

# federal register

Friday  
July 26, 1985

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## Selected Subjects

### **Air Transportation**

Customs Service

### **Animal Diseases**

Animal and Plant Health Inspection Service

### **Antibiotics**

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### **Authority Delegations (Government Agencies)**

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### **Hunting**

Fish and Wildlife Service

### **Imports**

Animal and Plant Health Inspection Service

### **Marketing Agreements**

Agricultural Marketing Service

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# Selected Subjects

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

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## Nuclear Materials

Nuclear Regulatory Commission

## Public Assistance Programs

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# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Revision of Delegation of Authority

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegation of authority from the Secretary of Agriculture and general officers of the Department to reflect the transfer of the Traffic Management Branch, Transportation and Storage Division, Agricultural Stabilization and Conservation Service to the Office of Transportation.

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

**FOR FURTHER INFORMATION CONTACT:**

Mr. Martin F. Fitzpatrick, Director, Office of Transportation, U.S. Department of Agriculture, Room 1405 Auditor's Bldg., 14th Street and Independence Avenue SW., Washington, D.C. 20250 (202-447-3963).

**SUPPLEMENTARY INFORMATION:** The Traffic Management Branch, Transportation and Storage Division, Agricultural Stabilization and Conservation Service (ASCS) has had the responsibility for developing and recommending policies and programs for inland transportation with respect to USDA and CCC-owned commodities under USDA programs and those in which USDA participates; analyzing freight rate proposals, rules and regulations pertaining to USDA-CCC shipments; recommending revisions of current procedure and contract provisions with respect to such transportation; providing technical advice; maintaining the Department Tariff Library and providing liaison with the trade and other interested groups.

The Office of Transportation (OT) has had the responsibility to coordinate all

transportation policy for USDA. OT is also responsible for representing the interests of agriculture and rural communities in the United States in order to ensure the availability of an adequate, efficient, and economical transportation system, domestically and internationally, to meet the needs of agriculture and rural development in the United States.

To further strengthen the Department's ability to manage its transportation responsibilities, the Secretary has determined that the traffic management program should be part of OT. Accordingly, the traffic management program functions are being assigned to the Assistant Secretary for Marketing and Inspection Services and to the Director, OT. The Department believes that this delegation will enable OT to serve other agencies and the public more efficiently.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act and thus, it is exempt from the provisions of that Act.

#### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

#### PART 2—[AMENDED]

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

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

#### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by revising paragraphs (d)(3) and (d)(5) and by adding new paragraphs (d)(7) and (d)(8), to read as follows:

#### § 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

(d) \* \* \*

(3) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(5) Coordinate Department programs of education, information, loans and grants in the area of agriculture transportation including providing technical advice and assistance to other USDA agencies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Maintain the Department Tariff Library and provide transportation rates and accessorial charges for various commodities to other USDA agencies.

#### Subpart F—Delegation of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.52 is amended by revising paragraphs (a)(3) and (a)(5) and by adding new paragraphs (a)(7) and (a)(8), to read as follows:

#### § 2.52 Director, Office of Transportation.

(a) \* \* \*

(3) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(5) Coordinate Department programs of education, information, loans and grants in the area of agriculture transportation including providing technical advice and assistance to other USDA agencies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Maintain the Department Tariff Library and provide transportation rates

and accessorial charges for various commodities to other USDA agencies.

**For Subpart C:**

Dated: July 22, 1985.

John R. Block,  
Secretary of Agriculture.

**For Subpart F:**

Dated: July 22, 1985.

Karen K. Darling,  
Assistant Secretary for Marketing and  
Inspection Services.

**Concur:**

Dated: July 22, 1985.

Richard W. Goldberg,  
Under Secretary for International Affairs and  
Commodity Programs.  
[FR Doc. 85-17741 Filed 7-25-85; 8:45 am]  
BILLING CODE 3410-01-M

**Animal and Plant Health Inspection  
Service**

**9 CFR Part 75**

[Docket No. 85-072]

**Equine Infectious Anemia; Procedures  
for Denying and Withdrawing Approval  
of Laboratories**

**AGENCY:** Animal and Plant Health  
Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations in 9 CFR Part 75 to establish procedures for denying and withdrawing approval of laboratories to conduct official tests for equine infectious anemia. This action is necessary to provide a mechanism to help ensure that all approved laboratories actually are in the business of conducting official tests and that only laboratories meeting the requirements set forth for approved laboratories are included as approved laboratories.

