with regard to the "Owners Special Committee." The statement acknowledges that the telex states that the TWRA lines had agreed not to exercise independent action against the minimums. In denying that his employer is actually a party to such an agreement, the carrier executive attributes the February 4 telex to his desire to provide a shield for sales personnel against shipper pressure:

I knew that shippers would be importuning my company's sales personnel to create exceptions to minima. Such pressures are extraordinarily difficult to resist, since they may be coupled with a threat to withhold cargo. Since I had decided, at least for the time being, that our company would not take IA below the minima, I knew that it would be much easier for our sales people to refer to the TWRA minima as a reason why they could not grant requests for such rate reductions. Stating that the company couldn't take IA would reduce commercial pressures.

By the time of their meeting in Honolulu on March 6-8, at which the minimums were reduced and delayed, the lines apparently had realized that their use of TWRA to shield themselves from shipper pressure could have undesirable consequences. A March 12 telex states:

It is of the utmost importance for the future of the TWRA that no shipper be given to believe that there is any reason whatsoever to think that TWRA itself might be in any way responsible for commercial decisions taken by members * * * as matter of individual company policy to implement . . . minima and GRI. It remains the policy of the TWRA that it is the sole responsibility of each individual member line to follow its own commercial interests acting in strict accordance with the Transpacific Westbound Rate Agreement as filed with the FMC and in total conformity with the U.S. Shipping Act of 1984.

Most recently, on March 27, the following resolution was adopted by the TWRA lines:

1. Resolved, that contrary to allegations made by shippers and government officials, every member has and always has had the absolute and unqualified right of independent action as to any TWRA rate or service item including, but not limited to GRI's, minimum rates, commodity rates or tariff rules governing the application of same.

Resolved further that, in the event any employee or agent of any TWRA member may have conveyed any contrary impression to any shipper, employee or other agent of the member, the member should convey the text of the foregoing resolution to such person to correct any misimpression.

2. The executive in each company, responsible for westbound transpacific pricing, should, in implementing the resolution, send a communication to each person who previously has received company or agency communications respecting the Vancouver action, which affirms that the particular member's policy respecting the exercise of independent action is in all respects a matter of internal company policy. The member can state, if it wishes, what that policy is, if there is such a policy.

The TWRA lines contend that nothing in the Agreement or the 1984 Act precludes them from discouraging each other from taking independent action by threatening to leave the agreement. This is termed an exercise of "commercial speech". It is argued that members may discuss, reach consensus on or agree as to their future intentions regarding the independent action process because, notwithstanding any such agreements, a TWRA member may always change its mind and exercise its right of independent action to the contrary.

There are several issues of fact and law raised by the TWRA carriers' imposition of minimum rates that

require full investigation. Any activity that threatens the viability of the concept of independent action must be viewed by the Commission with the utmost seriousness. Congress indicated in writing the Shipping Act of 1984 that independent action was to be a counterweight against the possibility that carriers might use their ability to form agreements more easily and their expanded antitrust immunity to extract unreasonably high rates from shippers.¹³ Independent action is particularly important in the case of agreements, such as TWRA, that hold a high degree of market power.¹⁴ The TWRA carriers stated in their November 1984 submissions in support of the Agreement that one of the central purposes of the Agreement was to permit more individual line competitive flexibility than the old conference structures, and that this would be achieved by the Agreement articles providing for independent action, reinforced by the novel concept of "rate initiative." An unfiled agreement not to invoke independent action below certain rate levels would—even if such an agreement was short-lived—be contrary to those representations, inconsistent with specific provisions of TWRA and directly against the intent of Congress and the 1984 Act. The Commission must investigate whether such an agreement was reached and whether it is still in effect despite the resolution adopted on March 27.

Perhaps more important, we believe that an investigation is necessary as to whether the publication and enforcement of a broad, comprehensive minimum rate program, such as that approved at the Vancouver meeting, by a ratemaking body with significant market power such as TWRA is, in and of itself, consistent with the statutory requirement of independent action. Certainly, the use of minimum rates is a long-standing commercial practice, usually designed to improve container utilization and deployment. But when a major rate agreement publishes a general rate increase and reinforces that with minimum rates that apply to essentially all types of cargo moving to all destinations served by the agreement, and when the approval of

those minimums is accompanied by "commercial speech" of the sort used at Vancouver, and when the agreement members regard the raising of rates and revenues as a life-or-death proposition for the agreement, the existence of the minimums takes on new dimensions and the fact that the agreement members still have the right on paper to take independent action below the minimums may no longer have any real meaning. The Commission wishes a full and complete development of the record on this new and important issue whether the TWRA minimum rate program has unlawfully frustrated or undermined the individual member's right of independent action.

III. Service Contracts

There are two distinct issues regarding service contracts raised by the TWRA actions at Vancouver and afterwards: (1) whether the Agreement permitted the establishment of minimum rates on individual carrier service contracts, and (2) whether the TWRA lines agreed not to take independent action against the established minimum rates.

A. The Establishment of Minimum Service Contract Rates on Other Than Agreement-Wide Contracts

There is no factual dispute that the lines agreed on minimum rates on individual contracts at the Vancouver meeting. The question is whether the Agreement authorized them to do so. Article 5(d) of TWRA states:

Service Contracts. Any party which, as of the effective date of this Agreement (or the date it becomes a Party, whichever is later), has entered into a service contract(s) may, during the term thereof, continue such contract(s) and continue separately to publish the essential terms thereof. After the effective date of this Agreement:

- (i) Any Party may enter into a service contract(s), but must furnish a copy of its essential terms to the Manager and do so no later than the date such terms are filed with the Federal Maritime Commission;
- (ii) Any two or more Parties may jointly enter into a service contract(s), but such Parties must furnish a copy of the essential terms of such contract(s) to the Manager and do so no later than the date such terms are filed with the Federal Maritime Commission;
- (iii) The Agreement may, with the consent of any Party or Parties, enter into a service contract(s) on behalf of such Party or Parties.

This provision appears to permit Agreement-wide accord on service contract terms only in the circumstance described in subpart (d)(iii), where the Agreement itself is a party to the contract. Otherwise, individual carriers or groups of carriers appear free to negotiate contracts of their own under

subparts (d)(i) and (d)(ii), the only restriction being that they must furnish the Agreement's executive office with informational copies of the contracts after they have been negotiated. Article 5(d) does not appear to authorize concerted activity on service contracts, such as the agreement reached at Vancouver, through which the parties attempt to control what individual lines or combinations of lines charge for carriage under a service contract. This interpretation appears to be consistent with the carriers' submissions in support of TWRA in November 1984, in which they stated:

Another major feature of the TWRA, which distinguishes it from most traditional conference-type agreements, is that it does not prohibit or create Agreement control over the terms of individual carriers' service contracts. Moreover, the independent action clause of the TWRA also applies to service contracts. In this respect, as with rate initiative, the Agreement provides for substantially more individual member competitive freedom than the 1984 Shipping Act requires." (emphasis supplied).

The parties also said that service contracts were to be "left up to members." In his affidavit in support of the Agreement, Mr. Ronald Gottshall stated:

The other basic decision under TWRA was not to prohibit or assume control in the Agreement over service contracts by individual carriers. Probably needlessly service contracts are also subject to independent action. Service contracts are proliferating in the trade and constitute an entire new and separate competitive force.

In informal submissions to the Commission, the TWRA carriers have denied that the Vancouver action on service contracts was inconsistent with their November 1984 statements or constituted the operation of an unfiled agreement or activity inconsistent with the TWRA. Nevertheless, a formal investigation is necessary as to whether the TWRA lines violated section 10(a)(2) of the 1984 Act by operating an agreement required to be filed under section 5 of the Act that has not become effective under section 6, and/or section 10(a)(3) by activity not in accordance with the provisions of their Agreement.

B. The Establishment and Maintenance of Minimum Service Contract Rates Generally

The issue whether the carriers agreed not to exercise their right of independent action against the service contract minimums does involve disputed facts. A carrier telex of February 4, 1985, summarizes the parties' understanding as follows:

¹³ House Committee on Merchant Marine and Fisheries, *International Ocean Commerce Transportation*, H.R. Rep. No. 53, 98th Cong., 1st Sess. 15-16 (1983).

¹⁴ Congress stated:

In the case of conference agreements, including those with intermodal ratemaking authority, the conferees believe that potential reductions in competition will be at least partially offset by a member carrier's right of independent action. . . . H.R. Rep. No. 600, n. 9, *supra*, at 34.

All service contracts filed with the Federal Maritime Commission on or after [January 31] must observe the new minimum charges. A contract filed with the Commission before this date even if the effective date of the contract is after January 31 is not a violation of this Agreement. Contracts below the minimums which are filed with the Federal Maritime Commission on or after January 31, even if signed by the parties or negotiated before January 31, are not within the spirit of the Agreement.

At a meeting held on February 22, 1985, the TWRA lines adopted the following resolution regarding service contracts and rate minimums:

It is the decision of TWRA that there may be no deviation from the rate increase and/or minima except for a commitment made on or before 30 January 1985 which agreement counsel concludes would be enforced. This conclusion would be based upon explanation and documentation presented by individual line seeking this conclusion. Initial requests to be submitted to counsel no later than 28 February 1985.

A telex of February 26 comments on this resolution as follows:

While there are still unclear points on this resolution, we interpret it as that Agreement counsel be authorized to evaluate each case submitted by member lines based upon explanation and supporting documents thereof as to whether each commitment made between carriers and shippers (or consignees) before January 31, 1985, has been legally binding in light of relative laws and once he concludes that such a commitment is to be enforced, rate action to exempt from the rate increase and/or minima will not be deemed as a deviation from owners' resolution adopted at the meeting in Vancouver on January 30 and 31, 1985.

There might have been various commitments based upon informal agreement by letter from carrier to shipper . . . and simple verbal agreement backed up by history of booking and rate application. We, however, expect that the Agreement counsel will not conclude that such commitments would be legally binding at least as far as cargo originating in the United States is concerned. . . . We, therefore, are quite doubtful if such submission make some sense.

One allegation made to the Commission was that the member lines had also agreed that no member would enter into any service contracts for a period of 90 days from January 30, 1985. Some documents apparently relevant to this allegation were submitted in response to the section 15 Order. A January 23 telex from a carrier's headquarters to its offices in the United States set forth several ideas for discussion at the upcoming Vancouver meeting. One was that all members should "freeze freight (no further reductions) . . . effective immediately or say February first for a three-month period or until common tariff goes into

effect." The January 24 reply from the same carrier's U.S. office for conference matters supported this idea "subject to the understanding that member lines are free to match any confirmed filing of a TWRA co-member." Finally, another carrier's telex dated January 31 and reporting on the results of the first day, January 30, of the Vancouver meeting states that the lines agreed that:

No service contract [sic] will be allowed for the next 90 days unless they are above \$3,000/40 foot for West Coast and \$5,000/40 foot for East Coast.

Note.—Service contract [sic] will be further negotiated in tomorrow (January 31, 1985) meeting.

No further reference to the apparent January 30 agreement could be located in the Section 15 Order submissions. It is not clear whether it was superseded by the January 31 agreement on minimums, or whether the 90-day ban continued in effect—even for a short time—as a supplement to the January 31 minimums.

As with the minimum tariff rates, the service contract minimums engendered protests from shippers, particularly since the service contract minimums were higher at that time than the prevailing tariff rates. A March 20 telex to the TWRA offices in San Francisco from a major Japanese shipper, is representative:

Minimum charge of service contracts should be cancelled. Our strongest protest lies with minimum charge for service contracts. Current minimum charge . . . far exceeds prevailing freight rate and is prohibitive for us to negotiate service contracts. . . .

As noted above, on March 27, the TWRA lines reduced the service contract minimums to prevailing tariff rates. In addition, a telex was sent, a copy of which was provided to the Commission by TWRA, which states that the minimums are a matter of "voluntary adherence by the members and are not binding upon any member carrier which decides to withdraw its adherence." This is a markedly different tone from that expressed in the earlier telexes quoted above, which referred to contracts below the minimums as "violations of the Agreement" and "contrary to the spirit of the Agreement."

Although the TWRA carriers have denied that they agreed not to use their independent action rights to negotiate service contracts for rates below the Vancouver minimums, the internal documents quoted above justify further investigation of this issue. There must also be a resolution of whether there was a secret agreement to ban all new

service contracts for a defined period.¹⁵ Finally, the undisputed agreement on service contract minimums raises the same broad concerns discussed above, regarding the effect of such minimums on the right of independent action, as did the establishment of tariff rate minimums. As described by the carrier telexes, the service contract minimums were apparently enforced by a "clearance" procedure involving Agreement counsel; this additional factor casts further doubt on the true pertinence and effectiveness of TWRA's independent action provisions.

Therefore, it is ordered, that pursuant to section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710) a proceeding is hereby instituted to determine whether the Transpacific Westbound Rate Agreement and its member lines:

(1) Have violated sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984 (46 U.S.C. app. 1709(a) (2) or (3)) by agreeing not to exercise independent action at levels below their minimum tariff rates, which agreement was subject to the filing requirements of section 5 of the Shipping Act of 1984 (46 U.S.C. app. 1704), or inconsistent with the independent action provisions of the Transpacific Westbound Rate Agreement as required by section 5(b)(8) of the Act (46 U.S.C. app. 1704(b)(8));

(2) Have violated section 10(a)(3) of the Shipping Act of 1984 by establishing and maintaining a program of minimum tariff rates in a manner inconsistent with the independent action provisions of the Transpacific Westbound Rate Agreement required by section 5(b)(8) of the Act;

(3) Have violated sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984 by agreeing on minimum rates applicable to service contracts between individual carriers, or combinations of carriers, and shippers, which agreement was subject to the filing requirements of section 5 of the Shipping Act of 1984, or inconsistent with the service contract and independent action provisions of the Transpacific Westbound Rate Agreement;

(4) Have violated sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984 by agreeing not to exercise independent action at levels below their minimum service contract rates, which agreement was subject to the filing requirements of section 5 of the Shipping Act of 1984, or inconsistent with the service contract and independent action provisions of

¹⁵ The amendment by the TWRA carriers to prohibit service contracts will be legally relevant only to future activity subsequent to the effective date of the amendment.

the Transpacific Westbound Rate Agreement;

(5) Have violated section 10(a)(3) of the Shipping Act of 1984 by maintaining a system of minimum service contract rates in a manner inconsistent with the service contract and independent action provisions of the Transpacific Westbound Rate Agreement;

(6) Have violated sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984 by agreeing not to negotiate or execute new or renewed service contracts for a period of time, which agreement was subject to the filing requirements of section 5 of the Shipping Act of 1984, or inconsistent with the service contract and independent action provisions of the Transpacific Westbound Rate Agreement;

It is further Ordered, that in the event any of the violations described above are found to have occurred, it should be determined whether the Respondents:

(1) Should be assessed civil penalties and, if so, the amount of such penalties; and/or

(2) Should have their Transpacific Westbound Rate Agreement disapproved, cancelled or modified by the Commission; and/or

(3) Should be ordered to cease and desist from such activity;

It is further Ordered, that a public hearing be held in this proceeding and that the matter be assigned for hearing by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further Ordered, that the Transpacific Westbound Rate Agreement and its member lines, as identified in the Appendix to this Order, are hereby made Respondents in this proceeding;

It is further Ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Bureau of Hearing Counsel shall be a party to this proceeding;

It is further Ordered, that notice of this Order be published in the Federal Register, and a copy be served upon all parties of record;

It is further Ordered, that any person, other than parties of record, having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further Ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further Ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record;

Finally, it is Ordered, that pursuant to the terms of section 11(d) of the Shipping Act of 1984 (46 U.S.C. app. 1710(d)) and Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the Presiding Officer in this proceeding shall be issued by July 15, 1986 and the final decision of the Commission shall be issued by November 17, 1986.

By the Commission.

Bruce A. Dombrowski,
Acting Secretary.

Appendix

Ronald B. Gottshall, Chairman, Transpacific Westbound Rate Agreements, P.O. Box 800, Iselin, New Jersey 08830
William J. Anderson, Executive Administrator, Transpacific Westbound Rate Agreement, P.O. Box 7574, San Francisco, California 94120
American President Lines, Ltd., W.B. Seaton, Chief Executive Officer, 595 Market Street, Ste. 2175, San Francisco, California 94104
The East Asiatic Company Ltd. A/S, Henning Hempel Sparso, Presiding Managing Director, Holbergsgade 2, DK-1099 Copenhagen K, Denmark
Evergreen Marine Corp. (Taiwan) Ltd., S.S. Lin, Chief Executive Officer, 83, Sung Chiang Road, Taipei, Taiwan
Hanjin Container Lines, Ltd., Y.K. Kim, President, C.P.O. Box: 8288, Seoul, Korea
Hapag-Lloyd AG, Hans Jakob Kruse, Chief Executive Officer, Postfach 10 26 26, Ballindamm 25, 2000 Hamburg 1, Federal Republic of Germany (West)
Japan Line, Ltd., Takeshi Kitagawa, President, Kokusai Building, 1-1, Marunouchi 3-Chome, Chiyoda-ku, Toyko 100 Japan
Mitsui O.S.K. Lines, Ltd., K. Aiurs, President, 1-1, Toranomom 2-Chome, Minato-ku, Toyko 105 Japan
Kawasaki Kisen Kaisha, Ltd., K. Kumagai, President, Hibiya Central Building, 2-9, Nishi-shinbashi 1-Chome, Minato-ku, Toyko 105 Japan

Nippon Yusen Kaisha, K. Miyaoka, President, 3-2, Marunouchi 2-Chome, Chiyoda-ku, Toyko, C.P.O. Box 1250, Toyko 100-91 Japan

Showa Line, Ltd., Daijiro Ishii, President, Hibiya Kokusai Building, 2-3, Uchisaiwaicho 2-Chome, Chiyoda-ku, Toyko 100 Japan

Korea Marine Transport Co., Ltd., Hyon Kyu Park, President, 23rd Floor, KAL Building, 118, 2-ka, Namdaemoon-Ro, Chung-Ku, Seoul, Korea

Lykes Bros. Steamship Co., Inc., W.J. Amoss, Jr., Chief Executive Officer, Lykes Center, 300 Poydras Street, New Orleans, Louisiana 70130

A.P. Moller-Maersk Line, Ib Kruse, General Partner, 50, Esplanaden, DK-1098 Copenhagen K, Denmark

Orient Overseas Container Line, Tan-Liu YU, President, c/o Robert E. Sequeira, Import Pricing Manager, Seapac Services, Inc., 433 Hegenberger Road, Suite 200, Oakland, California 94621

Neptune Orient Lines Ltd., Lua Cheng Eng, Managing Director, 458 Alexandra Road, NOL Building, Singapore 0511, Republic of Singapore

Sea-Land Service, Inc., R. Kenneth Johns, Chief Executive Officer, 10 Parsonage Road, P.O. Box 800, Iselin, New Jersey 08830

United States Lines, Inc., William B. Bru, Chief Executive Officer, 27 Commerce Drive, Cranford, New Jersey 07016

Yamashita-Shinnihon Steamship Co., Ltd., Takayoshi Kaji, President, 1-1, Hitotsubashi 1-Chome, Chiyoda-Ku, Tokyo 100, Japan

Zim Israel Navigation Company Ltd., Matty Morgenstern, Chief Executive Officer, c/o A. Birnbaum, Vice President, Conferences and Pricing, Zim Container Service, One World Trade Center, Suite 2909, New York, New York 10048

[FR Doc. 85-17084 Filed 7-17-85; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL RESERVE SYSTEM

Firsnabanco, Inc., et al.; Formations of, Acquisitions, 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 section 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 8, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firsnabanco, Inc.*, Viroqua, Wisconsin; to acquire 96.1 percent of the voting shares of Citizens State Bank, Trempealeau, Wisconsin.

2. *Rhea County Financial Corporation*, Spring City, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Rhea County, Spring City, Tennessee.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hunter Holding Company*, Hunter, North Dakota; to acquire 100 percent of the voting shares of First State Bank of Hope, Hope, North Dakota.

Board of Governors of the Federal Reserve System, July 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-17036 Filed 7-17-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Identification of Musculoskeletal Injuries During Asymmetric Lifting; Open Meeting

The following meeting will be convened by the National Institutes for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: July 26, 1985.

Time: 9 a.m.-12 noon.

Place: Conference Room 3A, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Purpose: To discuss the research protocol of a project which will identify some of the

important biomechanical and physiological stresses associated with asymmetrical lifting. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Tim Pizatella, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888. Telephones: FTS: 923-4807, Commercial: 304/291-4807.

Dated: July 10, 1985.

Robert L. Foster,

Acting Associate Director for Policy Coordination.

[FR Doc. 85-17058 Filed 7-17-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 83D-0247]

Animal Drugs, Feeds, and Related Products; Efficacy Evaluation of Canine/Feline Anthelmintics; Availability of a Guideline

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline prepared by its Center for Veterinary Medicine (CVM) entitled "Guideline for Efficacy Evaluation of Canine/Feline Anthelmintics." The guideline reflects consideration of those comments received in response to publication of a notice of availability of the draft guideline.

ADDRESS: The December 1984 revised guideline and related materials are available for public examination at, additional written comments may be submitted to, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations that show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) describes the criteria that must be met before a new animal drug may be approved,

including that it be safe and effective for use as labeled. Section 514.1(b)(8) of the animal drug regulations (21 CFR 514.1(b)(8)) describes the effectiveness requirements for an NADA.

In the Federal Register of September 13, 1983 (48 FR 41095), FDA published a notice of availability of a draft guideline for effectiveness evaluation of canine/feline anthelmintics. Comments were received from the Animal Health Institute, the Canadian Health and Welfare Bureau of Veterinary Drugs, and several independent parasitologists. Following evaluation of the comments, the guideline was revised. CVM's responses to the comments have been filed with the Dockets Management Branch. The "Guideline for Efficacy Evaluation of Canine/Feline Anthelmintics," dated December 17, 1984, describes studies an NADA sponsor may conduct to obtain information needed to evaluate effectiveness of anthelmintic new animal drugs for dogs and cats. This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. If an applicant believes that alternative procedures also apply, a guideline does not preclude the applicant from pursuing those alternative procedures. Under such circumstances, however, the agency encourages applicants to discuss the alternative procedures in advance with CVM to prevent the expenditure of resources and effort for work that may later be found to be unacceptable.

Requests for single copies of the guideline may be sent to the Docket Management Branch (address above). Interested persons may, at any time, submit additional written comments on the guideline to the Dockets Management Branch. Such comments will be considered in determining if further revisions of the guideline are required. Two copies of any comments should be submitted, except that individuals may submit one copy. Submissions should be identified with Docket No. 83D-0247. Received comments and all related materials may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1985.

Mervin H. Shumate,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 85-17021 Filed 7-17-85; 8:45 am]

BILLING CODE 4160-01-M

(Docket No. 81D-0300)

Anti-Infective Bovine Mastitis Product Development; Availability of Guideline

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline entitled "Guideline for Anti-Infective Bovine Mastitis Product Development" prepared by FDA's Center for Veterinary Medicine (CVM). The guideline describes the type of data required to establish target animal safety and effectiveness of anti-infective drugs used for treatment and control of infectious bovine mastitis. This guideline is a revision of a 1981 draft guideline entitled "Antimicrobial Drugs for Intramammary Infusion" which described such required data. The agency is issuing the revised guideline under a different title to be consistent with current terminology.

ADDRESS: The draft and final revised guideline and comments are available for public examination at, further written comments may be submitted to, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations that show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) describes the criteria that must be met before a new animal drug may be approved, including that it be safe and effective for use as labeled. Section 514.1(b)(8) of the animal drug regulations (21 CFR 514.1(b)(8)) describes the effectiveness requirements for an NADA.

In the Federal Register of October 9, 1981 (46 FR 50152), FDA published a notice of availability of a draft revised guideline concerning the evaluation of antimicrobial drugs for intramammary infusion (infectious bovine mastitis) as related to target animal safety and effectiveness. The notice solicited comments by December 7, 1981. FDA

published a notice in the Federal Register of December 4, 1981 (46 FR 59309), extending the time for comment to February 5, 1982, based on a request by the Animal Health Institute (AHI) in a letter dated November 3, 1981 (on file with the Dockets Management Branch).

In a letter dated February 4, 1982 (on file with the Dockets Management Branch), AHI requested a further extension of time and a meeting with CVM to discuss the guideline. CVM believed it would be beneficial to hold an open public meeting, and FDA published a notice in the Federal Register of March 2, 1982 (47 FR 8857), announcing a meeting to be held on May 19, 1982, in Rockville, MD, and extending the time for comment to July 6, 1982. The meeting was held and is summarized in memoranda that are on file with the Dockets Management Branch.

Twelve letters containing comments were received from drug manufacturers, professional organizations, the AHI, and the National Mastitis Council. A summary of the significant comments and the agency's responses is on file with the Dockets Management Branch.

The guideline replaces a guideline entitled "Guideline for Bovine Anti-Mastitis Products: 1973 Revised."

This notice of availability is issued under 21 CFR 10.90(b), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Sponsors may rely upon a guideline with the assurance that it represents procedures acceptable to the agency (see 21 CFR 10.90). If a sponsor believes that alternative procedures are also applicable, a guideline does not preclude a sponsor from pursuing the alternative procedures. Under such circumstances, however, the agency encourages sponsors to discuss the alternative procedures in advance with FDA to prevent the expenditure of money and effort for work that may later be found unacceptable.

Interested persons may, at any time, submit additional written comments on the guideline to the Dockets Management Branch. Such comments will be considered in determining if further revisions of the guideline are required. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 11, 1985.

Mervin H. Shumate,
Acting Associate Commissioner for
Regulatory Affairs.
[FR Doc. 85-17020 Filed 7-17-85; 8:45 am]
BILLING CODE 4160-01-M

Captan With Benzocaine (Holiday® Itch Rid and VIP® Mercapto); Withdrawal of Approval of NADA

Correction

In FR Doc. 85-15788 beginning on page 27360 in the issue of Tuesday, July 2, 1985, make the following correction:

On page 27361, first column, third line, "(21 U.S.C. 350(e))" should read "(21 U.S.C. 360b(e))".

BILLING CODE 1505-01-M

Office of Human Development Services

Intent To Reallot Basic Support and Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services, HHS.

ACTION: Notice of intent to reallot funds.

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which will not be used by the Trust Territories of the Pacific and any other States prior to September 30, 1985, in accordance with section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984, Pub. L. 98-527. To be considered for receipt of additional funds under this reallotment, each State must provide the following information in writing:

(1) The amount of funds that will not be obligated prior to September 30, 1985, under its approved State Plan. If all funds will be obligated, provide a statement to that effect;

(2) If additional funds could be used and obligated prior to September 30, 1985; or

(3) A statement that no additional funds are needed.

The information provided will be used to calculate the amounts to be reallotted and this information should be submitted no later than (30 days from date of publication) to: Betty J. Mobley, Grants and Contracts Management Division, Office of Human Development Services, Department of Health and Human Services, 200 Independence

Avenue SW., Room 341F.4 HHH Bldg., Washington, D.C. 20201.

If a State fails to provide written notice as indicated above by August 19, 1985, that State will not receive additional funds under the fiscal year 1985 reallocation of funds.

FOR FURTHER INFORMATION CONTACT:

Betty J. Mobley, (202) 245-7220.
(Catalog of Federal Domestic Assistance Program No. 13-630 Developmental Disabilities-Basic Support and Advocacy Grants)

Dated: July 11, 1985.

Jean K. Elder,

Commissioner, Administration on Developmental Disabilities.

Approved: July 15, 1985.

[FR Doc. 85-17094 Filed 7-17-85; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

Developmental Therapeutics Contracts Review Committee; Cancellation of Meeting

Notice of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, July 26, 1985, published in the *Federal Register*, (50 FR 25629) is hereby cancelled as fewer applications were received than expected. Therefore, it will be possible to review all applications within the time frame of the July 29-30 meeting. For further information, please contact Dr. Kendall G. Powers, Executive Secretary, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7575).

Dated: July 10, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-17035 Filed 7-17-85; 8:45 am]

BILLING CODE 4140-01-M

Commercial/Industrial Activities Review Schedule

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice of Review Schedule.

SUMMARY: This notice identifies a cost comparison study for a commercial/industrial activity by the National Institutes of Health during Fiscal Year 1986. This study will be in accordance with Office of Management and Budget Circular A-76.

FOR FURTHER INFORMATION CONTACT: Ana Kennedy, Division of Management Policy, National Institutes of Health,

Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20205. (301) 496-2461.

SUPPLEMENTARY INFORMATION: In accordance with OMB Circular A-76, a cost comparison is scheduled for the elevator maintenance and related services to be completed by January 1986. This activity includes administration, maintenance, repair, inspections and emergency service work for elevators, escalators, dumbwaiters, automatic doors, window washing scaffolds and automated material handling systems.

The activity is located at the National Institutes of Health, Bethesda, Maryland.

Dated: July 9, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 85-17033 Filed 7-17-85; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Telone II®

The HHS' National Toxicology Program today announces the availability of the technical report described toxicology and carcinogenesis studies of Telone II® (Technical-Grade 1,3-Dichloropropene containing 1.0% epichlorohydrin as a Stabilizer). Telone II® is widely used in agriculture as a soil fumigant for parasitic plant nematodes. 1,3-Dichloropropene, a mixture of *cis* and *trans* isomers, is a clear, light straw-colored liquid with a penetrating, irritating, chloroform-like odor and is also found in D-D® and Vorlex® soil fumigants.

Toxicology and carcinogenesis studies of Telone II® were conducted by administering the commercial-grade formulation in corn oil by gavage to groups of 52 male and 52 female F334/N rats at doses of 0, 25, or 50 mg/kg and to groups of 50 male and 50 female B6C3F₁ mice at doses of 0, 50, or 100 mg/kg. Doses were administered three times per week for 104 weeks. Ancillary studies were conducted in which dose groups containing five male and five female rats were killed after Telone II® for 9, 16, 21, 24, or 27 months.

Under the conditions of these gavage studies, there was *clear evidence of carcinogenicity* for male F344/M rats, as indicated by Telone II®-related increased incidence of squamous cell papillomas and carcinomas of the forestomach, as well as an increased incidence of neoplastic nodules of the

liver. In female F334/N rats, there was *some evidence of carcinogenicity* because Telone II® caused an increased incidence of squamous cell papillomas of the forestomach. The experiment in male B6C3F₁ mice was considered to be an *inadequate study of carcinogenicity* because of reduced survival in the vehicle control group. However, there was some indication in the male mice of Telone II®-related increases of transitional cell carcinomas of the urinary bladder, squamous cell papillomas of the forestomach, and alveolar/bronchiolar adenomas and carcinomas of the lung. There was *clear evidence of carcinogenicity* for female B6C3F₁ mice, since Telone II® caused increased incidences of transitional cell carcinomas of the urinary bladder; Telone II® also increased the incidences of alveolar/bronchiolar adenomas of the lung and of squamous cell papillomas or carcinomas of the forestomach in the female mice. Telone II®-related non-neoplastic lesions included basal cell or hyperplasia in the forestomach of male and female rats and male and female mice and epithelial hyperplasia of the urinary bladder in male and female mice.

Copies of *Toxicology and Carcinogenesis Studies of Telone II® in F344/N Rats and B6C3F₁ Mice (Gavage Studies)* (T.R. 289) are available without charge from the NTP Public Information Office, M.D. B2-04, P.O. Box 12233, Research Triangle Park, NC, 27709. Telephone (919) 541-3991, FTS: 629-3991.

Dated: July 10, 1985.

David P. Rall,

Director.

[FR Doc. 85-17034 Filed 7-17-85; 8:45 am]

BILLING CODE 4101-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services, (HHS); Public Health Service, (PHS).

ACTION: Notification of establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Assistant Secretary for Health (OASH) is publishing notice of a proposal to establish a new Privacy Act system of records 09-37-0017. "Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM." This system, which has been a subsystem under another system of records, will continue to be used to review and act on requests to correct alleged errors or

injustices resulting from the administration of laws and regulations. We are also proposing new routine uses for this system. PHS invites interested persons to submit comments:

- (1) On the proposal to establish a separate system of records;
- (2) On two proposed new routine uses (#6 and #7 of the accompanying system notice) on or before August 19, 1985.

DATES: PHS has sent a Report of the New System to the Congress and to the Office of Management and Budget (OMB) on July 10, 1985. The system of records will become effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination. A Notice of Proposed Rulemaking to exempt the system from the access provisions of the Privacy Act under subsections (k)(5) and (k)(6) has been submitted to the Secretary of the Department. These exemptions will become effective after the Secretary's approval and after the exemption have been published separately in the Federal Register for public comment. The proposed exemptions are included in the accompanying system notice solely for public information.

ADDRESS: Comments should be addressed to the Chairperson, Board for Correction of PHS Commissioned Corps Records, HHS/OASH/OM, Room 17-51, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments received will be available for inspection from 9:00 a.m. to 4:00 p.m. Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. White, Executive Secretary, Board for Correction of PHS Commissioned Corps Records, Room 17-79, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or call (301) 443-6268. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Office of Management (OM) in the Office of the Assistant Secretary for Health (OASH) proposes to establish a new system of records: 09-37-0017, "Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM." To date, these records have been maintained as a discrete subsystem under system of records 09-37-0005, "PHS Commissioned Corps Board Proceedings, HHS/OASH/OM." OM has decided to create a new, separate system of records for the Board for Correction of PHS Commissioned Corps Records, hereafter referred to as the Board for Correction, to allay a concern that the records of the Board for Correction may be incorrectly perceived

to be part of the personnel records maintained by the Commissioned Personnel Operations Division (CPOD), since CPOD's decisions about officers' rights, benefits and privileges are the substance of appeals made to the Board for Correction.

As soon as the proposed new system has been approved and the requested exemptions have been granted, the Board for Correction subsystem will be deleted from system 09-37-0005.

The purposes of the proposed new system are the same as those of the original subsystem:

1. To process requests from present or former Commissioned Corps officers for the correction of alleged errors or injustices resulting from the administration of laws and regulations;
2. To review and adjudicate these requests;
3. To disclose the decisions of the Board for Correction to CPOD for appropriate action;
4. To document all actions and activities of the Board for Correction.

Such actions and activities include correspondence with applicants regarding their requests; case summaries; findings, conclusions and Board for Correction members' recommendations; and final decisions made on these recommendations. Copies of records maintained by CPOD is personnel systems of records are used for verification and documentation. Applicants are informed that the disclosure of their Social Security Number is mandatory when the applicant requests a correction of a financial record such as payroll or leave, or when it is anticipated that a favorable resolution of a request would result in a financial settlement.

Hard-copy records are stored securely in a manner compatible with the sensitivity of the records. Microfiche technology will be used where appropriate, to facilitate the storage and retrieval of data.

The System Manager, who is also the Chairperson of the Board for Correction, and/or the Executive Secretary of the Board for Correction, control access to the data. Additional authorized personnel having access to the data are the Director, Office of Management, who has been delegated authority by the Assistant Secretary for Health (ASH) to oversee operations of the Board for Correction, and specifically designated clerical support staff in the offices of the System Manager and the Executive Secretary. Board for Correction members have access to records only on a need-to-know basis subject to the final decision of ASH.

Seven routine uses are proposed for this system.

Routine uses #1, 2, and 3 are the same as in the original subsystem. Routine use #1 permits disclosure of information to a congressional office to allow subject individuals to obtain assistance from their representatives in Congress. Such disclosure will be made only pursuant to a request of the individual. Routine use #2 permits disclosure of information to the Department of Justice (DOJ) in the case of litigation arising from actions of the Board for Correction, to allow DOJ to defend the Federal Government, the Department, or employees of the Department in case of such lawsuits.

Routine uses #3 permits disclosure of information to appropriate Federal, State, or local agencies as well as international agencies or foreign governments if the Board for Correction becomes aware of evidence a potential violation of civil or criminal law on the part of subject individuals.

Routine uses #4 and #5 were also in the original subsystem (although routine use #5 here was #8 there) but are being modified here solely for the purpose of greater specificity (#4) and clarity (#5).

Routine uses #4 permits disclosure of information to a private contractor assisting the Board for correction in recording and transcribing tapes of Board for Correction meetings. The contractor is required to comply with Privacy Act safeguards, and the HHS Privacy Act Regulations, with respect to such records. These are explained in the system notice.

Routine uses #5 permits disclosure of information to properly identified attorneys of subject individuals or their personally designated representatives to court-appointed representatives of mentally incompetent or otherwise legally handicapped subject individuals and to guardians to the extent necessary to assure attainment of rights or payment of benefits to which such individuals would be entitled.

Routine uses #6 and #7 are new. If adopted, routine use #6 will permit disclosure of information to federal, State or local government agencies, or public interest organizations, when the subject individual's request for correction indicates that such agencies may have information which will assist the Board for Correction in clarifying the individual's entitlement to rights or benefits. By resulting in information which will help the Board for Correction to arrive at an equitable decision, this proposed new routine use is compatible with the purpose of the system, which is to support a process for assuring that subject individuals have available to

them an appeal procedure for correcting alleged errors or injustices.

Proposed routine use #7 will permit disclosure of information to consultants in a Federal agency or in the private sector if the Board for Correction has determined that it needs such opinions to arrive at an equitable decision concerning the subject individual's request. By making certain that expert opinion is available to the Board for Correction, this proposed new routine use is compatible with the purpose of the system, which is to support a process for assuring that subject individuals have available to them an appeals procedure for correcting alleged errors or injustices.

The proposed system of records will not become effective until 60 days after the date it was reported to OMB, as discussed above. Until then it will remain a discrete subsystem under system of records 09-37-0005.

Dated: July 12, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-37-0017

SYSTEM NAME:

Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board for Correction of PHS Commissioned Corps Records, HHS/OASH/OM Room 17-79, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; and Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Records also may be located at the contractor site. The names and addresses of contractors used by the Board for Correction can be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned Officers of the PHS Commissioned Corps, and former officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commissioned Officer case files consisting of applications requesting corrections of alleged errors or injustices, administrative reports, case summaries, findings, conclusions, recommendations, Board decisions, and related documents, including copies of records from other systems of records as

specified under Record Source Categories below.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552 "Correction of Military Records"; Public Health Service Act, 42 U.S.C. 213a(a)(12); Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons."

PURPOSE(S):

This system of records is used:

1. To process requests for present or former Commissioned Officers for the correction of alleged errors or injustices resulting from the administration of laws and regulations;
2. To review and adjudicate these requests;
3. To disclose the decisions of the Board for Correction to the Commissioned Personnel Operations Division (CPOD) for appropriate action;
4. To document all actions and activities of the Board for Correction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. These records may be used to disclose information 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.
2. In the event of litigation where the defendant is:
 - a. The Department, any component of the Department, or any employee of the Department in his or her official capacity;
 - b. The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or
 - c. Any Department employee in his or her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the DOJ to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.
3. These records may be used to disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. Disclosure of information may be made to private contractors who record and transcribe tapes of Board for Correction meetings. Contractors are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5. Disclosure of information may be made to properly identified attorneys of subject individuals or their personally designated representatives, to court-appointed representatives of mentally incompetent or otherwise legally handicapped subject individuals and to guardians to the extent necessary to assure attainment of rights or payment of benefits to which such individuals would be entitled.

6. Disclosure of information may be made to Federal, State or local government agencies (such as those concerned with disability compensation, health and human services, hospitals, and legal affairs) or to public interest organizations (such as the American Red Cross, the American Civil Liberties Union, Disabled American Veterans, and the Legal Aid Society) when the subject individual's request for correction will affect the individual's entitlement to rights or benefits, and when such agencies may have information which will assist the Board for Correction in clarifying that entitlement.

7. Disclosure of information may be made to authorized experts or consultants in a Federal agency or in the private sector if the Board for Correction has determined that it needs such opinions to arrive at an equitable decision concerning the subject individual's request. Consultants or experts are required to comply with Privacy Act safe-guards and the HHS Privacy Act Regulations with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, word processing disks and microfiche.

RETRIEVABILITY:

Alphabetically by name, by service number, and by Social Security Number (SSN).

SAFEGUARDS:

1. *Authorized Users:* The System Manager, and/or the Executive Secretary of the Board for Correction, will control access to the data. Additional authorized personnel having

access to the data are: (1) The Director, Office of Management; (2) Designated clerical support staff in the offices of the System Manager and the Executive Secretary; (3) Board for Correction members on a need-to-know basis; and (4) Experts, consultants or private contractors when approved by the System Manager.

2. Physical Safeguards: Hard-copy records, word processing disks and microfiche are stored in a locked metal file cabinet located in an inner office occupied continuously during working hours and locked at all other times. The doors to the inner and outer offices are secured with combination locks. The building has a 24-hour security guard, and entry into the building is controlled before and after normal working hours. A contractor who is given records must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract.

3. Administrative Safeguards: Authorized personnel have been trained to comply with provisions of the Privacy Act and the HHS Privacy Act Regulations. Records are transmitted in sealed envelopes and are identified as confidential material. When copying records for authorized purposes, care is taken to ensure that no imperfect or extra pages are left in the reproduction room. These pages are disposed of by shredding. Contractor compliance is assured through inclusion of privacy requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

4. Implementation Guidelines: These safeguards have been developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf:45-13.

RETENTION AND DISPOSAL:

Records are transferred to the Washington National Records Center (WNRC) one year after CPOD has implemented the Board for Correction's (favorable) decision, or three years after the Board for Correction has denied the applicant's request, whichever applies to the final disposition of a case.

Records are destroyed by the WNRC after 20 years by pulping.

SYSTEM MANAGERS AND ADDRESS:

Chairperson, Board for Correction of PHS Commissioned Corps Records, Room 17-51, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

To determine if a record exists, the subject individual should contact the System Manager at the above address. A subject individual who appears in person is required to provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, Social Security card, or discharge or separation papers). An individual making a written inquiry is required to sign the request mailed to the System Manager. The signature given is compared with the signature on file prior to release of the material requested.

If the subject individual is represented by an attorney, other than the one shown on the application to the Board for Correction, it would be necessary to have in the case file a dated letter signed by the subject individual giving the name of the attorney and stating that he/she has been authorized access to the case file. If the subject individual is represented by another person, it would also be necessary to have in the case file a dated letter signed by the individual giving the name of the representative and stating that he/she has been authorized access to the case file. In both instances, the persons representing the subject individual would be required to present documentation identifying him/herself as being the person mentioned in the application or in a letter on file with the Board for Correction.

If the subject individual is judged to be mentally incompetent to handle his/her personal affairs, a court order should have been issued to that effect. The person identifying him/herself as representing the subject individual in this circumstance would be required to present a copy of the court order and to personally identify him/herself as being the person mentioned in the order.

If the subject individual is physically incapacitated, a medical statement certifying to the physical disability would be required, signed and dated by a licensed physician. The person presenting this statement would be required to personally identify him/herself and provide documentation of his/her relationship to the subject individual (e.g., marriage license, birth certificate, etc.).

If the subject individual is deceased, proof of death would be required, signed and dated by the appropriate certifying agency of Government. The person presenting this document would be required to personally identify him/herself and provide documentation of his/her relationship to the deceased (e.g., marriage license, birth certificate, etc.).

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on either the subject individual or the determination of his/her request, the requester (whether the subject individual, his/her personal representative, an attorney other than the one shown on the application to the Board for Correction, a court appointed representative, or a guardian) shall be asked to designate in writing a physician or other health professional who is willing to review the material and inform the requester of its contents, at the discretion of the health professional. The person designated to evaluate the medical information must provide proof that he/she is duly authorized by the requester to review the material.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. The requester is required to specify reasonably the contents of the records being sought. Access to records granted exemptions from the Privacy Act access requirement is made at the discretion of the System Manager subject to the appropriate approvals. Denial of access is ultimately appealable to the Assistant Secretary for Health, Room 716G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

The requester may also ask for an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, the requester shall contact the System Manager above, reasonably identify the records, specify the information being contested, and state the corrective action sought, with supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are obtained from applicants; reports of findings and recommendations made by Board for Correction members; Board for Correction decisions; supervisors; private and Government physicians;

hospitals and clinics rendering treatment; investigative reports; death certificates and reports of death; survivors and executors of estates; private and Government agency reports on service delivery, compensation, disability and legal opinions; and records contains in systems 09-37-0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM"; 09-37-0003, "PHS Commissioned Officer Medical Records, HHS/OASH/OM"; 09-37-0005, "PHS Commissioned Corps Board Proceedings, HHS/OASH/OM"; 09-37-0006, "PHS Commissioned Corps Grievance; Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM"; 09-37-0008, "PHS Commissioned Corps Unofficial Personnel Files and other Station Files, HHS/OASH/OM."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Applicants may obtain information from the proposed record system except for the exemption allowed in accordance with the provisions of 5 U.S.C. 552a(k)(5). The exemption includes investigatory material compiled by the Board for Correction or obtained from CPOD to the extent that disclosure of such material would reveal the identity of a confidential source when an express promise has been given to withhold that identity. This exemption applies only in those cases where the source provides expert opinion related to the subject individual's suitability, eligibility or qualification for Federal civilian employment or military service.

Additionally, in accordance with exemption (k)(6) of 5 U.S.C. 552a, the Board for Correction will protect from disclosure testing and examination materials relating to determining the qualifications of PHS Commissioned Corps officers for appointment or promotion, if disclosure of such materials could compromise the objectivity or fairness of the testing and examination process.

[FR Doc. 85-17095 Filed 7-17-85; 8:45 am]
BILLING CODE 4610-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Crow Creek Sioux Tribe; Crow Creek Sioux Indian Reservation, Fort Thompson, South Dakota; Transfer of Federally Owned Lands

July 9, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Deputy Assistant

Secretary—Indian Affairs by 209 DM 8.3A.

On September 28, 1984, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 as amended by Public Law 93-599 dated January 2, 1975 (88 Stat. 1954), the below described property was transferred by the Administrator of the General Services Administration to the Secretary of the Interior without reimbursement to be held in trust by the United States for the benefit and use of the Crow Creek Sioux Tribe, Crow Creek Sioux Indian Reservation, Fort Thompson, South Dakota.

5th Principal Meridian

Parcel 1

A tract of land situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 107 North, Range 72 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$; thence Southerly along the East line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$, 318.70 feet, more or less, to the centerline of existing highway; thence Northwesterly along said centerline to a point on the North line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$, said point being 490.90 feet Westerly of said Northeast corner; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of the Crow Creek Tribe of Sioux Indians, et al., all mineral rights as described in Judgment on Declaration of Taking, Civil Number 184 C.D., dated January 21, 1955, United States District Court, Sioux Falls, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 2

A tract of land situated in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 107 North, Range 72 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence Southerly along the East line of said S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ to a point on the centerline of existing highway, said point being 170.20 feet Northerly of the Southeast corner of said S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence Northwesterly along a curve to the right, having a radius of 5,729.62 feet, a central angle of 04°58'00", 496.67 feet tangent to said curve being North 63°13'00" West, said curve being said centerline of existing highway; thence North 58°15'00" West to the North line of said S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of the Crow Creek Tribe of Sioux Indians, et al., all mineral rights as described in

Judgment on Declaration of Taking, Civil Number 184 C.D., dated January 21, 1955, United States District Court, Sioux Falls, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 3

A tract of land situated in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, Township 107 North, Range 72 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said Section 25; thence Southerly along the East line of said Section 25, 522.91 feet, more or less, to the centerline of the existing highway; thence Northwesterly along said centerline to a point on the North line of said Section 25, said point being 985.70 feet Westerly of said Northeast corner; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of Dell Menzie and Rose Menzie for all oil and gas rights as described in Warranty Deed dated April 25, 1953, and recorded April 27, 1953, Book 8M of Misc. Records on page 3-4, records of Buffalo County, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 4

A tract of land situated in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, Township 107 North, Range 71 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence Southerly along the East line of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ to a point on the centerline of the existing highway, said point being 132.50 feet Northerly of the Southeast corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence North 62°20'00" West along said centerline to the North line of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence Easterly along said centerline to the point of beginning.

Subject to a reservation in favor of L.P. Christensen, Victor D. Christensen, and Margery A. Christensen, all oil and gas rights as described in Warranty Deed dated August 11, 1953, and recorded August 13, 1953, in Book 17 of Deeds at Page No. 174, records of Buffalo County, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 5

A tract of land situated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, Township 107 North, Range 71 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said SE $\frac{1}{4}$ NW $\frac{1}{4}$; thence Southerly along the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ to a point on the centerline of the existing highway, said point being 773.58 feet more or less Northerly of the Southeast corner of said SE $\frac{1}{4}$ NW $\frac{1}{4}$; thence Northwesterly along said centerline to a point on the North line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, said point being 290.10 feet Easterly of the Northwest corner of said SE $\frac{1}{4}$ NW $\frac{1}{4}$; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of the Crow Creek Tribe of Sioux Indians, et al., all mineral rights as described in Judgment on Declaration of Taking, Civil Number 184 C.D., dated January 21, 1955, United States District Court, Sioux Falls, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 6

A tract of land situated in the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, Township 107 North, Range 71 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence Southerly along the East line of said S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, 306.90 feet, more or less, to the centerline of the existing highway; thence Northwesterly along said centerline to a point on the North line of said S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, said point being 483.60 feet Westerly of said Northeast corner; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of L.P. Christensen, Victor D. Christensen, and Margery A. Christensen, all oil and gas rights as described in Warranty Deed dated August 11, 1953, and recorded August 13, 1953, in Book 17 of Deeds at Page No. 174, records of Buffalo County, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 7

A tract of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, Township 107 North, Range 71 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence Southerly along the East

line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ to a point on the centerline of the existing highway, said point being 992.34 feet Northerly of the Southeast corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence Northwesterly along said centerline to a point on the North line of said S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; said point being 594.40 feet Easterly of the Northwest corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of L.P. Christensen, Victor D. Christensen, and Margery A. Christensen, all oil and gas rights as described in Warranty Deed dated August 11, 1953, and recorded August 13, 1953, in Book 17 of Deeds at Page No. 174, records of Buffalo County, South Dakota.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Parcel 8

A tract of land situated in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 107 North, Range 71 West, Buffalo County, South Dakota, being more particularly described as follows:

Beginning at the Northeast corner of said NW $\frac{1}{4}$ NE $\frac{1}{4}$; thence Southerly along the East line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ 612.50 feet, more or less, to the centerline of the existing highway; thence Northwesterly along said centerline to a point on the North line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$, said point being 281.40 feet Easterly of the Northwest corner of said Northwest corner of said NW $\frac{1}{4}$ NE $\frac{1}{4}$; thence Easterly along said North line to the point of beginning.

Subject to a reservation in favor of the Crow Creek Tribe of Sioux Indians, et al., all mineral rights as described in Judgment on Declaration of Taking, Civil Number 184 C.D., dated January 21, 1955, United States District Court, Sioux Falls, South Dakota.

Subject to a perpetual permit No. DA-25-066-CIVENG-61-818, granted by the United States of America, Secretary of the Army, to the Department of Interior, Bureau of Indian Affairs for the construction, use and maintenance of a road, as it now exists, over and across the above described property.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

Preservation Covenant

Transfer of Parcels 7 and 8 is subject to the conditions, restrictions, and limitations hereinafter set forth which shall be considered as covenants running with the property, and which the transferee, its heirs, and assigns covenant and agree, in the event that the property is sold or otherwise disposed

of, will be inserted in the conveyance or other instrument disposing of the property.

1. No physical change to the archeological site or its surface or surface covering will be made without the written approval of the South Dakota State Historic Preservation Officer.

2. Scientific investigation of the archeological site involving removal of its contents or disturbance of any area within the site boundaries will be permitted only if the investigations are conducted in a professional manner under the direction of a person(s) meeting the professional standards for archeologists established by the U.S. Department of the Interior and after (a) written approval by the South Dakota State Historic Preservation Officer of a research design which will ensure adequate recovery of data that makes the site significant; and (b) the owner has granted consent to the implementing individuals for conducting such work on the property.

3. The South Dakota State Historic Preservation Officer will be contacted by the owner upon completion of any scientific investigation or after any disturbance of the site in order that the State Historic Preservation Officer can conduct, or cause to be conducted, an inspection of the site to determine the necessity for retaining the protection provided by these covenants.

4. The owner shall not allow removal or collecting of artifacts from the archeological site except under the provision for scientific investigation described above.

5. The above restriction shall be binding on the parties hereto, to their heirs, successors, and assigns, in perpetuity or until the site no longer retains the data that makes it significant.

6. The State Historic Preservation Officer may, for good cause, modify or cancel any or all of the foregoing restrictions upon application of the grantee, his heirs and assigns.

7. In the event of a violation of the above restrictions, GSA or the South Dakota State Historic Preservation Officer may institute a suit to enjoin such violation or for damages by reason of any breach thereof.

The acceptance of this transfer shall constitute conclusive evidence of the agreement of the transferee to be bound by the conditions, restrictions, and limitations and to perform the obligations herein set forth.

Parcel 9

That portion of S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 and the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 106 North, Range 71 West, Buffalo County, South Dakota, lying Northerly of the centerline of the existing highway.

Subject to a reservation in favor of the Crow Creek Tribe of Sioux Indians et al., all mineral rights as described in Judgment on Declaration of Taking, Civil Number 184 C.D., dated January 21, 1955, United States District Court, Sioux Falls, South Dakota.

Subject to a permit, No. DACW 45-4-71-6042, which expires April 9, 2021, granted by the United States of America, Secretary of the Army, to the Department of the Interior, Bureau of Indian Affairs for the construction, use and maintenance of a road, as it now exists, over and across the above described property.

Subject to existing easements and encumbrances for public roads and highways, public utilities, railroads and pipelines and other easements and encumbrances of record, if any.

These lands are to be treated and receive the same benefits and protection as other trust lands held for the benefit and use of the Crow Creek Sioux Tribe. Appropriate notation will be made to the land records of the Bureau of Indian Affairs.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-17118 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management**Designation of the Red Hills Area of Critical Environmental Concern, Bakersfield District, CA**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice that Certain Public Lands in the Folsom Resource Area, Bakersfield District, California are Designated as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Notice is hereby given pursuant to authority in the Federal Land Policy and Management Act of 1976 (Sec. 202(c)(3)), 43 CFR Part 1610, and land use decisions developed in the Sierra Management Framework Plan (February 1983), that public lands within the Red Hills Management Area are designated as an Area of Critical Environmental Concern.

SUPPLEMENTARY INFORMATION: Notice of the intent to designate public lands within the Red Hills Management Area

as an Area of Critical Environmental Concern and the availability of the Final Red Hills Management Plan and Environmental Assessment were published in the Federal Register on March 8, 1985. The Record of Decision and final management plan call for the management of the Red Hills as an ACEC.

The Red Hills ACEC is located in western Tuolumne County, southwest of Chinese Camp and east of Keystone. The ACEC was identified to protect five sensitive plant species found in the area. Major components of the plan are to restrict cumulative surface disturbance to less than five percent, and to close the ACEC to off-road vehicle activity.

The following described lands (approximately 4,500 acres) are hereby designated as the Red Hills Area of Critical Environmental Concern (ACEC):

Mount Diablo Meridian, California

- T. 1 S., R. 13 E.,
 Sec. 12, S $\frac{1}{2}$;
 Sec. 13, NW $\frac{1}{4}$ N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 T. 1 S., R. 14 E.,
 Sec. 7, Lot 4;
 Sec. 16, N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 18, Lots 1, 2, N $\frac{1}{2}$ Lot 3;
 Sec. 19, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 20, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 21, S $\frac{1}{2}$ S $\frac{1}{2}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 22, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 23, Lots 4, 5, 8, 9, 10, 12, 13, 14, 15, 16;
 Sec. 24, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 25, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 26, Lots 1-8, includes W $\frac{1}{2}$ Lot 9, 10-15, includes W $\frac{1}{2}$ Lot 16;
 Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ N $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$;
 Sec. 28, E $\frac{1}{2}$, NW $\frac{1}{4}$;
 Sec. 29, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 34, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 35, Lots 21, 25.

FOR FURTHER INFORMATION CONTACT:

Deane K. Swickard, Folsom Resource Area Manager, 83 Natoma Street, Folsom, California 95630 (916) 985-4474.

Dated: July 11, 1985.

Richard F. Johnson,

Acting State Director, California.

[FR. Doc. 85-17120 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-40-M

[A-20225]

Realty Action; Public Lands Exchange in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described lands and interests therein 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:

Gila and Salt River Meridian, Arizona

- T. 21 N., R. 18 W.,
 Sec. 34, SW $\frac{1}{4}$.
 T. 20 N., R. 18 W.,
 Sec. 13, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 14, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ W $\frac{1}{2}$ S E $\frac{1}{4}$ SE $\frac{1}{4}$.

Comprising 350 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from the Western Progress Company of Kingman, Arizona.

Gila and Salt River Meridian

- T. 19 N., R. 18 W.,
 Sec. 29, all.

Comprising 640 acres, more or less.

The public lands to be transferred are subject to the following terms and conditions:

1. Reservations to the United States—(a) right-of-way for ditches and canals pursuant to the Act of August 30, 1890; (b) all the oil and gas and with it, the right to prospect for, mine and remove same; and (c) electric distribution right-of-way A-16998.

2. Subject to—(a) prior valid rights existing as of the date of this action; (b) electric distribution right-of-way PHX-034352; (c) telephone line right-of-way PHX-079765; (d) Topock-Oatman Road right-of-way A-21021; (e) such rights for road right-of-way purposes as the Mohave County Board of Supervisors may have under Revised Statute 2477; (f) any restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84-10 of July 16, 1984; and (g) the right of the grazing lessee to continue the grazing use of those public lands in sections 13 and 14, T. 20 N., R. 18 W., through September 29, 1985.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals in the subject are reserved to the New Mexico and Arizona Land Company as set forth in Book 92 of Deeds, page 166, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not

the mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Dated: July 11, 1985.

Marlyn V. Jones,
District Manager.

[FR Doc. 85-17111 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action, Exchange of Public Lands in Boundary, Bonner, Kootenai Counties, ID

AGENCY: Bureau of Land Management (BLM), Interior

ACTION: Notice

SUMMARY: The following described public 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:

- T. 53 N., R. 5 W., B.M.,
Sec. 28: NE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 56 N., R. 5 W., B.M.,
Sec. 3: S $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 10: E $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 56 N., R. 3 W., B.M.,
Sec. 12: S $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 56 N., R. 2 W., B.M.,
Sec. 8: S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 19: Lots 1, 2, 3, 4, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 57 N., R. 3 W., B.M.,
Sec. 17: S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
T. 62 N., R. 3 E., B.M.,
Sec. 10: Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
Sec. 15: Lots 1 & 2.
T. 64 N., R. 4 W., B.M.,
Sec. 35: SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 942.43 acres.

In exchange for these lands, the Federal Government will acquire scattered sections of non-Federal lands in Blaine and Power Counties from the State of Idaho, described as follows:

- T. 5 S., R. 27 E., B.M.,
Sec. 36: All.
T. 6 S., R. 27 E., B.M.,

- Sec. 18: All;
Sec. 36: All.
T. 6 S., R. 28 E., B.M.,
Sec. 18: All;
Sec. 25: SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 38: W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$
NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$
SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 7 SE., R. 27 E., B.M.,
Sec. 16: N $\frac{1}{2}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 36: All.
T. 7 S., R. 28 E., B.M.;
Sec. 16: All;
T. 8 S., R. 27 E., B.M.,
Sec. 16: All.
T. 8 S., R. 28 E., B.M.,
Sec. 16: All.

Containing 6,140 acres.

The purpose of the exchange is to dispose of scattered, difficult to manage public lands while acquiring State-owned lands which would compliment management of the Bureau's Wapi Lava Flow portion of the proposed Great Rift Wilderness Area. The exchange is consistent with the Bureau's planning and has been discussed with Federal, State and local governmental agencies, public land user groups and individuals through participation in the Bureau's Land Use Planning Process. The public interest will be well served by making the exchange. The exchange will include both surface and mineral estates.

The acreage of the lands to be exchanged will be adjusted so that the acreage exchanged will be equal in value. The State of Idaho's offered land has been appraised at \$25 per acre.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for powerline purposes as granted to Northern Lights, Inc. under serial number I-017450.

3. Those rights for pipeline purposes as granted to Pacific Gas Transmission Company under serial numbers I-9099 and I-011838.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

The non-Federal lands described above are subject to prior Federal reserved minerals. The prior Federal interests are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days, interested parties may submit comments to the Idaho Falls District Office, at the address listed above.

For Further Information Contact:
O'dell A. Frandsen, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401; Telephone: (208) 529-1020.

July 9, 1984.

O'dell A. Frandsen,
District Manager.

[FR Doc. 85-17113 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-GG-M

[W-90883]

Realty Action; Noncompetitive Sale of Public Land in Sweetwater County, WY

July 8, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of public land in Sweetwater County, Wyoming.

SUMMARY: The following public lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than the appraised fair market value of \$8,250.00. The lands will not be offered for sale until 60 days after the date of this notice.

Sixth Principal Meridian

- T. 18 N., R. 105 W.,
Sec. 20: SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$
SW $\frac{1}{4}$.

The above-described lands, containing 25 acres, are proposed to be offered for direct sale to the Sweetwater County Solid Waste Disposal District No. 1 which plans to construct a County industrial waste disposal facility adjacent to their existing sanitary landfill operation. The land proposed for sale is presently leased to the Solid Waste District for the landfill under authority of the Recreation and Public Purposes Act. The Recreation and Public

Purposes classification and lease on the affected lands would be terminated at the time of sale.

The sale is consistent with the Bureau's planning system. The lands are needed for any resource program and are not suitable for management by the Bureau or another Federal department or agency. After consulting with Sweetwater County officials and members of the public, it has been determined that the public interest would be served by offering the lands for sale.

All minerals except oil and gas and coal beneath the parcel will also be offered for conveyance. The mineral interest being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). The bid must be accompanied by a fifty dollar (\$50.00) non-returnable filing fee to process the mineral conveyance.

The BLM must receive fair market value for the land sold and a bid for less than fair market value will be rejected. The BLM may accept or reject the offer, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. Requests for information about the sale should be sent to BLM, Salt Wells Resource Area, P.O. Box 1170, Rock Springs, Wyoming 82902-1170 (Phone 307-362-7350).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for ditches and canals.

For period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Donald Sweep,

District Manager.

[FR Doc. 85-17112 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-22-M

[W-059320, W-068665, W-094183, W-0150196, W-0321051, W-28577, W-34584]

Wyoming; Notice of Proposed Continuation of Forest Service Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes a 537.40 acre withdrawal for an administrative site and recreational areas continue for an additional 20 years. The lands remain closed to the operation of the mining laws. They have been and will remain open to surface entry and mineral leasing.

DATE: Comments and requests for a public meeting should be received on or before October 16, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307-772-2089.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service proposes that the existing withdrawals made by Public Land Order No. 2278, as modified by PLO 4788, and PLO No's 2796, 2978, 3250, 3777, 4265, 5140 and 5293, dated February 27, 1961, April 2, 1970, October 19, 1962, March 18 and October 10, 1963, August 10, 1965, August 30, 1967, October 18, 1971, October 11, 1972, and Executive Order 8519 of August 19, 1940, be continued for an additional 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following described lands:

Sixth Principal Meridian

Medicine Bow National Forest

- T. 14 N., R. 71 W.,
 Sec. 7, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ of lot 1, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 18, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 20, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 28 N., R. 71 W.,
 Sec. 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 9, Block 1, lots 1-5; Block 2, lots 1-5, 16-20; Block 3, lots 1-5, 16-20.
- T. 15 N., R. 72 W.,
 Sec. 23, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 24, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 28 N., R. 73 W.,
 Sec. 8, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

- T. 29 N., R. 75 W.,
 Sec. 28, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 13 N., R. 77 W.,
 Sec. 19, NW $\frac{1}{4}$ of lot 6.
- T. 12 N., R. 78 W.,
 Sec. 23, SW $\frac{1}{4}$ of lot 4.
- T. 13 N., R. 78 W.,
 Sec. 27, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 28, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 16 N., R. 78 W.,
 Sec. 16, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 13 N., R. 80 W.,
 Sec. 6, E $\frac{1}{2}$ of lot 5, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 14 N., R. 80 W.,
 Sec. 31, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 537.40 acres in Albany, Carbon and Converse Counties.

The purpose of the withdrawal is to protect the capital investments for the Esterbrook Administrative Site and the recreational areas. The withdrawal segregates the lands from the operation of the mining laws, but not from surface entry and mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination of the continuation of the withdrawal will be published in the *Federal Register*. The existing withdrawals will continue until such final determination is made.

Gerald L. Jessen,

Acting State Director.

[FR Doc. 85-17110 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-22-M

Public Meeting; Emergency Coal Lease Application on Public Land in Carbon and Emery Counties; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting; Correction.

SUMMARY: Emergency coal lease application on public land in Carbon and Emery Counties.

For FR Doc. 85-15825 appearing on page 27364 in issue of Tuesday, July 2, 1985 note the following corrections:

1. The title should read: "NOTICE OF PUBLIC MEETING; EMERGENCY COAL LEASE APPLICATION ON PUBLIC LAND IN EMERY COUNTY".

2. The summary should read: "Emergency Coal Lease Application on Public Land in Emery County".

3. In 2nd column in 2nd paragraph beginning on the sixth line the information that appeared "the 278.16 acre tract (U-54762) is located on the Manti-La Sal National Forest in Carbon and Emery Counties approximately 5 miles west of Hiawatha, Utah" should have read, "the 256.46 acre tract (U-54762) is located on the Manti-La Sal National Forest in Emery County approximately 10 miles west of Hiawatha, Utah".

Dated: July 11, 1985.

Gary Hansen,
Acting District Manager.

[FR Doc. 85-17041 Filed 7-17-85; 8:45 am]
BILLING CODE 4310-DQ-M

Sale of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public lands in Lemhi County and Custer County, Idaho.

DATE AND ADDRESS: The sale offering will be held on Thursday, September 19, 1985, at 10:00 a.m. at the Salmon District Office, Box 430, Salmon, Idaho 83467. Unsold parcels will be offered every Thursday through December 19, 1985.

SUMMARY: Based on public supported land use plans the following described lands has been examined and identified as suitable for disposal by public sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. U.S.C. 1713), at no less than the appraised fair market value.

Sealed bids only will be accepted for each parcel offered for sale. The appraised values will be available after August 15, 1985 by contacting the Salmon District Office.

The below described lands are hereby segregated from all appropriations under the public land laws, including the mineral laws, as provided by 43 CFR 2711.1-2(d).

Parcel	Legal description	Acres	Sale type
I-22074, I-4(61)	T. 9 N., R. 22 E., B.M., Sec. 17: Lot 2	17.91	Competitive
I-22075, I-4(62)	T. 9 N., R. 22 E., B.M., Sec. 17: Lots 3, 6, 8	82.45	Do.
I-22076, I-4(63)	T. 9 N., R. 22 E., B.M., Sec. 17: Lot 9	25.53	Do.
I-21324, I-4(58)	T. 13 N., R. 23 E., B.M., Sec. 34: NE1/4	40.00	Modified competitive
I-19635, I-4(27)	T. 9 N., R. 22 E., B.M., Sec. 6: Lot 9	40.00	Competitive
I-21325, I-4(45)	T. 16 N., R. 25 E., B.M., Sec. 35: NW1/4NE1/4	40.00	Do.
I-21326, I-4(46)	T. 16 N., R. 25 E., B.M., Sec. 35: NW1/4SE1/4	10.00	Do.
I-21327, I-4(47)	T. 16 N., R. 25 E., B.M., Sec. 35: N1/4NE1/4, NW1/4SE1/4, SW1/4NE1/4, NW1/4SE1/4, N1/4SW1/4, NW1/4SE1/4, SW1/4SE1/4, NW1/4SE1/4	25.00	Do.
I-21328, I-4(49)	T. 16 N., R. 25 E., B.M., Sec. 25: SW1/4SW1/4	40.00	Do.
I-21330, I-4(50)	T. 16 N., R. 25 E., B.M., Sec. 11: SW1/4SW1/4	40.00	Modified competitive.

When patented the lands will be subject to the following reservations.

1. Ditches and Canals (43 U.S.C. 945).
2. Oil and gas leasing and development (43 U.S.C. 1719).
3. All valid and existing rights and reservations of record.

4. Sale of I-21327 will be subject to temporary continued use of existing grazing privileges. The successful bidder agrees that the real estate is taken, subject to the grazing use occurring within the State Section grazing allotment (No. 6220) by Charles Shiner. The privilege to graze domestic livestock on the real estate according to the terms and conditions of grazing permit No. 4708 dated January 8, 1983, shall cease on February 28, 1989. The level of use allowed on the real estate under the above grazing permit will not exceed 12 animal unit months annually. The successful bidder is entitled to receive annual grazing fees from Charles Shiner in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register. If at any time prior to the expiration date listed above the permitted sells or leases to another person the condition of patent is null and void.

Sale Procedures

Bids for less than the appraised fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A \$50.00 non-returnable filing fee for processing the mineral,

along with twenty percent (20%) of the full bid price, must accompany each bid. Bids must be accompanied by a certified check, postal money order, or cashier's check made payable to the Bureau of Land Management. Bids will be rejected if accompanied by a personal check.

Sale parcels I-21324 and I-21330 are being offered at public auction subject to preference bidding designations to allow Dick Coleman, P.O. Box 5, Ellis, Idaho, 83235 to meet the highest bid on I-21324 and to allow Jack Powers, P.O. Box 203, Leadore, Idaho, 83464 to meet the highest bid on I-21330. Both of these preference right bidders must submit a bid on September 19, 1985, in order to exercise their preference. They will be allowed 30 days from the date of sale to match the highest bid. If no bid is received from a preference right bidder, the preference right will be waived and the parcel will be subject to competitive sale procedures as outlined above. This preference right is being allowed based on adjacent landownership, historical use and restricted access.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale terms and conditions, bidding instructions and procedures, appraisal and other details may be obtained by contacting the District Office at the above address or by calling (208) 756-2201. For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address.

Dated: July 9, 1985.
Kenneth G. Walker,
District Manager.
[FR Doc. 85-17122 Filed 7-17-85; 8:45 am]
BILLING CODE 4310-66-M

[CA 16639]**California; Exchange of Public and Private Lands in Tehama County**

July 11, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Land Exchange Conveyance Document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire 6,700 acres of the preserve. Other State or Federal agencies will acquire the

remaining portion of the preserve. The values of the public and private lands in the exchange were equalized by a cash payment in the amount of \$6,625 from The Nature Conservancy. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to the operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 484-4431.

The United States issued an exchange conveyance document to The Nature Conservancy on March 14, 1985, for the following described public land under the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 8 S., R. 8 E.,

Sec. 4, Fractional NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 10, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 14, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 26, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Comprising 1,335.41 acres of public land.

In exchange for these lands, the United States acquired the following described land from The Nature Conservancy:

Parcel 1. Section 34, Township 3 South, Range 6 East, San Bernardino Base and Meridian, according to the Official Plat thereof;

Except all sodium, as reserved to the United States of America, together with the right to prospect for, mine and remove same, in Patent to William A. Whitlow and Minnie A. Whitlow, recorded April 7, 1965, as Instrument No. 39903 of Official Records of Riverside County, California.

Parcel 2. The Southwest Quarter, the Northwest Quarter of the Southeast Quarter, the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of Section 35, Township 3 South, Range 6 East, San Bernardino Base and Meridian, according to the Official Plat thereof.

Subject To Agreement dated February 10, 1984, by and between Cathton Investments, Inc., C.I. Indio, Inc., and Nature Conservancy, copy of which is on file at District Office of Bureau of Land Management in Riverside, California.

The private land described above contains 850.00 acres.

At 10 a.m. on August 20, 1985, the lands described under Parcels 1 and 2 above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 20, 1985, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on August 20, 1985, the lands described under Parcels 1 and 2 above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-17046 Filed 7-17-85; 8:45 am]

BILLING CODE 4301-84-M

[CA 7572 WR, CA 7573 WR, CA 7576 WR]

California; Proposed Continuation of Withdrawals

July 11, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Mid-Pacific Region, proposes that three land withdrawals in the Los Padres National Forest aggregating approximately 20,641 acres continue for an additional 50 years for the Cachuma Project. The lands would remain closed to surface entry and mining. As provided by Secretarial Order No. 2714 dated January 27, 1953, until further notice, no oil and gas lease under the Mineral Leasing Act of February 25, 1920, as amended, shall be issued affecting about 19,133 acres of land within the subject withdrawals. This is a separate order issued by the Secretary on the recommendation of the Department of Agriculture.

DATE: Comments should be received by October 16, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Annisteen Pack-Lovelace, California State Office, (916) 484-4431.

The Bureau of Reclamation proposes to continue three existing withdrawals of land for a period of 50 years pursuant to the provisions of Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

San Bernardino Meridian

CA 7572 WR

Secretarial Order dated July 3, 1943

T. 5 N., R. 29 W.,

Sec. 3, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 6 N., R. 29 W.,

Sec. 29, lots 1, 2, and 3;

Sec. 30, lots 1, 2, and 4.

The areas described aggregate 265.83 acres in Santa Barbara County.

CA 7573 WR

Secretarial Order dated February 30, 1946

T. 5 N., R. 29 W.,

Sec. 4, lots 1, 5, 9 to 12 and SE $\frac{1}{4}$;

Sec. 5, lots 1 to 3, 6 to 11 and 13 to 16; inclusive;

Sec. 6, lots 5, 6, 7, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 8;

Sec. 8;

Sec. 16, N $\frac{1}{2}$.

T. 6 N., R. 29 W.,

Sec. 32, W $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 33, W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 34, lots 1 and 2.

The areas described aggregate 3332.15 acres in Santa Barbara County.

CA 7576 WR

Bureau of Land Management Order dated November 30, 1948

T. 5 N., R. 28 W.,

Sec. 1, lots 1 to 6, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 2;

Sec. 3;

Sec. 4, lots 2, 4, 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 5, lots 2, 3, 4 and S $\frac{1}{2}$ S $\frac{1}{2}$;

Sec. 6, lot 1;

Sec. 7;

Sec. 8, lots 2 to 8, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, lots 2, 3 and 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 10, S $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 11, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$;

Sec. 13;

Sec. 14, N $\frac{1}{2}$ and SE $\frac{1}{4}$;

Sec. 15, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 17, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 19.

T. 6 N., R. 28 W.,

Sec. 24, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 25, lots 1 to 4, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 26, lot 1;

Sec. 34, lot 1;

Sec. 35, lot 1, 2, 4 and 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 36.
 T. 5 N., R. 29 W.,
 Sec. 1 lots 3 to 6;
 Sec. 2, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 7;
 Sec. 10, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
 Sec. 11, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
 Sec. 12, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
 Sec. 12, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 14;
 Sec. 15;
 Sec. 22;
 Sec. 23;
 Sec. 25, NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 26, E $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 27, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 6 N., R. 29 W.,
 Sec. 31, lots 2, 3, 4, and E $\frac{1}{2}$ E $\frac{1}{2}$.
 T. 5 N., R. 30 W.,
 Sec. 1, lots 1, 2, 3, 5, 6, and 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. Sec. 12, lots 1 to 4, W $\frac{1}{2}$ E $\frac{1}{2}$ and W $\frac{1}{2}$.
 The areas described aggregate 17,042.82 acres in Santa Barbara County.

The purpose of the Reclamation withdrawals is to protect lands for the Cachuma Project. The withdrawals segregate the lands from operation of

the public land laws generally, including the mining laws but not mineral leasing. No change is proposed in the purpose or segregative effect of the Reclamation withdrawals.

Secretarial Order No. 2714 provides that all pending applications for oil and gas leases and all applications for such leases shall be rejected. The overlapping order was issued to protect Forest Service watershed and wild-area values of the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so,

for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-17047 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-84-M

California; Sale of Public Land in Calaveras County

The following described land has been examined and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (90 Stat. 2750; 43 U.S.C. 1713). Sale parcels will be offered for sale September 20, 1985, at no less than the appraised fair market value using competitive and modified competitive sale procedures.

Serial No.	Legal description	Acres	Fair market value	Bidding procedure
CA 16847	T. 3 N., R. 13 E., MDM, Sec. 29, Lot 13	1.93	\$5,000	Modified competitive
CA 17465	T. 5 N., R. 14 E., MDM, Sec. 5, Lot 2	37.20	35,350	Do.
CA 17466	T. 6 N., R. 14 E., MDM, Sec. 29, Lots 3, 4, and 5; Sec. 32, Lots 6 and 7	86.57	103,250	Do.

The BLM solicits and will accept bids on these lands; and may accept or reject any and all bids, or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Sale terms and conditions are as follows

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).
2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.
3. The parcels described as CA 17465 and CA 17466 will be offered by modified competitive sealed bid with Fort Mountain Ranch designated as having the right to meet any high bid. Fort Mountain Ranch completely surrounds both parcels.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal**

Register as provided in 43 CFR 2711.1-2(d) (amended) the above lands will be segregated from appropriation under the mining laws but excepting the mineral leasing laws for a period not to exceed 270 days, or until the lands are sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 270-day period. The above described lands, will be separately offered for sale utilizing sealed bid procedures. The bids will be opened at 10:00 a.m. on September 20, 1985, at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on September 20, 1985. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior-BLM for 10 percent of the bid.

The sealed bid envelopes must be marked on the front lower left corner

"Folsom Resource Area, September 1985, Land Sale, Case File Serial CA _____" After opening all sealed bids, if two or more envelopes containing valid high bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bids. The oral bidding, if needed, will be conducted by the Authorized Officer immediately following the opening of the sealed bids. The person declared to have entered the highest qualifying oral bid shall submit payment of 10 percent as specified above, immediately following the close of the sale.

The successful bidder, whether such is a sealed or oral bid, shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

It has been determined that the lands are without known mineral values and a successful bid will constitute a

simultaneous request for conveyance of the reserved mineral estate. As such, the successful high bidder will be required to deposit a \$50.00 nonreturnable filing fee for conveyance of the mineral estate.

If any of the lands described do not receive qualifying bids on September 20, 1985, they will be available over the counter at the fair market value until April 30, 1986. Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861-4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination.

DATE: Sealed bids must be received by 10:00 a.m. September 20, 1985.

ADDRESS: Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: July 11, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-17043 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-40-M

Idaho; Filing of Plat of Survey

July 10, 1985.

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, on the dates hereinafter stated:

Boise Meridian

T. 47 N., R. 5 W., Accepted June 4, 1985.
Officially filed June 10, 1985.

T. 20 N., R. 3 W., Accepted June 5, 1985.
Officially filed July 3, 1985.

T. 25 N., R. 1 E., Accepted June 4, 1985.
Officially filed July 5, 1985.

T. 7 N., R. 4 E., Accepted June 5, 1985.
Officially filed July 8, 1985.

T. 29 N., R. 4 E., Accepted June 18, 1985.
Officially filed July 8, 1985.

The above plats represent surveys, dependent resurveys, and subdivisions of section.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral

Survey, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706.
Sharon Deroin,

Chief, Land Services Section.

[FR. Doc. 85-17045 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-00-M

[Serial No. I-20858]

Idaho; Proposed Reinstatement of Oil and Gas Lease

Notice is hereby given that a petition for reinstatement of oil and gas lease I-20858 for lands in Clark County, Idaho, was timely filed and was accompanied by all the required rentals and royalties accruing from April 1, 1985, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 and 16 2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1985, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Bunny Wilson of the Idaho State Office at (208) 334-9088.

Dated: July 3, 1985.

Peter Oberlindacher,

Chief, Branch of Solid and Fluid Minerals.

[FR. Doc. 85-17044 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Development Operations Coordination Document, Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6144, Block 67, High Island Area, Offshore Texas. 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 Freeport, Texas.

DATE: The subject DOCD was deemed submitted on July 9, 1985.

ADDRESS: 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: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 10, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-17040 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the fourteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on August 8 and 9, 1985.

The purpose of the meeting is to discuss concepts of U.S. national agricultural extension programs as they relate to AID's activities in developing national extension systems in developing countries; review progress of AID-supported Collaborative Research

Support Programs; react to recommendations for improvement of involvement of U.S. universities in AID's human capital development programs; and consider future action and agenda items for JCARD.

JCARD will meet from 1:00 p.m. to 5:00 p.m. on August 8 and from 9:00 a.m. to 1:00 p.m. on August 9. The meeting will be held in Room 1408 New State Building, 21st and Virginia Avenue NW, Washington, D.C. on August 8, and in Room 1105 New State Building on August 9. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated AID Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523 or telephone him at (202) 632-9048.

Dated: July 12, 1985.

John Stovall,

*AID Advisory Committee Representative,
Joint Committee on Agricultural Research and
Development Board for International Food
and Agricultural Development.*

[FR Doc. 85-17072 Filed 7-17-85; 8:45 am]

BILLING CODE 8116-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stepan Chemical Co.; Importation of Controlled Substances Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1985, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement

Administration to be registered as an importer of coca leaves (9040), a basic class controlled substance in Schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30) days from publication.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice of 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (e), and (f) are satisfied.

Dated: July 10, 1985.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.*

[FR Doc. 85-17073 Filed 7-17-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-85-5]

Permanent Variance; the Chlorine Institute, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Modification of Notice of Application for Permanent Variance.

SUMMARY: This notice is to make a change in the Federal Register

publication of the Chlorine Institute, Inc. application for a permanent variance (50 FR 25343-46, June 18, 1985).

The Occupational Safety and Health Administration has been requested, and has agreed, to extend the time for comments to be accepted for an additional 30 days until August 14, 1985. The comment period and last date for requests for a hearing have been extended by modifying the following:

(1) The paragraph entitled "DATES:" in column one on page 25344, to read:

"The last date for interested persons to submit comments on the variance application is August 18, 1985. The last date for affected employers and employees and appropriate State authority having jurisdiction over employment or places of employment covered in the application to request a hearing on the application is August 18, 1985."

(2) The paragraph in column three on page 25346, to read:

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application of variance are invited to submit written data, views, and arguments relating to the pertinent application no later than August 18, 1985. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than August 18, 1985, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, D.C., this 15th day of July, 1985.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 85-17100 Filed 7-17-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-46]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration

announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Teams on Rotorcraft, Supersonic and Subsonic.

DATE AND TIME: July 23, 25 and 29, 1985, 8:30 a.m. to 5:00 p.m. each day.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil Rosen, National Aeronautics and Space Administration, Code RJ, Washington, DC 20546 (202/453-2792).

SUPPLEMENTARY INFORMATION: The Ad Hoc Teams on Rotorcraft, Supersonic and Subsonic were established to assist the National Aeronautics and Space Administration in the development of "Technology Trees" for the National Aeronautical Research and Development (R&D) Goals. The Ad Hoc Team of Rotorcraft, Chaired by Mr. Al Schoen, is comprised of seven members. The Ad Hoc Team on Supersonic, Chaired by A.D. Welliver, is comprised of five members. The Ad Hoc Team on Subsonic, Chaired by R. Hopps, is comprised of seven members. The meetings of the Ad Hoc Teams are an integral first step in expanding and refining the Technology Roadmaps for the recently established National Aeronautical R&D Goals. It is imperative that the meetings be held at this time in order to review and revise the draft Technology Roadmaps to reflect a truly national perspective prior to submission to the White House Office of Science and Technology Policy by the end of July as requested. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Ad Hoc Team members and participants).

TYPE OF MEETING: Open.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

July 12, 1985.

[FR Doc. 85-17016 Filed 7-17-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

July 15, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on

August 12, 1985, at the Denver Airport Clarion, Denver, Colorado.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "Agricultural Trade Policy" should contact the Commission staff at (202) 488-1961.

Kenneth L. Bader,

Chairman.

[FR Doc. 85-17048 Filed 7-17-85; 8:45 am]

BILLING CODE 3410-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on the information collection must be submitted by August 2, 1985.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests OMB approval of a revision of a currently approved collection. The entry contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504 (h).

Title: Final Descriptive Report Form for State and Regional Arts Agencies
Form number: OMB No. 3135-0034
Frequency of Collection: Annually
Respondents: Non-profit institutions and State or local governments
Use: Information is used for monitoring of state and regional arts agency program activities; planning for coordination of Endowment programs and activities with those of state and regional arts agencies; and reporting to the Congress and the public on the use of funds awarded to the states and regions.

Estimated Number of Respondents: 63
Estimated Hours for Respondents to Provide Information: 252

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 85-17029 Filed 7-17-85; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Humanities Advisory Committee; Meeting

July 12, 1985.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on August 7-9, 1985.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C. The afternoon session on August 7, 1985 and a portion of the morning and afternoon sessions on August 8-9, 1985 will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the

Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the session on August 7, 1985 will be as follows:

Committee Meeting

(Open to the Public)

4:00—4:20 p.m.: Challenge Grants—
Room 430

4:20 p.m. until adjourned: (Closed to the Public)

Discussion of specific grant applications

The agenda for the sessions on August 8, 1985 will be as follows:

Committee Meetings

(Open to the Public)

8:30—9:30 a.m.: Coffee for Council Members—Room 502

9:30—10:30 a.m.: Committee Meetings—
Policy Discussion

General Programs—Room 415

Education Programs—Room M-14

Fellowship Programs—Room 315

Research Programs—Room 316-2

State Programs—Room M-07 East

10:30 a.m. until adjourned: Committee Meetings (Continued)

(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on August 9, 1985 will convene at 8:30 a.m. in the 1st Floor Council Room M-09 and will be open to the public. The agenda for the morning session will be as follows: (Coffee for Staff and Council members attending the meeting will be served from 8:30 a.m.—9:00 a.m.)

Minutes of the Previous Meeting Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Dates of Future Council Meetings

E. Application Report and Gifts and Matching Report

F. Status of Fiscal Year 1985 Program Funds

G. FY 1986 Appropriation Request and Reauthorization Hearings

H. FY 1987 Budget Planning

I. Institutional Endowments and Application Review

J. Committee Reports on Policy and General Matters

1. General Programs

2. Education Programs

3. Fellowship Programs

4. Research Programs

5. State Programs

6. Challenge Grants

K. Emergency Grants and Actions Departing from Council Recommendation—Awards

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code 202-786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-17054 Filed 7-17-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting of the Committee on Equal Opportunities in Science and Technology and of Its Subcommittees; July 31 and August 1-2, 1985

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meetings:

Names/Dates/Times/Places:

Subcommittee on Minorities, Wednesday,

July 31, 9:00-5:00 p.m.

Full Committee, Thursday, August 1, 9:00-

12:00 Noon

Subcommittee on Women, Thursday,

August 1, 1:30-5:00 p.m.; Friday, August 2,

9:00-12:00 Noon

Subcommittee on Disabled Scientists,

Friday, August 2, 1:30-5:00 p.m.

National Science Foundation, 1800 G Street

NW., Room 540, Washington, D.C. 20550

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550, Telephone: 202/357-9418.

Purpose of Subcommittees: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities, women and handicapped persons in science and technology, and the impact of science and technology on them.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittees will consider mechanisms to increase participation of minorities, women and handicapped persons in Foundation programs, research projects, and on all NSF advisory committees. They will also advise the Director on how to modify NSF policies and procedures relating to minority, women and handicapped persons as well as the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

July 15, 1985.

[FR Doc. 85-17028 Filed 7-17-85; 8:45 am]

BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 19, 1985. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant*—David F. Parmelee, 349 Bell Museum of Natural History, University of Minnesota, Minneapolis, Minnesota 55455.

Activity for Which Permit Requested

Taking; Import into U.S.A.; Enter Specially Protected Area

The applicant proposes to collect birds south of the Antarctic Convergence in heavy pack ice, light pack ice, ice edge, and open water habitats along the west coast of the Antarctic Peninsula. The main objective of these collections is to obtain

representative samples of species present in this area in the austral winter to determine diet, plumage and molt condition, winter weight and fat content.

If ice conditions permit, the applicant will census birds on Anvers Island and the surrounding smaller islands, including Litchfield (SPA-17).

The applicant proposes to take up to the following numbers of birds:

Species	Number
Southern Giant Fulmar	5
Blue-eyed Shag	6
Antarctic Prion	20
Wilson's Storm Petrel	20
Black-bellied Storm Petrel	20
American Shearwater	20
Southern Black-backed Gull	20
South Polar Skua	20
Antarctic Tern	20
Chinstrap Penguin	20
Adelie Penguin	20
Blue Petrel	50
Southern Fulmar	50
Antarctic Petrel	50
Cape Pigeon	50
Snow Petrel	50

Location

West Coast of Antarctic Peninsula

Dates

August-September, 1985.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A. N. Fowler,

Acting Division Director, Division of Polar Programs.

[FR Doc. 85-17117 Filed 7-17-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 50.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses, and amendments thereto, to construct and operate power plants, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act).

5. Who will be required or asked to report: Licensees and applicants for nuclear power plants, and research and test reactors.