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

**FOR FURTHER INFORMATION CONTACT:**  
Dr. C. A. Gipson, Special Diseases Staff,  
VS, APHIS, USDA, Room 826, Federal  
Building, 6505 Belcrest Road,  
Hyattsville, MD 20782, 301-436-8321.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 75 (referred to below as the regulations), among other things, contain provisions concerning the interstate movement of horses, asses, ponies, mules, and zebras found to be affected with equine infectious anemia (referred to below as EIA), also known as swamp fever.

The regulations in § 75.4(b)(1) provide that the Agar gel immuno-diffusion test

is the official test for determining whether horses, asses, ponies, mules, and zebras are affected with EIA. The official test for EIA is required to be conducted in a laboratory approved by the Deputy Administrator, Veterinary Services. Under the provisions of § 75.4(b)(1), a laboratory will be approved by the Deputy Administrator after determining that the laboratory:

(i) has adequately trained technical personnel assigned to conduct the test, (ii) uses USDA licensed antigen, (iii) follows standard test protocol, (iv) meets check test proficiency requirements, and (v) reports all test results to State and Federal animal health officials.

A document published in the *Federal Register* on May 31, 1985 (50 FR 23137-23138), proposed to amend the regulations by specifying procedures for denying or withdrawing approval of laboratories to conduct official EIA tests. These procedures are set forth in the regulatory text portion of this document. The document of May 31, 1985, invited the submission of written comments on or before July 1, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

**Executive Order 12291 and Regulatory  
Flexibility Act**

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required under Executive Order 12291.

It is not anticipated that a significant number of laboratories will be affected by this rule. In addition, conducting official EIA tests is not the primary business activity of any laboratory in the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 9 CFR Part 75**

Animal diseases, Horses, Quarantine, Transportation, Equine, Dourine, Equine infectious anemia, Contagious equine metritis.

**PART 75—COMMUNICABLE DISEASES  
IN HORSES, ASSES, PONIES, MULES,  
AND ZEBRAS**

Accordingly, the regulations in 9 CFR Part 75 are amended as follows:

1. The authority citation for Part 75 is revised to read as set forth below and the authority citations following all the sections in Part 75 are removed:

**Authority:** 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134-134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new paragraph (d) is added to § 75.4 to read as follows:

**§ 75.4 Notice relating to existence of equine infectious anemia (swamp fever), official test and conditions of interstate movement of reactors.**

(d) The Deputy Administrator may deny approval of any laboratory to conduct the official test upon a determination that the laboratory does not meet the criteria for approval under this part and at any time may withdraw approval of any laboratory to conduct the official test upon a determination that any of the requirements for approval under this part are not complied with. In the case of denial, the operator of the laboratory will be informed of the reasons for the action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action in accordance with the rules of practice which shall be adopted for the proceeding. In the case of a withdrawal, before such action is taken, the operator of the laboratory will be informed of the reasons for the proposed action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal shall become effective pending final determination in the proceeding when the Deputy Administrator determines that such action is necessary to protect the public health, interest, of safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the laboratory. In the event of oral notification, written confirmation shall be given to the operator of the laboratory as promptly as circumstances allow. This withdrawal shall continue in effect

pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Deputy Administrator. In addition to withdrawal of approval when the requirements for approval are not complied with, approval will be automatically withdrawn by the Deputy Administrator when the operator of any approved laboratory notifies the National Veterinary Services Laboratories in Ames, Iowa, in writing, that the laboratory no longer conducts the official test.

Done at Washington, D.C., this 23rd day of July 1985.

J.K. Atwell,  
Deputy Administrator, Veterinary Services.

[FR Doc. 85-17812 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-34-M

## 9 CFR Part 92

[Docket No. 85-045]

### Cattle From Canada

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations in 9 CFR Part 92 concerning the importation into the United States of cattle from Canada by designating the Canadian provinces of Alberta, Manitoba, and Saskatchewan as brucellosis certified free provinces and by allowing cattle classified as cattle from brucellosis certified free provinces of Canada to enter into the United States at certain existing ports of entry. It has been determined that this action is necessary to relieve restrictions on the importation of certain cattle from Canada since it has been determined that these provinces are free of brucellosis. This document also amends the regulations by deleting certain provisions which allowed cattle of the beef breeds raised under range conditions in the western provinces of Canada to meet the brucellosis certification requirements for importation into the United States on an individual animal basis. It has been determined that this action is necessary to help prevent the importation into the United States of cattle infected with brucellosis.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Allan A. Furr, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8530.

## SUPPLEMENTARY INFORMATION:

### Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20 of the regulations contains specific provisions concerning the importation into the United States of cattle from Canada.

In a document published in the *Federal Register* on March 21, 1985 (50 FR 11374-11376), the Department proposed to amend the regulations by (1) adding the provinces of Alberta, Manitoba, and Saskatchewan to the list of brucellosis certified free provinces of Canada; (2) by adding the existing Canadian border ports of Raymond, Opheim, and Sweetgrass, Montana; and Pembina, Portal, and Dunseith, North Dakota; to the list of United States ports of entry through which cattle to be imported into the United States from brucellosis certified free provinces of Canada may be shipped; and (3) by deleting certain provisions which allowed cattle of the beef breeds raised under range conditions in the western provinces of Canada to meet the brucellosis certification requirements for importation into the United States on an individual animal basis.

The document of March 21, 1985, invited the submission of written comments on or before April 22, 1985. The two comments that were received raised issues concerning vaccination of cattle imported from Canada. These issues were not raised by the proposal. Therefore, these comments were not considered as a part of this rulemaking. Further, based on the rationale set forth in the proposal, the regulations are amended as proposed.

### Executive Order 12291 and Regulatory Flexibility Act

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

For this rulemaking action, the Office of Management and Budget has waived

its review process required by Executive Order 12291.

As a result of the adoption of this rule, no significant change is anticipated in the number of cattle imported into the United States from Canada or in the cost of importing cattle into the United States from Canada.

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

### List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the regulations in 9 CFR Part 92 are amended as follows:

1. The authority citation for Part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1(w) is revised to read:

### § 92.1 Definitions.

(w) *Brucellosis certified free provinces of Canada.* Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland (including Labrador), Nova Scotia, Prince Edward Island, and Saskatchewan, known in Canada as brucellosis accredited free provinces.

### § 92.20 [Amended]

3. In the first sentence of paragraph (c)(1) of § 92.20, "paragraph (c)(4), or paragraph (c)(6)" is changed to "paragraph (c)(3), or paragraph (c)(5)".

4. In the fourth sentence of paragraph (c)(1) of § 92.20 "in accordance with paragraph (c)(3) of this section" is changed to "issued or endorsed by a salaried veterinarian of the Canadian Government showing them to have been tested for brucellosis with negative results within 30 days preceding their offer for entry".

5. In paragraph (c)(2) of § 92.20, "paragraph (c)(4), or paragraph (c)(6)" is changed to "or paragraph (c)(5)".

6. The sixth sentence of paragraph (c)(2) of § 92.20 is changed to: "Cattle to

be imported into the United States from brucellosis certified free provinces of Canada shall be (A) moved entirely within the boundaries of the brucellosis certified free provinces of Canada from the farm of origin directly to the United States ports of entry of Eastport, Idaho; Houlton, Maine; Raymond, Opheim, and Sweetgrass, Montana; Pembina, Portal, and Dunseith, North Dakota; and Blaine, Sumas, Lyndon, and Oroville, Washington; or (B) such cattle shall be moved in a vehicle sealed with Canadian Governments seals."

7. Paragraph (c)(3) of § 92.20 is removed.

8. Paragraphs (c)(4), (c)(5), (c)(6), and (c)(7) of § 92.20 are redesignated as paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) respectively.

9. In redesignated paragraph (c)(3) of § 92.20, "paragraph (c)(3), or paragraph (c)(6)" is changed to "or paragraph (c)(5)".

10. In the second proviso of redesignated paragraph (c)(3)(i) of § 92.20, "paragraphs (c)(1), (3), and (4)(i)" is changed to "paragraphs (c)(1) and (c)(3)(i)".

11. In redesignated paragraph (c)(3)(ii) of § 92.20, "paragraph (c)(4)(i)" is changed to "paragraph (c)(3)(i)" both places that "paragraph (c)(4)(i)" appears.

12. In redesignated paragraph (c)(4) of § 92.20, "paragraph (c)(6)" is changed to "paragraph (c)(5)".

13. In redesignated paragraph (c)(5) of § 92.20, "paragraphs (c)(1), (2), (3) and (4)(i)" is changed to "paragraphs (c)(1), (c)(2), and (c)(3)(i)".

Done at Washington, D.C., this 23rd day of July 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-17811 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-34-M

## 9 CFR Part 166

[Docket No. 85-074]

### Swine Health Protection Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of Interim Rule.

**SUMMARY:** This document affirms the interim rule which removed Louisiana from the list of States that have primary enforcement responsibility under the Swine Health Protection Act (the Act). This amendment was made pursuant to a request from Louisiana. The intended effect of this amendment is to help ensure that certain requirements for the feeding of garbage to swine under the

Act are enforced in Louisiana and thereby help prevent the dissemination of certain swine diseases.