6. An estimate of the number of responses: 2,126 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 3.87 million.

8. An indication of whether section 3504(h), Pub. L. 9696-511 applies: Not applicable.

9. Abstract: 10 CFR Part 50 of the NRC's regulations, "Domestic Licensing of Production and Utilization Facilities," specifies technical information and data to be provided by applicants and licensees so that the NRC may make determinations necessary to promote the health and safety of the public, in accordance with the Act.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated At Bethesda, Maryland, This 10th day of July 1985.

For the Nuclear Regulatory Commission,
Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-17087 Filed 7-17-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Exemption; Consumers Power Co.

I

The Consumers Power Company (CPC the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes operation of the Palisades Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Van Buren County, Michigan.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G., is the subject of the licensee's exemption request.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration.

III

By letters dated July 16, 1984, as supplemented by letters dated July 20, 1984, August 10, 1984, October 1, 1984, December 28, 1984, March 19, 1985 and June 19, 1985, the licensee requested exemptions from III.G.3 of Appendix R in the Engineered Safeguards Panel Room and the Corridor between the Charging Pump Room and the 1C Switchgear Room in the Reactor Building elevation 590'-0". The exemptions were requested from providing fixed fire suppression systems in the above areas as required by section III.G.3 of Appendix R.

The licensee has provided alternative shutdown capability in each area. Fire protection in each area consists of early warning fire detectors, manual hose stations and portable fire extinguishers. The fuel loading (cable insulation) in each area is moderate. The staff finds that there is reasonable assurance that a fire in these areas would be promptly detected and extinguished. The moderate combustible loading in each area ensures that safety-related equipment in adjacent areas will not be threatened before the fire brigade can extinguish the fire. NRR and Region III fire protection engineers recently visited the site to walk down the fire protection modifications made by the licensee to comply with Appendix R and to review the above two areas where exemptions from Appendix R had been requested. Based on the licensee's analysis and the review of the areas at the site the staff concludes that the installation of fixed fire suppression systems would not significantly increase the level of fire protection in the Engineered Safeguards Room or the Corridor between the Charging Pump Room and the 1C

Switchgear Room in the Reactor Building elevation 590'-0". Therefore, the requested exemptions should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.G.3 of Appendix R to 10 CFR Part 50:

1. Engineered Safeguards Room to the extent a fixed fire suppression system should be installed in the area.

2. Corridor between the Charging Pump Room and the 1C Switchgear Room in the Reactor Building elevation 590'-0" to the extent a fixed fire suppression system should be installed in the area.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of these exemptions will have no significant impact on the environment (July 5, 1985, 50 FR 27708).

A copy of the Safety Evaluation dated July 12, 1985, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Van Zoeren Library, Hope College, Holland, Michigan 49428. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of July 1985.

For the Nuclear Regulatory Commission,

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-17096 Filed 7-17-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intent to Designate Major Wine Trading Countries; Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice requesting written comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is

soliciting written comments on the list of countries which the USTR intends to designate as major wine trading countries.

The Trade and Tariff Act of 1984 (the "Act") was signed into law on October 30, 1984. Title IX of that Act, the Wine Equity and Expansion Act of 1984, provides USTR with specific responsibility to respond to problems that Congress has found are facing the U.S. wine industry. Among these responsibilities are: (1) The designation of major wine trading countries and (2) the development and coordination of reports on wine trade.

Section 906 of the Act provides that USTR must consult with representatives of the wine and grape products industries in the United States prior to designating major wine trading countries. In response to a Federal Register notice dated November 23, 1984, comments were received on market potential for U.S. wines in various countries and on trade barriers or distortions to U.S. wine exports.

Based on this and other information, the U.S. Trade Representative intends to designate the following as major wine trading countries: Canada, Jamaica, Japan, Mexico, South Korea, and Taiwan. In addition, the U.S. Government will conduct trade consultations with a number of other foreign governments to discuss their trade barriers or distortions affecting U.S. wine exports. Depending on additional information, other countries may be designated at a later date.

DATE: Written comments should be received by July 26, 1985. Twenty copies of the submission should be provided.

ADDRESS: Written comments should be submitted to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506, (202) 395-3487.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy, Office of the United States Trade Representative, Room 423, 600 17th Street, NW., Washington, D.C. 20506, Phone: (202) 395-5006.

Alexander Platt, Associate General Counsel, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, Phone: (202) 395-7305.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-17102 Filed 1-17-85; 8:45 am]

BILLING CODE 3190-01-M

Termination of the International Sugar Agreement 1977; Deadline for Refunds for Unused Stamps

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination for refunds of unused International Sugar Agreement 1977 stamps for contributions to the stock financing fund.

SUMMARY: Traders holding unused sugar stamps that are not required to meet obligations to pay outstanding contributions should seek refunds before July 31, 1985.

U.S. sugar importers were required to purchase certificate-exempt International Sugar Organization stamps for use on imported sugarcane under the terms of the 1977 International Sugar Agreement. This Agreement expired on December 31, 1984.

Unused stamps should be returned to the Manager, Stock Financing Fund, International Sugar Organization, 28 Haymarket, London SW1Y 4SP, England. requests for refunds on unused stamps will not be entertained after July 31, 1985, in accordance with the decision of the Council of the ISA 1977 taken on May 22, 1985.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy, Office of the United States Trade Representative, Room 423, 600 17th Street, NW., Washington, D.C. 20506, Phone: (202) 395-5006.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-17103 Filed 7-17-85; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14626; File No. 811-3276]

Application and Opportunity for Hearing; KILICO Money Market Fund, Inc.

July 11, 1985.

Notice is hereby given that KILICO Money Market Fund, Inc. ("Applicant"), 120 S. LaSalle Street, Chicago, Illinois 60603, registered as a diversified open-end investment company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N-8F on August 27, 1984, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All

interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Investment Company Act of 1940 on October 9, 1981, and submitted a registration on Form N-1 on that same date. The application and exhibits attached thereto indicate that the Applicant's Board of Directors resolved it advisable that Applicant be dissolved and that the proposed dissolution be submitted for consideration by shareholders at a special meeting. Shareholders approved the proposal to dissolve Applicant at a special meeting held on October 4, 1983, and Applicant states that it filed Articles of Dissolution of the corporation with the state of Maryland concurrently with the filing of this application.

The application states that as of July 31, 1983, it had 19,820,448 shares outstanding common stock, the net asset value of which was \$1.00 per share. Applicant submits that it distributed all of its assets remaining after the payment of all of its debts and obligations to Kemper Investors Life Insurance Company in behalf of participating contractowners in Kemper Investors Life Insurance Company Variable Annuity Account C. Applicant further states that participating contractowners were given the following options: (1) To use the remaining value of their contracts to purchase a Kemper Advantage III contract, with assets allocated to KILICO Money Market Separate Account, (2) retain the current contract and have its contract value transferred to a Fixed Rate Option, or (3) terminate the existing contract. Applicant states that it has retained no assets, has no outstanding debts, and no securityholders. Applicant states that it is not a party to any litigation or administrative proceeding, and is not now engaged or proposed to be engaged in any business activities other than those necessary for winding up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 6, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington,

D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-17068 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23763; 70-7126]

**Consolidated Natural Gas Co.,
Proposal to Acquire \$250,000
Partnership Interest**

July 11, 1985.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed an application with this Commission pursuant to section 9(c)(3) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 40 and 100 thereunder.

As a result of the difficult economic climate that has befallen Pittsburgh in recent years, The Pittsburgh Seed Fund ("Fund"), a limited partnership, has been formed for the purpose of encouraging and financing local high risk entrepreneurial ventures, including research and development of products. The limited partnership, organized under and by virtue of the laws of the Commonwealth of Pennsylvania, has appealed to companies operating in and around Pittsburgh, such as Consolidated, to assist financially in this endeavor.

Affiliated with the Fund will be The Enterprise Corporation of Pittsburgh, a nonprofit Pennsylvania corporation, which is also affiliated with the University of Pittsburgh and Carnegie-Mellon University. The function of The Enterprise Corporation will be to advise the Fund on the selection and financing of worth while ventures.

Consolidated proposes to subscribe for the acquisition of five of the Fund's units ("Units"), at a price of \$50,000 per Unit, consisting of \$20,000 cash and \$30,000 in the form of a limited partner note. The subscription is irrevocable unless rejected by the general partner, Pittsburgh Venture Partners. Thus,

Consolidated will initially pay \$100,000 and will sign a promissory note obligating it to pay \$75,000 in each of the years 1986 and 1987.

The application and any amendment thereto are available for public inspections through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 5, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-17066 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Midwest Stock Exchange,
Incorporated**

July 11, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Snyder Oil Partners

Units of Limited Partnership Interest
(File No. 7-8468)

This security is listed and registered on one more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 1, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission,

Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-17065 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 10, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

The Limited, Inc.

Common Stock, No Par Value (File No. 7-8480)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 31, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-17070 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14628; (File No. 811-3846)]

Omega Venture Partners I Ltd.; Application for Order Declaring that Applicant Has Ceased To Be an Investment Company

July 12, 1985.

Notice is hereby given that Omega Venture Partners I Ltd. ("Applicant"), 5950 Canoga Avenue, Woodland Hills, California 91367, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on June 13, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rule thereunder for the applicable provisions thereof.

Applicant represents that it filed a registration statement pursuant to section 8(b) of the Act on September 16, 1983, never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant represents further that it is not a party to any litigation or administrative proceeding, and that it does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Finally, Applicant represents that it was dissolved under California state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 5, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-17131 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22236; File No. SR-OCC-85-9]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change

The Options Clearing Corporation ("OCC") on June 26, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposal would amend OCC By-Laws and Rules to enable OCC to issue, clear and settle European style options, which are options that may be exercised only on their expiration date. The Commission is publishing this notice to solicit public comment on the proposal.

Proposed issuance, clearance and settlement procedures for European style options would be identical to those now in effect for all options at OCC, except that European style options could not be exercised before their expiration date. As described below, OCC is proposing several changes in its By-Laws and Rules to accommodate European style options.

OCC By-Law Article I would be amended to provide definitions for "styles" of options. Options that can be exercised by holders at any time from issuance to expiration (which includes all options currently issued by OCC) would be termed "American" style options. Options that can be exercised only on their expiration date would be termed "European" style options. See proposed Article I, § 1 (rrr), (sss) and (ttt).

OCC By-Law Article VI, governing clearance of exchange transactions, would be amended in several ways. Section 7 of the By-Law would require all options exchanges submitting trade information to OCC to include the option style for each reported trade. Section 12 would be amended to limit the exercise of European style options to their expiration date. Amended Section 17 would clarify that exercise restrictions cannot be imposed for European style options.¹

¹ Section 17 also would be amended to clarify that exercise restrictions on a series of American style options could not be imposed on that series' expiration date. Current Section 17 states that such restrictions cannot be imposed during the business

Continued

Section 2 of OCC By-Law Article XVII, which governs the general rights and obligations of holders and writers of index options, would be amended to provide for the two styles of options. The amendment again would make it clear that European style options can only be exercised on their expiration date.²

OCC Rules would be amended to conform to the above changes in OCC By-Laws. Specifically, the proposal would amend OCC Rule 401, governing trade reports, and OCC Rule 801, governing option exercise procedures.³

OCC believes that the proposal is consistent with the Act in general, and section 17A of the Act in particular, because it facilitates the prompt and accurate clearance and settlement of European style options. OCC states that the proposal does so by applying to European style options substantially the same clearing system and rules currently in use by OCC. That system, in OCC's view, already has been proven efficient, effective, and safe.

OCC requested accelerated approval of its proposal to the extent necessary to allow OCC to issue, clear and settle European style options at the latest by the time the Commission approves any exchange proposal to trade European style options. OCC notes that trading in European style options has been proposed by the Chicago Board Options Exchange.⁴ OCC believes that accelerated approval would be justified because the proposal would merely implement any Commission approved program for trading European style options.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at OCC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission invites public comment on the proposal. Comments should refer to file no. SR-OCC-85-9. Please file six copies of

day (for index options) or the ten business days (for all other options) immediately prior to the expiration date of such series.

² Section 2 of OCC By-Law Article XVII replaces Section 9 of OCC By-Law Article VI, which governs the general rights and obligations of holders and writers of non-index options. Thus, the proposal clarifies the rights and obligations of holders and writers of all OCC options.

³ OCC's proposal also would correct typographical errors in Section 1 of OCC By-Law XVII.

⁴ See file no. SR-CBOE-84-31.

comments with the Secretary of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, by August 8, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-17132 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22237; File No. SR-NASD-85-17]

**Self-Regulatory Organizations;
Proposed Rule Change by the National
Association of Securities Dealers;
Relating to the ITS/CAES Rules
Dealing With Locked or Crossed
Markets**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 25, 1985, the National Association of Securities Dealers, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The proposed amendment establishes specific procedures in regard to locked and crossed markets that have evolved through the operational experience and mutual agreement of the Intermarket Trading System (ITS) Participants.

The amendment provides a complaint and rectification procedure for the party whose quotation is locked or crossed which obligates the locking or crossing party to promptly ship stock or unlock the market, as directed.

**II. Self-Regulatory Organization's
Statement Regarding the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the

most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule**

The rule change will allow the aggrieved member the flexibility of requesting either the shipment of stock or the unlocking of the market, and should enhance the operation of ITS by encouraging the prompt and equitable resolution of locked and crossed markets.

The proposed rule change is consistent with sections 15A(b)(6) of the Securities Exchange Act of 1934 and with the Commission's order dated May 6, 1982 issued pursuant to section 11A(a)(3)(B) of the Act which together requires the Association to adopt rules governing the participation of ITS/CAES market makers in the ITS/CAES linkage.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The Association does not foresee any impact on competition not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Changes Received From
Members, Participants, or Others**

Comments were neither solicited nor received.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

July 12, 1985.

[FR Doc. 85-17133 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

**Omega Government Fund, Inc.;
Application For Order Declaring that
Applicant Has Ceased To Be an
Investment Company**

[Release No. IC-14629; File No. 811-3845]

July 12, 1985.

Notice is hereby given that Omega Government Fund, Inc. ("Applicant"), 5950 Canoga Avenue, Woodland Hills, California 91367, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 13, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it filed a registration statement pursuant to section 8(b) of the Act on September 16, 1983, never made a public offering of its securities, has fewer than 100 securityholders for purposes of 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant further states that it has previously distributed all of its assets to its one securityholder, and, accordingly, will have no assets to distribute upon dissolution. Applicant represents that it is not a party to any litigation or

administrative proceeding, and that it does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Finally, Applicant represents it is in the process of being dissolved under Maryland state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 5, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of any attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-17129 Filed 7-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22235; File No. SR-NASD-85-15]

**Self-Regulatory Organizations;
Proposed Rule Change by National
Association of Securities Dealers
Relating to Proposed Amendments to
Appendix A to Article III, Section 30 of
the Association's Rules of Fair
Practice**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The proposed rule change amends Appendix A to Article III, section 30 of the Association's Rules of Fair Practice to provide a uniform, premium-based

customer margin system for "short" options positions.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The purpose of the proposed amendments to section 4 of Appendix A is to establish uniform minimum margin requirements for different types of options which are listed or traded on a registered national securities exchange, or in the future, may be displayed on the NASDAQ System.

Under current margin rules, there are different systems for calculating margin requirements for the different types of options products (equity, broad and narrow-based indices, foreign currencies and treasuries). The Association and the options exchanges have developed a uniform margin system based upon the option premium plus an additional amount, which more closely reflects the risks involved in such trading than that under the current system. The Board of Governors determined that it was appropriate to adopt this uniform system as the basis for the Association's minimum margin requirements. The proposed rules continue to protect broker/dealers in the event that customers fail to meet their financial obligations but simplify the margin requirements by establishing a single, standardized approach, which can be applied to all option products. Under proposed rules, the minimum margin requirement for all short options positions would be: 100% of the option premium plus a fixed percentage of the current market value of the underlying security (the percentage to vary for each option product), with an adjustment for out-of-the-money options not to be less than 100% of the option premium plus a stipulated lesser percentage of the current market value of the underlying security. Percentages contained in the

proposed rule change which are the same as those previously adopted by the number of the registered options exchanges were developed by relating option margin to the annualized price volatility of the underlying security. The resulting percentage has been adjusted to provide for initial margin that would cover the underlying product's historical volatility over a seven day period given a 95% confidence level. The proposed formula will decrease the incidence of excessive or inappropriate margining in customer accounts by correlating the margin to risk exposure. In addition, the broker/dealer community will benefit from reduced operational and computerization costs due to the uniformity of the rules among the various self-regulatory organizations and the standardization of the formula. The Association and the other self-regulatory organizations will also have a more rational basis for establishing margin levels for new option products as well as for monitoring an appropriate level of existing requirements on an ongoing basis. The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934 which applies to registered securities associations and requires that rules of the Association be designed to promote just and equitable principals of trade and to protect the investing public. The Association believes that by revising the margin requirements to more closely reflect the risks involved in options trading and thus potentially increasing market liquidity, the proposed rules are consistent with these provisions. The proposed rule change is also consistent with the requirements of Section 7(a) of the Act and the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to that Section in that they adjust margins to a level which provides a reasonable amount of financial protection to the securities industry and does not permit the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any impact on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 12, 1985.

John Wheeler,
Secretary.

[FR Doc. 85-17130 Filed 7-17-85; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs will hold a

public meeting at 10:30 a.m., on Wednesday, August 21, 1985, at the U.S. Small Business Headquarters, 1441 L Street, NW., Room 1000 Administrator's Conference Room, Washington, D.C. 20416, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Leon J. Bechet, Director (Acting) Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street, NW., Room 500, Washington, D.C. 20416, (202) 653-8220.

Jean M. Nowak,
Director, Office of Advisory Councils.

July 11, 1985.

[FR Doc. 85-17025 Filed 7-17-85; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-5488]

SB Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by SB Capital Corporation, 36 West 47th Street, Suite 701, New York, New York 10036, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102(1985).

The officers, directors and sole shareholder of the Applicant are as follows:

Name and address	Title or relationship	Percent of ownership
Benzion Bornfreund, 1624 46th Street, Brooklyn, New York 11204.	Chairman of the Board, President, Director.	100
Chaim Bornfreund, 1566 47th Street, Brooklyn, New York 11219.	Treasurer, Secretary, Director.	0
Marcel Gross, 1746 53rd Street, Brooklyn, New York 11219.	Manager, Director	0

The Applicant, a New York corporation, will begin operations with a capitalization of \$1,000,000 and will conduct its operations principally in the State of New York.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and managerial assistance solely to small business

concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: July 9, 1985.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 85-17024 Filed 7-17-85; 8:45 am]

BILLING CODE 8025-01-M

Region II—Advisory Council; Public Meeting

The Small Business Administration, Region II Newark District Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:00 A.M. on Tuesday, July 30, 1985, at the Ramada Inn, 36 Valley Road, Clark, New Jersey 07006 to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Andrew P. Lynch, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Jean M. Nowak,
Director, Office of Advisory Council.

July 9, 1985.

[FR Doc. 85-17023 Filed 7-17-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-053]

Lower Mississippi River Waterway Safety Advisory Committee; Reestablishment

AGENCY: Coast Guard, DOT.

ACTION: Notice of Reestablishment.

SUMMARY: The Secretary of Transportation has approved the reestablishment of the Lower Mississippi River Waterway Safety Advisory Committee. The purpose of the Committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, and other related topics dealing with waterway safety in the Lower Mississippi River area as required by the Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander R. A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130. Telephone number (504) 589-6901.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. 1.

Dated: July 12, 1985.

L. C. Kindbom,
Captain, U.S. Coast Guard, Acting Chief,
Office of Boating, Public, and Consumer
Affairs.

[FR Doc. 85-17087 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-054]

New York Harbor Traffic Management Advisory Committee; Establishment

AGENCY: Coast Guard, DOT.

ACTION: Notice of establishment.

SUMMARY: The Secretary of Transportation has approved the establishment of the New York Harbor Traffic Management Advisory Committee. The purpose of this Committee is to advise the Coast Guard on matters relating to maritime traffic management and safety in the New York Harbor area.

FOR FURTHER INFORMATION CONTACT: Captain L. N. Hein, Chief, Marine Safety Division, Third Coast Guard District, Building 301, Coast Guard Support Center, Governors Island, New York 10004, Phone (212) 668-7179.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. 1.

Dated: July 12, 1985.

L. C. Kindbom,
Captain, U.S. Coast Guard, Acting Chief,
Office of Boating, Public, and Consumer
Affairs.

[FR Doc. 85-17087 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Cook and Dupage Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for multi-lane (four or six) highway from U.S. Route 12/20/45 (Mannheim Road), near O'Hare International Airport in Cook County, extending westerly approximately 21 miles to U.S. Route 20 (Lake Street) near the southeast corporate limits of the City of Elgin in Cook County, Illinois. The proposed project, which generally follows the previously recorded centerline for the Elgin-O'Hare Corridor Highway Improvement, will be designated Federal-aid Primary Route 426 (FAP 426).

FOR FURTHER INFORMATION CONTACT: James C. Partlow, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone (217) 492-4622. Cesar Nepomuceno, Chief, Bureau of Programming, Illinois Department of Transportation, 1000 Plaza Drive, Schaumburg, Illinois 61096-1096, telephone (312) 884-3493.

SUPPLEMENTARY INFORMATION: The proposed Elgin-O'Hare Corridor Highway Improvement was conceived in the early 1960's and early 1970's. The studies were discontinued in 1972. As a result of these studies, an approximately 3 mile portion of the facility was constructed as the relocation of Illinois Route 19 (Irving Park Road) near O'Hare International Airport. The Illinois Route 53 (FAI 290) interchange at Thorndale Avenue was also constructed at that time, taking into account the proposed Elgin-O'Hare Supplemental Freeway.

Major alternatives under consideration are (1) no action, (2) upgrading and/or rehabilitation of existing arterial facilities and (3) construction of a limited access controlled, combined expressway/high-

type arterial facility. Incorporated into and studied with the build alternatives will be design variations of grade, alignment, grade separations, possible interchange locations and access to adjacent existing and planned facilities by means of access road or frontage roads.

Coordination meetings and public hearings were conducted as part of the earlier corridor studies. Coordination at that time was undertaken with Federal, State, regional, metropolitan and local agencies, community organizations, public utilities and private industry. Contacts, comments and inputs have been made through correspondence, telephone communications and meetings. As a result of these studies and coordination, corridor approval for the Elgin-O'Hare Corridor Highway Improvement was given by the FHWA January 5, 1970. Additional information will continue to be gathered throughout project development. Due to the ongoing nature of the coordination process a formal scoping meeting is not anticipated. If new information indicates a need to define issues attendant to the proposed action, scoping activities will be conducted with specific agencies.

To ensure that the range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program)

James C. Partlow,

District Engineer, Springfield, Illinois.

[FR Doc. 85-17115 Filed 7-17-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 15, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

United States Customs Service

OMB No.: 1515-0013

Form No.: Customs Form 3171

Type of Review: Reinstatement

Title: Application—Permit—Special License—Unlading—Lading—Overtime Service

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Clearance Officer: Vince Olive (202) 566-9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229

OMB No.: 1545-0003

Form No.: IRS Forms SS-4 and SS-4PR

Type of Review: Revision

Title: Application for Employer Identification Number

OMB No.: 1545-0074

Form No.: IRS Form 1040 and related Schedules A, B, C, D, E, F, G, R, SE and W

Type of Review: Revision

Title: U.S. Individual Income Return

OMB No.: 1545-0196

Form No.: IRS Form 5227

Type of Review: Revision

Title: Split-interest Trust Information Return

Clearance Officer: Garrick Shear (202)

566-6150, Room 5571, 1111

Constitution Avenue, NW.,

Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-17053 Filed 7-17-85; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 138

Thursday, July 18, 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

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, July 15, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution regarding liquidation rights of repurchase agreement participants in bank insolvencies.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Application of Council Bluffs Savings Bank, Council Bluffs, Iowa, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Mineola State Bank, Mineola, Iowa, and for consent to establish the sole office of Mineola State Bank as a branch of Council Bluffs Savings Bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,277-L (Amendment)
The First National Bank of Midland,
Midland, Texas

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: July 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-17173 Filed 7-16-85; 8:45 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 22, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: The National Bank of Carmel, Carmel, California, NR-478 (Memo dated June 27, 1985)

Summary Audit Report re: West Olympia Bank, Los Angeles, California, AP-374 (Memo dated June 25, 1985)

Summary Audit Report re: Washington National Bank of Chicago, Chicago, Illinois, AP-390 (Memo dated June 13, 1985)

Summary Audit Report re: The Shelby National Bank of Shelbyville, Shelbyville, Indiana, AP-381 (Memo dated June 13, 1985)

Summary Audit Report re: Oakland Savings Bank, Oakland, Iowa, AP-414 (Memo dated June 19, 1985)

Summary Audit Report re: Gamaliel Bank, Gamaliel, Kentucky, SR-469 (Memo dated June 25, 1985)

Summary Audit Report re: National Bank and Trust Company of Traverse City, Traverse City, Michigan, AP-378 (Memo dated June 19, 1985)

Summary Audit Report re: State Bank of Boyd, Boyd, Minnesota, AP-427 (Memo dated June 14, 1985)

Summary Audit Report re: Bucklin State Bank of Bucklin, Missouri, Bucklin, Missouri, AP-423 (Memo dated June 27, 1985)

Summary Audit Report re: David City Bank David City, Nebraska, AP-413 (Memo dated June 19, 1985)

Summary Audit Report re: United Bank of Oregon, Milwaukie, Oregon, AP-376 (Memo dated June 19, 1985)

Summary Audit Report re: First American Banking Company Pendleton, Oregon, AP-429 (Memo dated June 28, 1985)

Summary Audit Report re: San Francisco Regional Office-Liquidation, Cost Center 3600 (Memo dated June 27, 1985)

Summary Audit Report re: Decimus Asset Management Systems, Southwest Regional Office Audit (Memo dated July 1, 1985)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hyle L. Robinson, Executive Secretary of the corporation, at (202) 389-4425.

Dated: July 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-17174 Filed 7-16-85; 11:25 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 22, 1985, the

Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-17175 Filed 7-16-85; 11:25 am]

BILLING CODE 6714-01-M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 23, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, July 25, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-21

Lois Moore, on behalf of Consolidated Freightways, Inc.

Draft AO 1985-22

The Honorable William Clay, United States House of Representatives
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,
202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR 85-17218 Filed 7-18-85; 2:59 pm]

BILLING CODE 6715-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., JULY 24, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Petition of American President Lines for Rulemaking Re Tariff Rules on Free Time and Detention Applicable to Carrier Equipment—Consideration of the petition and replies submitted in response to Notice of Filing of Petition.

2. Docket No. 84-27: Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States: Co-Loading Practices by NVOCC's—Further Review of Deferred Final Rule.

Portions Closed to the Public

1. Petition of Hong Kong Shippers' Council for Investigation of General Rate Increase of the Inbound Hong Kong Conferences—Consideration of the petition and the reply of the respondent conferences.

2. Agreement No. 202-010776: Asia North America Eastbound Rate Agreement.

3. Docket No. 82-1: California Cartage Company, Inc. v. Pacific Maritime Association, and Docket No. 82-10: Containerfreight Terminals Company, et al. v. Pacific Maritime Association—Consideration of Complainants' Motion for Entry of a Final Order and respondent's reply thereto.

CONTACT PERSON FOR MORE

INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-17224 Filed 7-16-85; 3:40 pm]

BILLING CODE 6730-01-M

6

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 11:00 a.m. Monday, September 9, 1985.

PLACE: Taft Room, University Club 1135 16th Street, NW., Washington, D.C. 20008.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of April 15, 1985 meeting.
4. Report of the Chairman.
5. Report of the Executive Secretary.
6. Report of the General Counsel.
7. New business.
8. Set date for Spring meeting of the Board in April, 1986.
9. Adjournment.

CONTACT PERSON FOR MORE

INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone 202/395-4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 85-17176 Filed 7-16-85; 11:37 am]

BILLING CODE 9500-01-M

federal register

Thursday
July 18, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Flight Time Limitations and Rest
Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 23634; Amdt. Nos. 121-186 and 135-19]

Flight Time Limitations and Rest Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends flight time limitations and rest requirements for flight crewmembers engaged in air transportation. The rule is based on recommendations of a Regulatory Negotiation Advisory Committee composed of persons who represent the interests affected by the flight time rules. The rule clarifies certain requirements that have had voluminous interpretations and updates certain requirements in relation to current operating conditions.

DATES: Effective date: October 1, 1985. Certificate holders may comply on the effective date or on the first day of any calendar month after the effective date or on the final compliance date of this rule.

Final compliance date: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Larry P. Bedore, Project Development Branch, (AFO)-240, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, Washington, D.C. 20591; telephone: (202) 426-8096.

SUPPLEMENTARY INFORMATION:**Background**

Air crewmember fatigue is a fundamental factor of flight safety. The flight time limitation rules regulate the number of flight hours a flight crewmember may be scheduled for in a year, month, week, and day and the frequency and length of rest periods that a flight crewmember must be given, in the interest of both individual and public safety. The flight time limitation rules that apply to major scheduled airlines—those most familiar to the traveling public—and to other airlines operating large transport category airplanes are contained in Part 121 of the Federal Aviation Regulations (FAR) (14 CFR Part 121). The flight time limitation rules that apply to the scheduled air carriers that operate airplanes of 30 or fewer seats and to air taxi operations are contained in Part 135 of the FAR (14 CFR Part 135).

The flight time limitation rules in both Parts 121 and 135 have remained virtually unchanged for the past 30 years despite significant changes in the aviation transportation industry. The most significant reasons for amending the rules are that—(1) rest requirements under Part 121 have been extremely complicated and have required thousands of pages of interpretation over the past 30 years; (2) rest requirements have been inflexible, preventing air carriers from adjusting schedules and resulting in a number of exemption requests; and (3) recent increases in short-duration, passenger-carrying operations (commonly called regional operations) have prompted recommendations (reflected in the Airline Deregulation Act of 1978) that Part 135 rules provide a level of safety that is, to the maximum feasible extent, equivalent to the level of safety provided by Part 121 rules.

The FAA has recognized for several years that the flight time rules need to be clarified and updated and on several occasions has proposed rules to correct problems. Because of the complexity of the rules and the variety of interested persons, none of the proposals adequately resolved the problems to the satisfaction of the affected parties. The FAA, therefore, initiated an innovative approach called Regulation by Negotiation. The FAA created an Advisory Committee under the Federal Advisory Committee Act. The committee included persons representing flight crewmembers, air carriers, air taxis, helicopter operators, the FAA, and a consumer interest group. Initially, the committee met on seven occasions for a total of 18 days. It gave serious consideration to various proposals and justifications submitted by its members and succeeded in narrowing the differences among interested parties and in reaching substantial agreement on some issues.

As a result of the committee's deliberations, the FAA drafted a Notice of Proposed Rulemaking (Notice 84-3), which reflected the committee's discussion of and agreements on certain issues, in addition to identifying five issues which were not resolved by the committee at the time of publication (49 FR 12136, March 28, 1984). The FAA and the Advisory Committee reviewed comments received on the NPRM, and on September 11, 1984, the Advisory Committee convened to discuss issues which needed to be addressed in the final rule. The final rule is the result of FAA consideration of all comments on the NPRM and of the final deliberations of the Advisory Committee.

The Advisory Committee met under the direction of Nicholas Fidandis who acted as convener/mediator. The regulatory negotiation process was supported by the Office of the Secretary of Transportation, the Vice President's Office, The Office of Management and Budget, and the Administrative Conference of the United States. The support of those offices was appreciated. In the obviously complex and controversial area of flight and duty time limitations, the regulatory negotiation process was essential in achieving the highly successful result which is apparent in these amendments. It allowed a thorough discussion of all issues with representatives of all interests. At a minimum, the process acted to substantially narrow the number of differences between the parties and, even where differences remained, acted to lessen the contentiousness of the parties regarding those differences. The process also highlighted for the FAA those areas in which a compromise position was possible that the parties could accept even if they could not concur with it publicly. The end result, in the FAA's view, is a final rule that accomplishes the objectives of the rulemaking and addresses the concerns expressed by all parties. An additional benefit is that the parties were made more sensitive to the competing interests of the other parties. As a result of this process, a better compliance attitude should result. The FAA wishes to express its appreciation for the cooperation and untiring efforts of all those who participated in the process either as committee members or commenters.

Intent of the Rule

The Notice of Intent for the formation of the Advisory Committee (48 FR 21339, May 12, 1983) contained a lengthy list of issues that could be addressed by the committee. However, as the committee began its deliberations, it became apparent that not all the issues could be resolved in a reasonable time. Therefore, the committee began to focus on the following major objectives:

- To address the series-of-flights problem in Part 121, thereby resolving many interpretation problems;
- To correct an inadequacy in current Part 121, domestic air carriers rules, for flight crewmembers scheduled to fly 8 hours or less in 24 consecutive hours (current rest requirements apply only if more than 8 hours is scheduled) and to allow greater scheduling flexibility;
- To upgrade the requirements for all operations in Part 135, particularly scheduled operations; and

• To incorporate into the rule certain exemptions that have wide applicability. Both the proposed rule and the final rule have kept within the limits of the FAA's intention and the deliberations of the committee.

The rule accomplishes the intended objectives in the following way:

- It establishes flexible daily rest requirements in Part 121 for domestic operations and in § 135.265 for scheduled operations, in accordance with the number of scheduled flight hours.
- It establishes cumulative weekly (every 7 days), monthly, and annual flight time limits for Part 135 to assure a level of safety, to the maximum feasible extent, equivalent to that under Part 121;
- It codifies in Part 135 several exemptions: the reduction of a 10-hour rest under certain conditions, the extension of flight time with augmented crews, and the special limitations needed for helicopter medical emergency services.

Comments on the Proposed Rule

During the 45-day comment period, the FAA received over 140 comments in response to Notice 84-3. The comments represented the views of individuals, airline organizations, labor organizations, research institutions, public interest groups, and other government agencies. Most comments expressed agreement with the need for improving the regulations and commended the FAA for the rulemaking effort. Airline organizations generally favored the proposal while some labor organizations, research institutions, public interest groups, individual pilots, and the National Transportation Safety Board expressed reservations about certain proposed changes. In general, the tone and the length of the comments received indicated that the proposed rule was far more acceptable than the last several FAA proposals.

A number of commenters stated that the 45-day comment period was not long enough for them to respond as fully as they would have liked. According to certain of these comments, one group particularly affected by the 45-day comment time was flight crewmembers who are not represented by unions and, therefore, were not formally represented at the Advisory Committee sessions. According to these comments, because of the busy work schedule of these flight crewmembers and their lack of an organizational unit to represent their interests, 45 days in which to comment was not sufficient. In addition, comments pointed out that the proposed rule was highly complex and that a comment period of 90 days should have

been given after the negotiation meetings to allow for a full consideration of the complex proposal. In response to these comments, the FAA points out that three factors determined the length of the comment period. First, all of the Advisory Committee meetings were open to the public. Interested parties, in addition to the representatives who served on the committee, were given an opportunity to express their concerns to the committee. A number of pilots, not represented by organizations on the committee, made oral presentations to the committee at the September 11, 1984 meeting, which occurred after the close of the comment period. The FAA considered these presentations, as well as the written comments submitted by non-unionized pilots, in the drafting of the final rule. Second, the majority of the parties most affected by the rulemaking were represented on the committee. Their views were heard during the negotiating sessions, and their written comments were, to a large extent, statements of their negotiating positions. Third, the scope of the rulemaking had been narrowed from the Notice of Intent in order to correct as quickly as possible those problems most in need of resolution. Thus, the issues for comment were relatively few. Given all of the above factors a 45-day comment period was considered sufficient. Comments which were received after the comment period closed were considered under 14 CFR 11.47 which provides that late filed comments are considered, in so far as possible, without incurring expense or delay.

Most of the comments received fall into one of three categories: (1) those which focus on particular provisions of the rule, such as the length of minimum rest and flight time limits between rests; (2) those which indicate a misunderstanding about certain provisions of the rule, such as the look-back provisions for required rest based on the amount of scheduled flight time during a preceding 24-hour period; and (3) those which focus on issues that are beyond the scope of this rulemaking. Comments that focus on particular provisions or that indicate a misunderstanding about certain provisions are discussed under the appropriate headings. Comments which raise issues beyond the scope of this rulemaking are discussed below.

A number of comments objected to the rule on the grounds that it does not amend flag and supplemental air carrier rules which have problems similar to those of domestic operations rules. In answer, the objective of revising the flag and supplemental rules was considered

by the Advisory Committee, and some committee proposals included flag or supplemental revisions. However, because of the overriding importance of clarifying the domestic rules, revisions to flag and supplemental rules are not addressed at this time.

A number of comments objected to the proposed rule because it does not take into account recent bio-medical research or factors affecting pilot fatigue. Some of these comments include copies of bio-medical studies. A representative of the Air Line Pilots Association also made a presentation to the committee on the status of the relevant scientific research. Again, because of the overriding importance of clarifying and simplifying the current rules, broader revisions which could alter the overall structure of the FAR on flight time limits and rest requirements could not be considered at this time. The FAA intends to continue its consideration of fatigue studies and is awaiting completion of the National Aeronautics and Space Administration's study on the operational significance of pilot fatigue and circadian desynchronization. The study report is expected to be available for review in the latter part of 1986. If the report establishes a quantifiable relationship between fatigue and job performance and identifies specific criteria which support an amendment of the flight time limitations and rest requirements, the FAA would then consider additional rulemaking. Presently, the rules adopted by these amendments protect against acute (short-term) fatigue by requiring specific rest periods in the 24 hours preceding the completion of scheduled flight time and protect against chronic or long-term fatigue by setting cumulative flight time limits.

A number of commenters pointed out that the proposed rule does not cover flight attendants and that regulations should be enacted that would cover flight attendants. The issue of including flight attendants is beyond the scope of this rulemaking. The Association of Flight Attendants presented a Petition for Rulemaking to the FAA on this issue, a summary of which was published in the Federal Register (50 FR 6185, February 14, 1985). Flight and duty time for flight attendants will be considered by the FAA as a separate issue.

One concern raised by a number of commenters is that the current rule and the proposed rule regulate only flight time and rest periods but do not regulate duty time. According to commenters, the proposed rule should specifically limit the duty period to protect flight crewmembers from fatigue. Again, the

FAA wishes to emphasize that these changes to Part 121 focused on clarification and simplification with the one exception of requiring a rest for less than 8 hours of flight time. To institute a limit on duty, beyond the inherent limits necessitated by the required rest, would be outside the scope of this rulemaking. However, adequate and timely rest periods effectively limit the length of duty periods.

The Rule—Parts 121 and 135

General Issues

Certain important issues, some of which were identified as unresolved issues in the proposed rule and some of which arise from the comments to the proposed rule, involve changes in both Parts 121 and 135. These issues and comments will be discussed in the following paragraphs. The general issues include: (1) applicability, (2) cumulative flight time limits, (3) daily flight time limits, (4) daily rest requirements, (5) actual flight time vs. scheduled flight time, (6) flight-crewmember responsibility, and (7) dual operations.

Specific changes to the sections involved and comments about these changes are discussed in the *Section by Section* division of this preamble.

Applicability

The dividing line between Part 121 and Part 135 is provided by Special Federal Aviation Regulation (SFAR) 38-2 (50 FR 23941; June 7, 1985). Operations of aircraft with more than 30 passenger seats or a payload capacity of more than 7,500 pounds must be conducted under Part 121. Operations of aircraft with a lesser seating configuration or payload capacity must be conducted under Part 135. This rule continues the 30 passenger/7,500 pound payload distinction as the major dividing line between Part 121 and Part 135, and it makes some additional distinctions within Part 135.

Part 135 contains two sets of cumulative flight time limits and daily rest requirements, one for scheduled operations and another for unscheduled operations. Scheduled operations that must be conducted under § 135.265 are defined in § 135.261(b) as passenger-carrying operations that are conducted in accordance with a published schedule of at least five round trips per week on at least one route between two or more points. The schedule must include dates or times (or both) and must be openly advertised or otherwise made available to the public. All other Part 135 certificate holders are given the option of complying with the rules applicable to

scheduled operations in § 135.265 if they obtain an amendment to their operations specifications.

Unscheduled operations, except for helicopter hospital emergency medical evacuation service (HEMES) operations, are conducted under §§ 135.267 and 135.269. These operations include unscheduled air taxi operations and commercial operations. The rule also permits Part 135 scheduled passenger and cargo-carrying operations in Alaska to be conducted under these sections. Helicopter hospital emergency medical evacuation services (HEMES) are conducted under § 135.271.

While this rulemaking clarifies Part 121 rest requirements, it also upgrades the requirements for all Part 135 operations, particularly scheduled operations. By separating Part 135 into scheduled and unscheduled operations, the FAA is able to establish acceptable cumulative flight time limits for operations that under current rules have only daily flight time limits.

Cumulative Flight Time Limits

Cumulative flight time limits, that is weekly, monthly, and annual limits for Part 121 domestic air carrier operations and Part 135 scheduled operations, and quarterly, biquarterly and annual limits for Part 135 unscheduled operations, are meant to protect the flight crewmember against chronic or long-term fatigue. Weekly limits in the context of this preamble refer to limits over any 7 consecutive days, not a calendar week. A quarter refers to the four periods of 3 months each, beginning in January, April, July, and October.

The annual, monthly, and weekly flight time limits for Part 121 domestic operations will remain the same as in the current rule: 1,000 hours in any calendar year, 100 hours in any calendar month, and 30 hours in any seven consecutive days (§ 121.471(a)). Newly imposed annual, monthly, and weekly flight time limits for Part 135 scheduled operations will be slightly less restrictive: 1,200 hours in any calendar year, 120 hours in any calendar month, and 34 hours in any seven consecutive days (§ 135.265(a)). The new quarterly, biquarterly, and annual limits for Part 135 unscheduled operations will be the least restrictive: 1,400 hours in any calendar year, 800 hours in any two consecutive calendar quarters, and 500 hours in any calendar quarter (§§ 135.267, 135.269, and 135.271).

One commenter objected to the Part 121 monthly flight time limit of 100 hours in any calendar month on the basis that Decision 83, which was incorporated into law, is still in force. Decision 83 was an announcement of the National

Labor Board on May 10, 1934, which stated that 85 hours a month would be the flight time limitation for pilots of five airline companies involved in a dispute. Decision 83 was incorporated into Federal law in the Civil Aeronautics Act of 1938, and reenacted in both the Federal Aviation Act of 1958 and the Airline Deregulation Act of 1978. Decision 83 is incorporated into Title IV of the Federal Aviation Act, which governs economic regulation, not into Title VI, which affects safety regulations. The economic decisions in Decision 83 have never carried over to safety rules such as the monthly flight time limit.

A number of commenters objected to the less restrictive limits for Part 135 operators on the basis that the FAA should require the same flight time limits as Part 121 domestic operations for all Part 135 operations. These commenters reasoned that what is considered safe for one type of operation should be considered safe for all. Certain factors, however, were considered in establishing the new Part 135 flight time limits. Part 121 limits for large aircraft have been established for more than 30 years. The large air carriers are accustomed to operating within these restrictions and have maintained a high level of safety. Part 135 scheduled and unscheduled operators have had no cumulative weekly, monthly, or annual flight time limits, only daily limits of 10 hours for a two-pilot crew and 8 hours for a one-pilot crew. Theoretically, the current rule allows a two-pilot crew to fly 70 hours of flight per week and 3,640 hours in 52 weeks. The new limits for both scheduled and unscheduled operations substantially reduce flight time in order to reduce fatigue and provide a level of safety equivalent to, to the maximum feasible extent, the level of safety in Part 121.

The Airline Deregulation Act of 1978 requires the Administrator to "impose requirements upon . . . commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling" on Part 121 air carriers. The FAA's action in establishing, for the first time, weekly, monthly, and annual flight time limits for Part 135 scheduled operations is consistent with the "maximum feasible extent" requirement.

Thirty-seven commenters, primarily operators, a few pilots, and a state government, objected to the proposed limit of 32 hours of flight time in any 7 consecutive days in § 135.265(a). They claimed that the weekly limit would

have a significant cost impact because of the additional bookkeeping requirements and the need to hire additional flight crewmembers. Examples from schedules submitted by operators as part of their comments showed that these operators were scheduling 1 or 2 hours of flight in excess of the proposed 32-hour weekly limit. Commenters also pointed out that during peak periods, seasonal operators would be forced to hire additional flight crewmembers. This would not only be costly to the operators but also to flight crewmembers who need the extra hours of flight time during peak seasons to compensate for wages lost during slack seasons. The commenters believed that from a safety standpoint a weekly limit is unnecessary; monthly and annual limits or only monthly limits are a sufficient safeguard against fatigue.