This document also affirms the interim rule which removed Arkansas from the list of States that do not have primary enforcement responsibility under the Act, but, under cooperative agreements with APHIS, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. Arkansas no longer issues such licenses. With the change affirmed by this document, APHIS is the entity that issues licenses for facilities eligible to be licensed in Arkansas. The removal of Arkansas from the list of such States was necessary to inform interested persons that Arkansas no longer issues such licenses.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. John L. Williams, Special Diseases Staff, VA, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

#### SUPPLEMENTARY INFORMATION:

##### Background

The "Swine Health Protection Provisions" regulations (contained in 9 CFR Part 166 and referred to below as the federal regulations) were established pursuant to the Swine Health Protection Act (set forth in 7 U.S.C. 3801 *et seq.* and referred to below as the Act.) These authorities contain provisions regulating the treatment of garbage to be fed to swine and the feeding thereof in order to prevent the introduction into and dissemination in the United States of certain diseases of swine. The Act, except for authority for certain emergency actions, provides that the provisions of the Act and federal regulations are to be enforced only in States that do not have primary enforcement responsibility under the Act.

A document published in the **Federal Register** on May 2, 1985 (50 FR 18632-18633) amended the regulations with respect to Louisiana and Arkansas.

##### Louisiana

Pursuant to a request from Louisiana and pursuant to the requirements of Section 10(a) of the Act, the document of May 2, 1985, removed Louisiana from the list of States that have primary enforcement responsibility under the Act. The intended effect of this amendment is to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Louisiana and thereby

prevent the dissemination of certain swine diseases.

##### Arkansas

Pursuant to authority in the Act, APHIS enters into cooperative agreements with some States that do not have primary enforcement responsibility under the Act to allow such States to issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. The document of May 2, 1985, also removed Arkansas from the list of States in § 166.14(d) which issue licenses under cooperative agreements with APHIS but do not have primary enforcement responsibility under the Act. With this change APHIS became the entity that issues such licenses for facilities eligible to be licensed in Arkansas.

##### Comments and Basis for Amendments

The interim rule became effective upon publication. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the interim rule still provides a basis for the amendments.

##### Executive Order 12291 and Regulatory Flexibility Act

This action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The amendments affirmed by this document will not cause significant changes in requirements for affected persons.

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

**List of Subjects in 9 CFR Part 166**

African Swine Fever, Animal diseases, Foot-and-Mouth Disease, Hog Cholera, Hogs, Garbage, Swine Vesicular Disease, Vesicular Exanthema of Swine.

**PART 166—SWINE HEALTH PROTECTION**

Accordingly, the interim rule amending § 166.14 of 9 CFR 166, published in the *Federal Register* at 50 FR 18632-18633 on May 2, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 23rd day of July 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-17808 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-34-M

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 140**

**Financial Protection Requirements and Indemnity Agreements; Indemnification of Spent Reactor Fuel Stored at a Reactor Site Different Than the One Where It Was Generated**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exercise of discretionary statutory authority.

**SUMMARY:** The Commission has decided to exercise its discretionary statutory authority under the Price-Anderson Act and again extend Government indemnity to spent reactor fuel stored at a particular reactor site different than the one where it was generated. Absent this action by the Commission, this spent reactor fuel would not have been covered by Government indemnity in the event of a nuclear incident at the site where this spent fuel was stored and where the reactors involved have the same licensee.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ira Dinitz, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-9884.

**SUPPLEMENTARY INFORMATION:** Most operating reactor licensees have increased, or are planning to increase, the capacity of their onsite spent fuel storage pools. In some instances where the capacity of the storage pools at the reactor site cannot be increased sufficiently to meet the licensee's needs, fuel storage may be sought at another

location. One method of storing spent fuel away from the reactor from which it is discharged is to store it in the spent fuel pool of another of the same licensee's reactors but at a different site.

The Commission has received a request from Duke Power Company to authorize and indemnify this type of activity. The Duke Power request is for Commission authorization permitting Duke to store spent fuel discharged from its Oconee Units 1, 2, and 3 at its McGuire Unit 2 reactor. Duke is seeking Price-Anderson indemnity protection for all such storage of spent fuel at the distant reactor location. The Commission considered and approved similar requests by Carolina Power and Light Company in August 1977 and Duke Power Company in November 1982 (See *Federal Register* Notice 42 FR 44615 and 48 FR 55024).