Based on these comments and considering that the new weekly flight time limit is considerably more restrictive than the old Part 135 limits, the FAA has decided to increase the weekly limit from the proposed 32 hours to 34 hours, which is within the range of weekly flight hour limitations discussed during the regulatory negotiation process. The increase should accommodate those air carriers who submitted schedules showing flight times in excess of 32 hours and should also increase flexibility for seasonal operators and crewmembers. However, the FAA is unwilling to eliminate the weekly flight time limitation.

The FAA points out that weekly, monthly, and annual limits work in conjunction with each other and with daily required rests and flight hour limitations between rests. For example, for Part 135 scheduled operators, an annual limit of 1200 hours if divided by 12 months allows 100 flight hours a month. However, a Part 135 pilot could accumulate a maximum of 120 flight hours in a month if necessary. In the same way, the monthly limit of 120 hours if divided by 4 weeks allows for 30 flight hours each week. However, a Part 135 pilot could accumulate a maximum of 34 flight hours per week for the first 3 weeks, but could not exceed 18 flight hours during the remainder of the calendar month. Thus the weekly, monthly, and annual flight hour limits will provide more protection from acute and chronic fatigue by significantly reducing the number of weekly, monthly, and annual flight hours permitted by the old rule. Therefore, the FAA believes that the weekly limit is a necessary component of the overall regulatory scheme for the prevention of fatigue of flight crewmembers engaged in

scheduled operations, and that the benefits of the amendment outweigh the costs. The costs and benefits are discussed below under "Economic Evaluation."

A number of commenters pointed out that two earlier FAA proposals, Notice 78-3B and 82-4 (45 FR 55316, August 11, 1980 and 47 FR 10748, March 11, 1982) did not contain annual limits and that one of these proposals also did not contain weekly limits. In both cases, however, the concepts for the proposed rules differed from this proposal. In Notice 78-3B annual limits were dropped but monthly and weekly limits included both flight and duty hours. In Notice 82-4 the flight time rules were simplified across the board with a single monthly limit, and an 8-hour rest for under 8 hours of flight time and a 10-hour required rest for over 8 hours of flight time. In light of comments on Notice 82-4 and the negotiations of the Advisory Committee, the FAA has determined that the final rule better serves the needs of the public, flight crewmembers, and operators. Those operators who will have additional costs connected with the weekly limit are reminded that they have an adequate time period to adjust their scheduling practices to the new weekly requirements.

A number of commenters favored the quarterly, biquarterly, and annual limits for Part 135 unscheduled operators. Two commenters objected to the limits for Part 135 unscheduled operations on the grounds that they appear potentially unsafe. One commenter pointed out that under the proposed limits, a flight crewmember could be scheduled to work a 14-hour duty day with 8 hours of flight time each day for 2 consecutive calendar months without an extended rest. Under these circumstances the flight crewmember would be within the limit of 500 hours within one calendar quarter and 800 hours within two consecutive calendar quarters. (§ 135.267(a) (1) and (2)).

The FAA recognizes that such a schedule would be allowed under the new rule. However, the quarterly limit has been set at 500 flight hours to allow for seasonal, unscheduled operations which provide an important transportation service to the public. In addition, certain safeguards are inherent in the rule. If a flight crewmember does fly 500 hours in one quarter, he or she cannot fly more than 300 hours in the quarter before nor in the quarter after. And a flight crewmember cannot fly more than 1400 hours in the year. Also a Decrease in flight crewmember must be given 13 rest periods of at least 24

consecutive hours in each quarter. If a pilot does fly 8 hours in a 14-hour duty period each day for 60 consecutive days, in the last 30 days of the quarter he or she can fly only 20 hours and must be given 13 rest periods of at least 24 consecutive hours. Although such a schedule is theoretically possible under the rule, it seems highly impractical. Finally, the rule also requires that each 14-hour duty period in this example be preceded and followed by 10 hour rest periods and that the daily flight limit of 8 hours for a single pilot and 10 hours for two-pilot crew cannot be exceeded without incurring a penalty of up to 16 hours of rest. Given the entire context of § 135.267, the flight crewmember will be adequately rested. This is in contrast to the current rule which allows a pilot to fly 8 to 10 hours a day for 7 days a week for 52 weeks.

The proposed rule distinguished a special category of Part 121 operators in § 121.471(h). Paragraph (h) established less restrictive weekly, monthly, and annual limits for operators of propeller-driven multiengine airplanes with a passenger seating configuration of 31 to 60 seats and a payload capacity range of 7,501 pounds to 18,000 pounds. The provision was based upon a proposal from the Regional Airlines Association (RAA) submitted to the Advisory Committee involved in the regulatory negotiations of the flight time limitation rules. The RAA originally proposed establishing in Part 135 special flight time limits to apply to operations of multiengine propeller-driven airplanes with a maximum passenger seating configuration of 60 seats and a maximum payload capacity of 18,000 pounds. The present benchmark for Part 135 operations, as established in Special Federal Aviation Regulation 38 (now SFAR 38-2), is a maximum seating configuration of 30 seats and a maximum payload capacity of 7,500 pounds. The basic premise of the RAA's request was that the 30-seat benchmark is inappropriate for flight time rules. According to the RAA, short-duration, passenger-carrying operations using smaller aircraft (commonly known as regional operations), whether conducted under Part 135 or Part 121, are like each other and unlike the longer haul jet operations of the major airlines. Therefore, the RAA requested that those operations in aircraft up to 60 passenger seats follow the flight time rule appropriate to their type of operation.

The FAA's proposed rule (Notice 84-3) retained the 30-passenger, 7,500 pound payload distinction as the dividing line between Part 121 and Part 135 flight time rules. However, the FAA

accommodated the RAA request by (1) proposing the same daily rest requirements and flight time limits between rests for Part 121 domestic air carrier operations and for Part 135 scheduled operations; and (2) proposing flight time limits, during any 7 days, calendar month or year, for Part 135 scheduled operations, which are less restrictive than those for Part 121 domestic air carrier operations (§ 121.471(a)). These less restrictive limits were incorporated in proposed § 121.471(h) as follows:

(h) For operations of propeller driven multiengine airplanes having a passenger seating configuration of 31-60 seats and a payload capacity of 18,000 pounds or less, no air carrier may schedule any flight crewmember for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

- (1) 1,200 hours in any calendar year.
- (2) 120 hours in any calendar month.
- (3) 32 hours in any 7 consecutive days.
- (4) 9 hours between rest periods. [Changed to "8 hours between rest periods" in this final rule.]

Thus, in effect, proposed paragraph (h) created a special aircraft size category in the Part 121 flight time limitations without changing the benchmark for Part 135 established in SFAR 38.

Proposed paragraph (h) was a controversial issue in the Advisory Committee negotiations and the Committee did not reach consensus on the issue. While the FAA chose to include paragraph (h) in the NPRM, it stated the following reservation:

Although the FAA has incorporated the RAA requests into this proposed rule, in view of objections to proposed paragraph (h) expressed at the February 14, 1984 Advisory Committee meeting, the FAA invites comments and statistics on this issue.

During the comment period, the FAA received a number of comments on paragraph (h). Of the 54 comments received on the subject, 27 favored including paragraph (h), while 27 opposed it. Most of the comments in favor of including paragraph (h) were from air carrier associations and individual air carriers who fly Part 121 operations or dual Part 121/135 operations. These comments supported the RAA's earlier position that regional operations are like each other and unlike other Part 121 or Part 135 operations. Some dual Part 121/135 operators pointed out that without paragraph (h) dual operators would have the expense of maintaining two sets of records on flight time limitations and rest requirements for operations that are essentially the same. However, recordkeeping is not that costly,

especially in light of the flexibility and other benefits the rule offers Part 121 and Part 135 scheduled operators. If it is of significant cost to keep dual records, it is not a new cost, and presumably is an anticipated cost when a Part 135 operator considers purchasing large aircraft. It is a cost that operators should take into account as part of that decision and is in no way a cost imposed by this rulemaking.

Most of the comments in opposition to paragraph (h) were from regional airline pilots who conduct operations under Part 121 and from organizations representing pilots. These comments stated that regional operations are actually more strenuous and more fatiguing than other Part 121 operations.

At the last Advisory Committee meeting on September 11, 1984, the issue of including paragraph (h) was not separately discussed as an issue by the committee members. However, several regional air carrier pilots made oral presentations to the committee in which they objected to less restrictive limits for short-duration, passenger-carrying operations. The chairman of the National Transportation Safety Board (NTSB) also made an oral presentation in which he objected to paragraph (h) as follows:

The FAA has not presented any basis for the higher flight time limitations proposed for flight crewmembers of the category of aircraft addressed in proposed 121.471(h) over the limitations set forth in 121.471(a). The operation of propeller-driven smaller airplanes and those used for commuter operations are, by the very nature of their normal use, more demanding; they fly shorter leg segments, make more approaches into smaller airports having less sophisticated navigational aids, spend proportionately more time in high density terminal environments, and encounter more often the adverse weather conditions typical of lower altitudes. Moreover, flight crewmembers of these aircraft often have a higher duty time to flight time ratio which is not accounted for in the proposed regulations. In the Board's view, there is a compelling rationale for imposing more restrictive flight time limitations on these flight crews. To allow less restrictive limitations, as proposed, will possibly jeopardize safety.

As emphasized in the NPRM, decisions in this final rule are the sole responsibility of the Administrator. Although the consensus recommendations of the Advisory Committee made a significant impact on the final rule, on this issue the Committee did not reach a consensus. Therefore, the FAA has made its own determination after considering NPRM 84-3 comments, final presentations, and the earlier deliberations. While the comments were numerically split, the

FAA is impressed that the most persuasive comments oppose allowing less restrictive cumulative limits for certain Part 121 operations. The less restrictive weekly, monthly, and annual limits being adopted for Part 135 scheduled operations can be justified primarily on the grounds that present Part 135 operations are subject only to daily limits. However, Part 121 operations—including operations conducted by operators who began as Part 135 operators—have for over 30 years been subject to the 30 hour weekly, 100 hour monthly, and 1,000 hour annual limits. The FAA concludes that it cannot ensure that the present level of safety would be maintained if it were to relax these limits for some Part 121 operations. Therefore, proposed § 121.471(h) has not been included in this final rule.

Daily Flight Time Limits—Part 121 and Part 135 Scheduled Operations

The daily flight time limits and rest requirements for Part 121 domestic operations and Part 135 scheduled operations are alike except that Part 135 scheduled operations have an additional daily flight time limit of 8 hours for a one-pilot crew. Under both parts, an air carrier may not schedule a flight crewmember for more than 8 hours of flight time between required rest periods. An 8-hour flight time limit between rests is similar to the current § 121.471(b) which limits flight time to 8 hours between rests by requiring that an intervening rest of twice the number of hours of flight time but not less than 8 hours be given at or before the completion of 8 hours of flight time in any given 24-hour period.

The proposed rule limited flight time to 9 hours between rest periods. A number of commenters objected to the 9-hour limit on the basis that 9 hours had not been discussed by the Advisory Committee before drafting NPRM. The FAA proposed 9 hours as the limit between rest periods because several members stood firm on an 8-hour flight time limit in any 24 consecutive hours with a 10-hour required rest and other members stood firm on an 8-hour flight time limit with an 8-hour required intervening rest.

In order to gather additional information, in Notice 83-4 the FAA requested comments on how often the 9-hour cap would be reached, including the types of schedules contemplated. Only one commenter submitted specific, substantive comments on the 9-hour cap. This comment stated that current Part 121 requirements have so influenced marketing strategies and scheduling

practices of carriers that carriers do not know and cannot hypothesize how often the 9-hour cap would be reached. However, flexibility to exceed 8 hours would likely offer benefits as certain markets, which involve turn-arounds on long stage lengths, could be efficiently served within a 9-hour cap. The FAA considered this information in conjunction with a number of comments submitted by pilots, pilot associations, and others who objected to the 9-hour cap because it would extend the duty day. The FAA concluded that the proposed 9-hour cap was of dubious benefit to long-haul operations because

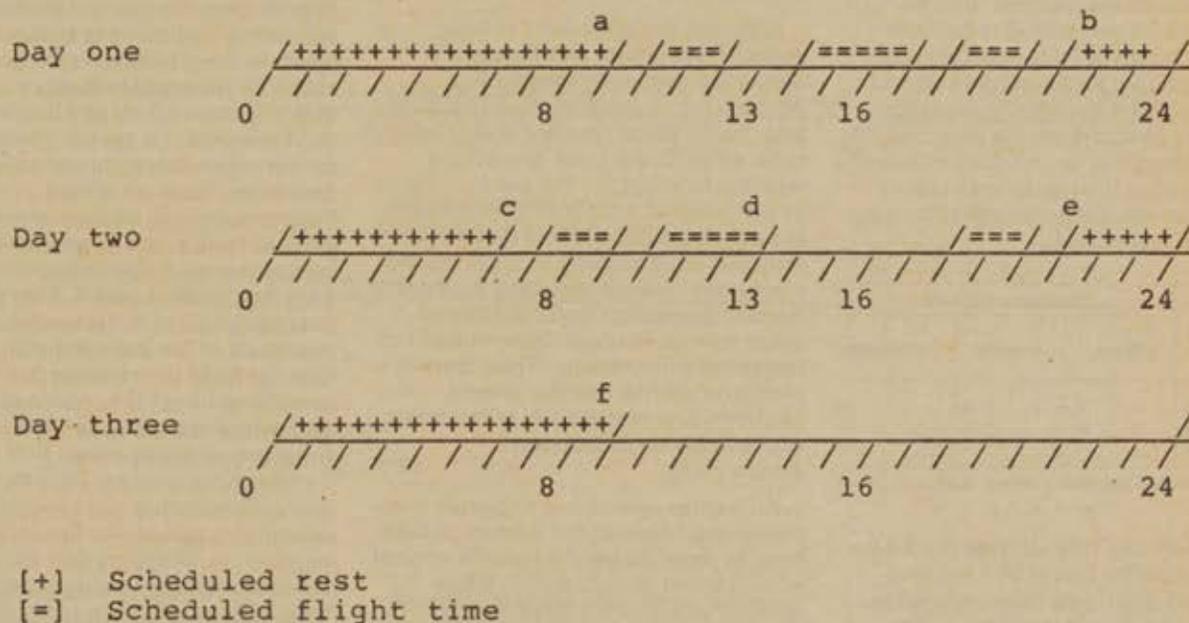
it could not accommodate many distant city pairs. Furthermore, the 9-hour cap might extend what is already a long duty period for flight crewmembers in short-haul operations. For short-haul, passenger carrying operations, 8 hours of flight time usually involves 12 to 14 hours of duty because of the number of flights and the time needed on the ground between flights. Extending the flight time limitation between rests beyond the 8 hours currently allowed by the domestic rules in Part 121 cannot be justified at this time, and would create inconsistencies with certain other Part 121 flight time limitations. Therefore, the

FAA has decided that the final rule will limit scheduled flight time between required rest periods to a maximum of 8 hours.

A number of commenters apparently view the 8-hour cap as an 8-hour limit within any 24-hour period. It should be noted that the 8-hour cap of this rule and the 8-hour cap of the current rule are not flight time limits in a rolling 24-hour period. Rather, the 8-hour cap is a flight time limit between required rest periods. It is possible under both rules to fly in excess of 8 hours within a 24-hour period. (See Figure 1 for an example of operation under the new rule.)

Figure 1

LEGALLY SCHEDULED FLIGHT TIME IN EXCESS OF 8 HOURS DURING 24 CONSECUTIVE HOURS



(a) At 0900 hours the flight crewmember is scheduled for duty after 24 hours rest.

(b) At 2100 hours the flight crewmember is scheduled to be released from duty after being scheduled for 7 hours of flight time.

(c) At 0600 hours (Day two), the flight crewmember reports for duty after a 9 hour reduced rest.

(d) At 1300 hours (Day two) the flight crewmember can look back on 10 hours

of scheduled flight time in 24 consecutive hours.

(e) At 2100 hours (Day two), the flight crewmember is released from duty after 7 hours of scheduled flight to receive compensatory rest of at least 12 hours.

(f) At 0900 hours (Day three), the flight crewmember completes the compensatory rest.

Daily Rest Requirements—Part 121 and Part 135 Scheduled Operations

The new rest requirements under Part 121 and Part 135 scheduled rules resolve the series-of-flights problem in current Part 121 by replacing the intervening rest concept and the 16-hour rest with a daily rest requirement based on the number of flight hours scheduled in any 24-hour period. The new daily rest requirements apply when any amount of flight time is scheduled, thereby correcting the lack of rest requirements in current Part 121 for flight crewmembers who are scheduled for

less than 8 hours of flight time in any 24-hour period. For both Part 121 and Part 135 scheduled operations for a 24 consecutive hour period, 9 consecutive hours of rest must be scheduled for less than 8 hours of flight time, 10 consecutive hours of rest for 8 or more but less than 9 hours of flight time, and 11 consecutive hours of rest for 9 or more hours of flight time.

To allow more flexibility than the current rule in scheduling or in adjusting scheduled rests in the event of late arrivals, the new rule provides for reducing a required rest as follows: a 9-hour rest can be reduced to 8 hours if 10 hours of rest is given at the flight crewmember's next scheduled rest; a 10-hour rest can be reduced to 8 hours of rest if 11 hours is given at the next scheduled rest; and an 11-hour rest can be reduced to 9 hours if 12 hours is given at the next scheduled rest. These reduced and compensatory rest periods are absolute and may not be further reduced under any circumstances.

It should be emphasized that the provisions for rest period reductions adopted herein provide substantially more flexibility for air carriers than is available under the current domestic rules. The change from the proposed 7½ hour reduced rest to an 8 hour reduced rest simplifies the regulation because the air carriers are accustomed to using an 8 hour rest period.

Scheduled flight time hours during any 24-hour period	Minimum hours of rest		
	Normal	Reduced	Compensatory
<8	9	8	10
>8 <9	10	8	11
>9	11	9	12

NOTE.—< means less than. > means equal to or greater than.

The proposed rule allowed the 9-hour rest required for less than 8 hours of scheduled flight time to be reduced to 7½ hours provided a minimum of 10 hours rest is given at the next scheduled rest period. A large majority of the commenters who addressed this provision strongly opposed allowing a minimum rest period to be reduced to 7½ hours. The following excerpt from the comment of the Aviation Consumer Action Project (which was represented on the Committee) was typical of the anti-7½-hour minimum rest comments:

It would seem more appropriate to limit the shrinkage, if at all, from nine hours to eight hours. An eight hour floor would seem more appropriate, particularly in the not unusual situation where the pilot lands late at night after a 'light' day of flying, but has a heavier schedule starting the next morning. Seven and one-half hours rest would seem to be too

little in that context, particularly since it does not include getting to or from the airport hotel or checking in and out.

A significant number of pilots in regional air carrier operations made a joint submission in commenting on various aspects of the proposal including that for a reduced rest period of 7½ hours. This submission indicated that on one carrier alone, there are five "quick turnaround" schedules involving overnight rest periods. According to these commenters, although the rest periods are scheduled for 8 to 9 hours, frequently the flights arrive late at the overnight point thus creating a situation for reduction of the scheduled rest to 7½ hours. According to these pilots, if transportation to and from the hotel and normal functions prior to retiring and after arising are considered, the maximum time available for sleep is 5 hours and 45 minutes. These pilots contend that this amount of time is inadequate, particularly if the next day involves a heavy flight schedule.

Although the proposed 7½ hour reduced rest period was focused on during the regulatory negotiation process, the above described comments and others which opposed that provision raise a significant issue concerning whether to adopt the 7½-hour provision as proposed or modify it. This question is exacerbated by the fact that the air transportation industry is experiencing significant changes including innovative operating practices and the entry of many new air carriers. Competition has increased substantially. Thus, there is a recognizable risk that the present relatively few rest periods in the range of 7½ hours could increase substantially.

All parties agreed to a minimum rest period regardless of the amount of flight time. In determining the specific amount of such a rest period, the FAA has decided to follow a course of action which minimizes the possibility of pilot fatigue. Accordingly, the proposal, as adopted herein, is modified to change the 7½ hour reduced rest period to 8 hours. In this respect, as discussed earlier in this preamble, at the present time the National Aeronautics and Space Administration is conducting a study of pilot fatigue factors. When the results of that study are available to the FAA, the agency will review the flight time limitations and rest requirements to determine what, if any, changes are indicated.

The FAA recognizes that some of the approximately 30,000 scheduled daily flights currently operating within the United States may depend on providing

less than 8 hours of rest. Therefore, the final compliance date of this final rule is delayed long enough to provide those operators affected by the minimum rest requirement ample time to adjust those flight schedules which provide for less than 8 hours of rest.

Requests that the minimum rest be an 8-hour rest at a rest facility are not being incorporated in the final rule because travel time to and from a rest facility varies according to distance, time of day, surface traffic conditions, and other variables. The FAA believes that the 8-hour minimum rest, taken together with weekly flight time limitations and compensatory requirements for rest reductions, will assure a rested flight crewmember. Since a reduced rest must be compensated for at the next scheduled rest, a flight crewmember will receive at a minimum 18 hours of rest over approximately 48 hours. Discussion at the last Advisory Committee meeting questioned whether the compensatory rest must be completed within a 48-hour period. One commenter specifically requested "definitive language" to that effect in the preamble or the proposed rule. The proposed rule only required that a compensatory rest be given at the next required rest period. The preamble by way of explanation stated that the rest would be given within "approximately a 48-hour period". The FAA did not intend to require that the compensatory rest be completed within exactly a 48-hour period. However, it was the intent of the proposal, as discussed at the last committee meeting, that the flight crewmember receive enough rest from the combined reduced and compensatory rests to overcome fatigue. In order to assure that a flight crewmember receives both the reduced and compensatory rests within a reasonable period, the final rule requires, in all appropriate sections, that the compensatory rest begin no later than 24 hours after the commencement of the reduced rest period. The longer compensatory rest is necessary within a reasonable time period to overcome any acute fatigue incurred during the flight times scheduled before and after the reduced rest period.

A number of commenters expressed concern that the rest reduction provisions of the rule would result in the scheduling of short flights late in the duty period of the first day, minimum rest overnight, and a strenuous flight and duty period on the second day. This concern, plus hypothetical schedules submitted in comments, suggest that these provisions have not been entirely understood. For example, one commenter stated that a flight

crewmember could be scheduled for 4 consecutive 15-hour days with 7.5 (now 8) to 9 hours of scheduled rest between the duty periods if the flight crewmember is scheduled for less than 8 hours of flight time each day. The statement is incorrect because in 4 consecutive days with less than 8 hours of scheduled flight time during any 24

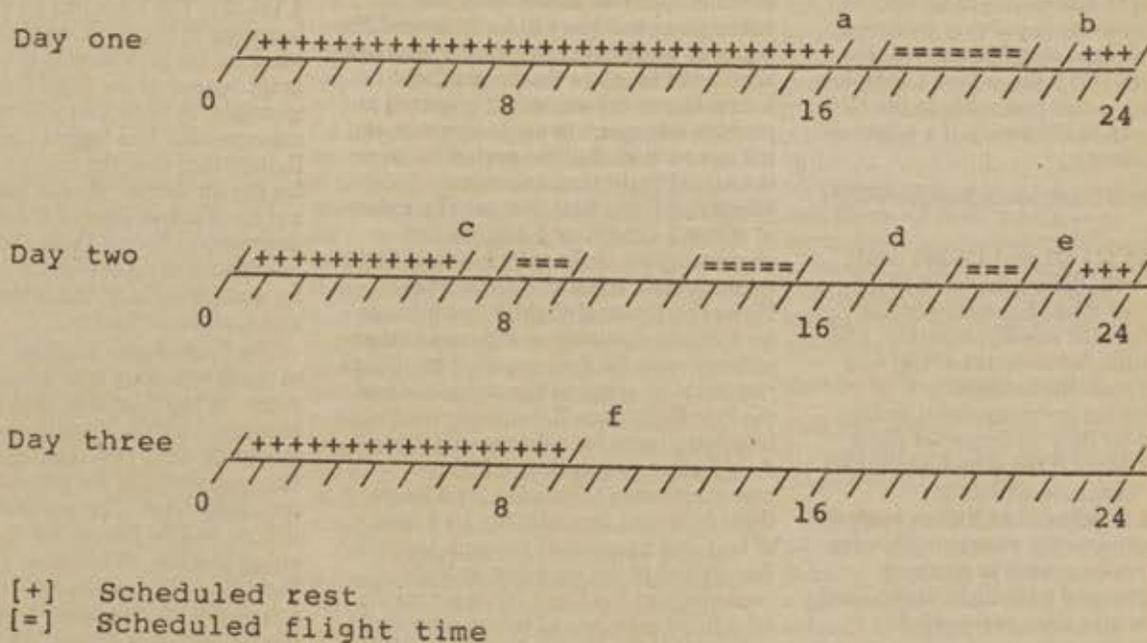
hour period, a reduced rest of 8 hours for the first scheduled rest must be compensated for at the second scheduled rest by at least 10 consecutive hours of rest.

It should be noted that the rest requirement is based on the number of flight hours looking back 24 hours from the completion of each flight segment. If

a pilot is scheduled for 4 hours of flight time late on the first day and receives a reduced rest of 8 hours, he or she can only be scheduled for up to 5 hours of flight time the following morning, since the flight crewmember cannot be scheduled for 9 or more flight time hours in 24 consecutive hours, based on an 8 hour reduced rest period. (See Figure 2)

Figure 2

REDUCED REST TIED TO NUMBER OF
FLIGHT HOURS IN 24 CONSECUTIVE HOURS



(a) At 1600 hours the flight crewmember reports for duty after 24 hours rest.

(b) At 2200 hours the flight crewmember is scheduled to be released from duty having been scheduled to fly 4 hours.

(c) At 0800 hours (Day Two), the flight crewmember is scheduled to report for duty after an 8 hour reduced rest.

(d) By 1700 hours (Day Two), the flight crewmember may not be scheduled for more than 4 hours and 59 minutes of flight, or he or she will equal or exceed 9 hours of flight time in 24 consecutive hours which would not be legal unless he or she is scheduled for at least 9 hours of reduced rest in the preceding 24 hours.

(e) At 2200 hours (Day Two), 24 hours after the commencement of the reduced rest, the flight crewmember is released from duty to receive 11 hours of compensatory rest for 8 or more but less than 9 hours of scheduled flight time.

(f) At 0900 hours (Day Three), the flight crewmember completes the compensatory rest.

The purpose of the rest reduction is to allow scheduling flexibility for the benefit of air carriers, pilots, and the flying public. Although this rule allows for scheduling a reduced rest, it does not allow for any reduction of the minimum reduced rest or of the minimum compensatory rest under any circumstances. Therefore, in order to benefit fully from this flexibility, an air carrier should schedule realistically to

avoid any possible flight schedule disruptions. The FAA expects that most air carriers will schedule at least 9- to 11-hour required rest periods. But, in those instances when air carriers need to schedule a shorter rest or when rest must be reduced because actual flight time has exceeded scheduled flight time, the rule allows for some scheduling flexibility.

A number of commenters requested that the word "rest" be defined or that rest be measured as the period between "release to report" and that release and report times be specified in the rules to allow 1 hour outside the rest period for report and 30 minutes outside the rest period for release. Actual report and release (briefing and debriefing) procedures vary among air carriers

depending on certain factors, such as agreements made with employees. In addition, actual time spent for report and release duties may vary according to the nature and time of the flight. The FAA will continue to leave briefing and debriefing time allotments to the discretion of the air carrier as long as the air carriers permit adequate time to perform required preflight and post flight duties and do not infringe on the required rest periods.

A number of commenters stated that the new sliding scale for required rest plus the system of reduced rests and compensatory rests is more complicated than the current rule. Actually, the proposed rule is very simple if reduced scheduling is not used, and no air carrier is required to schedule a reduced rest period. However, to provide guidance for scheduling in compliance with the new rule, the FAA has added examples and a chart to this preamble to the rule that can help to determine if a schedule is in compliance.

Actual Flight Time vs. Scheduled Flight Time

While §§ 121.471 and 135.265 deal primarily with daily scheduled flight hours, *actual flight hours* determine compliance with weekly, monthly, and annual limits. Sections 121.471(g) and 135.263(d) state that a flight crewmember is not considered to be scheduled for duty in excess of flight time, limitations if the scheduled flights normally terminate within the limitation. In scheduling flights, each air carrier must provide adequate time for the flight crewmember to perform required pre- and post-flight duties, and at least the minimum rest periods required by the rules.

A number of commenters objected to the lack of a provision for a make-up rest in Part 121 domestic operations and Part 135 scheduled operations, such as exists in the Part 135 unscheduled operations rules for instances when actual flight time exceeds scheduled flight time. In answer, compliance with the flight scheduling rules requires each air carrier to schedule realistically. In addition, each flight crewmember, if provided the opportunity, should bid a realistic schedule. If actual flight time is consistently higher than the scheduled flight time allowed, the schedule should be adjusted. It should also be noted that the required rest period in § 121.471(b) and § 135.265(b) is actual rest time which may not be reduced except in accordance with § 121.471(c) and § 135.265(c). If a flight crewmember does not receive the required number of hours of rest, the operator and the flight crewmember are in violation of the

regulation. The FAA intends to enforce the regulation vigorously. Realistic scheduling and bidding should provide a reasonable balance between scheduled flight hours and rest periods on a daily, weekly, monthly, and annual basis. Public safety demands realistic scheduling and properly rested flight crewmembers.

Two commenters raised a question about the application of the rule when during a 24 consecutive hour period, actual flight time exceeds scheduled flight time. For example, if a flight crewmember is scheduled for 7:45 hours of flight and 9 hours of rest in the 24 hours preceding the scheduled completion of the flight, and because of enroute delays, the crewmember actually flies 8:05 hours, does the subsequent rest have to be 10 hours? *No*, because the flight crewmember was not scheduled for more than eight flight hours. Nor is the air carrier required to provide a longer compensatory rest at the next scheduled rest period because the actual flight time exceeded scheduled flight time. No penalty exists in either § 121.471 or § 135.265 for circumstances under which actual flight time exceeds scheduled flight time. However, if actual flight hours infringe on a required minimum reduced rest or makeup rest, the full, required minimum rest must be given at the completion of the late flight even if doing so results in late departures for subsequent flights. As a further example, if a flight crewmember is scheduled for 5 hours of flight followed immediately by 9 hours of rest and because of reasons beyond the control of the operator or flight crewmember the flight infringes on the scheduled rest, one of two events could occur: (1) If the total scheduled flight time in the 24 consecutive hours is less than 8, the required rest could be reduced to 8 hours with a compensatory rest of 10 hours given at the next scheduled rest; (2) If the rest is already a minimum rest, the flight crewmember must be given that rest, which may mean that subsequent scheduled flights will have to be delayed.

Flight Crewmember Responsibility

At the September 11, 1984 meeting, several committee members requested that the proposed language in § 121.471(a) ". . . no domestic air carrier may schedule any flight crewmember and no flight crewmember may accept . . ." be changed by deleting the words "no flight crewmembers may accept." According to the committee, the phrase places responsibility for accepting an assignment on the crewmember which can create labor-management problems

for the air carriers. Committee members think that the air carriers should have full responsibility for scheduling flight time. Members representing labor organizations expressed the concern that in the event of an accident, a flight crewmember could be blamed if he or she had accepted an assignment for flight time beyond his or her limit. A number of commenters also stated that requiring flight crewmembers to be responsible for the flight time limits could create confusion if a difference of opinion arises between a flight crewmember and an operator as to whether a flight will extend beyond the flight time limits.

"Flight crewmember responsibility" is a requirement in current Part 135, § 135.261. The FAA has retained the language throughout the final rule because the provision is essential for enforcement of the flight time limits. For example, in instances where a flight crewmember has logged commercial flying other than the flight time logged for the air carrier, the air carrier might not have knowledge of the additional commercial flying. Thus, the flight crewmember must also be responsible for complying with the flight time limits and rest requirements.

The FAA wants to stress that the goal of these revisions is to prevent fatigue. Acute or short-term fatigue will be prevented by the introduction of a minimum daily rest requirement in Part 121, regardless of the amount of flight time scheduled. Cumulative or long-term fatigue will be prevented by instituting either weekly, monthly, and annual flight time limitations for Part 135 scheduled operations or quarterly, biquarterly, and annual flight time limitations for Part 135 unscheduled operations. It is the responsibility of both the operator and the flight crewmember to prevent fatigue, not only by following the regulations, but also by acting intelligently and conscientiously while serving the traveling public. This means taking into consideration weather conditions, air traffic, health of each flight crewmember, or any other circumstances (personal problems, etc.) that might affect the flight crewmember's alertness or judgment on a particular flight. The FAA also emphasizes that accurate flight time records must be made. The agency will consider it a very serious matter if recording of flight time is not accomplished in an honest manner.

Dual Operations

In Notice 84-3, the FAA stated that "Part 135 operators who operate scheduled passenger-carrying

operations under Part 121 are subject to the domestic air carrier flight time limitations of Subpart Q." The FAA requested comments on whether additional language was needed in the rule to clarify this requirement. The purpose of the statement was to clarify for air carriers that operate under both Part 121 and Part 135, that they must comply with Part 121 Subpart Q flight time limits and rest requirements for their Part 121 domestic air carrier operations. The statement was specifically referring to Part 135 operators who had been operating scheduled passenger-carrying operations under Part 121 Subpart S and who recently have been required to comply with the domestic air carrier requirements of Subpart Q and other rules applicable to domestic air carrier operations. No specific comments were received on this issue.

A number of comments indicated and the deliberations of the Advisory Committee confirmed the existence of a broader problem concerning dual operations. Several comments were received from air carriers who fly both scheduled and unscheduled operations. These comments expressed confusion about how to comply with the rules. Should a dual operator make all its operations comply with whatever the most restrictive flight time limits and rest requirements are? For example, should a Part 135 scheduled operator who has some Part 121 operations comply in all operations with the more restrictive Part 121 rules? Or should that operator maintain separate crews, one for Part 121 operations and one for Part 135 operations? The same questions arise for operators who have both Part 135 scheduled and Part 135 unscheduled operations, and for operators who fly different types of Part 121 operations, such as domestic and supplemental.

The long-standing policy of the FAA has been to permit dual operators to use the same flight crewmembers interchangeably for different types of operations. However, an operator may maintain separate crews for different types of operations if that is more convenient. To be in compliance with the rules, a pilot who files dual operations must, in all respects, comply with the flight time limits and rest requirements for the particular operation being conducted. Thus, under the new rule, a pilot flying Part 121 domestic flights and Part 135 scheduled flights could legally fly both types of flights interchangeably up to 1,000 hours in a calendar year. The pilot could then continue to fly Part 135 scheduled flights for an additional 200 hours, but could no

longer fly Part 121 domestic flights. The same principle would apply for the monthly and weekly limits. In the case of dual operators who operate Part 121 domestic and supplemental flights, a pilot could fly up to 30 hours of domestic flight operations and supplemental operations in less than 7 days. During a 7-day period, the pilot could then continue to fly supplemental operations, which have no weekly limit, but could not fly more hours of domestic operations. However, the 30 hours in 7 days limit may prohibit the pilot from conducting a domestic flight on the eighth day.

Dual operators who assign pilots interchangeably on a daily basis must also see that the pilot has satisfied all of the flight time limits and rest requirements. Thus, for any assigned flight hours, a pilot must have had the required amount of rest and must fly within the daily flight time limitations for the particular type of operation. For example, a pilot who flies both Part 135 scheduled operations and Part 135 unscheduled operations on a daily basis must be in compliance with both sets of rest and flight requirements. If a pilot is flying scheduled operations morning and afternoon, the pilot must have had at least the required rest under § 135.265 and may not fly more than 8 hours between rests. If in addition to scheduled flights, the pilot is flying unscheduled operations in the middle of the day, the pilot must have had at least 10 hours of rest in the 24 hours preceding the completion of any flight.

On a daily basis, in instances where the requirements are not parallel (most cases) the more restrictive limits will necessarily apply. A certificate holder who plans less than 8 hours of flight time for combined scheduled and unscheduled flights must schedule at least 10 hours of rest preceding the flight hours. Certificate holders who plan more than 9 hours of scheduled and unscheduled flights must give 11 hours of rest in the preceding 24 hours. If the certificate holder reduces the 11-hour rest as allowed under § 135.265(c)(3), he may only reduce it to 10 hours or he will not be in compliance with § 135.267(c)(2). In the same way, a certificate holder who conducts scheduled and unscheduled operations on a daily basis must adhere to both daily flight time limits of § 135.265(a) (4) and (5), and § 135.267(c) (1) and (2) as applicable. This certificate holder cannot schedule a pilot for more than 8 hours of flight time between required rest periods nor schedule a pilot for more than 10 hours of flight time in any 24 consecutive hours.

Clearly, dual operations do present scheduling complications and always have. However, the FAA believes that it is beneficial to the majority of operators to have flight time limits and rest requirements specifically suited to different types of operations. One rule for all operations would eliminate the complications of dual operations, but might unreasonably restrict certain types of operations. Under the new rule, dual operators will continue to be required to comply with all applicable rules. However, in Part 121 and Part 135 rules certain mechanisms exist which allow some dual operators to simplify their operations. Section 121.5 allows flag and domestic air carriers to obtain authority from the Administrator to conduct charter flights or other special services, over certain routes, under the rules applicable to flag and domestic air carriers. The requirements in § 135.261 have been changed from the proposed rule to allow any Part 135 operator the option of conducting all Part 135 operations under the rules for scheduled operations after obtaining an appropriate operations specification amendment. This should reduce the administrative and operational management burdens for Part 135 dual operators.

Section by Section Discussion

Part 121, Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

Subpart Q of Part 121 consists of §§ 121.470 and 121.471. Throughout Subpart Q, the words "rest requirements" have been added, in the subpart heading, in the body of § 121.470, and in the heading of § 121.471. In addition, certain nonsubstantive editorial changes have been made for clarity or correctness.

The following sections describe the technical changes to the proposed rule incorporated in the final rule. All of the major issues involving Part 121 and related changes have been discussed earlier in this preamble.

Section 121.471—Flight time limitations and rest requirements: All flight crewmembers.

Paragraph (a)(4) is changed from the proposed rule by adding the word "required" to clarify that the rest period must be a scheduled rest period as described in paragraph (b) or (c). The proposed 9 flight hours between rests in paragraph (a)(4) is changed to 8 flight hours, and the proposed minimum of 7½ hours of rest in paragraph (c) (1) is changed to 8 hours.

Paragraphs (c) (1), (2), and (3) are changed from the proposed rule to clarify in the rule that the compensatory rest must begin within 24 hours of the commencement of the reduced rest. (See the "Daily Rest Requirements Part 121 and Part 135 Scheduled Operations" section of the preamble.) The undesignated paragraph at the end of paragraph (c) is redesignated as paragraph (c)(4) in order to make its relationship to the paragraph clear.

The word "duty" in the second line of paragraph (g), which describe flight time in excess of limitations, is changed in the final rule to "flight time", for consistency.

Paragraph (h) is removed, as discussed in the section on "Cumulative Flight Time Limits—Certain Part 121 Operations."

Part 135, Subpart F—Flight Crewmember Flight Time Limitations and Rest Requirements

The flight time limitations and rest requirements for Part 135 operations are organized into the following categories to accommodate the needs of the varied operations conducted under Part 135: (1) general requirements for all Part 135 operations; (2) scheduled operations; (3) unscheduled operations (one- and two-pilot crews and augmented crews); and (4) helicopter hospital emergency medical evacuation services (HEMES).

Some technical changes have been made throughout Part 135, Subpart F. First, the words "rest requirements" are added to the subpart and section headings throughout the subpart in order to make it clear that the subpart contains rest requirements as well as flight time limitations.

Second, whenever the word "duty" meant "flight time" the wording has been changed to read "flight time" in order to make the language in the subpart consistent with the FAA interpretation of the word "duty".

In addition, certain nonsubstantive editorial changes have been made.

The following sections detail the technical changes from the proposed rule in the final rule. They also describe those changes and comments related to controversial issues in specific sections of Part 135, Subpart F. General issues related to both Parts 121 and 135 have been considered in earlier sections of this preamble.

Section 135.261—Applicability.

Proposed § 135.216(b) limited by definition "scheduled operations" to "scheduled passenger carrying operations" with a published schedule of at least five round trips per week. Cargo operators represented on the

Advisory Committee and those who commented in writing on the rule requested that cargo operations also be allowed to operate under Section 135.265, scheduled operations rules. The FAA has changed the proposed rule to permit any Part 135 operator to comply with the flight time limitations and rest requirements of § 135.265 thereby reducing any compliance burden caused by keeping two sets of records. In addition, paragraph (b) has been restructured for the sake of clarity.

Paragraph (c) specifies that operations not included in the definition of "scheduled passengers-carrying operations" and operations conducted only within the state of Alaska (except for the helicopter hospital emergency medical evacuation operations) are conducted under the rest requirements and flight time limits of §§ 135.267 and 135.269. Comments were invited by the FAA on the inclusion of scheduled Alaskan operations under Part 135 unscheduled operations. One commenter opposed including Alaskan operations under unscheduled operations because the commenter believed that all operators providing regularly scheduled air service should be subject to the same rules. On this issue, the FAA remains in agreement with certain members of the Advisory Committee who maintain that because of the size of the state and the weather conditions, Alaska has a unique flying environment which justifies the flight time limits and rest requirements applicable to unscheduled operations. One commenter who opposed the rule apparently assumed that scheduled operators in Alaska would have to comply with scheduled rules. This is a misunderstanding of the proposal. Scheduled and unscheduled operations conducted solely within the state of Alaska must comply with § 135.267 and § 135.269, i.e., rules for unscheduled operations. However, Alaskan operators may elect to comply with § 135.265, flight time limitations and rest requirements for scheduled operations, and obtain an appropriate operations specification amendment.

Some commenters requested that large helicopters, those with a passenger seating capacity of more than 30 people, be allowed to fly under the Part 135 flight time limitations and rest requirements. They argued that the new, large helicopters are operated in the same way and under the same conditions as smaller helicopters. This concern is outside the scope of this rulemaking. The operation of large helicopters has been accommodated in a recent revision of SFAR 38.

Section 135.263—Flight time limitations and rest requirements: All certificate holders.

Section 135.263 contains requirements that apply either to all operations under Part 135 or to more than one type of operation. Most of the paragraphs in § 135.263 originated in current § 135.261. Paragraph (d) states that under certain conditions a flight crewmember is not considered to have flown in excess of the flight time limitations. It has been changed from proposed § 135.263 (d) to clarify that it applies to unscheduled as well as scheduled operations.

The requirements for compensatory rest for flight crewmembers who have exceeded the daily flight time limitations, which appeared in proposed § 135.263(e), have been moved to §§ 135.267(e), 135.269(c), and 135.271(c) for clarity and in order to tailor them appropriately to the different unscheduled operations.

The deviation authority that appeared in proposed § 135.263(f) is moved to § 135.267(g) because it concerns only that section.

Section 135.265—Flight time limitations and rest requirements: Scheduled operations.

The words "air carrier" in this section have been changed to "certificate holder" in order to clarify that § 135.265 applies to any operator conducting scheduled operations under Part 135, not just air carriers.

The flight time limit in § 135.265(a)(3) has been changed from "32 hours in any 7 consecutive days" to "34 hours in any 7 consecutive days." (See the discussion of "Cumulative Flight Time Limits.")

Section 135.265(a)(5) has been amended to clarify that the rest periods referred to are the required rest periods in paragraphs (b) and (c). The proposed 9 hours between rest in paragraph (a)(5) is changed to 8 hours, and the proposed minimum of 7½ in paragraph (c)(1) is changed to 8 hours. Paragraph (a)(5) is also changed from the proposed rule by adding the phrase "qualified under this part for the operation being conducted." This phrase was inadvertently omitted from the proposal. This is consistent with other provisions imposing certain qualifications for certain types of operations.

Paragraphs (c) (1), (2), and (3) are changed from the proposed rule to clarify in the rule that the make-up rest must commence within 24 hours of the beginning of the reduced rest. (See the "Daily Rest Requirements Part 121 and Part 135 Scheduled Operations" section of this preamble.)

Section 135.267—Flight time limitations and rest requirements: Unscheduled one- and two-pilot crews.

For the first time, quarterly, biquarterly, and yearly flight time limits are imposed. Quarterly limits, as opposed to monthly limits, allow flexible scheduling for seasonal and on-demand operations and provide adequate rest for flight crewmembers engaged in such operations. The rule requires 13 rest periods of at least 24 hours in each calendar quarter, as proposed, instead of 24 hours off in 7 days. This provides for the same number of days off as are required for Part 121 and scheduled Part 135 operators, and at the same time recognizes that unscheduled pilots, particularly in remote operating locations, may not find it convenient or necessary to take one day off every 7 days.

Daily flight time limits for one- and two-pilot crews remain 8 and 10 hours, respectively, in every 24 consecutive hours. However, § 135.267(c), which is adopted as proposed, allows an operator and flight crewmember to use a schedule of regular daily duty hours rather than a rolling 24-hour clock.

In paragraph (a), editorial changes have been made: (1) to clarify that the section applies to unscheduled one- and two-pilot crews, and (2) to remove the words "duty during."

Paragraph (b)(2) is changed by adding the phrase "for the operation being conducted." This is consistent with other provisions imposing certain qualifications for certain types of operations.

Paragraph (c)(1) is changed to incorporate elements of proposed paragraph (e), and (e) is deleted in order to avoid redundancy. Also, the paragraph is changed to clarify that the regularly scheduled rest period may be more than 10 hours.

A new paragraph (e) is added which contains the make-up rest provisions for overflights formerly in § 135.263(e) of the proposed rule. The provisions were moved unchanged to this section for convenience and to enable the similar provisions that apply to augmented crews in § 135.269 and to helicopter emergency medical evacuation services (HEMES) in § 135.271 to be tailored to those sections.

Comments on the make-up rest provision stated that, since a 16-hour rest was considered excessive under current Part 121 and Part 135, the maximum make-up rest should be no more than 13 hours of rest. The FAA does not agree. Although 16 hours may be excessive as a routinely required rest, it is not excessive as a make-up

rest. The purpose of the make-up rest is to ensure that each flight crewmember is properly rested prior to the next assignment. The provision has always acted as an incentive to operators to plan for actual flight times, and leave an adequate margin of safety.

A number of commenters wrote that the make-up rest clause is inequitable because it applies to Part 135 operations and not Part 121 operations. Actually the provision applies to the unscheduled operations in Part 135, where daily flight time limits are actual limits. In scheduled operations under Part 135 (§ 135.265) and Part 121 operations, there is a limit to the number of scheduled flight time hours (8 hours) between required rest periods, but no specified limit to actual daily flight time (except for one-pilot crews in § 135.265). The wording and position of the make-up rest clause in proposed § 135.263(e) is changed to make it clear that it applies to the unscheduled flights in §§ 135.267 through 135.271, and not to the scheduled flights in § 135.265. The undesignated paragraph that followed proposed § 135.263(e) is deleted. The paragraph is unnecessary now that the application of the make-up rest provision has been clarified.

The deviation authority originally proposed in § 135.263(f) is transferred to § 135.267(g), the specific section to which it applies. If granted, a deviation will allow an operator who conforms with the current rules to continue under those rules for a period of time not to exceed 2 years. This will give operators who may experience difficulties because of the more restrictive cumulative flight time limits in new Part 135, Subpart F, additional time to adjust their operations. The reference to § 135.269 has been removed from the deviation authority since the current rules do not address augmented crews, and the deviation authority is not intended to apply to those operating under exemptions to the current rule. Each of these exemptions contains a provision that states that the exemption terminates with the adoption of any amendments to the Part 135 flight time limitations and rest requirements that provide for augmented crews.

The proposed rule stated that, within 2 years after the issuance of this rule, the Director of Flight Operations could issue operations specifications authorizing a deviation from any specific requirement of §§ 135.267 and 135.269 if he or she finds that the deviation provides a substantially equivalent standard of safety. Commenters pointed out that the proposal did not limit either the duration of the deviation or the time within which

the FAA must respond to a request for a deviation. To correct the proposed language, the final rule makes the deviation effective for up to 2 years after the effective date of this rule, and allows an operator who has requested a deviation to operate under the current rule until the FAA has reviewed the request and made a final determination.

One commenter also suggested that deviations be discouraged and that requests for deviations be reviewed by personnel specifically trained in flight crew stress and fatigue management. The FAA intends that the deviation authority will provide a smooth transition to compliance with the new rule. The FAA will base its approval for allowing a deviation on the certificate holder's need for additional time and its ability to maintain a comparable level of safety.

Section 135.269—Flight time limitations and rest requirements: Unscheduled three- and four-pilot crews.

Section 135.269 provides flight time limitations and rest requirements for augmented crews which in the past have always been handled by exemption. This section limits not only hours of flight deck duty, but also hours of duty and hours aloft.

Paragraph (b) is redesignated as paragraph (d) and moved to the end of the section. Proposed paragraph (c) becomes paragraph (b) and the cross references are changed accordingly. This is done to make the organization of this section consistent with the rest of the subpart.

The term "flight time" in paragraphs (b)(2) and (c) is changed to "flight deck duty" in order to make the language consistent with similar provisions in Part 121 (§§ 121.507 and 121.509). The word "approved" in proposed paragraph (b)(5) has been replaced by the word "adequate" to be consistent with the requirements applicable to augmented crews in Part 121.

A new paragraph (c) is added which contains the compensatory rest provisions, formerly in proposed § 135.263(e), which apply particularly to augmented crews.

No substantive comments on § 135.269 were received.

Section 135.271—Helicopter hospital emergency medical evacuation service (HEMES).

This rule provides specific flight time limits and rest requirements for helicopter hospital emergency medical evacuation services. The rule was based on FAA experience with numerous certificate holders operating under

exemption. The internal cross reference in proposed § 135.271(a) has been deleted, and the referenced material has been included in the final rule in full for the convenience of the user.

New compensatory rest provisions have been added to this section in paragraph (c). The FAA has decided that the provisions that were contained in proposed § 135.263(e) are not appropriate to HEMES operations, nor do they reflect the requirements of the exemptions on which this rule is based. As stated in the preamble to the NPRM, this rule is based on the terms of typical exemptions for emergency evacuations because of their undoubted public benefit. Typically, the exemption required the development of procedures for the termination of a HEMES assignment "When it becomes apparent that . . . a flight crewmember might be required, for an emergency situation, to exceed 8 hours duty during flight time." While the FAA does not find it necessary for the rule to be that stringent, a HEMES pilot who exceeds 8 flight hours during any 24-hour period will not be given a graduated rest. Instead, he or she must be relieved of the HEMES assignment and immediately given a minimum rest period of:

1. 12 consecutive hours for an assignment of less than 48 hours.
2. 16 consecutive hours for an assignment of more than 48 hours.

A flight crewmember who has exceeded 8 flight hours in any 24-hour period of a HEMES assignment, because of circumstances beyond the control of the certificate holder or flight crewmember, is assumed to be tired and may be unsafe to conduct additional flight operations under demanding conditions. It is highly improbable that any HEMES flight crewmember will exceed 8 flight hours during any 24-hour period of a HEMES assignment, because the assignment is for emergency medical evacuation purposes only. The HEMES assignment is not to be used for the routine transport of patients to, from, or between hospitals. Rather, it is intended to be used in bona fide emergency situations.

Proposed paragraph (d) is changed by adding a sentence which explains that the flight crewmember must be relieved if he or she has not or cannot receive 8 hours of rest during any 24 consecutive hour period of a HEMES assignment. It is amended to be consistent with the conditions of the exemptions. The word "approved" in proposed paragraph (f) has been replaced by the word "adequate" to be consistent with the language in other parts of the FAR.

Paragraph (h)(1) is changed from the proposed rule by removing the words "at least 24 hours but," in order to make paragraph (h) compatible with the new compensatory rest provisions in paragraph (c).

One commenter objected to the exclusion of fixed-wing aircraft from the HEMES rule. The FAA has excluded fixed-wing aircraft because they are not truly hospital based, and the flight crewmember of an airplane does not work in the same closely controlled environment experienced by a helicopter flight crewmember based at a hospital heliport.

Economic Evaluation

FAA analysis indicates that there should be no significant adverse impact associated with the amendments, and that they will not have a significant economic impact on a substantial number of small entities. The amendment includes a number of changes which should benefit the industry. However, it is not possible for the FAA to quantify the benefits associated with the rule, as these benefits can only be achieved by the air carriers after any operational flexibilities are translated into actual use.

Part 135 Benefits

The benefits which result specifically from weekly and other flight time limits derive from improved safety, since the maximums established will prevent a flight crewmember from accruing unsafe amounts of flight time. These benefits are not specifically quantifiable, due to a lack of detailed accident records. Specifically, accident records rarely address cumulative fatigue, which is the primary problem addressed by these amended standards.

There are additional benefits associated with the amendments, resulting from increased flexibility in crew scheduling options, and reduced penalties for exceeding flight time limits. Aircraft and crew utilization can improve, providing benefits. Scheduled operators, for example, can provide 9 hours of rest after less than 8 hours of flight time, down from a minimum 10 hours of rest under current rules. The minimum rest periods can be reduced, whereas previous minimums could not be reduced. Additionally, while the regulation for unscheduled operators before amendment required 16 hours of make-up rest if daily flight time limits were exceeded, the amendment allows for less compensating rest, unless the daily limit is exceeded by more than 1 hour. After amendment, there is no requirement for scheduled operators to

provide compensating rest when flight time limits are exceeded. The benefits associated with crew utilization flexibility and the change in make-up rest cannot be quantified with the data available. The changes can be evaluated economically by management only after experience with the flexibilities of the final rule.

Part 135 Costs

Part 135 operators incur costs as a result of these amendments in two ways. First, operators' scheduling costs will increase; second, decreased crew utilization will involve a cost for some operators. These costs will be higher for scheduled operators than for unscheduled operators.

Increased scheduling costs will affect both scheduled and unscheduled operators. Scheduled operators will be more heavily impacted than unscheduled operators, because the most complicated and restrictive new flight time limit is the one limiting scheduled operators to 34 hours of flight time in 7 consecutive days. This restriction will involve a more complex crew scheduling process for larger operators, since the crew scheduling task will be more complicated than at present.

The economic analysis assumes that the scheduling cost for the largest 50 commuter airlines will be approximately \$25,000 per year, approximately equivalent to one full-time clerk and additional office expenses. The next largest 50 commuters are assumed to incur one half the cost of the largest commuters, and the smallest 40 scheduled operators are assumed to incur a cost of \$2,500 yearly. The total scheduling cost impact for scheduled operators is thus approximately \$2,000,000 for the industry.

Nonscheduled air taxi operators may incur minor scheduling cost increases since they must now be concerned with quarterly, biquarterly, and annual total flight hours in addition to daily flight hours. This analysis assumes that one half of the approximately 4,000 unscheduled operators will incur no notable cost, due to their very small size. The other half of unscheduled operators is assumed to incur costs averaging \$500 per operator.

The weekly and other flight time limits also involve costs associated with crew utilization. Some scheduled firms will have to add to crew count in order to handle peaks of activity. Data submitted in comments was not substantive, however, and we expect that only about 20 scheduled operators will be affected, incurring a cost of

\$25,000 to \$50,000 per firm. The range of industry impacts is therefore between \$500,000 and \$1,000,000. The impact of crew utilization changes for unscheduled operators is expected to be negligible, based on review of the comments.

One final element of the amendment provides benefits to certain operators, particularly operators of unscheduled helicopter services. Section 135.267(c) refers to operations having regularly assigned duty periods, and it is discussed in the preamble to the final rule. This section involves a minor benefit which is not quantifiable, due to lack of information.

There are no other rule elements which involve notable increased costs for the Part 135 operator.

Part 121 Costs and Benefits

There is only one major change for Part 121, namely the new rule for daily rest requirements. The amendment is somewhat simpler than the rule prior to amendment and provides more flexibility in crew utilization. One potentially costly provision is that, under the present rules, there is no minimum rest requirement when crewmembers are scheduled for less than 8 hours of flight time in 24 consecutive hours. Under the amendment, there is a minimum 9-hour rest period required, which is reducible to 8 hours, as explained elsewhere. However, this cost is minimal and is balanced by benefits. The impact is minimal because the actual number of routings which would be affected by the amendment are very few.

Benefits of the Part 121 amendments result from better crew utilization, a possible reduction in the amount of time crews must be away from home, and, probably, a reduction in the number of days per month the typical crew member must work. The benefits of this amendment can only be quantified by air carriers, after experience is gained under the amendment.

For both classes of air operator, the FAA believes that the benefits of the amendments exceed any costs involved with showing compliance.

Conclusion

The FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 but is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This final rule is expected to generate no net cost, while maintaining or increasing the level of safety. Although there are a number of changes in the regulation, any potentially costly changes would be

balanced by benefits. Under the terms of the Regulatory Flexibility Act of 1980, Federal Agencies must review rules with particular concern about the impact rules might have on small entities. It is certified that this rule will not have significant economic impact on a substantial number of small entities because the only costs implied are minimal and balanced by the benefits of the rule. A summary of the economic evaluation is printed in the preamble to this final rule, and a copy of the full economic evaluation is filed in the docket and may also be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

Compliance Date

This rule will become effective October 1, 1985, at which time any certificate holder who wishes to may begin complying with the new flight time and rest requirements. However, the final compliance date of this rule is delayed until October 1, 1986, in order to allow certificate holders ample time to reschedule and bring their operations into full compliance with this rule. The delayed compliance date is particularly intended to give those few operators who have flight schedules that depend on less than 8 hours of rest time to reschedule those flights.

List of Subjects

14 CFR Part 121

Aviation safety, Air carriers, Aircraft, Airmen, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 135

Aviation safety, Air taxis, Airmen, Aircraft, Reporting and recordkeeping requirements.

Rule

In consideration of the foregoing, the Federal Aviation Administration amends Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By revising the table of contents of Subpart Q of Part 121 to read as follows:

Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

Sec.

121.470 Applicability.
121.471 Flight time limitations and rest requirements: All flight crewmembers.

3. By revising Subpart Q of Part 121 to read as follows:

Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

§ 121.470 Applicability.

This subpart prescribes flight time limitations and rest requirements for domestic air carriers.

§ 121.471 Flight time limitations and rest requirements: All flight crewmembers.

(a) No domestic air carrier may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

- (1) 1,000 hours in any calendar year;
- (2) 100 hours in any calendar month;
- (3) 30 hours in any 7 consecutive days;
- (4) 8 hours between required rest periods.

(b) Except as provided in paragraph (c) of this section, no domestic air carrier may schedule a flight crewmember and no flight crewmember may accept an assignment for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment without a scheduled rest period during that 24 hours of at least the following:

- (1) 9 consecutive hours of rest for less than 8 hours of scheduled flight time.
- (2) 10 consecutive hours of rest for 8 or more but less than 9 hours of scheduled flight time.
- (3) 11 consecutive hours of rest for 9 or more hours of scheduled flight time.

(c) An air carrier may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

- (1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 10 hours that must begin no later than 24 hours after the commencement of the reduced rest period.
- (2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 11 hours that must

begin no later than 24 hours after the commencement of the reduced rest period.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given a rest period of at least 12 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(4) No air carrier may assign, nor may any flight crewmember perform any flight time with the air carrier unless the flight crewmember has had at least the minimum rest required under this paragraph.

(d) Each domestic air carrier shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

(e) No domestic air carrier may assign any flight crewmember and no flight crewmember may accept assignment to any duty with the air carrier during any required rest period.

(f) Time spent in transportation, not local in character, that an air carrier requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(g) A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

4. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. By revising the table of contents of Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time Limitations and Rest Requirements

Sec.

135.261 Applicability.

135.263 Flight time limitations and rest requirements: All certificate holders.

135.265 Flight time limitations and rest requirements: Scheduled operations.

Sec.

135.267 Flight time limitations and rest requirements: Unscheduled one- and two-pilot crews.

135.269 Flight time limitation and rest requirements: Unscheduled three- and four-pilot crews.

135.271 Helicopter hospital emergency medical evacuation service (HEMES).

6. By revising Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time Limitations and Rest Requirements

§ 135.261 Applicability.

Sections 135.263 through 135.271 prescribe flight time limitations and rest requirements for operations conducted under this part as follows:

(a) Section 135.263 applies to all operations under this subpart.

(b) Section 135.265 applies to:

(1) Scheduled passenger-carrying operations except those conducted solely within the state of Alaska.

"Scheduled passenger-carrying operations" means passenger-carrying operations that are conducted in accordance with a published schedule which covers at least five round trips per week on at least one route between two or more points, includes dates or times (or both), and is openly advertised or otherwise made readily available to the general public, and

(2) Any other operation under this part, if the operator elects to comply with § 135.265 and obtains an appropriate operations specification amendment.

(c) Sections 135.267 and 135.269 apply to any operation that is not a scheduled passenger-carrying operation and to any operation conducted solely within the State of Alaska, unless the operator elects to comply with § 135.265 as authorized under paragraph (b)(2) of this section.

(d) Section 135.271 contains special daily flight time limits for operations conducted under the helicopter emergency medical evacuation service (HEMES).

§ 135.263 Flight time limitations and rest requirements: All certificate holders.

(a) A certificate holder may assign a flight crewmember and a flight crewmember may accept an assignment for flight time only when the applicable requirements of §§ 135.263 through 135.271 are met.

(b) No certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period.

(c) Time spent in transportation, not local in character, that a certificate

holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(d) A flight crewmember is not considered to be assigned flight time in excess of flight time limitations if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

§ 135.265 Flight time limitations and rest requirements: Scheduled operations.

(a) No certificate holder may schedule any flight crewmember, and no flight crewmember may accept an assignment, for flight time in scheduled operations or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

- (1) 1,200 hours in any calendar year.
- (2) 120 hours in any calendar month.
- (3) 34 hours in any 7 consecutive days.
- (4) 8 hours during any 24 consecutive hours for a flight crew consisting of one pilot.

(5) 8 hours between required rest periods for a flight crew consisting of two pilots qualified under this part for the operation being conducted.

(b) Except as provided in paragraph (c) of this section, no certificate holder may schedule a flight crewmember, and no flight crewmember may accept an assignment, for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment without a scheduled rest period during that 24 hours of at least the following:

- (1) 9 consecutive hours of rest for less than 8 hours of scheduled flight time.
- (2) 10 consecutive hours of rest for 8 or more but less than 9 hours of scheduled flight time.

(3) 11 consecutive hours of rest for 9 or more hours of scheduled flight time.

(c) A certificate holder may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

- (1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 10 hours that must begin no later than 24 hours after the

commencement of the reduced rest period.

(2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 11 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given a rest period of at least 12 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(d) Each certificate holder shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

§ 135.267 Flight time limitations and rest requirements: Unscheduled one- and two-pilot crews.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a one- or two-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter.

(2) 800 hours in any two consecutive calendar quarters.

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight when added to any other commercial flying by that flight crewmember may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or

(2) 10 hours for a flight crew consisting of two pilots qualified under this Part for the operation being conducted.

(c) A flight crewmember's flight time may exceed the flight time limits of paragraph (b) of this section if the assigned flight time occurs during a regularly assigned duty period of no more than 14 hours and—

(1) If this duty period is immediately preceded by and followed by a required rest period of at least 10 consecutive hours of rest;

(2) If flight time is assigned during this period, that total flight time when added to any other commercial flying by the flight crewmember may not exceed—

(i) 8 hours for a flight crew consisting of one pilot; or

(ii) 10 hours for a flight crew consisting of two pilots; and

(3) If the combined duty and rest periods equal 24 hours.

(d) Each assignment under paragraph (b) of this section must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

(e) When a flight crewmember has exceeded the daily flight time limitations in this section, because of circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), that flight crewmember must have a rest period before being assigned or accepting an assignment for flight time of at least—

(1) 11 consecutive hours of rest if the flight time limitation is exceeded by not more than 30 minutes;

(2) 12 consecutive hours of rest if the flight time limitation is exceeded by more than 30 minutes, but not more than 60 minutes; and

(3) 16 consecutive hours of rest if the flight time limitation is exceeded by more than 60 minutes.

(f) The certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(g) The Director of Flight Operations may issue operations specifications authorizing a deviation from any specific requirement of this section if he finds that the deviation is justified to allow a certificate holder additional time, but in no case beyond October 1, 1987, to bring its operations into full compliance with the requirements of this section. Each application for a deviation must be submitted to the Director of Flight Operations before October 1, 1986. Each applicant for a deviation may continue to operate under the requirements of Subpart F of this part as in effect on September 30, 1985 until the Director of Flight Operations has responded to the deviation request.

§ 135.269 Flight time limitations and rest requirements: Unscheduled three- and four-pilot crews.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a three- or four-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter.

(2) 800 hours in any two consecutive calendar quarters.

(3) 1,400 hours in any calendar year.

(b) No certificate holder may assign any pilot to a crew of three or four pilots, unless that assignment provides—

(1) At least 10 consecutive hours of rest immediately preceding the assignment;

(2) No more than 8 hours of flight deck duty in any 24 consecutive hours;

(3) No more than 18 duty hours for a three-pilot crew or 20 duty hours for a four-pilot crew in any 24 consecutive hours;

(4) No more than 12 hours aloft for a three-pilot crew or 16 hours aloft for a four-pilot crew during the maximum duty hours specified in paragraph (b)(3) of this section;

(5) Adequate sleeping facilities on the aircraft for the relief pilot;

(6) Upon completion of the assignment, a rest period of at least 12 hours;

(7) For a three-pilot crew, a crew which consists of at least the following:

(i) A pilot in command (PIC) who meets the applicable flight crewmember requirements of Subpart E of Part 135;

(ii) A PIC who meets the applicable flight crewmember requirements of Subpart E of Part 135, except those prescribed in §§ 135.244 and 135.247; and

(iii) A second in command (SIC) who meets the SIC qualifications of § 135.245.

(8) For a four-pilot crew, at least three pilots who meet the conditions of paragraph (b)(7) of this section, plus a fourth pilot who meets the SIC qualifications of § 135.245.

(c) When a flight crewmember has exceeded the daily flight deck duty limitation in this section by more than 60 minutes, because of circumstances beyond the control of the certificate holder or flight crewmember, that flight crewmember must have a rest period before the next duty period of at least 16 consecutive hours.

(d) A certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

§ 135.271 Helicopter hospital emergency medical evacuation service (HEMES).

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment for flight time if that crewmember's total flight time in all commercial flight will exceed—

(1) 500 hours in any calendar quarter.

(2) 800 hours in any two consecutive calendar quarters.

(3) 1,400 hours in any calendar year.

(b) No certificate holder may assign a helicopter flight crewmember, and no flight crewmember may accept an assignment, for hospital emergency medical evacuation service helicopter operations unless that assignment

provides for at least 10 consecutive hours of rest immediately preceding reporting to the hospital for availability for flight time.

(c) No flight crewmember may accrue more than 8 hours of flight time during any 24-consecutive hour period of a HEMES assignment, unless an emergency medical evacuation operation is prolonged. Each flight crewmember who exceeds the daily 8 hour flight time limitation in this paragraph must be relieved of the HEMES assignment immediately upon the completion of that emergency medical evacuation operation and must be given a rest period in compliance with paragraph (h) of this section.

(d) Each flight crewmember must receive at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment. A flight crewmember must be relieved of the HEMES assignment if he or she has not or cannot receive at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment.

(e) A HEMES assignment may not exceed 72 consecutive hours at the hospital.

(f) An adequate place of rest must be provided at, or in close proximity to, the hospital at which the HEMES assignment is being performed.

(g) No certificate holder may assign any other duties to a flight crewmember during a HEMES assignment.

(h) Each pilot must be given a rest period upon completion of the HEMES assignment and prior to being assigned any further duty with the certificate holder of—

(1) At least 12 consecutive hours for an assignment of less than 48 hours.

(2) At least 16 consecutive hours for an assignment of more than 48 hours.

(i) The certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

Issued in Washington, D.C., on June 3, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-16971 Filed 7-15-85; 11:37 am]

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Federal Register

Thursday
July 18, 1985

Part III

Department of the Interior

Bureau of Land Management

43 Parts 5400 and 5440

Procedures for Debarment of Timber
Sale Contractors; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400 and 5440

Sales of Forest Products; General and Conduct of Sales, Procedures for Debarment of Contractors

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5400, Sales of Forest Products; General, and Part 5440, Conduct of Sales. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning debarment and suspension of timber sale contractors to provide notice and opportunity for a hearing to contractors who are subject to debarment, and to focus on the contractor's present and future responsibility, considering the circumstances provoking the proposed debarment. The provisions of the proposed rulemaking are similar to provisions in the revised Federal Procurement Regulations on debarment and suspension, and have been determined to be suitable for timber sale contracts and to meet the requirements of the law.

DATE: Comment period expires September 16, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management 1800 'C' Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles R. Frost, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that there are two shortcomings in the existing regulations on debarment of timber contractors at 43 CFR 5441.1(c). First, the regulations fail to focus on the purchaser's present responsibility as a contractor with the Bureau of Land Management. The proposed rulemaking would eliminate this problem by requiring a careful review of the financial integrity of the contractor, which is in doubt upon its failure to make payment by the expiration date of the contract. Debarment will be pursued only if, as a result of the review, the debarring official determines that the contractor's financial situation demonstrates its lack of present responsibility i.e., the

contractor is presently a bad risk for the government to do business with. Second, the regulations lack procedural safeguards, such as provisions for notice and opportunity to present evidence, in the process leading to debarment.

The existing regulation at 43 CFR 5441.1(c) provides for automatic debarment of defaulting contractors from all future Bureau of Land Management timber contracts until the default is cured. This proposed rulemaking would establish procedures for the Bureau to recognize mitigating and other circumstances relating to the contractor's present responsibility, and to assure the contractor due process of law.

This proposed rulemaking parallels the debarment procedures in Subpart 9.4 of the Federal Acquisition Regulation (48 FR 42102). These regulations meet the requirements of law and are well suited, as adapted herein, to the timber management program of the Bureau. The debarment provisions of the existing Federal Procurement Regulations have on occasion been used as the authority for debarring a timber purchase contractor, so the suitability of that segment of the Federal Procurement Regulations to timber sale contracts has been established.

The principal author of this proposed rulemaking is Ernest Black, Division of Forestry, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under this proposed rulemaking, individuals or firms who receive notice from the Bureau of Land Management of proposed debarment would be permitted to present facts and information pertaining to an allegation of failure to perform under a timber sale contract and/or to mitigation of damages. The rulemaking would not require any specific information or any format for the information to be provided. Therefore, the rulemaking would not impose an information collection requirement as that term is defined in

Office of Management and Budget regulations at 5 CFR 1320.7.

List of Subjects in 43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for Part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 423, 1181a et seq. unless otherwise noted.

2. Section 5400.0-5 is amended by adding new paragraphs (p), (q), and (r) at the end thereof to read:

§ 5400.0-5 Definitions.

(p) 'Debarment' means action taken by a debarring official under § 5441.1(c) of this title to exclude a purchaser from entering into contracts with the Bureau of Land Management for sale of timber.

(q) 'Debarring Official' is a Bureau of Land Management official who has been delegated authority to make debarment decisions under this part.

(r) 'Purchaser' means any individual or other legal entity that: (1) Submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Bureau of Land Management timber sale contract, or (2) conducts business with the Government as an agent or representative of another purchaser.

PART 5440—[AMENDED]

3. Section 5441.1 is amended by revising paragraph (c) to read:

§ 5441.1 Qualification of bidders.

(c)(1) In accordance with the provisions of this section the debarring official may debar a bidder who has defaulted on a timber purchase contract because of failure to make payment by the expiration date of the contract from bidding on any subsequent timber purchase contracts until the bidder has made satisfactory arrangements with the authorized officer for payment of damages to the United States.

(2) Debarment shall be pursued only if the defaulting purchaser's financial situation demonstrates a lack of present

responsibility to do business as a government contractor.

(3) The authorized officer shall report to the State Director and the debarring official any information relating to the basis for debarment of a timber purchaser, including a complete statement of the facts, appropriate exhibits and a recommendation for action.

(4) When the debarring official gives preliminary approval, debarments shall be initiated by informing purchasers and any specifically named affiliates by certified mail, return receipt requested, as follows:

(i) That debarment is being considered.

(ii) The reasons for the proposed debarment in terms sufficient to put the purchaser on notice of the transaction(s) upon which it is based; and

(iii) The potential effect of the proposed debarment.

(5) The purchaser, within 30 days after receipt of the notice, may submit, in person, in writing, or through a representative, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(6) If purchaser requests, the authorized officer shall hold a meeting with the purchaser within 20 calendar days. Any statements, records, or

exhibits submitted by the purchaser at this meeting shall become part of the debarment decision record.

(7) The debarring official shall make a decision on the basis of all the information in the record, including any submission made by the purchaser. The decision shall be made within 30 working days after receipt of any information and arguments submitted by the purchaser, unless the debarring official determines that there is good cause to extend this period.

(8)(i) If the debarring official decides to impose debarment, the purchaser and any affiliates involved shall be given prompt notice by certified mail, return receipt requested, as follows:

(A) The notice of proposed debarment shall be referred to;

(B) The reasons for debarment shall be specified; and

(C) The period of debarment including effective date shall be stated.

(ii) If a debarment is not imposed the debarring official shall promptly notify the purchaser and any affiliates involved of the decision by certified mail return receipt requested.

(d)(1) The debarring official shall compile and maintain a current list of debarred timber purchasers. This list shall be distributed to all State Directors, the General Services Administration, the General Accounting

Office, and other Federal agencies requesting it.

(2) The list of debarred purchasers shall contain the following information:

(i) The names and addresses of all debarred or suspended purchasers.

(ii) The cause of the action.

(iii) Any limitation to or deviations from the normal effect of debarment.

(iv) The effective date of the action.

(v) The name and telephone number of the person in the Bureau of Land Management with information about the debarment.

(3) Purchasers debarred in accordance with this section shall be excluded from receiving Bureau of Land Management timber sale contracts and the Bureau shall not solicit offers from, award contracts to, or consent to subcontracts with these purchasers unless the Director or authorized representative determines in writing that there is a compelling reason for such action.

(4) During the period of debarment, a debarred contractor, upon a showing of good cause, may apply for reinstatement to contract with the Bureau of Land Management.

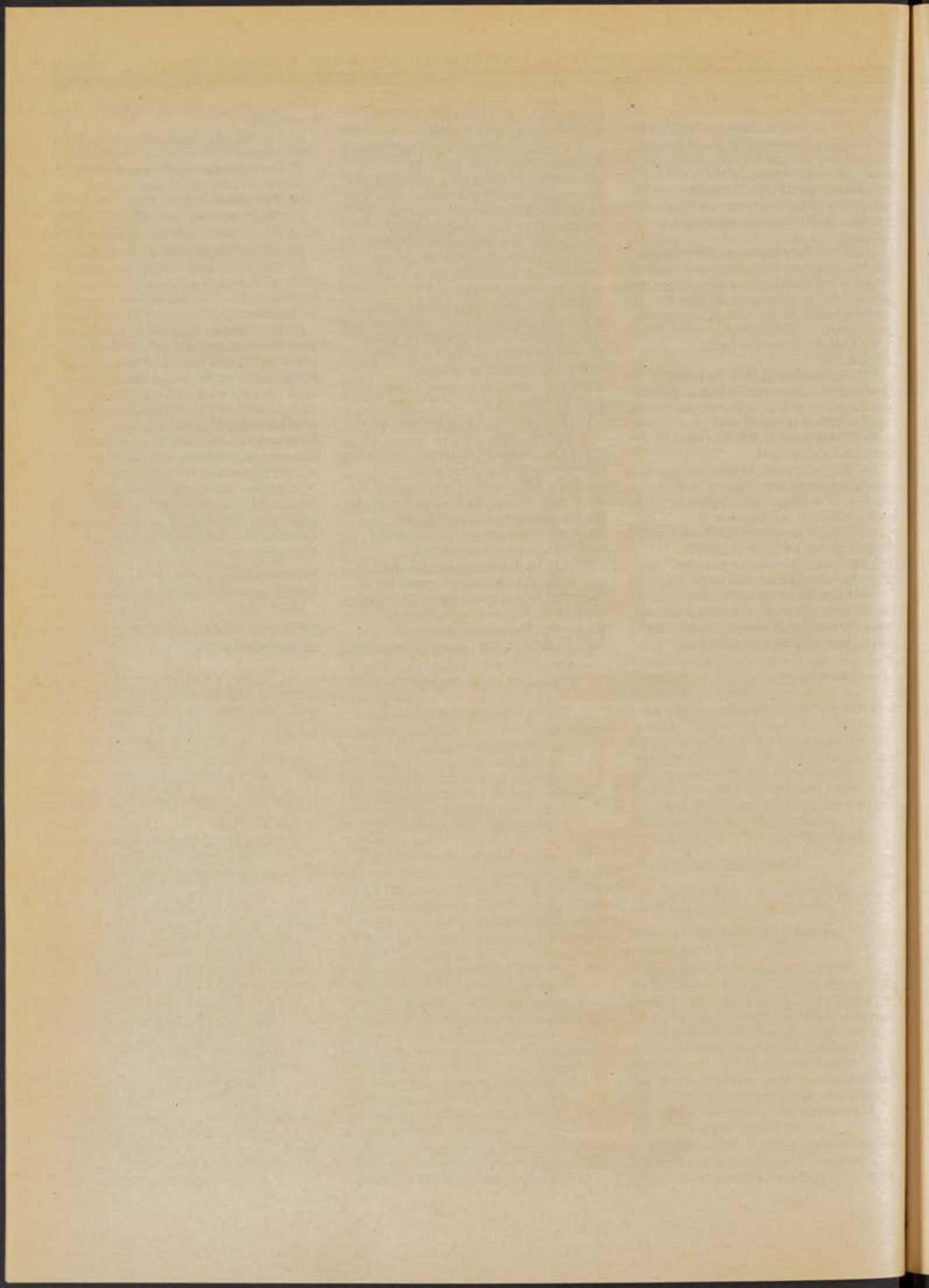
J. Steven Griles,

Deputy Assistant Secretary of the Interior.

May 7, 1985.

[FR Doc. 85-17074 Filed 7-17-85; 8:45 am]

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July 18, 1985

Part IV

**Department of
Education**

34 CFR Part 304

Removal of Architectural Barriers to the
Handicapped; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 304

Removal of Architectural Barriers to the Handicapped

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary issues regulations under section 607 of the Education of the Handicapped Act to govern a State formula grant program for the elimination of architectural barriers to handicapped children and individuals. The Removal of Architectural Barriers to the Handicapped program provides grants to State educational agencies (SEAs) to assist them in making subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs) to alter existing buildings and equipment. These final regulations include application requirements, an allocation formula, and funding activities that are allowable under this program.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of the regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Tyrrell, Special Education Programs, Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3611, Washington, D.C. 20202; Telephone (202) 732-1025.

SUPPLEMENTARY INFORMATION:**A. Overview of the Program**

The Removal of Architectural Barriers to the Handicapped program is authorized by Section 607 of the Education of the Handicapped Act (EHA), 20 U.S.C. 1406, as amended by section 5 of the Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, December 2, 1983. As amended, section 607 provides that:

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Pub. L. 90-480), relating to architectural barriers.

(b) For the purpose of carrying out the provisions of this section, there are

authorized to be appropriated such sums as may be necessary.

Pub. L. 98-8, commonly referred to as the Emergency Jobs Bill, enacted on March 24, 1983, provides \$40 million to carry out the provisions of section 607. The funds will remain available until expended.

The Architectural Barriers Act of 1968 (ABA), Pub. L. 90-480, 42 U.S.C. 4151-4157, requires various Federal agencies—not including the Department of Education—to prescribe such standards for the design, construction, and alteration of certain buildings as may be necessary to ensure that handicapped children and individuals will have ready access to and use of those buildings. These agencies include the General Services Administration (GSA), the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service.

Section 607 of the EHA authorizes the alteration of existing buildings and equipment in accordance with standards promulgated under the ABA. The alteration of existing buildings and equipment under this part must be consistent with the standards adopted by the GSA on August 7, 1984 (49 FR 31528) and incorporated by reference at 41 CFR 101-19.603 (49 FR 31625; August 7, 1984). The GSA standards may be modified as appropriate to take into account the age groups of individuals who will benefit under this program.

The final regulations establish a State formula grant program. This is consistent with the revisions to Section 607 of the EHA made by the Education of the Handicapped Act Amendments of 1983. As amended, section 607 authorizes the Secretary to give grants to SEAs for the removal of architectural barriers. SEAs then give subgrants to LEAs and IEUs.

In order to establish administrative procedures for this program that are consistent with procedures used for the Department's other State formula grant programs, 34 CFR 76.102(y) is redesignated as § 76.102(z), and a new provision is added at 34 CFR 76.102(y).

This new provision adds the application submitted by a State under the Removal of Architectural Barriers to the Handicapped program to the EDGAR definition of "State plan." As a result of this amendment, all the administrative procedures set out in the EDGAR which govern State plans apply to the Removal of Architectural Barriers to the Handicapped program.

The authorizing statute for this program does not include a formula for distributing funds. The Secretary, however, amends the definitions of

"direct grant program" and "State formula grant program" at 34 CFR 75.1(b) and 76.1(b), respectively, to include programs which contain a regulatory formula for distributing funds. In addition, conforming amendments are made to 34 CFR 76.260.

B. Overview of Regulatory Provisions**1. Subpart A—General**

Subpart A describes the basic purpose of the Removal of Architectural Barriers to the Handicapped program. This subpart identifies the parties that are eligible to receive grants. Other Federal regulations which apply to this program are also listed. In addition, Subpart A contains definitions of several terms that apply to this program, and commonly used acronyms. The definition for "alteration" in this subpart is the definition used in the "Uniform Federal Accessibility Standards" (49 FR 31528, August 7, 1984) adopted by GSA. The definition of "equipment" under section 602 of the EHA is used for this program.

2. Subpart B—How Does an SEA Apply for a Grant?

Subpart B sets forth the requirements that an SEA must meet in order to receive a grant under this program, including program assurances and application requirements. Assurances included in this subpart incorporate requirements under section 607 of the EHA and Pub. L. 98-8. The use of assurances in the program application relieves the paperwork burden on SEAs since they will not need to submit detailed information to demonstrate how applicable statutory and regulatory requirements will be met.

In its application for program funds, each SEA must assure that the quality of the environment will be assessed according to provisions in the National Environmental Policy Act of 1969 and Executive Order 11514. See 34 CFR 75.601, as incorporated by 34 CFR 76.600(a). In addition, the SEA must provide the Secretary with the information required under 34 CFR 75.602(a) (*Preservation of historic sites*). The Secretary will notify SEAs of the date on which they must submit a summary of this information to the Department.

The SEA must also assure that special consideration will be given to projects in areas experiencing high rates of unemployment. The legislative history of Pub. L. 98-8 includes this provision for making section 607 awards under that appropriation. See Senate Report No. 98-17 (1983), pp. 33-34. Section 101(c) of

Pub. L. 98-8 requires that, to the extent practicable, funds authorized by the Act be used in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least fifteen of the twenty-six weeks immediately preceding the March 24, 1983, date of its enactment.

In its application, an SEA must describe the general areas to be funded under this program. The SEA need not describe specific projects, nor does it submit blueprints to the Secretary for approval.

3. Subpart C—How Does the Secretary Make a Grant to an SEA?

Section 607 of the EHA does not provide a funding formula for allocating funds among eligible SEAs. A funding formula has been developed from the comments of individuals and organizations who responded to the Secretary's request for comments in the notice of proposed rulemaking. The formula used to allocate funds to the fifty States, the District of Columbia, and Puerto Rico is based on the number of handicapped children served in each participating State, as determined under Part B of the EHA and the State agency program for handicapped children under section 146 of Title I of the Elementary and Secondary Education Act of 1965 (as incorporated in Chapter 1 of the Education Consolidation and Improvement Act of 1981). The Insular Areas, which include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, are eligible for grants that, together, do not exceed one-half of one percent of the aggregate amounts available to States under this program, and which will be allocated proportionately among the Insular Areas on the basis of the number of children aged three through twenty-one in each Insular Area. However, no Insular Area will receive less than \$15,000, and allocations within these jurisdictions will be ratably reduced, if necessary, to ensure that each Insular Area receives that amount.

Section 304.21 describes how excess funds are reallocated.

4. Subpart D—How Does an Applicant Apply to an SEA for a Subgrant?

Subpart D specifies the information which LEAs and IEUs must include in applications for subgrants. Readers should note that the EDGAR definition of "local educational agency" (34 CFR 77.1(c)) is substantively the same as the definition of that term under section 602(a)(8) of the EHA, and includes any public institution having administrative

control and direction of a public elementary or secondary school. Consequently, State agencies and other public institutions which are legally responsible for the education of handicapped children are eligible for subgrants under this program.

5. Subpart E—How Does an SEA Make a Subgrant?

Subpart E describes the methods an SEA will use to approve or disapprove applications for subgrants from LEAs and IEUs. The regulations permit a State to establish criteria for awarding subgrants. This subpart includes the criteria for determining the amount of subgrants and procedures for reallocating funds.

6. Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

Subpart F describes the provisions with which recipients must comply as a condition of receiving funds under the Removal of Architectural Barriers to the Handicapped program. In the notice of proposed rulemaking, the Secretary encouraged States to use their funds for activities that would—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEUs.

These activities have been incorporated into § 304.51 as examples of project priorities which an SEA may adopt for approving projects.

7. Subpart G—What Are the Administrative Responsibilities of an SEA?

Subpart G describes the amount of grant funds that the SEA can use for administrative costs, including, among other things, technical assistance to, and monitoring of, participating LEAs and IEUs. Program planning is added to the examples of allowable administrative costs.

Public Participation

Proposed regulations for this program were published on September 19, 1984 (49 FR 36808). A summary of the comments received in response to that notice and the Secretary's responses to

those comments are contained in the appendix to these regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations (§ 304.11) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned an OMB control number. The control number appears as a citation at the end of this section.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of this Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based upon the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 304

Education, Education of handicapped, Grants program—education, Local educational agency, Reporting and recordkeeping requirements, School, School construction, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the

line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.155; Removal of Architectural Barriers to the Handicapped)

Dated: July 11, 1985.

William J. Bennett,
Secretary of Education.

PART 75—[AMENDED]

The Secretary amends Parts 75 and 76 and adds a new Part 304 to Title 34 of the Code of Federal Regulations as follows:

1. Section 75.1 is amended by revising paragraph (b) to read as follows:

§ 75.1 Programs to which Part 75 applies.

(b) If a direct grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "direct grant program" includes any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

2. The table following § 75.1 is amended by removing the following language from the list in Section IV.C.

C. Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "None"; "None".

PART 76—[AMENDED]

3. Section 76.1 is amended by revising paragraph (b) to read as follows:

§ 76.1 Programs to which Part 76 applies.

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

4. The table following § 76.1 is amended by adding the following language to the list in Section B.

Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "Part 304"; "84.155".

5. Section 76.102 is amended by redesignating paragraph (y) as paragraph (z) and adding a new paragraph (y) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

(y) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

6. The table following § 76.125 is amended by adding the following language to the list under "Education for the Handicapped Programs":

EDUCATION FOR THE HANDICAPPED PROGRAMS

CFDA No. and name of program	Authorizing legislation	Implementing regulations Title 34 CFR (Part)
84.155 Removal of architectural barriers to the handicapped.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).	304

7. Section 76.260 is revised to read as follows:

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallocation to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program. (20 U.S.C. 3474(a)).

8. A new Part 304 is added to Title 34 of the Code of Federal Regulations, as follows:

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

- 304.1 The Removal of Architectural Barriers to the Handicapped program.
- 304.2 Applicability of regulations in this part.
- 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.
- 304.4 Definitions.
- 304.5 Acronyms that are used.
- 304.6-304.9 [Reserved]

Subpart B—How Does an SEA Apply for A Grant?

- 304.10 Submission of an SEA application.
- 304.11 Content of SEA application.
- 304.12 304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

- 304.20 Amount of an SEA's grant.
- 304.21 Reallocation of excess funds.
- 304.22-304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

- 304.30 Submission of an application to the SEA.
- 304.31 LEA and IEU applications.
- 304.32-304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

- 304.40 Amount of a subgrant to an LEA or IEU.
- 304.41 Reallocation of excess funds.
- 304.42-304.49 [Reserved]

Subpart F—What Conditions Must be Met by an SEA, LEA, or IEU?

- 304.50 Standards for the removal of architectural barriers.
- 304.51 Project priorities.
- 304.52 Project requirements.
- 304.53-304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

- 304.60 Amount available for SEA administration.
- 304.61 Administrative responsibilities and allowable costs.
- 304.62-304.69 [Reserved]

Authority: Sec. 607, Education of the Handicapped Act (20 U.S.C. 1406), Pub. L. 94-142, as amended by Pub. L. 98-199; Sec. 5, 97 Stat. 1358 (Dec. 2, 1983); sec. 101(c), Pub. L. 98-8, 97 Stat. 31-32 (1983), unless otherwise noted.