Under the Price-Anderson Act (section 170 of the Atomic Energy Act of 1954, as amended (the Act)), financial protection and government indemnity are *mandatory* for production and utilization facilities, such as reactors, licensed under section 103 and section 104 of the Act. This financial protection and indemnity covers the "licensed activity" which encompasses not only possession and operation of the reactor facility itself but also certain ancillary activities including (1) possession of the new fuel (containing special nuclear material) being stored on-site for use in the reactor and (2) on-site storage of spent fuel following irradiation at that reactor. Mandatory indemnification does not extend to the fuel when it is stored at another reactor site.

Possession of spent fuel away from the facility where it was generated, i.e., at a location where it is not used in connection with the operation of the facility, is not a part of the ancillary activity of possession and operation of the facility where the spent fuel is to be stored. As a result, after being transferred from the reactor site where it was generated to some other site, possession of such spent fuel must be licensed under other provisions of the Act which authorize licenses for possession and use of the special nuclear and byproduct material and would not be subject to the mandatory indemnity requirements of the Act providing that the Commission require financial protection of and indemnify reactor (and other production and utilization facility) licensees.

Accordingly, no indemnity protection automatically would be afforded spent fuel stored away from the facility where it is produced or used. To indemnify this spent fuel, the Commission must require the licensee at whose facility the spent

fuel will be stored to maintain financial protection and to be indemnified by exercising its *discretionary* authority under section 170 of the Act. For the purposes of Price-Anderson coverage, this exercise of discretionary authority would result in treating spent fuel produced at one reactor site but stored at a different site the same as spent fuel stored at the site of the reactor where it was produced. Thus, irradiated fuel generated by a reactor at one site whether stored by itself in the spent fuel pool of a reactor at a different site or commingled with the second reactor's irradiated fuel in that reactor's spent fuel pool would be covered by financial protection and indemnity.

The NRC believes that it would not be desirable to have a situation where spent fuel generated by one reactor and stored in the spent fuel pools of a second reactor at a different site would be unindemnified while the spent fuel produced by the second reactor and stored at the same site would be indemnified. If indemnity coverage were not extended to the spent fuel generated by the first reactor but stored at the site of a second reactor and if an accident occurred involving the fuel storage pool it would be virtually impossible to determine whether indemnified or unindemnified spent fuel caused the accident.

In view of the foregoing, the Commission has decided to exercise its discretionary authority under section 170 of the Atomic Energy Act of 1954, as amended, and will modify Duke's indemnity agreement at the McGuire's facility to permit the storage of Oconee's irradiated fuel at McGuire. As required in 10 CFR 140.9, the Commission is publishing this amendment, which would redefine the term "the radioactive material" in Article I, paragraph 9 in the McGuire Indemnity Agreement B-83, to read as follows:

The radioactive material means source, special nuclear and byproduct material which (1) is used, was used or will be used in, or is irradiated, was irradiated or will be irradiated by, the nuclear reactors licensed under NPF-9 and NPF-17 or (2) was used in, or was irradiated in the nuclear reactors licensed under DPR-38, DPR-47, and DPR-55 and subsequently is transported to the site of the nuclear reactors licensed under NPF-9 and NPF-17 for the purpose of storage or (3) which is produced as a result of operation of the nuclear reactors licensed under NPF-9 and NPF-17.

This amendment relates to changes in an indemnity agreement incorporated into a 10 CFR Part 50 license. Accordingly, this amendment meets the eligibility criteria for categories exclusion

set forth in 10 CFR 51.22(c)(10)(i). Pursuant to 10 CFR 51.22(b), no environmental impact statement nor environmental assessment need be prepared in connection with the issuance of this amendment.

(5 U.S.C. 552; Pub. L. 83-703, 68 Stat. 919 as amended by Pub. L. 85-256, 71 Stat. 576, as amended (42 U.S.C. 2210).

Dated at Bethesda, Maryland, this 22nd day of July 1985.

For the Nuclear Regulatory Commission,  
William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-17817 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 85-ANE-7; Amdt. 39-5097]

#### Airworthiness Directives: Alexander Schleicher Model ASK-21 Gliders

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

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the *Federal Register* and makes effective to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of certain Alexander Schleicher Model ASK-21 gliders by individual letters. The AD requires a one time inspection and enlargement, if necessary, of the wheel box cutout in the fuselage. The AD is needed to prevent structural damage and aileron control problems caused by interference of the wheel fairing with the wheel box cutout.

**DATES:** Effective July 25, 1985, to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 85-06-07, issued March 26, 1985, which contained this amendment.

Compliance required prior to next flight after the effective date of this AD, unless already accomplished.