Subpart A—General

§ 304.1 The Removal of Architectural Barriers to the Handicapped program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to the handicapped children and other handicapped individuals.

(20 U.S.C. 1406)

§ 304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Education of the Handicapped Act.

(20 U.S.C. 1406)

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.

The following regulations apply to assistance under the Removal of Architectural Barriers to the Handicapped program:

- (a) The regulations in this Part 304.
- (b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—
 - (1) Part 74 (Administration of Grants);
 - (2) Part 76 (State-administered Programs);
 - (3) Part 77 (Definitions that Apply to Department Regulations);
 - (4) Part 78 (Education Appeal Board); and
 - (5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1406; 20 U.S.C. 3474(a))

§ 304.4 Definitions

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Local educational agency
Project
Public
Secretary
State
State educational agency
Subgrant

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Handicapped children
Intermediate educational unit
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraphs (a) and (b), the following definitions apply to this part:

(1) "Alteration," as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

(20 U.S.C. 1406, 41 CFR 101-19.603)

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to

house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(20 U.S.C. 1401(a)(5), 1406)

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

"IEU" stands for intermediate educational unit.
"LEA" stands for local educational agency.
"SEA" stands for State educational agency.

(20 U.S.C. 1406)

§§ 304.6-304.9 [Reserved]

SUBPART B—HOW DOES AN SEA APPLY FOR A GRANT?

§ 304.10 Submission of an SEA application.

In order to receive funds under this part, an SEA must submit an application to the Secretary for review and approval.

(20 U.S.C. 1406)

§ 304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in § 304.50;

(2) In using funds appropriated under Pub. L. 98-8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Pub. L. 98-8, "Education for the Handicapped", 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98-8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98-8).

(Pub. L. 98-8, section 101(c); 97 Stat. 31-32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant

in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under § 304.51(b) (see § 304.40 and Subpart F, "What Conditions Must Be Met by an SEA, LEA, or IEU?").

(20 U.S.C. 1406)

§§ 304.12-304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 304.20 Amount of an SEA's grant.

(a) For the purpose of this section—

(1) The term "Insular Area" means American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) The term "handicapped children" means the number of handicapped children determined by the Secretary—

(i) Under section 611 of the Act, to be receiving special education and related services; or

(ii) In average daily attendance at schools for handicapped children or supported by a State agency within the meaning of section 146 of Title I of the Elementary and Secondary Education Act of 1965.

(b) The amount of an SEA's grant under this part for a State other than an Insular Area is determined by—

(1) Dividing the number of handicapped children in that State by the total number of handicapped children in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part.

(c) The Secretary reserves up to one-half of one percent of the aggregate of the amounts available under this part for grants to Insular Areas. Funds reserved by the Secretary for the Insular Areas are allocated proportionately among them on the basis of the number of children ages three through twenty-one in each Insular Area. However, no Insular Area may receive less than \$15,000, and allocations within these jurisdictions are ratably reduced, if necessary, to ensure that each Insular Area receives at least that amount. Allocations within these jurisdictions are further ratably reduced if the amount reserved is insufficient to provide \$15,000 to each Insular Area.

(20 U.S.C. 1406)

§ 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to an SEA under this part if the Secretary determines that the SEA cannot use the funds in a manner consistent with the requirements of applicable statutes or this part. Any reallocation is made on the same basis as grants are determined under § 304.20. (20 U.S.C. 1406)

§§ 304.22-304.29 [Reserved]**Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?****§ 304.30 Submission of an application to the SEA.**

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA. (20 U.S.C. 1406, 3474(a))

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part. (20 U.S.C. 1406, 3474(a))

§§ 304.32-304.39 [Reserved]**Subpart E—How Does an SEA Make a Subgrant?****§ 304.40 Amount of a subgrant to an LEA or IEU.**

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

- (1) The size, scope, and quality of the proposed project; and
- (2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants. (20 U.S.C. 1406)

§ 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of section 607 of the Education of the Handicapped Act and the requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for approving subgrants in its approved application. (20 U.S.C. 1406)

§§ 304.42-304.49 [Reserved]**Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?****§ 304.50 Standards for the removal of architectural barriers.**

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90-480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards may be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

Note.—On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101-19.603 (49 FR 31825). (20 U.S.C. 1406)

§ 304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of handicapped children and individuals from school to work.

(b) The Secretary encourages States to use their funds for activities that will—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEOs. (20 U.S.C. 1406)

§ 304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98-8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98-8, section 101(c). (Pub. L. 98-8, sec. 101(c); 97 Stat. 31-32 (1983))

§§ 304.53-304.59 [Reserved]**Subpart G—What Are the Administrative Responsibilities of an SEA?****§ 304.60 Amount available for SEA administration.**

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part. (20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of programs and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEOs with respect to the requirements of this part. (20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]**Subpart G—What Are the Administrative Responsibilities of an SEA?****§ 304.60 Amount available for SEA administration.**

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part. (20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of program and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEOs with respect to the requirements of this part. (20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]**Appendix—Summary of Comments and Responses (Note: This Appendix Will Not Be Codified in the Code of Federal Regulations)**

The following is a summary of the comments received on the notice of proposed rulemaking for the Removal of Architectural Barriers to the Handicapped program published on September 19, 1984. Each comment is followed by a response that indicates a change has been made or why no

change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Subpart A

Comment. One commenter recommended adding the term "handicapped children" to § 304.1 in place of the term "the handicapped."

Response. A change has been made. The term "handicapped" is modified by adding "children and other handicapped individuals" to § 304.1 to make it consistent with the language in § 304.51.

Comment. Several commenters asked about the availability of funds under this program for removing architectural barriers in postsecondary schools.

Response. No change has been made. Postsecondary schools are not eligible applicants under this program. Section 607 of the Education of the Handicapped Act (EHA) states that grants are made to State educational agencies (SEAs), and SEAs then make subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs).

Comment. One commenter asked the Secretary to add a definition of the word "barriers" to help clarify how funds distributed under this program may be expended.

Response. No change has been made. The terms "alteration" and "equipment" are defined in § 304.4(c). These definitions and the "Uniform Federal Accessibility Standards" adopted by the GSA on August 7, 1984 describe the types of modifications that can be made for accessibility of handicapped persons to facilities and programs. This approach gives States the necessary flexibility to modify facilities to meet the variety of needs of handicapped persons for accessibility in LEAs and IEUs.

Comment. One commenter felt that State program funds should only be used for the removal of "actual architectural barriers," such as the construction of ramps, curb cuts, restroom renovations, the widening of doorways and sidewalks, and the purchase of properly approved equipment such as water fountains.

Response. No change has been made. The adoption of this recommendation would limit potential projects by responding primarily to some needs of handicapped individuals who are non-ambulatory. This program is not limited to providing accessibility only to individuals with those disabilities. The definitions of "alteration" and "equipment" applicable to this program reflect the needs created by the wide range of physical disabilities in handicapped children and other handicapped individuals which schools must accommodate. For example, some of the target population expected to benefit from this program have visual impairments which may require modification in signs and tactile warnings for detecting hazardous obstructions. Hearing impaired individuals may need visual emergency warning systems and may require amplification systems in classrooms and common areas. Children with other health impairments which result in limited strength due to chronic or acute

health problems may need other kinds of adaptations to their educational environment.

Comment. A number of commenters approved of the proposed definition of "alteration" under § 304.4(c)(1). Other commenters requested changes. Several commenters recommended that the word "alteration" be modified to include the extension of mechanical systems needed to make renovated areas operative, and to include roofing when it is needed to complete a renovated area. Others suggested expanding the term "alteration" to include buildings and grounds in order to allow school systems to make changes to playgrounds, walkways, sidewalks, and curbs on school grounds, or to add bus ramps.

Response. A change has been made. The proposed definition of "alteration" has been replaced by the definition of the term which is used in the revised "Uniform Federal Accessibility Standards" (49 FR 31528, August 7, 1984) as adopted by GSA. The Secretary believes that the amended definition addresses the concerns of the commenters since the definition is flexible enough to permit the use of funds under this program for the various projects suggested by the commenters.

Comment. One commenter recommended that the definition of "alteration" in § 304.4(c)(1) be flexible enough to include State and local options for the use of non-standard temporary ramps so that cities can make more of their schools accessible.

Response. No change has been made. This type of ramp does not meet the guidelines in the GSA standards. The recipients of funds under this program must comply with the "Uniform Federal Accessibility Standards."

Comment. Several commenters stated that the definition of "equipment" under § 304.4(c)(2) should not include "printed, published materials, or books, periodicals, documents, and other related materials" since these are generally considered supplies. One commenter wanted to delete all these examples from the definition. Another commenter felt that priorities should be assigned to the examples of equipment.

Response. No change has been made. By statute, the definition of "equipment" under section 602(a) of the EHA, which is repeated in these final regulations, applies to the program under Section 607. The Secretary notes, however, that under this program, priorities for the use of funds may be set at the discretion of SEAs. Under this program, SEAs have the responsibility to approve projects proposed by LEAs and IEUs. At a minimum, SEAs should ensure that proposed equipment purchases are directly related to the needs of handicapped individuals for an accessible school environment.

Comment. Several commenters requested that the definition of "equipment" under § 304.4(c)(2) be modified by adding the terms "communication aids," "computer access devices," and "augmentative communication" to provide program accessibility for mobility impaired, hearing impaired, and nonspeaking students, and those with other physical and sensory impairments.

Response. No change has been made. Communication aids, computer access devices, and augmentative communication

devices are included under the terms "telecommunications, sensory, and other technological aids and devices" in the definition of equipment.

Subpart B

Comment. Several commenters agreed with the provisions in § 304.11(a) (2) and (3) which require SEAs to assure that special consideration will be given to projects in areas experiencing high rates of unemployment. However, one commenter felt that current unemployment data, rather than data from the 1980 census, should be used to determine which areas are experiencing high rates of unemployment. Others felt that the special consideration of high rates of unemployment and the creation of new employment opportunities are unnecessary requirements and have no bearing on the removal of architectural barriers to the handicapped. Another commenter felt that funds should be used to maximize immediate creation of new employment opportunities for unemployed individuals.

Response. No change has been made. The Senate report on the bill that became Pub. L. 98-199 states that special consideration should be given to areas experiencing high rates of unemployment. S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983). In addition, Section 101(c) of Pub. L. 98-8 requires that funds made available under the Act shall, to the extent practicable, be utilized in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least fifteen of the twenty-six weeks preceding the date of enactment of the Act. These requirements are incorporated in the regulations at § 304.11(a)(2), and at § 302.11(a)(3) and § 304.52, respectively. The Secretary believes that States are afforded sufficient flexibility to comply with these requirements while selecting projects that most effectively meet the program's purpose. The Secretary also notes that nothing in the EHA, Pub. L. 98-8, or in these regulations requires the use of 1980 census data under this program.

Comment. A number of commenters recommended that the unique requirements in the Emergency Jobs Bill regarding the use of funds to ease unemployment should be deleted from § 304.11(a). Others felt that since regulations for this program will outlive the Emergency Jobs Bill, the regulations should not include specific references to the unemployment situation. Another commenter recommended adding an additional requirement to § 304.11(a) stating that funds should be distributed so that the largest possible number of handicapped children benefit.

Response. No change has been made. The assurances required by § 304.11(a) reflect the requirements of the Emergency Jobs Bill and Section 607 of the EHA. Each SEA has the discretion to establish further requirements for distributing funds within the State. See § 304.51 concerning project priorities.

Comment. Several commenters wanted to ensure that funds appropriated under this program are used in addition to, not instead of, funds already being spent or budgeted by

States for the removal of architectural barriers. One commenter recommended that LEAs match or contribute to program funds to increase the impact of the program.

Response. No change has been made. SEAs have the flexibility to develop criteria for approving LEA and IEU applications. There is no statutory requirement for cost-sharing under this program and no prohibition on supplanting of State and local funds.

Comment. Several commenters indicated approval of the requirements for an SEA application at § 304.11(b). One commenter was concerned that the requirement at § 304.11(b)(1) may be impossible for an SEA to fulfill. The commenter believed that since LEAs will apply for funds for specific projects, the SEA may only be able to provide enough detail for the Secretary to gain substantial understanding of whether the purposes of Section 607 of the EHA will be fulfilled.

Response. No change has been made. It is expected that each SEA will be able to provide the Secretary with a general overview of the State's goals and objectives for this program. The SEA will then approve LEA and IEU applications that support these goals and objectives. SEAs will meet the requirement of § 304.11(b)(1) by providing descriptions of priorities and criteria for funding and by indicating examples of the types of projects that can be considered rather than descriptions of specific projects.

Comment. Several commenters felt that consumer groups should be involved in the development of an SEA's criteria for approving LEA and IEU applications. Some of these commenters noted that, under § 304.11(b)(2), these criteria must be described in the State plan submitted to the Secretary for program funds.

Response. No change has been made. In the general State application required under EDGAR, which each State has submitted to the Secretary, SEAs provided an assurance that the State will provide for the participation of relevant committees, interest groups, and experienced professionals in the development of State plans (see 34 CFR 76.101(e)(7)(i)). Since that section in EDGAR applies to this program (see the amendments to 34 CFR 76.1), consumer groups will have the opportunity for participation in the development of the State's application. The public must also have 30 days to comment on the State's application for program funds before it is submitted to the Secretary. (See 34 CFR 76.101(e)(7)(ii).)

Subpart C

Comment. More than two-thirds of the commenters responding to the Secretary's invitation to comment on the proposed alternative funding formulas under § 304.20 recommended the adoption of the first option as the most appropriate distribution scheme for the appropriation under this program. The first formula is based on the number of handicapped children served in each participating State, as determined under Part B of the EHA and the State agency program for handicapped children under section 146 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA). The second option is a formula based on the number of

all school-aged children in each participating State.

Commenters who preferred the second formula felt that this approach would recognize the needs of children with impaired mobility who are not "handicapped" within the meaning of Section 602 of the Act, focus on increasing accessibility to general education facilities, deter some States from inflating their child counts in order to increase their allocations under this program, or provide specific States and LEAs with a greater amount of funds than would a formula based only on the relative numbers of handicapped children.

One commenter indicated that neither of the proposed formulas was adequate to address the needs of the Insular Areas. The commenter suggested that the funds be allocated according to a formula that provides a minimum of \$100,000 to each of the Insular Areas.

A few commenters recommended the inclusion of a formula (based on either the first or second alternative) for making subgrants to LEAs.

Response. A change has been made. The Secretary has determined that allocations to the fifty States, the District of Columbia, and Puerto Rico will be based on the number of handicapped children served in those States and jurisdictions, as reported in their child counts under Part B of the EHA and the State agency programs for handicapped children under Section 146 of Title I of the ESEA.

A funding formula that is similar to the funding formula under the EHA-B (see 34 CFR 300.710) has been adopted for the Insular Areas (American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific). Under this formula (see § 304.20(c)), the Secretary will reserve an amount not to exceed one-half of one percent of the aggregate of the amount available to States under this part. Funds reserved for the Insular Areas will be allocated proportionately among them on the basis of the number of all children aged three through twenty-one in each Insular Area. No Insular Area will receive less than \$15,000, which is the minimum amount that the Secretary believes appropriate to support projects of adequate size, scope, and quality to meet the needs of the small population of handicapped children in those jurisdictions. In order to ensure that each Insular Area receives at least that amount, allocations within these jurisdictions will be ratably reduced if necessary. A formula based on the count of handicapped children in each Insular Area would not be consistent with the EHA-B funding formula for those areas and would impose additional data collection, record-keeping, and reporting requirements since those jurisdictions are not required to submit counts of handicapped children under either the EHA-B or the State agency program under section 146 of Title I.

Under Section 611(e)(2) of the EHA-B, the Insular Areas may receive grants that do not exceed a total amount equal to one percent of the amounts available to all States under that part for any fiscal year. For the purpose of the Removal of Architectural Barriers to the Handicapped program, the Secretary has determined that a maximum of one-half of

one percent of the appropriated funds will apply to the funds reserved for the Insular Areas in order to provide a fair share of the program funds to each eligible State and jurisdiction.

The Secretary agrees with the majority of the commenters that the adoption of the funding formula applicable to the fifty States, Puerto Rico, and the District of Columbia is appropriate for the following reasons. First, this approach is consistent with the funding formula under Part B of the EHA and the purpose of that program, which is to make available (that is, to provide access to) special education and related services for handicapped children. Second, this formula directs funds to jurisdictions in proportion to their established programs for serving handicapped children. Third, the desirable goal of increasing accessibility to general education facilities, including vocational education and other program options, can be addressed as well under this formula as under the alternative approach. Finally, since there is no guarantee of further appropriations under this program, there is no real incentive for States to inflate their child counts in expectation of increased allocations under this program.

The Secretary also has determined that an allocation formula for LEAs and IEUs is not necessary for the purpose of this program. Each SEA can establish goals, objectives, criteria, and priorities for projects that reflect the number and location of physically handicapped children within its jurisdiction who can best benefit from the program funds.

Comment. One commenter indicated that the formula used for allocating funds should be used on a three-year trial basis before a final formula is selected for this program.

Response. No change has been made. The Secretary expects to distribute funds appropriated under this program before the end of fiscal year 1985. No additional funds were appropriated for this program.

Subpart D

Comment. One commenter asked if State-operated or State-supported programs for the education of handicapped children can receive subgrants under this program.

Response. No change has been made. The EDGAR definition of "local educational agency" is used for this program. This definition includes public institutions or agencies having administrative control and direction of a public elementary or secondary school. (See 34 CFR 77.1.) Under this definition, State-operated programs or State-supported programs are eligible subgrantees if they are under the administrative control and direction of a public institution or agency, and if they meet the EDGAR requirements for construction grants under 34 CFR 75.603 and 75.615, and other applicable rules and requirements under these regulations.

Subpart F

Comment. One commenter recommended incorporating into the regulations a requirement that LEAs and IEUs submit, as part of their application to the SEA, a copy of their most recent self-evaluation report and a description of how the proposed

modifications will eliminate previously identified program accessibility barriers.

Response. No change has been made. According to the Department's regulations under Section 504 of the Rehabilitation Act of 1973 at 34 CFR 104.22(e), the recipients of Federal funds, including LEAs and IEOs, were required to develop and implement a transition plan describing how they would achieve program accessibility for handicapped individuals. Funds available under this program may be used to achieve full program accessibility, as specified in the schedule outlined in an LEA's or IEO's transition plan. The SEA has flexibility under this program to determine the types of information LEAs and IEOs must submit with an application for a subgrant.

Comment. A number of commenters felt that § 304.50 should be amended to allow States to use State standards which are equivalent to standards adopted by the GSA for making alterations to existing buildings and equipment. One commenter supported the use of GSA standards with age appropriate dimension modifications.

Response. No change has been made. The "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984, are now in effect. As was noted in the preamble to the proposed regulations, the GSA standards may be modified as appropriate for the age groups of individuals to be served under this program.

Comment. Several commenters recommended that the Department send each SEA a copy of the "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984.

Response. No change has been made. However, a copy of the GSA standards published in the Federal Register on August 7, 1984 will be included as part of the State application package for this program. Each State eligible for a grant will receive an application package.

Comment. One commenter recommended that the "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984, be codified into the regulations for this program. The commenter believed that requirements relating to the preservation of historic sites might not be observed if users of 34 CFR Part 304 were not informed of the criteria in the GSA standards.

Response. No change has been made. The GSA standards are referenced in a note under § 304.50 of these regulations. In addition, the regulations under 34 CFR Part 76, which apply to this program, specify that States and subgrantees using funds for construction must comply with requirements relating to preservation of historic sites (see 34 CFR 76.600).

Comment. Several commenters felt that § 304.50 should be amended to permit the use of the American National Standards Institute (ANSI) accessibility standards.

Response. No change has been made. Section 607 of the EHA requires that alterations of existing buildings and equipment must be made in accordance with standards authorized by the Act approved August 12, 1968 (Pub. L. 90-480), relating to architectural barriers. The "Uniform Federal Accessibility Standards" (49 FR 31523, August 7, 1984) are the standards adopted to implement Pub. L. 90-480. Readers may be interested to note that these new standards clearly identify which provisions differ from the ANSI standards.

Comment. Numerous commenters responded to the Secretary's invitation to comment on the use of program funds for the three types of activities described in the portion of the preamble summarizing the contents of Subpart F in the proposed regulations. The comments fell into several distinct categories—

(1) Recommendations that no changes be made to the provisions relating to project priorities under § 304.51;

(2) Recommendations to incorporate the three proposed activities into the regulations and to make them mandatory;

(3) Recommendations for adding or substituting different activities as priorities instead of the three proposed activities (e.g., giving priority to educational facilities used as polling places); and

(4) Recommendations to target funding to projects enhancing the integration of handicapped and nonhandicapped children.

Response. A change has been made. The activities listed in the portion of the preamble summarizing Subpart F in the proposed regulations have been added to § 304.51 as examples of project priorities. This gives each SEA the discretion to determine which activities and priorities are needed to meet the needs within the State. States are not precluded from adopting different activities and priorities as criteria for approving projects under this program, and the requirements regarding the conditions which SEAs, LEAs, and IEOs must meet in order to receive program funds are kept flexible. States have the discretion to target funds to programs which integrate handicapped and nonhandicapped children. However, the Secretary believes that some funding needs to be available for children who are placed in separate facilities since this is the least restrictive environment for those children. Also, in previous responses in this Appendix, the Secretary has indicated that the definitions of "alteration" and "equipment" are broadly construed to accommodate the wide variety of physical disabilities exhibited by handicapped children and other handicapped individuals.

Comment. One commenter stated that under this program LEAs should be encouraged to develop joint projects with recreation and other public community agencies and local organizations which serve

handicapped children and other handicapped individuals.

Response. No change has been made. These types of cooperative arrangements are not precluded under this program, provided that grantees and subgrantees meet the construction requirements in EDGAR relating to the grantee's title to the construction site, and the responsibility for operation and maintenance of facilities built with program funds (see 34 CFR 75.603 and 75.615, as incorporated by 34 CFR 76.600).

Comment. Some commenters recommended that certain types of projects receive priority consideration (e.g., giving preference to projects for ramps or other alterations to assist nonambulatory individuals).

Response. No change has been made. Each State has the flexibility to develop the criteria for approving LEA and IEO applications based on State-established goals, objectives, criteria, and priorities. States have the discretion to assign relative weights to the types of projects that are consistent with their established requirements.

Subpart G

Comment. Several commenters felt that five percent of its grant allowed for SEA administration of the program under § 304.60 is an appropriate amount. One commenter felt that the Department should recognize that expenditures will be made by SEAs for planning and recommended that program planning be included as an allowable administrative cost.

Response. A change has been made. Program planning has been added to the activities listed under allowable administrative costs at § 304.61. The Secretary believes that pre-application planning by SEAs will ensure effective use of the program funds and that States may need to use some portion of these funds to involve appropriate staff or consultants.

Comment. One commenter asked if the SEA can contract for administrative services.

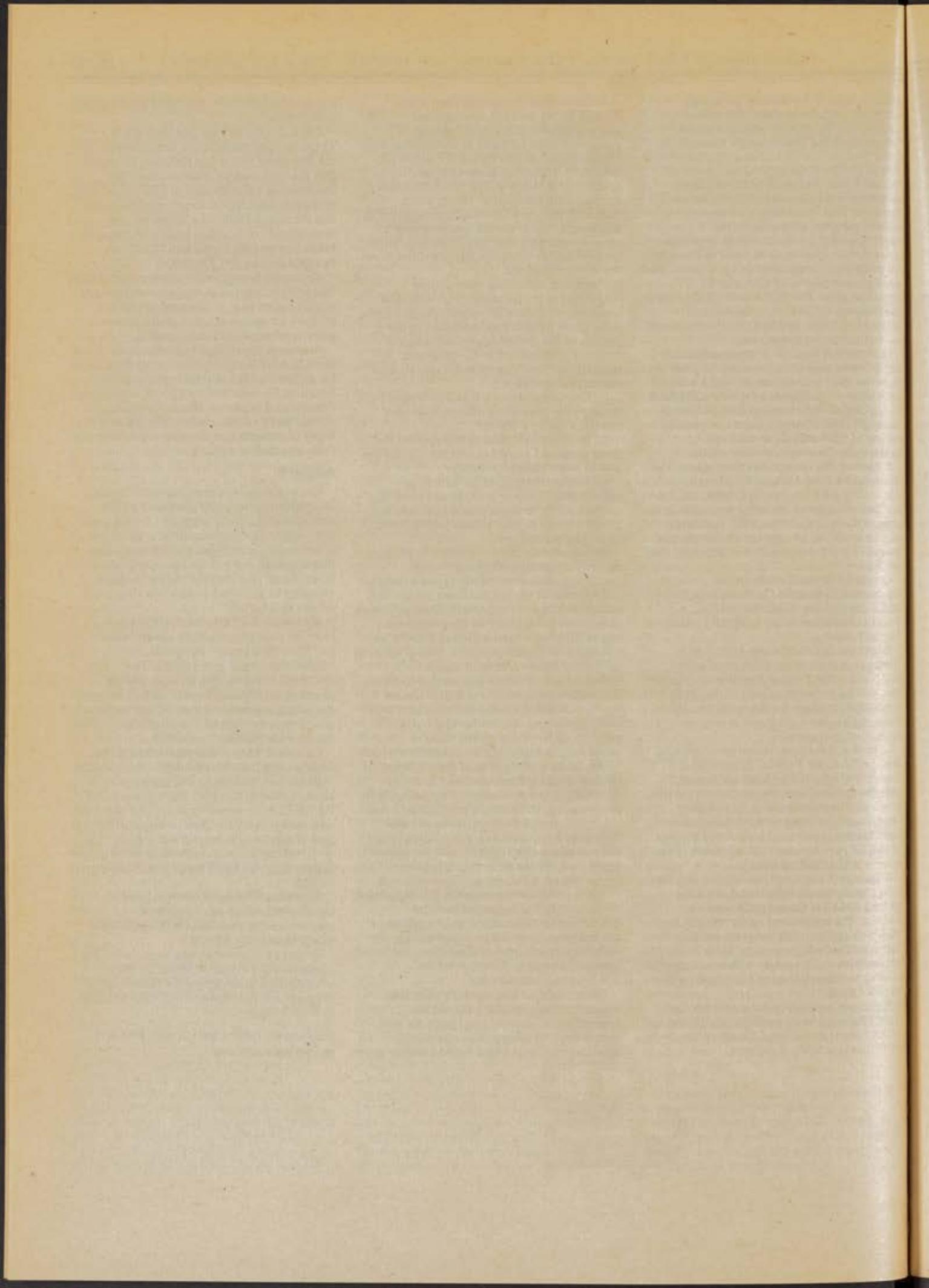
Response. No change has been made. Under EDGAR, 34 CFR Part 74, Appendix C, Part II, C. 7, the cost of professional services rendered by an individual or organization not part of a grantee's department may be paid with Federal funds if the State is given prior approval by the Department (see 34 CFR 74.102).

Comment. One commenter asked for clarification of the administrative responsibilities that SEAs will assume for this program (see § 304.61).

Response. No change has been made. The administrative responsibilities for State-administered grant programs, including this program, are described in EDGAR at 34 CFR Part 76, Subpart G.

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July 18, 1985

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Determination of Threatened and
Endangered Status; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Ribes Echinellum* (Miccosukee Gooseberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Ribes Echinellum* (Coville) Rehder (Miccosukee gooseberry) to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Ribes Echinellum* is found at only two locations, one in South Carolina and another, with two population segments, in Florida. *Ribes Echinellum* is threatened by potential recreational activities at both sites, and in Florida from development pressures and logging of its lakeshore habitat. This action will implement the protection provided by the Act for *Ribes Echinellum* (Miccosukee gooseberry).

DATE: The effective date of this rule is August 19, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Ribes echinellum was first discovered by two Florida Botanists in the early spring of 1924, along the shore of Lake Miccosukee, in Jefferson County, Florida (Coville, 1924). *Ribes echinellum* remained known only from this one population along the shores of Lake Miccosukee for over 30 years, until a second population was located about 308 kilometers (200 miles) northeast in McCormick County, South Carolina, in 1957 (Radford, 1959). The South Carolina location is considered to represent one of the most unusual floristic assemblages in the two Carolinas (Radford and Martin, 1975). In 1984, an additional segment of the Florida population was discovered approximately 0.6 kilometers (1 mile) from the previously known plants. These locations remain the only known sites for *Ribes echinellum*.

This unique plant is a shrub that reaches 1 meter (3.3 feet) in height and forms patches that often measure several meters in diameter. The plant has spiny stems and three-lobed leaves that measure 1-2 centimeters (0.5-1 inch) in length. The flowers are greenish white and small. The fruits are spiny and measure up to 22 millimeters (1 inch) in diameter.

Past Federal Government actions involving *Ribes echinellum* 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. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review 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 thereby to review the status of the covered plants. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Ribes echinellum* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to 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 given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* (44 FR 70796), the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *Ribes echinellum* 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 presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those

species, including *Ribes echinellum*, was October 13, 1983. On October 13, 1983, the Service found that the petitioned listing of *Ribes echinellum* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This finding was published in the *Federal Register* on January 20, 1984 (49 FR 2485). On August 31, 1984, the Service published a proposal to list *Ribes echinellum* as a threatened species (49 FR 34535). That proposal constituted the next one-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the August 31, 1984, proposed rule (49 FR 34535) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *McCormick Messenger*, McCormick, South Carolina, on September 13, 1984, and in the *Monticello News*, Monticello, Florida, on September 12, 1984, which invited public comment. On September 18, 1984, the Fish and Wildlife Service received a request for a public hearing. A notice announcing the public hearing was published on October 22, 1984, in the *Federal Register* (49 FR 41266). Notice of the public hearing was also published in the *Monticello News* on October 24, 1984. Eleven substantive comments were received in response to the *Federal Register* and newspaper notifications. A public hearing was held on November 8, 1984, in the Jefferson County Courthouse, Monticello, Florida. The comments and public hearing are summarized below.

The proposal was supported by the Governor of South Carolina, South Carolina Wildlife and Marine Resources Department, South Carolina Nature Conservancy, Florida Department of Agriculture, Florida Department of Environmental Regulation, Florida Native Plant Society, Apalachee Regional Planning Council, and Florida Natural Areas Inventory. The last named group also reported that a

previously unknown group of plants had been discovered in Florida in January 1984. The Orvis Company stated that it would cooperate with efforts to protect *Ribes echinellum* on its lands.

Woodlanders (a native plant dealer) provided information on its experience in propagating *Ribes echinellum*. It stated that the plant seemed to qualify for protection as a threatened species under the Endangered Species Act; however, it expressed doubts about the severity of threats to both the Florida and South Carolina populations of *Ribes echinellum*. The Service agrees that the threats facing the South Carolina population are not severe; however, the Florida population is not currently protected. The low number of populations and low total number of plants would have warranted endangered status if the threats had been more immediate.

Woodlanders further expressed concern that listing of the plant as a threatened species might restrict or prohibit its sale of cultivated *Ribes echinellum*. The merits of maintaining a commercial source of artificially propagated endangered and threatened plant species such as *Ribes echinellum* were also stated in the letter. The trade prohibitions, which are found in the Act and at 50 CFR 17.71 and 17.72, will prohibit interstate commerce in *Ribes echinellum*, except for the sale of seeds obtained from cultivated plants and shipped in containers clearly marked "cultivated origin." However, the Act and 50 CFR 17.72 also provide for issuance of permits to engage in interstate commerce of federally listed threatened plant species. The Service generally supports the commercial availability of federally listed endangered or threatened plant species, provided the original plant material is obtained in a manner that does not adversely affect wild populations of the species and the material in interstate commerce is of propagated origin.

An attorney representing an interested party in Florida requested a public hearing and asked for information about the specific location of the Florida population. Following a brief summary of the proposal, which included a review of current knowledge of the status of *Ribes echinellum*, the public hearing was opened to public comment. The above mentioned attorney stated that the best protection for *Ribes echinellum* would be provided if the Federal Government owned the land on which it occurred. He further indicated that the lands on which the Florida population occurs may in fact be owned by the State or Federal

Government. This attorney also requested an explanation of why the species was being proposed as a threatened species in 1984 when it was discovered in 1924 and had been under review by the Service for some time. A representative of the Apalachee Regional Planning Council read from the Council's letter indicating their support for threatened status. An attorney representing a landowner for part of the Florida population of *Ribes echinellum* requested information about restrictions that would be placed on his client if *Ribes echinellum* were listed as a threatened species. More detailed information about listing restrictions and the geographical location of the Florida population of *Ribes echinellum* has been provided to the interested party and his attorney.

Notwithstanding comments to the contrary, the information currently available to the Service indicates that all segments of the Florida population of *Ribes echinellum* are located on privately owned land. Further examination of land ownership of this population may be an appropriate part of future recovery efforts for this species. Information about the discovery of the Miccosukee gooseberry is included in the "Background" section of this rule. The reasons for the extended period of time that has elapsed since *Ribes echinellum* was first recognized as a potential candidate for protection under the Act and the August 31, 1984, proposal to list it as a threatened species are also reviewed in the "Background" section of this rule. The potential restrictions on the actions of private landowners are reviewed in the "Available Conservation Measures" section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Ribes echinellum* (Miccosukee gooseberry) should be classified as a threatened species. Procedures found at 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 (50 CFR Part 424) were followed. 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 *Ribes echinellum* (Coville) Rehder (Miccosukee gooseberry) (Syn: *Grossularia echinella* Coville), are as follows:

A. *The present or threatened destruction, modification, or curtailment*

of its habitat or range. Because of its localization to only two populations, *Ribes echinellum* is particularly vulnerable to any natural or human-influenced disturbance. The South Carolina population occurs on lands managed as a nature preserve by the South Carolina Wildlife and Marine Resources Department. Increased visitation by the public to this area could increase the risk of accidental destruction and trampling. Additional protection and management planning is needed at the South Carolina site. Also, research is needed to determine the management needs for *Ribes echinellum*.

The species' continued existence is more tenuous in Florida. The Florida population is on privately owned lands and the sites have potential for lakeside development. The present owners have no plans to sell or develop the sites, but subsequent owners may well choose to develop the sites for homesites or recreational developments if protection planning does not occur. Logging of the associated hardwoods and severe fire could pose additional threats to the Florida population (Milstead, 1978). Logging has occurred near part of the Florida site, with observed detrimental effects (Kral, 1977).

Both populations of *Ribes echinellum* occur at sites (riverbank and lakeshore) that have potential for recreational use. If this recreational use is not controlled with the protection of *Ribes echinellum* as a primary consideration, negative impacts to the populations could result.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. The Miccosukee gooseberry is not in demand for these purposes at present, but, with publicity, such a demand could occur.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* *Ribes echinellum* is afforded limited protection under Florida State law, Chapter 65-426, which includes prohibitions concerning taking, transport, and the sale of plants listed under the Florida law. South Carolina does not have a State law to protect endangered plants, but *Ribes echinellum* is indirectly protected under the Natural Area prohibitions against unauthorized plant taking. The Endangered Species Act will offer additional protection for the species.

E. *Other natural or manmade factors affecting its continued existence.* The small size and number of the populations cause this species to be in

jeopardy due to natural perturbations such as lightning fires or to natural fluctuations in the numbers of extant individuals. The South Carolina population is threatened by competition from the introduced vine, Japanese honeysuckle (*Lonicera japonica*).

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 make this rule final. Based on this evaluation, the preferred action is to list *Ribes echinellum* as threatened. With only two populations of this species known to exist, it warrants protection under the Act; threatened status seems appropriate since one of the sites is in State ownership and managed as a natural area. For the reasons given below, critical habitat is not 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 critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ribes echinellum* at this time. Taking is not prohibited 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. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. Publication of critical habitat descriptions would make this species even more vulnerable to taking and increase enforcement problems. Although South Carolina State law prohibits unauthorized plant taking from natural areas, drawing attention to the site could increase enforcement problems. Increased visitation at both populations, stimulated by critical habitat designation, could also result in trampling problems. Both the appropriate South Carolina land-management agency and the Florida landowners have been informed of the locations of this species and the importance of protecting *Ribes echinellum*, so no additional benefits from the notification function of a critical habitat designation are expected. Therefore, it would not be prudent to determine critical habitat for *Ribes echinellum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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 expected or known for *Ribes echinellum*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Ribes echinellum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, 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. Seeds from cultivated specimens of threatened species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be

sought or issued since *Ribes echinellum* 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. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Ribes echinellum* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) 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 final regulations will be issued following public comment. As this species is not known to occur on Federal lands, no collecting permit requests are 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).

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).

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Authors

The primary authors of this rule are Ms. LaVerne Smith and Mr. Quinn P. Sinnott, Office of Endangered Species, U.S. Fish and Wildlife Service,

Washington, D.C. 20240 (703/235-1975), and Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321). Status information and a preliminary listing package were provided by Dr. Wayne Milstead, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of

Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Saxifragaceae 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					
Saxifragaceae—Saxifrage family.						
<i>Ribes echinellum</i>	Miccosukee gooseberry	U.S.A. (FL, SC)	T	188	NA	NA

(Final: *Ribes echinellum* (Miccosukee gooseberry)—Threatened)

Dated: July 3, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-17075 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Pityopsis Ruthii* (Ruth's Golden Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pityopsis ruthii* (Small) Small (Ruth's golden aster), a plant endemic to Polk County, Tennessee, to be an endangered species under the Endangered Species Act of 1973 (Act), as amended. *Pityopsis ruthii* is endangered by water quality degradation, toxic chemical spills, and water level and flow regime alterations, and potentially from trampling associated with recreational use of its habitat. This action will implement the protection provided by the Act for *Pityopsis ruthii*.

DATE: The effective date of this rule is August 19, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Pityopsis ruthii, a member of the Asteraceae (Aster family), was first collected by Albert Ruth, a Knoxville botanist, near the Hiwassee River in Polk County, Tennessee. Ruth often visited this area between 1894 and 1902 and collected this unusual plant on several occasions (Bowers, 1972a). J.K. Small (1897) named the species in honor of Ruth, including it in the genus *Chrysopsis* in his original description. In 1933, Small transferred the species to the genus *Pityopsis*. Several alternative taxonomic treatments have been proposed for this and associated species (Harms, 1969; Bowers, 1972b; Cronquist, 1980; Semple *et al.*, 1980). Regardless of which genus (*Pityopsis*, *Heterotheca*, or *Chrysopsis*) the species is included in, all authors have recognized the specific distinctness of this unique plant. The inclusion of this species in the genus *Pityopsis*, as advocated by Semple *et al.*

(1980), is widely supported and is followed here.

Following Ruth's original collections, *Pityopsis ruthii* was not collected again for almost 50 years. Harms (1969) speculated that the species might be extinct. Bowers (1972a) reported that *Pityopsis ruthii* had been rediscovered on the Hiwassee River by himself and two other Knoxville botanists and stated that W.J. Dress had also collected the species in 1953. The Dress collection had not been reported in the literature, and his collections were housed in herbaria outside the region. This resulted in a 19-year lapse in knowledge of Dress' discovery. In 1976, A. White discovered a small population of *Pityopsis ruthii* on the Ocoee River, Polk County, Tennessee (White, 1978). Despite searches of apparently suitable habitat on the adjacent Tellico and Conasauga River systems by White (1977) and Wofford and Smith (1980), *Pityopsis ruthii* is only known to occur on short reaches of the Ocoee and Hiwassee Rivers.

Pityopsis ruthii is a fibrous-rooted perennial which grows only in the soil-filled cracks of phyllite boulders in and adjacent to the Ocoee and Hiwassee Rivers. The stems are from one to three decimeters tall and bear long narrow leaves covered with silvery hairs. The yellow flower heads appear in a paniculate inflorescence in late August and September. The fruits (achenes) develop a few weeks after the flowers fade (Wofford and Smith, 1980).

Federal actions involving *Pityopsis ruthii* 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 acceptance of the report of the Smithsonian Institution as a petition within the context of former section 4(c)(2) (now section 4(b)(3)(A), as amended) of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Pityopsis ruthii* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to 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 two years old be withdrawn. A one-year grace period was given to proposals already over two years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *Pityopsis ruthii* 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 presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Pityopsis ruthii*, was October 13, 1983. On October 13, 1983, and October 13, 1984, the Service found that the petitioned listing of *Pityopsis ruthii* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). On November 20, 1984, the Service published, in the **Federal Register** (40 FR 45766), a proposal to list *Pityopsis ruthii* as an endangered species. That proposal constituted the next one-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the November 20, 1984, proposed rule (49 FR 45766) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was

published in the *Cleveland Banner* on December 12, 1984, which invited public comment. Five supporting comments were received in response to the **Federal Register** and newspaper notifications. The comments are summarized below.

The U.S. Department of Agriculture, Forest Service Regional Office in Atlanta stated that *Pityopsis ruthii* merits listing as an endangered species. The forest supervisor for the Cheochee National Forest stated that publicity (associated with designation of critical habitat) is likely to attract attention to the plant and make protection efforts more difficult. It was further stated that this species, which occurs on the Cherokee National Forest, has been treated by the Forest Service as a sensitive species since 1981.

The Tennessee Department of Conservation, Ecological Services Division, supported listing *Pityopsis ruthii* as an endangered species, provided additional information about the threats to this species, and provided recent information on the status of the Ocoee River population.

Two comments, one from a private organization and the other from a private individual, supported listing *Pityopsis ruthii* as an endangered species.

The Tennessee Valley Authority (TVA) was provided a copy of the November 20, 1984, proposed rule on November 27, 1984. Although that agency made no official comments during the formal comment period, it did provide, in a letter dated February 6, 1984, information concerning the existing environmental conditions in the reaches of the Ocoee and Hiwassee Rivers occupied by *Pityopsis ruthii*. The information provided has been incorporated into the appropriate sections of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Pityopsis ruthii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 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 *Pityopsis ruthii* (Small) Small (Ruth's golden aster) [SYN: *Chrysopsis ruthii* Small and *Heterotheca ruthii* (Small) Harms] are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The two known populations of *Pityopsis ruthii* occur on short reaches of rivers in which water regimes are controlled by upstream dams. The dams are operated by the Tennessee Valley Authority. Natural water flows in the Hiwassee River, through the area where the species occurs, have been essentially eliminated since construction of the Appalachia Dam in 1943 (White, 1977). Water usually bypasses this area through a large pipeline between the dam and the powerhouse that is located several miles downstream of the dam. Apart from temporary releases to flush toxic chemical spills from the river or to release excess water after heavy upstream rainfall, the prime source of water for this river reach is inflow from small tributaries and surface runoff from the adjacent slopes (Wofford and Smith, 1980; Parrish, 1981). Rivers (1985) stated that releases due to high water above Appalachia Dam have occurred an average of 19 times per year since the dam was built in 1943. This alteration of natural flow cycles with a significant reduction of the annual scouring of boulders on which *Pityopsis ruthii* grows has permitted more competitive species to invade the boulders and encroach and overshadow the riverbanks (White, 1977). Somers (1985) reported that the Hiwassee River population has been reduced by approximately 50 percent in the past eight years. *Pityopsis ruthii* has little shade tolerance and is replaced by other species when sunlight is reduced (Wofford and Smith, 1980; White, 1977). If present trends continue it would appear that *Pityopsis ruthii* will eventually be displaced from the Hiwassee River by more shade-tolerant species. *Pityopsis ruthii* has adapted to and is not displaced by the normal high water flows that periodically scour the rocks and riverbanks and remove the more competitive vegetation.

The Ocoee River population of fewer than 500 plants (Wofford and Smith, 1980) appears to be subject to detrimental impacts of abnormally high flows during the growing season. Present water management on the Ocoee River results in regular releases during the growing season that approximate the historical average annual flow on this reach of the river (Rivers, 1985). However, periodic low (summer) and high (spring) flows have been eliminated. Although periodic high flows appear to be essential for maintenance of *Pityopsis ruthii* habitat, the higher than normal flows on the

Ocoee River during the growing season may be exceeding the species' capability to withstand this normally beneficial action. A closer correlation between water management and the needs of *Pityopsis ruthii* is needed, if the species is to survive on the Ocoee River.