**Incorporation by Reference—** Approved by the Director of the *Federal Register* on July 25, 1985.

**ADDRESSES:** The applicable technical note may be obtained from Alexander Schleicher, Segelflugzeugbau, D-6416 Poppenhausen, Federal Republic of Germany.

A copy of the technical note is contained in Rule Docket 85-ANE-7, in the Office of the Regional Counsel, Federal Aviation Administration, 12

New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between the hours of 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Munro Dearing, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, 40 American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 X2710, or Terry Fahr, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

**SUPPLEMENTARY INFORMATION:** On March 26, 1985, Priority Letter AD No. 85-06-07 was issued and made effective immediately to all known U.S. owners and operators of certain Alexander Schleicher Model ASK-21 gliders. The AD requires a one time inspection, and enlargement, if necessary, of the wheel box cutout in the fuselage. AD action was necessary of these gliders since the wheel box cutout in the fuselage may not have been correctly enlarged. This could cause structural damage during wheel retraction when the rear edge of the wheel fairing contracts the wheel box cutout. Also the fouled gear could loosen a rib during a hard landing and cause aileron control problems.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued March 26, 1985, to all known U.S. owners and operators of certain Alexander Schleicher Model ASK-21 gliders. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

#### Conclusion

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

as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

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

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

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

2. By adding the following new AD:

**Alexander Schleicher:** Applies to Model ASK-21 Gliders, S/Ns 21194 through 21228, certificated in all categories.

Compliance is required prior to next flight. To prevent the main wheel fairing from (1) causing structural damage to the fuselage wheel well box cutout and (2) loosening a rib during a hard landing causing aileron control problems, accomplish the following:

Inspect the wheel box cutout in the fuselage for clearance, and modify if necessary, in accordance with Actions 1 through 5 of Alexander Schleicher ASK-21 Technical Note No. 17, dated October 1, 1984, or an FAA-approved equivalent.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 X2710.

Alexander Schleicher ASK-21 Technical Note No. 17, dated October 1, 1984, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Alexander Schleicher, Segelflugzeugbau, D-6416 Poppenhausen, Federal Republic of Germany. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between the hours of 8:00 a.m. and 4:30 p.m.

This amendment becomes effective July 25, 1985, to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 85-06-07, issued March 26, 1985, which contained this amendment.

Issued in Burlington, Massachusetts on July 2, 1985.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85-17717 Filed 7-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-ANE-24; Amdt. 39-5098]

#### Airworthiness Directives; Hartzell ( )HC-( ) (X,V) Series Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection or replacement of certain blade clamp assemblies on Hartzell ( )HC-( ) (X,V) series propellers within the next 12 months or by the next overhaul after the effective date of this AD. The AD is needed to prevent failure of certain propeller blade clamp assemblies which could result in blade separation and severe unbalance.

**DATES:** Effective—September 27, 1985.

Compliance required within the next 12 months or by the next overhaul, after the effective date of this AD, whichever occurs first, unless already accomplished.

#### Incorporation by Reference—

Approved by the Director of the Federal Register on September 27, 1985.

**ADDRESSES:** The applicable service document may be obtained from Hartzell Propeller Products Division, TRW Aircraft Components Group, 350 Washington Ave., Piqua, Ohio 45356.

A copy of the service document is contained in the Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 84-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Alpiser, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7130.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring inspection or replacement of certain blade clamp assemblies on Hartzell ( )HC-( ) (X,V) series propellers was published in the Federal Register on March 22, 1985 (50 FR 11512).

The proposal resulted from a determination that certain Hartzell

propeller Part Number C-3-( ) blade clamp assemblies are susceptible to cracks in either the grease fitting hole or in the area of the inner bearing support housing radius which can result in possible blade loss. Since this condition is likely to exist or develop on other blade clamp assemblies of the same type design, the NPRM proposed inspection or replacement of certain blade clamp assemblies.

Blade clamp assemblies with serial numbers ranging from 0 through D5293, generally produced prior to 1959 and which have a grease fitting hole located approximately one-half inch from the clamp parting line, must be removed from service. Blade clamp assemblies with serial numbers ranging from D5294 through K6336, generally produced between 1959 and 1980 and having a grease fitting hole located approximately one inch from the clamp parting line, must be inspected for defects and removed from service if defects are observed. Clamp assemblies on which no serial numbers are readable or which have mismatched serial numbers on each clamp half must be removed from service.

A 5 year malfunction or defect computer run shows that there were 20 reports of blade clamp failures of which at least 3 resulted in blade separation. Hartzell Propeller has issued Service Bulletins Nos. 126B and 127B and Instruction No. 159A to address the corrective action described in this document. It is estimated that an average of 2.5 manhours per blade clamp assembly will be required to comply with this AD. The cost of a replacement blade clamp assembly is approximately \$500. Therefore, the cost to replace the clamps on a two blade propeller will approximate \$500 per blade X 2 + \$35/hr. X 5 hrs. labor = \$1175 per propeller. The cost to inspect and reuse the blade clamp assemblies on a two blade propeller will approximate \$35/hr. X 5 hrs. labor = \$175 per propeller. It is estimated that 5000 two blade propellers will require clamp replacement making the total cost for the fleet approximately \$5,875,000. Because clamp assemblies manufactured since 1959 only require inspection, it is unlikely that a fleet operator would have more than one or two propellers that require clamp replacement. Additionally, compliance with this AD is a one-time cost, and any additional cost associated with blade clamp replacement would be part of normal maintenance. Therefore, the FAA has determined that this proposed AD will not have a significant economic impact on a substantial number of small entities.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed May 21, 1985. Two comments were received:

One commenter concurred with the proposal. A second commenter recommended that the compliance time be changed from at next overhaul or by January 1, 1986, whichever occurs first, to within the next 12 months or by the next overhaul after the effective date of this AD, whichever occurs first. In response to this comment, the compliance time was changed to within the next 12 months or by the next overhaul after the effective date of this AD, whichever occurs first. This was done to accommodate logistical requirements and a determination was made by the FAA that safety would not be derogated. Therefore, this amendment will be adopted substantially as proposed with a minor change that is relieving in nature.

#### Conclusion

As described in **SUPPLEMENTARY INFORMATION**, the FAA has determined that this regulation is not considered to be major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certify that this is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

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

Propellers, Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

#### Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

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

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

2. By adding the following new AD:

Hartzell Propeller Products Division: Applies to all Hartzell Model ( JHC- ( ) ( ) (X.V) series propellers with Hartzell Part Number C-3-( ) blade clamp assemblies.

Compliance is required within the next 12 months or by the next overhaul after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent propeller blade clamp failure, accomplish the following:

(a) Replace all propeller blade clamp assemblies which have serial numbers ranging from 0 through D5293 with airworthy clamp assemblies.

(b) Replace all propeller blade clamp assemblies which have mismatching serial numbers on each clamp half or which have unreadable serial numbers with airworthy clamp assemblies.

(c) Magnetic particle inspect all blade clamp assemblies which have serial numbers ranging from D5294 through K6336 in accordance with Hartzell Service Instruction No. 159A dated May 13, 1985, or FAA approved equivalent. Replace all defective clamp assemblies with airworthy clamp assemblies.

Note.—Blade clamp assemblies with serial numbers subsequent to K6336 are not affected by this AD.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

Hartzell Service Instruction No. 159A dated May 13, 1985, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain a copy upon request to Hartzell Propeller Products Division, TRW Aircraft Components Group, 350 Washington Avenue, Piqua, Ohio 45356. This document also may be examined at the Office of Regional Counsel, FAA, Attn: Rules Docket No. 84-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on September 27, 1985.

Issued in Burlington, Massachusetts, on July 5, 1985.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85-17718 Filed 7-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 85-ANE-06]

#### Control Zone; Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action amends the description of the Portsmouth, New Hampshire Control Zone so as to provide protected airspace for aircraft executing a new Nondirectional Radio Beacon (NDB) Approach to the Littlebrook Airpark, Elliot, Maine.

**EFFECTIVE DATE:** 0901 G.m.t., October 6, 1985.

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

#### SUPPLEMENTARY INFORMATION:

##### History

On April 8, 1985, the FAA proposed to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Portsmouth, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a new NDB Approach to the Littlebrook Airpark, Elliot, Maine. [50 FR 13819].

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

##### The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of the Portsmouth, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a new NDB Approach to the Littlebrook Airpark, Elliot, Maine.

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

substantial number of small entities under this criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

#### Adoption of the Amendment

#### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.171 as follows:

#### Portsmouth, New Hampshire Control Zone [Amended]

"within a 5 mile radius of the Littlebrook Airpark, Elliot, ME. (Lat. 43°08'35" N., Long. 70°46'22" W.) and within 2 miles each side of the 152° True (166° Mag.) bearing of the Rollings NDB (Lat. 43°13'12" N., Long. 70°49'43" W.) extending from the 5 mile radius of Littlebrook Airpark to the Rollings NDB."