Current recreational use of the Hiwassee River is limited to hiking and fishing on the banks adjacent to the *Pityopsis ruthii* population. Current levels of activity do not appear to be adversely affecting the species. Should levels of these activities increase in the future, they could threaten the species if they are not managed in a way that minimizes direct impacts such as trampling. Recreational use of the Ocoee River primarily consists of white-water sports like rafting. Since this activity takes place in the river, it would not appear to be impacting *Pityopsis ruthii* at this time. Observers and photographers of these white-water activities have trampled this species in the past (Collins, 1984).

B. Overutilization for commercial, recreational, scientific, or educational purposes. *Pityopsis ruthii* is not currently in commercial trade as an ornamental plant. However, Farmer (1977) indicates that the species has excellent potential for horticultural use and public awareness of the species could generate a demand.

C. Disease or predation. Not applicable to this species at this time.

D. The inadequacy of existing regulatory mechanisms. The State of Tennessee recently passed the Tennessee Rare Plant Protection Act of 1985; implementing rules and regulations will soon be developed and it is anticipated that at that time *Pityopsis ruthii* will be offered some protection by this new legislation. The Tennessee Department of Conservation recognizes Ruth's golden aster as endangered in its current (1984) revision of the Official Rare Plant List of Tennessee issued pursuant to the Governor's Executive Order on March 7, 1980, and compiled with the assistance of a scientific advisory committee and with other public input. Removal of plants without a permit from the Cherokee National Forest is prohibited by regulation. However, this regulation is difficult to enforce. The Endangered Species Act will provide additional protection for the species.

E. Other natural and manmade factors affecting its continued existence. Water quality in the Ocoee River is drastically reduced on a regular basis because of mining activities in the Copperhill area, upstream of the *Pityopsis ruthii* population. Sediment levels are generally high, and acidity levels as low

as pH 1.2 have been recorded in the Ocoee River (White, 1977). These water quality problems have adversely impacted the aquatic fauna of this reach of the Ocoee River and are probably adversely affecting the *Pityopsis ruthii* population. Several spills of toxic chemicals (sulfuric acid) have occurred on the Hiwassee River. In order to flush these chemicals from the river, releases from Appalachia Dam have been made. These releases have resulted, on at least one occasion (1976), in a loss of seed production for the year (White, 1977).

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 make this rule final. Based on this evaluation, the preferred action is to list *Pityopsis ruthii* as endangered. With only two populations of this species known to exist, it definitely warrants protection under the Act; endangered status seems appropriate because of the threats facing both populations. Critical habitat is not being designated for reasons discussed 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 critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Pityopsis ruthii* at this time. The species has high potential for horticultural use (Farmer, 1977). Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on Ruth's golden aster. Although removal and reduction to possession of endangered plants from lands under Federal jurisdiction is prohibited by the Endangered Species Act, such provisions are difficult to enforce effectively. Publication of critical habitat descriptions would make *Pityopsis ruthii* more vulnerable and would increase enforcement problems for the U.S. Forest Service. Increased visits to both populations stimulated by critical habitat designation could also result in trampling problems. Both of the Federal agencies involved in managing the habitat of Ruth's golden aster have been informed of the locations of this species and of the importance of protecting it, so no additional benefits from the notification function of critical habitat designation would result. Therefore, it would not be prudent to determine critical habitat for *Pityopsis ruthii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against removal and reduction to possession 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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.

The U.S. Forest Service (Cherokee National Forest) and the Tennessee Valley Authority (TVA) have jurisdiction over this species' habitat or essential components of its habitat. Federal activities that could impact *Pityopsis ruthii* and its habitat in the future include, but are not limited to, the following: Management of flow regimes and water levels on the Ocoee and Hiwassee Rivers, timber harvesting, recreational development, channel alterations, road and bridge construction, permits for mineral exploration, and implementation of forest management plans. It has been the experience of the Service that the large majority of section 7 consultations are resolved so that the species is protected and the project can continue.

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 *Pityopsis ruthii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, 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 will be sought or issued since Ruth's golden aster 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 now applies to *Pityopsis ruthii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act (revised regulations are being developed for the issuance of removal or reduction to possession permits) *Pityopsis ruthii* is only known to occur on lands administered by the Forest Service and TVA, but it is anticipated that few collecting permits will be requested for this species. Requests for copies of the current 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).

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).

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- White, A.J. 1978. Range extensions of the proposed endangered plant, *Heterotheca ruthii* (Compositae). *Castanea* 43:263.
- Wofford, B.E., and D.K. Smith. 1980. Status report for *Heterotheca ruthii* (Ruth's golden aster). Unpublished report prepared under contract for the U.S. Fish and Wildlife Service, Atlanta, GA. 33 pp.

Author

The primary author of this final rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 8/672-0321). Preliminary status information was provided by Mr. J. Heifetz and Dr. W.C. Milstead, formerly of the Service's Southeastern Regional Office, Atlanta, Georgia.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Species		Historic range	Status	When listed	Critical habitat	Special rules
	Common name						
Asteraceae—Aster family:							
<i>Pityopsis ruthii</i> (SYN: <i>Heterotheca ruthii</i> , <i>Chrysopsis ruthii</i>)	Ruth's golden aster		U.S.A. (TN)	E	189	NA	NA

Dated: June 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-17076 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered and Threatened Status for Five Florida Pine Rockland Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service finds four plants to be endangered: *Euphorbia deltoidea* ssp. *deltoidea* (spurge), *Galactia smallii* (Small's milkpea), *Polygala smallii* (tiny polygala), and *Amorpha crenulata* (crenulate lead-plant). The Service finds one plant, *Euphorbia garberi* (Garber's spurge), to be a threatened species. The four endangered species are restricted to pine rockland habitats in Dade County, Florida. They are endangered by the continuing destruction of pine rocklands for residential and commercial purposes. *Euphorbia garberi* formerly occurred widely in Dade and Monroe Counties, Florida, at the edges of pinelands and hammocks, and in coastal areas. Its range has been reduced by commercial and residential development to four sites in Everglades National Park and one site in the Florida Keys. Critical habitat has not been designated for any of these species. This action provides the protection of the Endangered Species Act to the five plant species.

DATE: The effective date of this rule is August 19, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Euphorbia deltoidea was originally described by Engelmann, and published in Chapman (1883). Small (1903) transferred the species to the genus *Chamaesyce*. For the sake of consistency with the Service's previous

treatment of the segregate genus *Chamaesyce*, the species affected by this rule are referred to the genus *Euphorbia*. This agrees with the nomenclature used in the Service's December 15, 1980, plant notice of review (45 FR 82480). Small (1903, 1927) later described *Chamaesyce serpyllum* and *Chamaesyce adhaerens* as species distinct from *Chamaesyce deltoidea*. Burch (1966) considered *Euphorbia deltoidea* to have two subspecies, *deltoidea* and *serpyllum*, the former including the varieties *deltoidea* and *adhaerens*. Herndon, however, believes that *deltoidea*, *adhaerens*, and *serpyllum* should be considered distinct species (Herndon, Florida International University, pers. comm., 1984). This final rule applies to the taxa *deltoidea* and *adhaerens*, which are restricted to Dade County, Florida. *Euphorbia deltoidea* subspecies *serpyllum* is restricted to Big Pine Key, Monroe County, Florida, and is a candidate for Federal listing. There is no known overlap in range among these three taxa. *Euphorbia deltoidea* ssp. *deltoidea* variety *deltoidea* occurs in the Coral Gables-South Miami-Perrine area, while variety *adhaerens* occurs in the Homestead-Goulds area. These two varieties are both covered by the listing of the subspecies *Euphorbia deltoidea* ssp. *deltoidea*.

Euphorbia deltoidea is a herbaceous, prostrate to barely ascending plant forming small mats to a few decimeters in diameter. The thin, wiry stems extend from a central woody taproot. Leaves are deltoid to ovate in shape, opposite, and up to 5 millimeters (0.2 inch) long. The flowers are unisexual; male and female flowers are arranged in a cuplike structure (cyathium). The 3-seeded fruits are 1-2 millimeters (0.04-0.08 inch) wide; seeds measure about 1 millimeter (0.04 inch) wide. The density and distribution of hairs on the stems, leaves, and capsules distinguish varieties *deltoidea* and *adhaerens*. Variety *deltoidea* is essentially hairless; *adhaerens* is fairly hairy.

Galactia smallii was described as *Galactia prostrata* by Small (1933). Herndon (1981) published H.J. Roger's finding that this specific name was preoccupied by another species of *Galactia*. He also published Hollis' suggestion of the new specific name *smallii*, and clarified the characters separating this species from the related *Galactia pinetorum*. *Galactia smallii* is a small vine with compound leaves, usually with 3 elliptic leaflets 1.5-3 centimeters (0.6-1.2 inches) long. The pinkish flowers have a calyx 8-9 millimeters (0.34 inch) long and a standard petal 15-17 millimeters (0.59-0.67 inch) long. This species is currently

known from only two sites near Homestead.

Polygala smallii was originally described by Small (1905) as *Polygala arenicola*. Smith and Ward (1976), realizing that the specific name *arenicola* was preoccupied in the genus *Polygala*, proposed a new name, *Polygala smallii*. The plant was originally known from pine rocklands in Broward and Dade Counties, Florida, but attempts to locate this species in 1979 (Austin et al., 1980b) found all historic populations extirpated. The species is now known only from two sites in Dade County. *Polygala smallii* is an erect biennial herb with short, branched or unbranched stems. Leaves are 12-50 millimeters (0.47-1.97 inches) long, crowded, and oblanceolate to linear-lanceolate, and often form a basal rosette. The small yellow-green flowers are clustered at the ends of stems. The oblong seeds are 1.9-2.3 millimeters (0.08-0.09 inch) long.

Amorpha crenulata was described by Rydberg (1919) based on material from near Coconut Grove, Dade County, Florida. Wilbur (1975) confirmed the taxonomic validity of this species. The plant is presently restricted to a few sites in the South Miami area (Herndon, 1984a). *Amorpha crenulata* is a shrub to 1.5 meters (4.92 feet) in height. The compound leaves bear 25-33 leaflets. The flowers bear a single petal (the standard) 6 millimeters (0.24 inch) long and are arranged in loosely clustered racemes 9-20 centimeters (3.5-7.9 inches) long. The seed pod is 6-7 millimeters (0.24-0.27 inch) long and is conspicuously glandular.

Pine rockland plants formerly were more widely distributed along the south Florida limestone ridge, an area about 105 kilometers (65 miles) long, extending more or less continuously from southeastern Broward County to Long Pine Key in Everglades National Park. The ridge reaches 3-5 meters (10-16 feet) in elevation and provides a markedly different habitat for plants and animals than the marshes and wet prairies that dominate the surrounding areas. The substrate consists of porous limestone known as Miami oolite. Soils are poorly developed, consisting mainly of a thin layer of sand. Erosion of the limestone results in frequent solution holes and jagged surface features. Many plants are rooted in crevices in the limestone. The predominant canopy vegetation on the ridge is southern slash pine (*Pinus elliotii* var. *densa*). An understory of saw palmetto (*Serenoa repens*), silver palm (*Coccothrinax argentata*), poisonwood (*Metopium toxiferum*), rough velvetseed (*Guetarda*

scabra), and wax myrtle (*Myrica cerifera*) is typical. Large numbers of endemic pine rockland plants are present in the understory. Lack of fire results in succession to tropical hardwood hammock vegetation, characterized by oaks (*Quercus virginiana*), gumbo-limbo (*Bursera simaruba*), strangler fig (*Ficus aurea*), poisonwood (*Metopium toxiferum*), wild tamarind (*Lysiloma latisiliqua*), and other species. Burning at 3 to 10-year intervals may be necessary to maintain the pine rockland community; without fire the community may develop into rockland hammock in about 25 years (Duever, 1984).

The pine rocklands have been extensively developed for residential, commercial and agricultural purposes. Shaw (1975) estimated that the historic area of pinelands and hammocks in Dade County, exclusive of Everglades National Park, was about 152,000 acres. In 1975, these forests were estimated to have been reduced to 8,149 acres; 7,370 acres were pinelands. Only 5,268 acres of pinelands were of sufficient size to be considered viable. In 1978, these 5,268 acres of viable pineland had decreased to 4,558 acres (Anonymous, 1978). Only 1,710 acres of pineland remained in good condition; the remainder suffered from lack of burning and/or invasion of exotic plants. The Dade County Department of Resources Management is currently updating the forest survey, since the pinelands have continued to decline rapidly since 1978. Summaries of the unique botanical features of the Miami rock ridge pineland and the threats facing the remnants of this habitat type were recently provided by Herndon (1984b) and Duever (1984). *Linum carteri* var. *carteri* (Carter's flax), an endemic to Dade County pinelands, is a candidate species for Federal listing but could not be located in a 1980 search and may now be extinct (Austin *et al.*, 1980a).

Euphorbia garberi was originally described by Engelman in 1883. Small (1903) transferred the species to the genus *Chamaesyce*. *Euphorbia garberi* is a prostrate herb with hairy stems, ovate leaves 4-9 millimeters (0.16-0.35 inch) long, and conspicuous flowers. The species formerly occurred in Dade and Monroe Counties, Florida, from the Miami area to the lower Florida Keys. Researchers conducted a status survey and were unable to locate this species over much of the historic range (Austin *et al.*, 1980a). The only known remaining populations occur at four sites in Everglades National Park, one in Dade County and three in Monroe County, Florida, and one site on Big Pine Key,

Monroe County, Florida. *Euphorbia garberi* occurs in transitional areas between hammocks and pine rocklands, and on beach ridges in saline coastal areas. This species occurs in open areas on dry, sandy soil. *Euphorbia garberi* has been extirpated from the Miami area and from most of the Florida Keys in Monroe County where it was formerly found.

Federal Government actions on these species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on 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. In this report *Euphorbia deltoidea* ssp. *deltoidea* was listed as threatened, and *Euphorbia garberi* was listed as endangered. On July 1, 1975 (40 FR 27823), the Service published a notice in the Federal Register 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)] of the Act, and its intention thereby to review the status of the plant taxa named within. The above two taxa were included in the notice. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa 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. *Euphorbia garberi* was included in the proposed rule. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, Federal Register publication, which also determined 13 plant species to be endangered or threatened (43 FR 17909). On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review for native plants in the Federal Register (45 FR 82480); *Euphorbia deltoidea*, *Polygala smallii*, and *Euphorbia garberi* were included as category-1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being

proposed to be listed 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. The species covered by the December 15, 1980, notice of review were considered to be petitioned and the deadline for a finding on those species, including *Polygala smallii*, *Euphorbia deltoidea* ssp. *deltoidea* and *Euphorbia garberi*, was October 13, 1983. On October 13, 1983, and October 12, 1984, the Service found that the petitioned listing of these three taxa was warranted, and that although other pending proposals had precluded their proposal, expeditious progress was being made to list the species.

On March 22, 1984, the Service received a petition from Mr. Alan Herndon of the Department of Biology, Florida International University, Miami, Florida, to list *Amorpha crenulata* and *Galactia smallii* pursuant to the Endangered Species Act. On June 4, 1984, an administrative decision was made that the petition presented substantial information indicating that the petitioned action might be warranted. Notice to this effect was published in the Federal Register on July 13, 1984 (49 FR 28583).

On November 7, 1984 (49 FR 44507), the Service proposed to list *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* as endangered species, and to list *Euphorbia garberi* as a threatened species. That proposal incorporated findings, pursuant to section 4(b)(3)(B) of the Act and due by March 22 and October 13, 1985, that the actions requested by the two petitions referred to above were warranted.

Summary of Comments and Recommendations

In the November 7, 1984, proposed rule (49 FR 44507) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Miami Herald* and the *Key West Citizen* on November 26, 1984, which invited general public comment. No public hearing was requested or held.

Six comments were received. The proposed listings were supported by the Florida Game and Fresh Water Fish

Commission, the Florida Department of Natural Resources (Division of Recreation and Parks), the Florida Natural Areas Inventory (FNAI), and the State organization and a local chapter of the Florida Native Plant Society. The FNAI indicated that another site for *Amorpha crenulata* might exist; six plants were found on the site (a small cultivated lot) in 1982. A botanist supported the listing of *Euphorbia garberi*, noting that the single known remaining site for this species in the Florida Keys was vulnerable to storms.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* should be classified as endangered species, and that *Euphorbia garberi* should be classified as a threatened species. Procedures found at 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 (50 CFR Part 424) were followed. 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 *Euphorbia deltoidea* Engelm. ex Chapman ssp. *deltoidea* (spurge), *Galactia smallii* H.J. Rogers ex Herndon (synonym: *G. prostrata* Small) (Small's milkpea), *Polygala smallii* Smith and Ward (synonym: *P. arenicola* Small) (tiny polygala), *Amorpha crenulata* Rydberg (crenulate lead-plant), and *Euphorbia garberi* Engelm. ex Chapm. (Garber's spurge) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* are restricted to pinelands of the Miami rock ridge in Dade County, Florida. Conversion of pine rocklands for commercial and residential purposes began early in the twentieth century and accelerated after 1930. It has been estimated that 90 percent of Dade County's pine rocklands (exclusive of the pine rocklands within Everglades National Park, where these species do not occur) present in 1940 had been destroyed by 1972 (Robertson and Kushlan, 1974). The pinelands outside of Everglades National Park have been even further reduced since that time, and are now restricted to small isolated stands. Herndon (1984b) estimated that 98 percent of the Dade County pinelands

outside of Everglades National Park had been destroyed by 1984. The largest of these remnants are in county ownership; a few significant parcels are in private or Federal ownership. Originally, these plant species were probably distributed fairly widely throughout the pinelands, but apparently did not occur west of the Homestead area. The species occurring in Dade County parks (*Euphorbia deltoidea* ssp. *deltoidea* and *Amorpha crenulata*) are vulnerable to ongoing and potential future development for recreational purposes and the establishment of service roads, parking, and picnic areas.

Euphorbia deltoidea ssp. *deltoidea* var. *deltoidea* formerly occurred throughout the pinelands from Miami southwest to Cutler Ridge. It is now restricted to eight known sites in the vicinity of Cutler Ridge and Perrine. *Euphorbia deltoidea* ssp. *deltoidea* var. *adhaerens* formerly occurred at several sites in the Homestead-Goulds area; this species is now restricted to two sites near Homestead (Austin et al., 1980a).

The former range of *Galactia smallii* is poorly known, but this species is presently restricted to two known sites near Homestead (Herndon, 1984a).

Polygala smallii formerly existed from southeastern Broward County (near Fort Lauderdale) to the Cutler area in Dade County. This species is now restricted to two sites in the Cutler area (Austin et al., 1980b).

Amorpha crenulata formerly occurred throughout pinelands in the Miami-Coral Gables area; it is now known only from a few highly restricted sites within the Miami City limits (Herndon, 1984a).

Habitat destruction or modification threatening *Euphorbia garberi* includes residential and commercial development, lack of fire resulting in increased competition and shading out by other plant species, and natural risk from destruction by storms or hurricanes. *Euphorbia garberi* was formerly found from the Miami area southwest to Everglades National Park (ENP) and the Lower Florida Keys. Currently, the species is known from only four sites in ENP, one in Dade County and three in Monroe County, and one site on Big Pine Key, Monroe County. The species has apparently been extirpated from eight of the Florida Keys where it formerly occurred (Austin et al., 1980a). It has not been found in the Miami area since 1949. Three of the ENP populations are located in coastal areas where storm overwash could eliminate them. *Euphorbia garberi* was considered a "species of highest concern" in a rare plant report prepared by the Everglades National Park South

Florida Research Center (Loope and Avery, 1979). Another population is in a pineland area where periodic burning may be required to prevent overshadowing by shrubs. The Big Pine Key site is vulnerable to overshadowing and storm damage.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* are so limited in distribution and population size that indiscriminate scientific or other collecting could adversely affect these species. Collecting is not known to occur at this time, but caution will be necessary to ensure that increased publicity does not spark such collecting.

C. *Disease or predation.* Not applicable to these species.

D. *The inadequacy of existing regulatory mechanisms.* *Polygala smallii* is considered endangered by the Florida Committee on Rare and Endangered Plants and Animals (Ward, 1979), but this recognition provides no protection to the plant or its habitat. *Euphorbia deltoidea* ssp. *deltoidea* and *Amorpha crenulata* occur in Dade County parks, but are not accorded any specific protection in park planning or development. *Euphorbia garberi* is provided some protection by its presence in ENP, but is unprotected outside the Park. National Park Service regulations prohibit the removal of plants from parks; these regulations will be further strengthened by prohibitions of the Act that restrict the removal and reduction to possession of endangered plants from lands under Federal jurisdiction (proposed to be implemented for threatened plants at 48 FR 31417, July, 1983).

Dade County sponsors an Environmentally Endangered Lands (EEL) program which provides property tax benefits to landowners who agree to maintain healthy forestlands. The program includes prescribed burning for pineland. Over 20 tracts of land supporting pinelands are now included in the EEL program, but these lands do not include any of the currently known sites for the species in this regulation.

E. *Other natural or manmade factors affecting its continued existence.* Pine rockland habitat in Dade County succeeds to hardwood hammock in the absence of periodic burning. Pine rockland plants are gradually shaded out as succession takes place. As Dade County becomes increasingly developed and the pinelands smaller and more fragmented, fire suppression is more apt to occur. Invasion of exotic plants is also affecting the pinelands. Two

species currently invading this habitat are *Schinus terebinthifolius* (Brazilian pepper) and a large reed (*Neyraudia reynaudiana*). Other exotic plants, which are extremely widespread in south Florida, may also invade pine rocklands in the future. The orchid tree (*Bauhinia variegata*) is currently present in some pinelands. Most of the remaining pinelands are surrounded with suburban landscaping dominated by exotic plants. Fire suppression and exotic plant competition affect *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* as endangered species and to list *Euphorbia garberi* as a threatened species. The former four species have already been extirpated over most of their historic range and could become extinct in the near future. *Euphorbia garberi* has been largely extirpated over its former range and is threatened at one or more of the remaining sites. The reasons for not proposing critical habitat for these species are discussed below 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 critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, and *Amorpha crenulata* are sufficiently restricted that scientific collecting or vandalism could seriously damage the remaining populations of these species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. Similarly, it would not be prudent to publish descriptions and maps of the few known sites of *Euphorbia garberi*. While collecting is generally prohibited in Monroe County Parks and in Everglades National Park, these prohibitions are difficult to enforce. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, there is no benefit in

designation of critical habitat for these plants.

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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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.

Euphorbia deltoidea ssp. *deltoidea* occurs on land under the jurisdiction of the U.S. Army. The Army is currently conferring with the Service regarding the development of Reserve facilities on the pineland site. This process is anticipated to become a consultation, with determination of *Euphorbia deltoidea* ssp. *deltoidea* to be an endangered species.

Euphorbia garberi occurs in Everglades National Park. Park management includes prescribed burning of pinelands in areas where *Euphorbia garberi* is located. The present burning schedules, aimed at maintaining pinelands, should benefit this species. This activity will be subject to consultation under section 7 of the Endangered Species Act. No monitoring of this plant species is currently being done in the Park; the listing could focus increased attention on its status.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants set forth a series of general trade prohibitions that apply to all endangered and threatened plant species. With respect to *Euphorbia deltoidea* ssp. *deltoidea*, *Galactia smallii*, *Polygala smallii*, *Amorpha crenulata*, and *Euphorbia garberi*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species are virtually unknown in cultivation and are uncommon 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 now applies to *Euphorbia deltoidea* ssp. *deltoidea* of Federal lands. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Euphorbia garberi* in ENP once revised regulations are promulgated. Everglades National Park regulations already prohibit collecting, except under permit, so the existing situation will be unchanged. The remaining plants considered in the rulemaking would be given similar protection to the extent they are located on land subject to Federal jurisdiction. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) 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. It is likely that few collecting permits for these 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).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under 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).

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Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, in amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

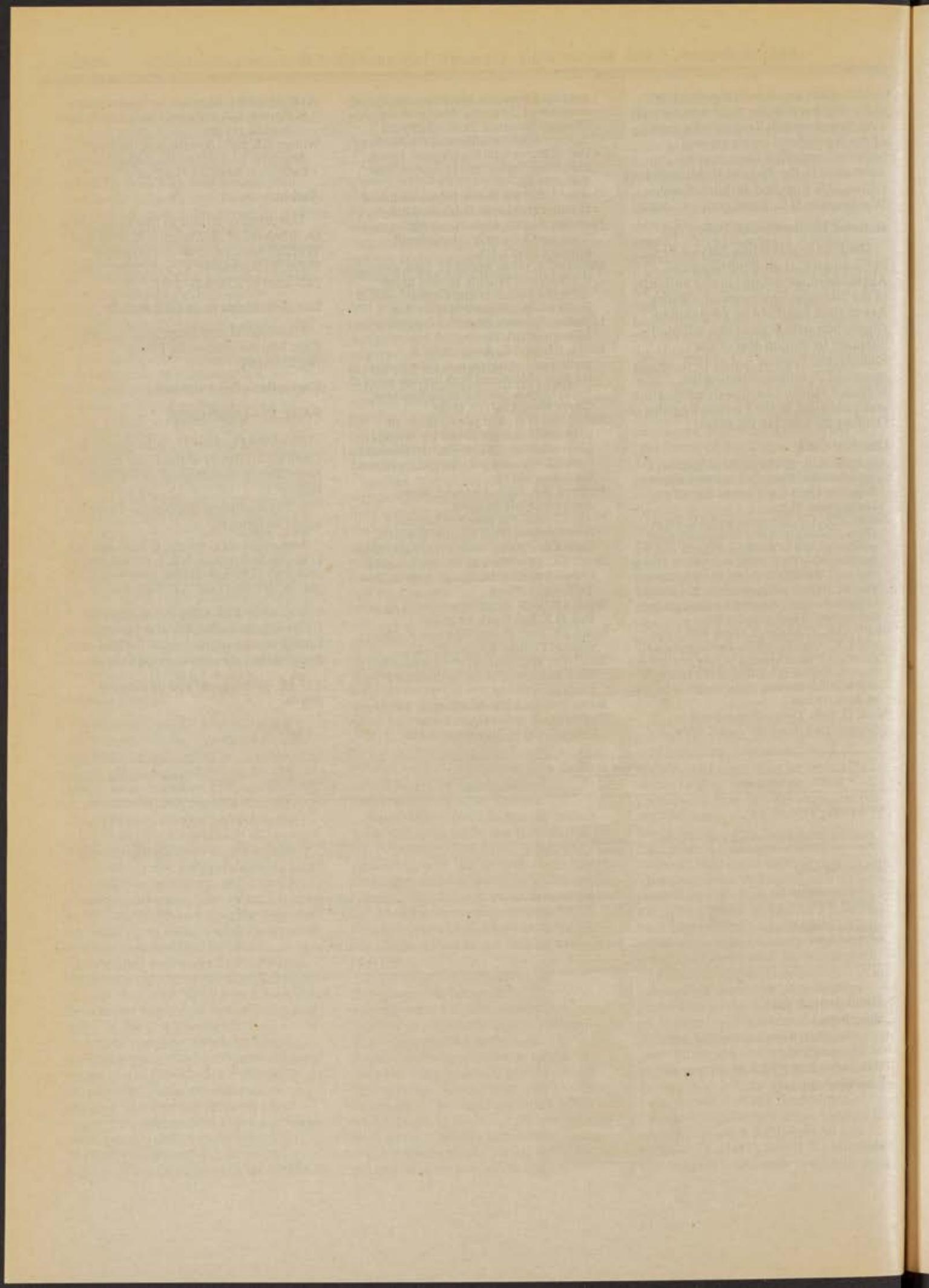
2. Amend § 17.12(h) by adding the following, in alphabetical order under family names indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

Scientific name	Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Euphorbiaceae—Spurge family:							
<i>Euphorbia (Chamaesyce) deltoidea</i> ssp. <i>deltoidea</i>	Spurge		U.S.A. (FL)	E	190	NA	NA
<i>Euphorbia (Chamaesyce) garberi</i>	None		U.S.A. (FL)	T	190	NA	NA
Fabaceae—Pea family:							
<i>Amorpha crenulata</i>	Crenulate lead-plant		U.S.A. (FL)	E	190	NA	NA
<i>Galactia smallii</i>	Small's milkpea		U.S.A. (FL)	E	190	NA	NA
Polygalaceae—Milkwort family:							
<i>Polygala smallii</i>	Tiny polygal a	ELS	U.S.A. (FL)	E	190	NA	NA

Dated: June 27, 1985.
 J. Craig Potter,
 Acting Assistant Secretary for Fish and
 Wildlife and Parks.
 [FR Doc. 85-17077 Filed 7-17-85; 8:45 am]
 BILLING CODE 4310-55-M



federal register

Thursday
July 18, 1985

Part VI

Department of Education

**34 CFR Parts 425, 426, 431, and 432
State-Administered Adult Education
Program and National Adult Education
Discretionary Program; Final Regulations**

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 431, and 432

State-Administered Adult Education Program and National Adult Education Discretionary Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Adult Education Act, which was amended and extended by the Education Amendments of 1984, Pub. L. 98-511. These regulations govern the State-administered program of adult basic and adult secondary education and the national adult education discretionary program for research, development, demonstration, dissemination, and evaluation. An additional purpose of these regulations is to reduce the administrative burden on grantees, to allow more flexibility in program administration to State educational agencies, to eliminate certain existing regulations that are unnecessary, and to clarify certain provisions of the existing regulations to make them more understandable to the public.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Paul V. Delker, Director, Division of Adult Education, U.S. Department of Education, (ROB-3, Room 5610), 400 Maryland Avenue, SW., Washington, D.C. 20202-3585, Telephone: (202) 245-9793; or Thomas L. Johns, Chairperson, Adult Education Regulations Task Force, U.S. Department of Education, (ROB-3, Room 5126), 400 Maryland Avenue, SW., Washington, D.C. 20202-3579, Telephone: (202) 245-8176.

SUPPLEMENTARY INFORMATION:**Background**

Title I of the Education Amendments of 1984 (Pub. L. 98-511) amends and extends the Adult Education Act (the Act), enacted in Pub. L. 91-230 (20 U.S.C. 1201 *et seq.*), as amended. The primary purpose of the Act has been, and continues to be under the recent amendments, to offer educationally disadvantaged adults an opportunity to acquire basic literacy skills necessary to function in society, to continue their education to at least the level of completion of secondary school, and to

become able to secure training that will make them more employable, productive, and responsible citizens.

There are two major parts to the adult education program established by the Act: The State-administered adult education program and the national adult education discretionary program.

The State-administered adult education program establishes a cooperative effort between the Federal Government and the States. Federal funds are allocated to the States on a formula basis, and the States, in turn, fund local programs of adult education based on need and resources available. The regulations governing the State-administered program are found in 34 CFR Parts 425 and 426.

The Act also authorizes a national adult education discretionary program. At an appropriation level of \$112 million, or higher, the Secretary may set aside up to five percent of that amount for projects under section 309 of the Act. At the current appropriation level of \$100 million for program operations, this authority is not available to the Secretary. The regulations governing the national discretionary program are found in 34 CFR Part 431.

As noted in § 425.2(a) of these regulations, the Education Department General Administrative Regulations (EDGAR) apply to the adult education programs. Specific regulatory requirements for EDGAR are not repeated in these regulations. However, particular attention should be directed to the following EDGAR requirements:

(A) The SEA must have on file with the Secretary a single State application that covers adult education programs (34 CFR 76.101).

(B) By submitting a single State application under 34 CFR 76.101, an SEA meets the requirements of section 306(b)(6) of the Act, covering fiscal control and fund accounting procedures.

(C) By submitting a single State application under 34 CFR 76.101, an SEA gives assurance that it will evaluate—not less often than once every three years—the effectiveness of section 306 and section 310 programs in meeting statutory objectives.

(D) A State plan for adult education must include the certifications required by 34 CFR 76.104.

(E) Computation of the non-Federal share of expenditures for matching or cost-sharing is discussed in 34 CFR 74.52. The non-Federal share of expenditures under the State plan may be computed on a statewide basis and may come from any source other than Federal assistance so long as these expenditures are made to further the

purposes of the State plan for adult education.

(F) An SEA must administer special experimental demonstration projects and teacher training projects under section 310 of the Act in accordance with the requirements contained in Subparts D and E of 34 CFR Part 76.

Summary of Major Areas of Public Comment

The State-administered Adult Education Program and National Adult Education Discretionary Program regulations were published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on February 28, 1985 (50 FR 8304). The Secretary invited comments on the proposed rules. In response to these comments changes were made in these final regulations. Summarized below are the major areas of comment and the Secretary's response. Appendix A contains a summary of all comments and responses received on the Notice of Proposed Rulemaking.

(a) *Limited English proficiency.* Two commenters urged that the definition of "limited English proficiency" be taken verbatim from title VII of the Elementary and Secondary Education Act of 1965, as amended. The definition is added in § 425.3. The Secretary agrees with the commenters that this definition relates to a particular subset of that population with limited English language skills and is required by section 306(b)(11) of the Act. The definition in the proposed regulations of "limited English language skills" is retained because this term is used both in the Act and the regulations and defines a broader population than those included under the definition of "limited English proficiency."

(b) *Data collection.* Commenters suggested that the regulatory language on data collection should reflect the requirements of section 306(b)(14) of the Act. The program assurance in § 426.11(b)(8) has been changed to reflect more explicitly these requirements.

(c) *Clarification of terms.* Commenters called attention to a variance in terms relating to employment and training between those used in the adult education program and those used in current legislation authorizing vocational education and job training programs.

The Secretary agrees that the terms should be consistent and has made the appropriate changes:

(1) In § 426.12(a)(10), the term "State manpower and training agencies" has

been changed to *State employment and training agencies*.

(2) In § 426.12(a)(11), the term "Local manpower and training agencies" has been changed to *Local employment and training agencies*.

(3) In § 426.12(i)(1), the term "State manpower service councils" has been changed to *State job training coordinating councils*.

(d) *Outreach activities*. Two commenters questioned the advisability of including the stipulation in § 426.12(h)(2) that a concerted effort be made to obtain such services as transportation and child care through other than adult education program resources. The Secretary agrees that this language may be misinterpreted by a State to preclude the expenditure of any funds under the Act for these services. The stipulation has been deleted in these final regulations.

(e) *Evaluation*. One commenter suggested that more frequent evaluations be required. Another commenter recommended that the requirement in § 426.12(o) be clarified.

Section 426.12(o) of the proposed regulations has been deleted from the final regulations. By submitting a single State application under 34 CFR 76.101, an SEA gives assurance that it will evaluate—not less often than once every three years—the effectiveness of section 306 and section 310 programs in meeting statutory objectives.

(f) *Administration*. One commenter pointed out that the provision in § 426.21 that stipulates that "allowable administrative costs must be necessary and reasonable for proper and efficient administration of the program" is also set forth in Appendix C to 34 CFR Part 74. The language has been deleted from the final regulations. It is Department policy not to repeat requirements set forth in the Education Department General Administrative Regulations in other regulations.

(g) *Dissemination plan*. A change has been made in the final regulations. One commenter, addressing the criterion on the dissemination plan, as set forth in § 431.31 of the proposed regulations, recommended that products of these national projects be disseminated to all parties concerned about illiteracy and other adult education problems. The Secretary agrees and has deleted the restrictive reference to "educators" in § 431.31(g)(2)(iii).

(h) *Application approval*. One commenter objected to the requirement in § 426.32(b)(2) that an applicant other than a local educational agency must provide the applicable local educational agency the opportunity to comment on the application prior to submitting it to

the State. The commenters pointed out that while section 304(a)(1) of the Act does require that the opportunity to comment must take place prior to approval of an application by the State educational agency, the Act does not require that the opportunity to comment must take place prior to submission of the application to the State.

The Secretary agrees with the commenter, and the phrase "prior to submitting it to the State" has been deleted from § 426.32(b)(2).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

The State-administered adult education program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 425

Administrative practice and procedure, Adult education, Education, Grant programs—education.

34 CFR Part 426

Adult education, Education, Grant programs—education, Reporting and recordkeeping requirements, State advisory councils, Teachers.

34 CFR Part 431

Adult education, Education, Grant programs—education, Nonprofit organizations, Reporting and recordkeeping requirements.

34 CFR Part 432

Adult education, Education, Grant programs, Immigrants, Indochina, Non-profit organizations, Refugees.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education—State-administered Program; National Adult Education Discretionary Program (Number not assigned))

Dated: July 15, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 425, 426, and 431 and removes Part 432 of Title 34 of the Code of Federal Regulations as follows:

1. Part 425 is revised to read as follows:

PART 425—ADULT EDUCATION—GENERAL PROVISIONS

Subpart A—General

Sec.

- 425.1 What are the Adult Education Programs?
425.2 What regulations apply to the Adult Education Programs?
425.3 What definitions apply to the Adult Education Programs?
425.4–425.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under the Adult Education Program?

- 425.10 What kinds of activities does the Secretary assist?

Authority: Secs. 301–315 of the Adult Education Act, as amended by Pub. L. 98–511; 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 425.1 What are the Adult Education Programs?

(a) Under the Adult Education Programs the Secretary provides Federal financial assistance to encourage and expand educational opportunities for adults.

(b) The regulations in this Part 425 govern the following programs:

- (1) 34 CFR Part 426—State-Administered Adult Education Program.
(2) 34 CFR Part 431—National Adult Education Discretionary Program.

(20 U.S.C. 1201 *et seq.*)

§ 425.2 What regulations apply to the Adult Education Programs?

The following regulations apply to the Adult Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), (applicable only to Part 431), Part 76 (State-administered Programs) (applicable only to Part 426), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this part.

(c) The regulations in 34 CFR Parts 426 and 431.

(20 U.S.C. 1201 *et seq.*)

§ 425.3 What definitions apply to the Adult Education Programs?

(a) *Program definitions.* The following definitions apply to 34 CFR Parts 426 and 431:

"Act" means the Adult Education Act as amended (20 U.S.C. 1201 *et seq.*)

"Adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except that for the purpose of section 305(a) of the Act, the term "adult" means an individual 18 years of age or older.

"Adult basic education" means adult education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

"Adult education" means instruction or services below the college level for adults who do not have—

(1) The basic skills to enable them to function effectively in society; or

(2) A certificate of graduation from a school providing secondary education (and who have not achieved an equivalent level of education).

"Basic literacy skills," as used in § 425.10(b)(1), means the skills taught in adult basic education.

"Community school program" means a program in which a public building, including but not limited to public elementary or secondary school or a

community or junior college, is used as a community center operated in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, cultural, and other related community services for the community that center serves in accordance with the needs, interests, and concerns of that community.

"Immigrant" means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(8 U.S.C. 1101(a)(15))

"Institution of higher education" means any such institution as defined by section 481 of the Higher Education Act of 1965.

"Institutionalized person" means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

"Limited English language skills" refers to difficulty of adults in speaking, reading, writing, or understanding the English language so that those adults are denied the opportunity to learn successfully in a learning environment where the language of instruction is English.

"Limited English proficiency" and "Limited English proficient" where used with reference to individuals means—

(1) Individuals who were not born in the United States or whose native language is a language other than English;

(2) Individuals who come from environments where a language other than English is dominant; and

(3) Individuals who are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(20 U.S.C. 3223(a)(1))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such

combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, except that, if there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools therein, the term means that other board or authority.

"Outreach" means activities designed to—

(1) Inform adult populations who are least educated and most in need of assistance of the availability and benefits of the adult education program; and

(2) Assist these adult populations to participate in the program by providing reasonable and convenient access.

"State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"State administrative costs" means costs for those management and supervisory activities necessary for the direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State Advisory Councils under section 311 of the Act, but does not include those costs incurred for ancillary services such as evaluation, teacher training dissemination, and curriculum development.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency of officer designated for the purpose of the Act by the Governor.

(b) *Definitions in EDGAR.* The following terms used in this part and Parts 426 and 431 are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Budget period
ED
EDGAR

Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Subgrant
Subgrantee

(Sec. 303; 20 U.S.C. 1201 *et seq.*)

§§ 425.4-425.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under the Adult Education Programs?

§ 425.10 What kinds of activities does the Secretary assist?

The Secretary provides financial assistance to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will—

(a) Enable all adults to acquire basic literacy skills necessary to function in society;

(b) Enable adults who so desire to continue their education to at least the level of completion of secondary school; and

(c) Make available to adults the means to secure training and education that will enable them to become more employable, productive, and responsible citizens.

(Sec. 302; 20 U.S.C. 1201)

2. Part 426 is revised to read as follows:

PART 426—STATE-ADMINISTERED ADULT EDUCATION PROGRAM

Subpart A—General

Sec.

426.1 How is the State-administered adult education program governed?

Subpart B—How Does a State Apply for a Grant?

426.10 Who is eligible?

426.11 What documents must a State submit to receive its grant?

426.12 What must the State plan contain?

426.13-426.19 [Reserved]

Subpart C—How is a Grant Made to a State?

426.20 How is the amount of each State's grant determined?

426.21 How does a State provide for the administrative of the program?

426.22-426.29 [Reserved]

Subpart D—How Does a State Distribute Funds?

426.30 Who is eligible for a subgrant or contract?

426.31 How does a State distribute funds?

426.32 How does a State approve applications?

Sec.

426.33 What are special experimental demonstration projects and teacher training projects?

426.34-426.39 [Reserved]

Subpart E—What Conditions Must Be Met by a State?

426.40 What are the matching requirements of the program?

426.41 What are the maintenance of effort requirements of the program?

426.42 How is a maintenance of effort waiver granted?

426.43 What are exceptional or uncontrollable circumstances?

426.44 How is maintenance of effort computed in the event of a waiver?

426.45 What are a State's responsibilities regarding State advisory councils and what the functions of these councils?

426.46-426.49 [Reserved]

Authority: Secs. 301-315 of the Adult Education Act, as amended by Pub. L. 98-511, 20 U.S.C. *et seq.*, unless otherwise noted.

Subpart A—General

§ 426.1 How is the State-administered adult education program governed?

(a) *Federal-State relationship.* The State-administered adult education program is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult education based on need and resources available.

(b) *Other applicable provisions.* The provision of 34 CFR Part 425 apply to the State-administered adult education program under this part.

(20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 426.10 Who is eligible?

Any State may apply for a grant under this part.

(Sec. 304(a); 20 U.S.C. 1203(a))

§ 426.11 What documents must a State submit to receive its grant?

A State educational agency (SEA) shall submit to the Secretary the following:

(a) A State plan, developed once every three years, that meets the requirements of the Act and the regulations in this part.

(b) Program assurances, signed by an authorized official of the SEA, to provide that—

(1) Special emphasis will be given to adult basic education programs except where these needs have been met in the State;

(2) Adult enrolled in adult basic education programs will not be charged

tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(3) The SEA will make available not to exceed 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from a secondary school;

(4) Not more than 20 percent of the funds granted to the State under the Act for any fiscal year will be used for the education of institutionalized adults;

(5) The SEA will use not less than 10 percent of the funds granted to the State under the Act for special experimental demonstration projects and teacher training projects under section 310 of the Act.

(6) Special assistance will be given to the needs of persons with limited English proficiency by providing bilingual adult education programs of instruction in English and, to the extent necessary to allow these persons to progress effectively through the adult education program, in the native language of these persons; and these programs will be carried out in coordination with programs of bilingual education assisted under title VII of the Elementary and Secondary Education Act of 1985 and bilingual vocational education programs under the Carl D. Perkins Vocational Education Act;

(7) (i) For each year covered by the plan, the fiscal effort per student or the aggregate amount available for expenditure by the State for adult education from non-Federal sources for the preceding fiscal year was not less than the fiscal effort per student or the amount available for expenditure for such purposes from those sources during the second preceding fiscal year;

(ii) In the event of exceptional and uncontrollable circumstances, the State may, under § 426.42, request a one-time waiver of the requirement in paragraph (b)(7)(i) of this section;

(8) The SEA will report information about the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary, together with information with respect to the age, sex, and race of students in the programs assisted under the Act and whether the students complete those programs; and

(9) The SEA will send to the Secretary one copy of each final report of special experimental demonstration projects and teacher training projects supported under section 310 of the Act.

(Approved under OMB Control No. 1830-0027)

Secs. 304(b), 306, 307(b) and 310; 20 U.S.C. 1203(b), 1205, 1206(b), 1208.)

§ 426.12 What must the State plan contain?

An SEA shall include all of the following in its State plan:

(a) The SEA shall describe the means by which one or more representatives of each of the following agencies and groups were involved in the development of the State plan and how they will continue to be involved in carrying out the plan:

- (1) The business community.
- (2) Industry.
- (3) Labor unions.
- (4) Public educational agencies and institutions.
- (5) Private educational agencies and institutions.
- (6) Churches.
- (7) Fraternal/sororal organizations.
- (8) Voluntary organizations.
- (9) Community organizations.
- (10) State employment and training agencies.
- (11) Local employment and training agencies.
- (12) Adult residents of rural areas.
- (13) Adult residents of urban areas with high rates of unemployment.
- (14) Adults with limited English language skills.
- (15) Institutionalized adults.
- (16) Other entities concerned with adult education, such as basic skills programs, volunteer literacy programs, libraries, and organizations offering education programs for older persons and military personnel and their adult dependents.

(b) The SEA shall describe—

- (1) Its accomplishments in meeting the goals included in the previous three-year plan; and
- (2) How the assessment of accomplishments and the evaluation required by paragraph (a) of this section were considered in establishing the State's goals for adult education in the plan being submitted.

(c) The SEA shall describe, for the three-year period covered by the plan, the adult education needs of all segments of the adult population in the State.

(d) The SEA shall—

- (1) Demonstrate that the special educational needs of adult immigrants in the State have been examined; and
- (2) Provide for the implementation of adult education and adult basic education programs for immigrants to meet existing needs.

(e) The SEA shall identify the other Federal and non-Federal resources available to meet the needs described in paragraph (c) of this section.

(f) The SEA shall describe its planned use of Federal funds for the administration of the program under

§ 426.21 including any planned expenditures for a State advisory council under § 426.45.

(g) The SEA shall—

(1) Identify the goals it intends to achieve in meeting the needs described in paragraph (c) of this section for the period covered by the plan. These goals must be designed to develop a statewide program in which the adult populations in the State that are least educated and most in need of assistance are served in a manner whereby they learn most effectively; and

(2) Describe proposed activities for reaching each goal and give estimated percentages of funds under the State plan to be allocated to each goal.

(h) The SEA shall describe—

- (1) The outreach activities that the State intends to carry out during the period covered by the plan; and
- (2) In conjunction with these outreach activities, for the period covered by the State plan, the efforts it will undertake to assist adult participation in adult education programs through flexible course schedules, convenient locations, adequate transportation, and child care services.

(i) The SEA shall describe the procedures the State will use to ensure that in carrying out the program there will be—

- (1) Adequate consultation, cooperation, and coordination among the SEA State job training coordinating councils, State occupational information systems, and other agencies, organizations, and institutions in the State which operate employment and training programs or other educational or training programs for adults; and
- (2) Coordination of programs carried out under this part with other programs carried out by State and local agencies, including reading improvement programs, designed to provide reading instruction for adults.

(j) The SEA shall describe the local application process and the criteria for evaluating local applications submitted by all eligible applicants for subgrants or contracts.

(k) The SEA shall describe the method of determining the amount of funds to be distributed to applicants approved for funding.

(l) The SEA shall describe the means by which the delivery of adult education services will be significantly expanded by—

- (1) Efforts to increase the number of participating agencies, institutions, and organizations other than the public school systems, such as business, labor unions, libraries, institutions of higher education, public health authorities,

antipoverty programs, and community organizations; and

(2) Efforts to increase the number of participants in adult basic education.

(m) An SEA that is prohibited by State law from awarding Federal funds by grant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

- (1) The legal basis of this prohibition; and
- (2) How public or private agencies, organizations, or institutions will be used for expanding the delivery of services.

(n) The SEA shall describe—

- (1) Its policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects in accordance with § 426.33; and
- (2) Its criteria and priorities for awarding special projects and teacher training projects.

(Approved Under OMB Control No. 1830-0026)

(Secs. 306 and 310; 20 U.S.C. 1205, 1208)

§§ 426.13-426.19 [Reserved]

Subpart C—How is a Grant Made to a State?

§ 426.20 How is the amount of each State's grant determined?

The Secretary determines the amount of each State's grant according to the formula in section 305(a) of the Act.

(Sec. 305; 20 U.S.C. 1204)

§ 426.21 How does a State provide for the administration of the program?

A State may use funds received under section 304 of the Act to provide for State and local administration of the program. A State shall determine allowable local administrative costs.

(Sec. 306(b)(2); 20 U.S.C. 1205(b)(2))

§§ 426.22-426.29 [Reserved]

Subpart D—How Does a State Distribute Funds?

§ 426.30 Who is eligible for a subgrant or contract?

(a) Local educational agencies and public or private agencies, organizations, and institutions are eligible to apply for funds.

(b) An SEA shall give public notification of the availability of Federal and State funds to eligible applicants—

- (1) For the purpose of notifying local educational agencies, an SEA shall provide the notice directly; and
- (2) For the purpose of notifying public or private agencies, organizations, and

institutions, an SEA shall give sufficient public notice throughout all regions of the State.

(Sec. 304; 20 U.S.C. 1203)

§ 426.31 How does a State distribute funds?

(a) An SEA shall distribute funds on the basis of applications submitted by eligible applicants.

(b) If funds are awarded to a for-profit agency, organization, or institution, the award must be in the form of a contract.

(Sec. 304; 20 U.S.C. 1203)

§ 426.32 How does a State approve applications?

(a) An SEA may not approve an application from a for-profit agency, organization, or institution unless the State has first determined that the applicant—

(1) Can make a significant contribution to attaining the objectives of the Act; and

(2) Can provide substantially equivalent education at a lesser cost or can provide services and equipment not available in public institutions.

(b) An SEA may not approve an application from a public or private agency, organization, or institution other than a local educational agency unless the applicant—

(1) Provides assurance to the State that advice on the development of its application has been sought from the applicable local educational agency, located in the same city, county, township, school district, or other political subdivision of the State to be served by the applicant; and

(2) Provides the applicable local educational agency the opportunity to comment on the application.

(Sec. 304; 20 U.S.C. 1203)

§ 426.33 What are special experimental demonstration projects and teacher training projects?

In accordance with section 310 of the Act, the SEA shall provide assistance for—

(a) Special projects which will be carried out in furtherance of the purposes of the Act, and which—

(1) Involve the use of innovative methods, including methods for educating persons of limited English-speaking ability, systems, materials, or programs which may have national significance or may be of special value in promoting effective programs under the Act; or

(2) Involve programs of adult education, including education for persons of limited English-speaking ability, which are part of community

school programs, carried out in cooperation with other Federal, federally assisted, State, or local programs which have unusual promise in promoting a comprehensive or coordinated approach to the problems of persons with educational deficiencies; and

(b) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(Sec. 310; 20 U.S.C. 1208)

§§ 426.34-426.39 [Reserved]

Subpart E—What Conditions Must be Met by a State?

§ 426.40 What are the matching requirements of the program?

(a) The Federal share of expenditures made under a State plan may not exceed 90 percent of the cost of carrying out a State's program.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands is 100 percent.

(Sec. 307; 20 U.S.C. 1206)

§ 426.41 What are the maintenance of effort requirements of the program?

(a) To be eligible for Federal funds a State shall expend for adult education from non-Federal sources an amount equal to the fiscal effort of the State in the preceding fiscal year.

(b) A State may determine its fiscal effort on a per student expenditure basis or on a total expenditure basis.

(Sec. 307; 20 U.S.C. 1206)

§ 426.42 How is a maintenance of effort waiver granted?

(a) The Secretary may waive for one fiscal year only the maintenance of effort requirement in section 307(b) of the Act if the Secretary determines it would be equitable to do so in view of exceptional or uncontrollable circumstances affecting a State.

(b)(1) If an SEA wishes to receive a waiver from the maintenance of effort requirement in paragraph (a) of this section, the SEA shall submit a request for a waiver.

(2) An SEA shall include in the request for a waiver the reason for the request and any additional information the Secretary may require.

(Sec. 307; 20 U.S.C. 1206)

§ 426.43 What are exceptional or uncontrollable circumstances?

(a) The Secretary considers

exceptional or uncontrollable circumstances under § 426.42 to include situations in which a State had no control of the events resulting in decreased expenditures but has made a reasonable effort in a timely fashion to comply with the maintenance of effort requirement of the Act.

(b) Exceptional or uncontrollable circumstances include, but are not limited to, the following situations:

(1) A sudden, substantial reduction in available revenue due to—

(i) A natural disaster;

(ii) The unforeseen removal of property from the tax roll by government action; or

(iii) The unforeseen departure of an industrial or commercial facility.

(2) An uncontrollable diversion of available revenue to other purposes outside the control of the State due to emergency circumstances such as those resulting from a disaster of human or natural causes.

(Sec. 307; 20 U.S.C. 1206)

§ 426.44 How is maintenance of effort computed in the event of a waiver?

A State shall determine fiscal effort for the year following the year for which a waiver is granted based on the level of effort that existed prior to the waiver. For example, if in fiscal year (FY) 1986 a State receives a waiver for its failure in FY 1985 to maintain fiscal effort at the level established in FY 1984, the State shall compute its fiscal effort for FY 1986 on the basis of the fiscal effort for FY 1984.

(Sec. 307; 20 U.S.C. 1206)

§ 426.45 What are a State's responsibilities regarding State advisory councils and what are the functions of these councils?

(a) A State may use funds received under section 304 of the Act to support a State advisory council.

(b) The State shall determine the membership, method of appointment, manner of operation, and necessary support services of a State advisory council.

(c) The functions of a State advisory council are to assist the SEA to plan, implement, or evaluate programs or activities assisted under the Act.

(Sec. 311; 20 U.S.C. 1206b)

§§ 426.46-426.49 [Reserved]

3. Part 431 is revised to read as follows:

PART 431—NATIONAL ADULT EDUCATION DISCRETIONARY PROGRAM

Subpart A—General

Sec.

- 431.1 What is the National Adult Education Discretionary Program?
 431.2 Who is eligible to apply for an award under the National Adult Education Discretionary Program?
 431.3 What regulations apply to this program?
 431.4 What definitions apply to this program?
 431.5–431.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

- 431.10 What types of projects may be funded?
 431.11 How does the Secretary establish priorities for this program?
 431.12–431.19 [Reserved]

Subpart C—[Reserved]

- 431.20–431.29 [Reserved]

Subpart D—How Does the Secretary Make an Award?

- 431.30 How does the Secretary evaluate an application?
 431.31 What selection criteria does the Secretary use?
 431.32 How does the Secretary select an application for funding?
 431.33–431.39 [Reserved]

Subpart E—What Condition Must Be Met by a Recipient?

- 431.40 What condition must be met under this program?
 431.41–431.49 [Reserved]

Authority: Sec. 309 of the Adult Education Act, as amended by Pub. L. 98-511; 20 U.S.C.1207a, unless otherwise noted.

Subpart A—General

§ 431.1 What is the National Adult Education Discretionary Program?

The National Adult Education Discretionary Program supports projects that contribute to the improvement and expansion of adult education.

(Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.2 Who is eligible to apply for an award under the National Adult Education Discretionary Program?

The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

- (a) Public and private institutions, agencies, and organizations.
- (b) Individuals.
- (c) Business concerns.

(Sec. 309(a)(2); 20 U.S.C. 1207a(a)(2))

§ 431.3 What regulations apply to this program?

The following regulations apply to the National Adult Education Discretionary Program:

- (a) The regulations in 34 CFR Part 425.
- (b) The regulations in this part.

(20 U.S.C. 1201 *et seq.*)

§ 431.4 What definitions apply to this program?

The definitions in 34 CFR 425.3 apply to this program.

(20 U.S.C. 1201 *et seq.*)

§§ 431.5–431.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 431.10 What types of projects may be funded?

(a) The Secretary directly or through grants, contracts, or cooperative agreements supports projects for the improvement and expansion of adult education. Funds may be used for—

- (1) Applied research;
- (2) Development;
- (3) Demonstration;
- (4) Dissemination;
- (5) Evaluation; and
- (6) Related activities.

(b) Projects may include, but are not limited to—

- (1) Improving adult education opportunities for elderly individuals and adult immigrants;
- (2) Evaluating educational technology and computer software suitable for providing instruction to adults; and
- (3) Supporting exemplary cooperative adult education programs that combine the resources of businesses, schools, and community organizations.

(Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.11 How does the Secretary establish priorities for this program?

(a) The Secretary announces, through one or more notices published in the *Federal Register*, the priorities for this program, if any, from the topics described in § 431.10, and the manner in which those priorities will be implemented.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(20 U.S.C. 1201 *et seq.*)

§§ 431.12–431.19 [Reserved]

Subpart C—[Reserved]

§§ 431.20–431.29 [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 431.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 431.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 431.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion are indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in § 431.31.

(20 U.S.C. 1201 *et seq.*)

§ 431.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

- (a) *Plan of operation.* (20 points)
 - (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.
 - (2) The Secretary looks for information that shows—
 - (i) High quality in the design of the project;
 - (ii) An effective plan of management that ensures proper and efficient administration of the project;
 - (iii) A clear description of how the objectives of the project relate to the purpose of the program;
 - (iv) The way the application plans to use its resources and personnel to achieve each objective;
 - (v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—
 - (A) Members of racial or ethnic minority groups;
 - (B) Women;
 - (C) Handicapped persons; and
 - (D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Member of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the subject, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross Reference. See 34 CFR 75.590 (Evaluation by grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (20 points)

(1) The Secretary reviews each application to determine how it addresses a national need in adult education.

(2) The Secretary looks for information that describes—

(i) The need in terms of the problem rather than the symptom of the problem;

(ii) Who or what will be helped by the project;

(iii) How the project will improve and expand adult education; and

(iv) The extent to which the project involves creative or innovative techniques and concepts.

(g) *Dissemination plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 431.31, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding on the basis of geographic distribution if doing so would contribute to achieving the purposes of this discretionary program.

(c) The Secretary may decline to fund any project that is eligible for funding under a different competition of Department of Education program.

(Sec. 309; 20 U.S.C. 1207a)

§§ 431.33-431.39 [Reserved]

Subpart E—What Condition Must Be Met by a Recipient?

§ 431.40 What condition must be met under this program?

A recipient shall not charge participants for their participation in the projects assisted under this program.

(Sec. 309(a)(2); (20 U.S.C. 1207a(a)(2))

§§ 431.41-431.49 [Reserved]

4. Part 432 is removed.

PART 432—ADULT EDUCATION PROGRAMS FOR IMMIGRANTS AND INDOCHINA REFUGEES—[REMOVED]

Appendix—Summary of Comments and Responses

Note.—This Appendix will not be codified in the Code of Federal Regulations.

The following is a summary of the comments, suggestions, and recommendations received on the notice of proposed rulemaking for the Adult Education General Provisions, the State-administered Adult Education Program, and the National Adult Education Discretionary Program published on February 28, 1985. Each comment is followed by a response that indicates a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

§ 425.3 Program definition—Limited English proficiency.

Comment. Two commenters urged that the definition of "limited English proficiency" be taken verbatim from title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as required by section 306(b)(11) of the Act.

Response. A change has been made. The definition of "limited English proficiency" from title VII of ESEA, as amended, is added in § 425.3. The Secretary agrees that this definition relates to a particular subset of that population with limited English language skills and is required for inclusion by section 306(b)(11) of the Act. However, since "limited English language skills" is also referenced in the Act and the regulations and defines a broader population than those included under the definition of "limited English proficiency," a definition of this term is retained in the final regulations.

§ 425.3 Program definition—Community school programs.

Comment. Two commenters suggested that the term "community school programs" be defined in the regulations.

Response. A change has been made. The term "community school program," as defined in section 303(e) of the Act, is included in § 425.3.

§ 425.10 Program activities.

Comment. One commenter took exception to the authorized program activities. With reference to acquiring basic literacy skills, the commenter questioned whether this activity takes into account cost-effectiveness of funding programs that are needed

because of the ineffectiveness of earlier compulsory education programs. The commenter viewed the activities relating to enabling adults to become more employable, productive, and responsible citizens as too broad in scope and lacking in definition.

Response. No substantive change has been made. Section 302 of the Act states the purpose of and the activities to be supported by the adult education program. The format of § 425.10 now explicitly reflects the language of section 302 of the Act.

§ 426.11(b)(2) *Tuition and fees.*

Comment. A number of commenters addressed the prohibition on charging tuition, fees, or other charges for adults enrolled in adult basic education. Over three-fourths of these commenters concurred in retaining this prohibition. Another commenter suggested the allowance of a modest contribution by the adult basic education participant with assistance from other agencies or individual scholarships for the more economically disadvantaged. A few commenters viewed eliminating the prohibition as a guarantee of adequate interest and a means of building a better self image for adult participants. One commenter suggested sliding scales for adult basic education participants and allowing charges for materials. It was asserted this would give participants ownership of their books and also help relieve the fiscal constraint on some programs. A few commenters advocated eliminating the entire regulatory provision and leaving the decision on all charges to the discretion of individual State educational agencies.

While the proposed regulations did not address charges for adult secondary education, three commenters suggested that individual State educational agencies be allowed flexibility in creating procedures for charges to participants at this instructional level.

Response. No change has been made. The prohibition on charging tuition and fees for adult basic education participants has been in effect since late in the 1960's. The adult education program emphasis has been and continues to be on serving educationally disadvantaged adults. These adult participants are the ones least likely to have financial resources available for these charges.

The prohibition does not apply to adult secondary education participants. A State educational agency is permitted discretion in making charges for adult secondary education participants.

The Secretary believes that modest tuition or fee charges for this population

will not discourage participation in the adult secondary education program.

§ 426.11(b)(9) *Final reports of 310 projects.*

Comment. One commenter requested retention of the requirement in the 1980 regulations that the results of State-administered special experimental demonstration projects and teacher training projects be sent to the adult education information clearinghouse.

Response. No change has been made. The Education Amendments of 1984 eliminated the requirement for an adult education information clearinghouse; consequently, no such dissemination requirement can be retained in the regulations.

§ 426.11(b) (5) and (9) and § 426.33 *Funds for section 310 projects.*

Comment. One commenter called for the repeal of the legislative authority for special experimental demonstration projects and teacher training projects. Another commenter recommended that a percentage range of expenditures, from 5 to 10 percent, be established to allow more flexibility to the State educational agency.

Response. No change has been made. Section 310 of the Act requires that each State expend not less than 10 percent of its allotment for each fiscal year for special experimental demonstration projects and teacher training projects. The statutory authority is specific and may not be changed by regulation. A State educational agency is allowed flexibility to determine any maximum limit.

§ 426.11(b)(6) *Assistance to persons with limited English proficiency.*

Comment. A commenter questioned the absence of any limitation on expenditures for special assistance to meet the needs of persons with limited English proficiency. That commenter believed assistance for this special population should carry an expenditure limitation as do programs in adult secondary education, programs for institutionalized adults, and section 310 projects.

Response. No change has been made. The program assurance relating to assistance to persons with limited English proficiency is required by section 306(b)(11) of the Act which contains no expenditure limitation. The Secretary, through the regulatory process, has no authority to establish an expenditure limitation on this activity.

Additionally, a State educational agency, in its three-year State plan, must show the needs, goals, and activities for persons with limited English proficiency,

including adult immigrants. The Secretary believes that a State educational agency should have the flexibility to determine the appropriate services to meet the educational needs of this population.

§ 426.11(b)(8) *Data collection.*

Comment. One commenter recommended that the data collection requirement include an assurance to the Secretary that private entities are participating in the program.

Response. No change has been made. Public and private entity participation is assured to the Secretary through requirements in § 426.12 (a), (i), and (1).

Comment. Regarding the program assurance on data collection, two commenters stated that the specific language of the statute should be followed in the regulations.

Response. A change has been made. The program assurance in § 426.11(b)(8) has been changed to reflect the requirements of section 306(b)(14) of the Act.

§ 426.12 (a) and (i) *Clarification of terms.*

Comment. Two commenters suggested that terms relating to employment and training be made more consistent with the language contained in the Job Training Partnership Act and the Carl D. Perkins Vocational Education Act.

Response. Changes have been made. The Secretary agrees that the terms should be consistent among related legislative authorities. Accordingly, in listing the entities to be involved in developing and carrying out the State plan in § 426.12(a)(10), the term "State manpower and training agencies" has been changed to *State employment and training agencies*. Likewise, in § 426.12(a)(11), the term "Local manpower and training agencies" has been changed to *Local employment and training agencies*.

An additional change for consistency appears in § 426.12(i)(1). The term "State manpower service councils" has been changed to *State job training coordinating councils*.

§ 426.12(a) *Representation in developing and carrying out the State plan.*

Comment. One commenter expressed concern about the prescriptiveness of the regulations in the listing of agencies and groups required to be involved in developing and carrying out the State plan. The commenter suggested that a representative sampling of these agencies and groups would suffice, thus allowing flexibility to a State to involve

those key agencies and groups that are unique to a particular State.

Another commenter supported this mechanism for ensuring involvement of nonpublic entities interested in adult education as a means of broadening the scope of the program.

Response. No change has been made. Section 306(b)(8) of the Act specifies fifteen agencies and groups to be involved in developing and carrying out the State plan. The Act also provides a general category of "other entities in the State concerned with adult education." The regulations contain this category, along with some examples of these "other entities," as the sixteenth agency and group. A State educational agency, of course, has the discretion to include additional entities as appropriate in its participatory planning process.

§ 426.12(h) Outreach activities.

Commenter. Two commenters questioned the advisability of stipulating that a State shall make a concerted effort to provide transportation and child care services through other programs, agencies, and organizations.

Response. A change has been made. A State is required, by § 426.12(h), to include in its three-year plan a description of its outreach activities, including efforts to assist adult participation in adult education programs. The regulations allow a State the option of using program funds for activities in conjunction with support services, such as child care. The permissible use of other programs or entities for support services is intended to allow maximum funding for programs to serve the needs of educationally disadvantaged adults. The stipulation that a concerted effort be made to obtain these services through other than adult education resources was included in the 1980 regulations. The Secretary agrees with the commenters that the statement may be misinterpreted by a State so as to discourage or preclude the expenditure of any funds under the Act for such support services as transportation and child care. Consequently, the statement stipulating that States make a concerted effort to obtain these services through other programs, agencies, and organizations has been deleted from the regulations.

§ 426.12(c) and (g) Addressing the educational needs of all segments of the adult population in a State.

Comment. One commenter, while agreeing with Department policy not to exceed statutory language in regulations, suggested that program participation of disabled persons be

highlighted in the preamble of these regulations. Another commenter called for specificity in addressing migrant farmworkers as a segment of the adult population in need of educational services.

Response. No change has been made. Section 306(b) (1) and (4) of the Act requires a State to identify the needs and to set forth a program with respect to the needs of all segments of the adult population in the State, including residents of rural areas, residents of urban areas with high rates of unemployment, adults with limited English language skills, and institutionalized adults. In addition, section 306(b)(12) of the Act requires that the special needs of adult immigrants be addressed and section 306(b)(9) of the Act requires outreach activities to assist participation, including adequate transportation. These provisions should assure the participation of disabled persons and migrant farm workers as part of the adult population of a State.

§ 426.12(i)(1) Public and private entities.

Comment. One commenter suggested that in § 426.12(i)(1) the phrase "other agencies, organizations, and institutions in the State which operate employment . . ." be changed to read *other public and private agencies, organizations, and institutions in the State which operate employment . . .*

Response. No change has been made. The current phrase reflects the statutory language and includes both public and private entities which are made eligible under section 304(a)(1)(A) of the Act.

§ 426.12(j) Local application process.

Comment. A number of commenters recommended retention of the competitive local application process as required by the 1980 regulations. A lesser number of commenters recommended the elimination of the competitive local application process.

Response. No change has been made. Section 304(a) of the Act establishes local educational agencies and public or private agencies, organizations, and institutions as categories of eligible applicants to a State educational agency for financial assistance to conduct adult education programs. A State educational agency may not give preferential status to or exclude any category of eligible applicant, unless it is prohibited by State law from awarding Federal funds to a category of eligible applicants. The regulations in § 426.12(j) require that a State educational agency in its three-year State plan describe "the local application process and the criteria for

evaluating local applications submitted by all eligible applicants for subgrants or contracts." This will ensure an open competition and equal opportunity for all eligible applicants.

§ 426.12(j) State-established criteria for evaluating local applications.

Comment. A number of commenters recommended retaining the factors for evaluating applications, as enumerated in the 1980 regulations for the adult education program. One commenter recommended that the factors be made more selective. Another commenter recommended suggesting certain criteria in the regulations, rather than requiring specific criteria.

A lesser number of commenters recommended deletion of the factors for evaluating applications to allow more flexibility to a State educational agency. One commenter saw no clear need to delete the factors nor any inherent problem in deleting them.

Response. No change from the NPRM has been made. The 1980 regulations for the adult education program contained factors that a State educational agency was required to consider in developing objective criteria for evaluating local applications. In developing these new regulations, the Secretary deleted those provisions because it is the policy of the Secretary not to promulgate regulations or to delimit State discretion when not required to do so by the law. However, the Secretary encourages State educational agencies to develop objective criteria for evaluating local applications to ensure quality instructional services, fiscal accountability, and access for educationally disadvantaged adults.

§ 426.12(l) Expansion of the delivery system.

Comment. The provision that generated the most public comment was the definition of expansion of the delivery of adult education services. All commenters recommended modifications of the 1980 provisions. A number of commenters expressed concern that expansion should not be measured purely by quantitative means particularly in view of the fact that funding limitations sometimes act to preclude program expansion in terms of enrollment increases. Quality factors as well as quantity factors were suggested for inclusion in the concept of expansion. Suggested modifications included making the definition less burdensome administratively; providing optional ways of measuring expansion; measuring involvement with additional public and private providers in planning,

delivery, and evaluation; and measuring an increased use of volunteers and literacy volunteer programs. One commenter suggested that measures of expansion be enlarged to include adoption of improved instructional techniques, use of new technologies, or new agency coordination. One commenter suggested that an expansion of geographic areas in which adult education services are provided should be a measure.

Response. No change has been made. The final regulations retain the language of the proposed regulations in requiring a description of the efforts to increase the number of participating agencies, institutions, and organizations other than the public school systems and the number of participants in adult basic education. This language is intended to allow a State educational agency to document its efforts to expand rather than reporting the end results of its efforts. It is clear that the legislation does charge a State with the responsibility to make an effort to expand the delivery system and to document those efforts in the State plan. However, the Secretary recognizes that the best efforts may not always result in quantifiable increases in agencies and participants because of uncontrollable factors.

§ 426.12(m) Prohibition by State law.

Comment. One commenter suggested that a State having a legal prohibition against awarding Federal funds by grant or contract to private agencies receive a decrease in its Federal allotment for the adult education program.

Response. No change has been made. The Secretary has no authority to withhold Federal funds from a State if by State law that State is prohibited from awarding Federal funds to public or private agencies, organizations, or institutions, other than local educational agencies. The regulations, do, however, in § 426.12(m), require a State educational agency to describe in its State plan (1) the legal basis of this prohibition and (2) how public or private agencies, organizations, or institutions will be used for expanding the delivery of services.

Comment. One commenter suggested that the phrase "public or private agencies" in § 426.12(m)(2) be changed to read *public and private agencies*.

Response. No change has been made. The phrase "public or private agencies" reflects the requirements of section 304(a)(1) of the Act.

§ 426.12(n) Criteria for awarding special projects and teacher training projects under section 310 of the Act.

Comment. A number of commenters gave views on whether the Secretary should publish national priorities for a State educational agency to consider in establishing criteria for the approval of section 310 projects. Commenters were evenly divided on this issue. Commenters who favored the published national priorities saw them as providing good, broad-based guidance. The opposing viewpoint was that Section 310 efforts should be directed more toward needs that are unique to regions within State boundaries.

Response. No change has been made. The Secretary chooses not to regulate in this instance, thus affording a State more flexibility to address its own special interests, needs, and concerns in section 310 projects.

§ 426.12(o) Evaluation of activities under sections 306 and 310 of the Act.

Comment. One commenter advocated more frequent evaluations to ensure managerial and programmatic effectiveness in the adult education program. Another commenter called for clarification of the evaluation requirement.

Response. A change has been made. Section 426.12(o) of the proposed regulations has been deleted from these final regulations because the applicable State evaluation requirements for the Act are set forth in 34 CFR 76.101(e)(4).

The single State application required by section 435(b) of the General Education Provisions Act contains an assurance that a State will evaluate the effectiveness of covered programs in meeting its statutory objectives, at such intervals (at least once every three years), and in accordance with such procedures as the Secretary may prescribe by regulation. While more frequent evaluations may not be required, a State, of course, has the option of performing evaluations annually if it so desires.

By submitting a single State application, an SEA gives assurance that it will evaluate the effectiveness of section 306 and section 310 programs under the Act.

§ 426.21 State administrative costs.

Comment. A majority of the commenters agreed that the regulations should not establish a limitation on administrative costs at the State level. Those commenters believe that a State should be given authority to determine appropriate administrative costs. Other commenters suggested percentage

limitations: the limitation under the 1980 regulations of five percent; a five to ten percent limitation; five percent of the State's total allocation or \$65,000 limitation, whichever is greater; and negotiated costs based on administrative goals and objectives submitted in the three-year State plan.

Response. No change has been made. The 1980 regulations for the adult education program limited State administrative costs to five percent. The amended legislation retains the requirement, in section 306(b)(2), that a State plan provide for the administration of the program by the State educational agency. However, the amended legislation is silent on a separate authorization for, or a maximum limitation on, administrative costs. Accordingly, the Secretary has no legal authority for stipulating or suggesting a limitation. However, the Secretary believes that administrative costs should be held to a minimum so as to allow maximum funding for programs to serve the needs of educationally disadvantaged adults. Also, the cost principles in Appendix C of 34 CFR Part 74 impose a "necessary and reasonable" standard.

State educational agencies should note that § 426.12(f) of the regulations requires that the State set forth in its three-year State plan a description of the planned use of Federal funds for the administration of the program, including any planned expenditures for a State advisory council.

Comment. One commenter pointed out that the provision in § 426.21 that stipulates that "allowable administrative costs must be necessary and reasonable for proper and efficient administration of the program" is also set forth in Appendix C to 34 CFR Part 74.

Response. A change has been made. The language has been deleted from the final regulations. It is Department policy not to repeat requirements set forth in the Education Department General Administrative Regulations in other regulations.

§ 426.21 Local administrative costs.

Comment. While a majority of the commenters did not support a regulatory limitation on State administrative costs, the commenters were unanimous in their desire to allow a State flexibility in determining or limiting local administrative costs. The commenters recommended that no regulatory guidance on determining or limiting local administrative costs be provided.

Response. No change has been made. Except with respect to the "necessary

and reasonable" cost principles, the Secretary has no authority to prescribe or limit local administrative costs. The regulations give a State the flexibility to determine allowable local administrative costs.

§ 426.30 Eligible applicants.

Comment. A number of commenters expressed concurrence with the elimination from the regulations of the authority to fund individuals under section 310 of the Act. A lesser number of commenters called for retention of the authority to fund individuals.

Response. No change has been made. Section 304(a)(1) of the Act provides that local educational agencies and public or private agencies, organizations, and institutions are eligible applicants for funds. Since the statute does not separately address eligible applicants for section 310 projects, these same categories of applicants are eligible for all components of the State-administered adult education program.

Previous program regulations permitted individuals to apply unless precluded by State law. Individuals are now excluded as eligible applicants for section 310 projects. A State educational agency, of course, has the authority to act directly and in doing so may issue personal service contracts to obtain products or services. Likewise, other recipients under section 310 may issue personal service contracts to obtain products or services.

Comment. One commenter suggested that the phrase "public or private agencies" in § 426.30(a) be changed to read *public and private agencies*.

Response. No change has been made. The current phrase reflects statutory requirements.

§ 426.30 Public notice of availability of funds.

Comment. One commenter recommended that the regulations prescribe the means of notifying public and private agencies, organizations, and institutions of the availability of funds. The commenter suggested a requirement that notices be posted in all public libraries and advertised in major daily newspapers in the State.

Response. No change has been made. A State educational agency is required by § 426.30(b)(2) to give sufficient public notice of the availability of Federal and State funds to public and private agencies, organizations, and institutions. The Secretary does not believe that a more prescriptive notification process is warranted. A State educational agency may choose to use public libraries, newspapers, or other means that ensure

equitable and appropriate public notice to public and private agencies, organizations, and institutions. To notify local educational agencies, a State educational agency is required by § 426.30(b)(1) to provide the notice directly.

§ 426.31 State distribution of funds.

Comment. One commenter recommended that a minimum of one-third of the funds distributed by a State be awarded to private agencies, organizations, or institutions.

Response. No change has been made. The Secretary has no authority to establish any minimum or maximum allotment level for any category of eligible recipient. Open competition and equal opportunity must be afforded to all eligible applicants.

§ 426.31 Multi-year grants or contracts.

Comment. A number of commenters suggested that a State educational agency be authorized to award multi-year grants or contracts. A few commenters opposed this discretion. One commenter suggested a three-year period for instructional programs, two years for section 310 projects. Another commenter suggested that safeguards be included in the multi-year process to ensure that changing demographics in the population and emerging priorities are served.

Response. No change has been made. Unlike the 1980 regulations, these regulations do not require an annual review of applications from eligible applicants and single-year awards. A State educational agency may continue to employ an annual application review and funding process, or it may employ a multi-year review and funding process.

§ 426.32 For-profit providers of services.

Comment. A majority of the commenters found the statutory and regulatory language adequate with respect to for-profit providers and services. One commenter was critical of the provision making for-profit providers of services eligible for funding. The commenter expressed concern that for-profit providers may seriously weaken efforts to ensure quality control and professionalization in the adult education field.

Response. No change has been made. Under section 304(a)(2) of the Act, for-profit agencies, organizations, and institutions are eligible applicants. The law provides that for-profit entities must meet two tests not explicitly required of other applicants. These are (1) that the applicant can make a significant contribution to attaining the objectives

of the Act and (2) either can provide substantially equivalent education at a lesser cost or can provide services and equipment not available in public institutions. The Secretary agrees with the commenters that a State educational agency should have the flexibility to develop its own procedures for determining these qualitative judgments and cost comparisons.

§ 426.32(b) Consultation by applicable local educational agency.

Comment. One commenter opposed the involvement by the applicable local educational agency in the review of applications by public or private agencies, organizations, and institutions. The commenter expressed doubt as to whether a local educational agency has an understanding of the problem or solutions superior to that of other eligible applicants.

Response. No change has been made. Section 304(a)(1) of the Act clearly requires consultation between the applicable local educational agency and other public or private eligible applicants prior to funding by a State. In addition to consultation, the Act further provides the applicable local educational agency the opportunity to comment on applications from these other categories of eligible applicants. This statutory requirement may not be changed by regulation.

The purpose of consultation is to reduce duplication of effort and provide for the best possible delivery of services to educationally disadvantaged adults. Consultation will enable different points of view and understanding to be considered in an organized way. The initiative for seeking consultation is the responsibility of the public or private agency. The local educational agency does not have the authority to certify, approve, or veto an application from an applicant. Nor can the local educational agency jeopardize the agency's application through inaction of the request for consultation. If a local educational agency delays in commenting on an agency's application, a State may still consider the application for funding if there is written evidence that consultation was requested in a timely manner.

Comment. One commenter objected to the requirement in § 426.32(b)(2) that an applicant other than a local educational agency must provide the applicable local educational agency the opportunity to comment on the application prior to submitting it to the State. The commenter pointed out that while section 304(a)(1) of the Act does require that the opportunity to comment must

take place prior to approval of an application by the State educational agency, the Act does not require that the opportunity to comment must take place prior to submission of the application to the State.

Response. A change has been made. The Secretary agrees with the commenter and the phrase "prior to submitting it to the State" has been deleted from § 426.32(b)(2).

§ 426.32 Local applications.

Comment. One commenter suggested that regulatory language be added in § 426.32 to require local applicants to describe the cooperative arrangements that have been made to deliver services to participants of the adult education program.

Response. No change has been made. Section 426.32 refers specifically to requirements for non-local educational agency applicants. The Secretary believes that assurance of consultation, cooperation, and coordination by both the State educational agency and by local providers of adult education services is adequately covered in § 426.12 (i) and (m).

§§ 426.41-426.44 Maintenance of effort.

Comment. One commenter strongly opposed the maintenance of effort requirement of the program on the basis that it would have the effect of punishing success. The commenter pointed out that as adult education programs achieve success State expenditures would be reduced in proportion to the decreased need for programs. In turn, the Federal contribution to the State would decrease.

Response. No change has been made. The statutory authority requiring maintenance of effort is specific and may not be changed by regulation.

Comment. One commenter suggested other situations that might result in less revenue to State governments and thereby constitute exceptional or uncontrollable circumstances warranting a waiver of the maintenance of effort requirement.

Response. No change has been made. Section 307(b)(2) of the Act cites examples of exceptional or uncontrollable circumstances "such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State educational agency." The language in § 426.43(b) is offered for guidance and is not intended to be an all-inclusive list of situations denoting exceptional or uncontrollable circumstances.

Comment. Due to the long-range effect on State governments of certain declines

in financial resources, one commenter believed that the one-year waiver provision is too restrictive.

Response. No change has been made. The regulatory language conforms to that in the Act and provides for a one-year waiver from the maintenance of effort requirement.

§ 431.2 Eligible applicants.

Comment. One commenter suggested that private nonprofit entities be eligible to apply under the National Adult Education Discretionary Program.

Response. No change has been made. Both the statute and the regulations cite public and private institutions, agencies, and organization among the eligible applicants under the National Adult Education Discretionary Program. That category of eligible applicants includes both nonprofit and for-profit entities.

§ 431.10 Program activities under the National Discretionary Program.

Comment. One commenter objected to a basic goal of the National Discretionary Program. That objectionable goal is to support projects that contribute to the expansion of adult education. Rather, the commenter suggested that the goal should be to reduce the need for adult education by having successful educational programs for all age levels. The commenter also took exception to the examples of projects that may be funded. In particular, the commenter believed that elderly individuals should not be singled out as a group more worthy of this program than any other group. The commenter suggested that activities relating to educational technology and computer software should not be opened but should be directly related to meeting the needs of educationally disadvantaged adults.

Response. No change has been made. The regulations reflect the statutory requirements as set forth in section 309(a)(1) of the Act. It should be noted that the project examples relating to elderly individuals and adult immigrants, educational technology and computer software, and cooperative adult education programs are intended to be illustrative only and are not required by statute or regulations.

§ 431.31(g) Dissemination plan.

Comment. One commenter recommended that information and materials developed under national projects be disseminated to any parties concerned about illiteracy and other adult education problems, not solely to educators.

Response. A change has been made. The Secretary agrees, and the phrase "to

educators" has been deleted in § 431.31(g)(2)(iii).

§ 431.40 Charges to participants.

Comment. One commenter suggested an amendment to the Act to allow charges to those participants who can afford to pay. The commenter further suggested that collected funds be reverted to the State program or placed in reserve for future funding needs.

Response. No change has been made. Section 309(a)(2)(B) of the Act is specific in the prohibition of charges to participants in projects conducted by any private for-profit institution, agency, organization, individual, or business concern. Further, the Secretary, based on legislative history, believes the Congress intended that no such charges shall be made to participants regardless of the entity conducting the program.

General Comments

Comment. Some commenters recommended that the greatest amount of latitude possible for program operations should be allowed to States. Commenters suggested that the diversity of conditions and populations throughout the country preclude establishing a set of prescriptive rules that will have equitable and beneficial application to all. Other commenters supported the efforts made to reduce administrative burden on grantees, to eliminate certain unnecessary regulations, and to clarify existing regulations.

Response. No change has been made. The Secretary believes that these regulations are not intrusive and provide maximum flexibility to State educational agencies, while adhering to requirements and intent of the authorizing legislation.

Comment. One commenter urged that the regulations be modified in a number of instances to involve public broadcasting stations and state public telecommunication agencies in State plan development and in the delivery of services under the Act. The commenter also suggested changes in the regulations that would encourage the use of telecommunications technology in the instructional program.

Response. No change has been made. The Secretary encourages States to utilize the public broadcasting system and its associated technology in carrying out responsibilities under the Act when such involvement and use is appropriate. However, there is no statutory authority for including in the regulations any requirements for such involvement.

Comment. One commenter, while generally supporting the regulations, emphasized the need to include teacher involvement in policy-making matters relative to the implementation of the adult education program.

Response. No change has been made. The Secretary agrees that teachers are the center of the learning environment and contribute immeasurably to programmatic achievements. The Secretary further agrees that States should use the expertise and experience of teachers in any way that is

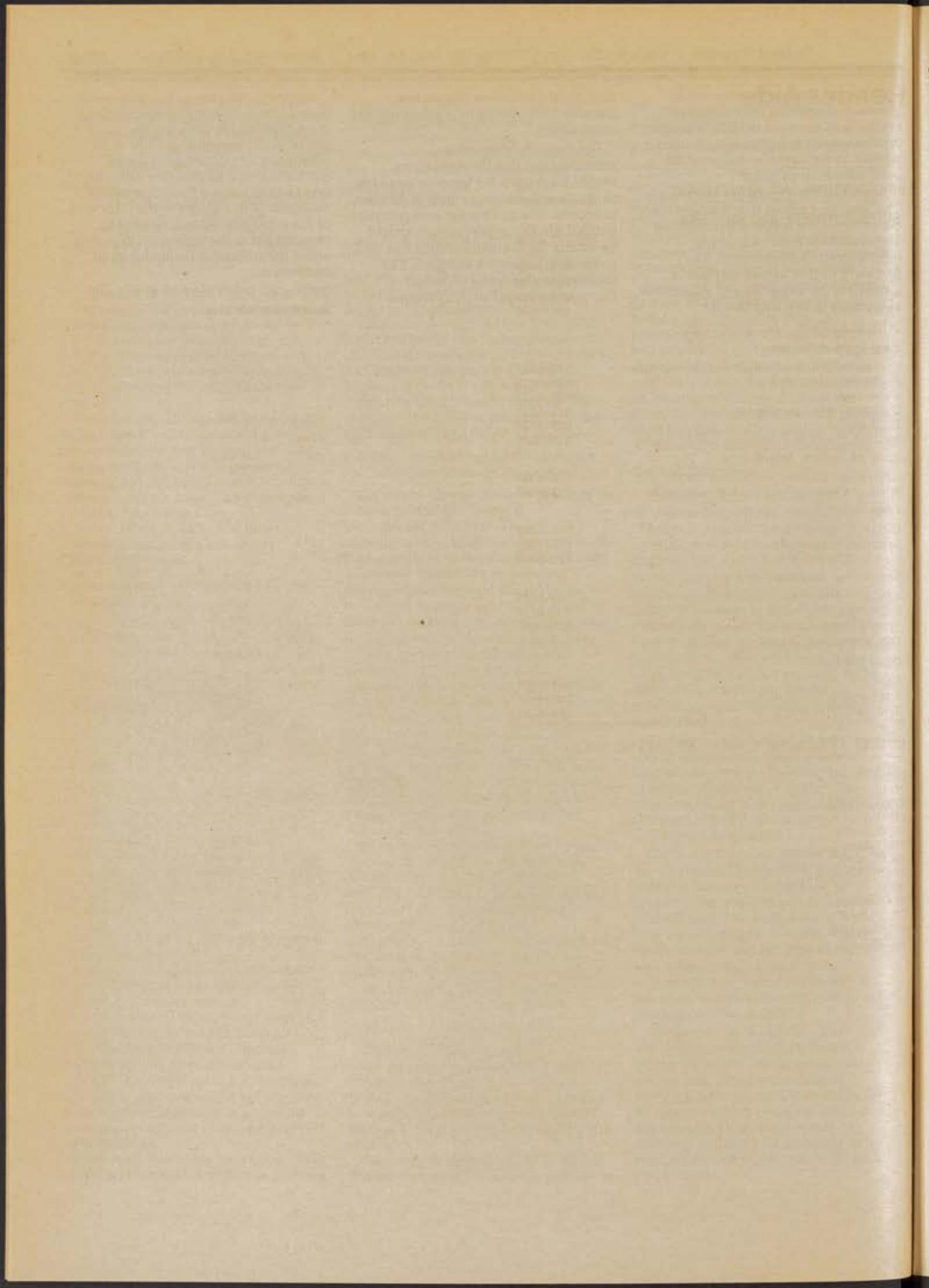
appropriate. However, the statute contains no authority to regulate teacher involvement.

Comment. A commenter recommended that the regulations should emphasize the importance of life skills toward enabling adults to function in society. The commenter also pointed out that life skill achievements should be among the evaluation criteria as well as the data collection elements. The commenter also spoke on behalf of competency-based adult education.

Response. No change has been made. Instructional content and methodology are determined at the State and local levels. While agreeing that life skills instruction and competency-based instruction may be effective methods in adult education, the Secretary leaves decisions of this nature to the discretion of the individual States. There is no requirement in the legislation to govern either the content or methodology of instruction.

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