Issued in Burlington, Massachusetts, on July 15, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-17719 Filed 7-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF COMMERCE

#### Office of the Secretary

#### 15 CFR Part 8a

[Docket No. 50695-5095]

#### Audit Requirements for State and Local Governments

AGENCY: Department of Commerce.

ACTION: Interim final rule with request for comments.

**SUMMARY:** The Department of Commerce proposes to implement the requirements for auditing State and local governments as required by the Single Audit Act of 1984, Pub. L. 98-502. This regulation is meant to improve audits of Federal aid programs to State and local governments. The rule establishes audit requirements for State and local governments that receive Federal aid, and defines the Department's responsibilities for implementing and monitoring these requirements.

**DATES:** Interim Rule: Effective July 26, 1985; comments must be received on or before July 30, 1985.

**ADDRESS:** Comments may be mailed to Mr. Robert M. McNamara, Room 6018, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Robert M. McNamara, 202-377-5817; W. Dan Haigler, 202-377-0142.

**SUPPLEMENTARY INFORMATION:** The Department of Commerce proposes to implement the requirements for auditing State and local governments as required by the Single Audit Act of 1984, Pub. L. 98-502. The Act establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

This is not a major rule within the meaning of Section 1 Executive Order 12291. It will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this rule relates to public property, loans, grants, benefits and contracts, it is exempt from the requirements of notice and opportunity to comment on the 30-day delayed effective date (5 U.S.C. 553(a)(2)). No other law requires that notice and opportunity for comment be given of this rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act and other relevant laws.

Since notice and opportunity to comment are not required to be given for this rule under Section 553 of the Administrative Procedure Act or any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act.

Although this rule is exempt from the 30-day delayed effective date and is being issued in interim form, effective upon publication in the Federal Register, public comments are invited and should be sent to the address listed in the "address" section above. Comments

must be received on or before July 30, 1985, to be considered in issuing the final rule. All comments received will be shared with other Federal agencies issuing rules pursuant to the Single Audit Act of 1984.

**Relationship to OMB Circular A-128:** The proposed rule is identical to the Circular in substantive content. For purposes of clarity consistent with this rulemaking effort, however, terminology has been changed where applicable and the format has been changed slightly.

For instance, the words "rule" and "Department" have been substituted for "Circular" and "Federal agency(ies)," respectively, where appropriate. Substitutions of a similar nature have been made where necessary.

In addition, the attachment to the Circular listing the criteria applicable to major Federal financial assistance programs has been included in the definition section under "Major Federal Assistance Programs."

**Paperwork Reduction Act:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 2507), approval for any applicable reporting and recordkeeping requirements of the Single Audit Act of 1984 and OMB Circular A-128 are being sought already by OMB from the Office of Information and Regulatory Affairs.

#### List of Subjects in 15 CFR Part 8a

Grants program, Grants administration, Loan programs, Intergovernmental relations.

For the reasons set out in the preamble, Part 8a is being added to 15 CFR Subtitle A to read as follows:

#### PART 8a—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

- Sec.
- 8a.1 Purpose.
  - 8a.2 Background.
  - 8a.3 Policy.
  - 8a.4 Definitions.
  - 8a.5 Scope of audit.
  - 8a.6 Frequency of audit.
  - 8a.7 Internal control and compliance reviews.
  - 8a.8 Subrecipients.
  - 8a.9 Relation to other audit requirements.
  - 8a.10 Cognizant agency responsibilities.
  - 8a.11 Illegal acts or irregularities.
  - 8a.12 Audit report.
  - 8a.13 Audit resolution.
  - 8a.14 Audit workpapers and reports.
  - 8a.15 Audit costs.
  - 8a.16 Sanctions.
  - 8a.17 Auditor selection.
  - 8a.18 Small and minority audit firms.

**Authority:** Single Audit Act of 1984, Pub. L. 98-502, (31 U.S.C. 7501, et seq.); OMB Circular A-128, Audits of State and Local Governments.

#### § 8a.1 Purpose.

Pursuant to the Single Audit Act of 1984, Pub. L. 98-502, this part established audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

#### § 8a.2 Background.

The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State and local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year.

#### § 8a.3 Policy.

The Single Audit Act requires the following:

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

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

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

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

#### § 8a.4 Definitions.

For the purpose of this part, the following definitions from the Single Audit Act apply:

(a) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 8a.10 of this rule.

(b) "Federal financial assistance" means assistance provided by the Department in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from the Department, or directly

through other units of State or local governments.

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

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

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

(f) "Independent auditor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 8a.5 Scope of audit.

The Single Audit Act provides that:

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

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

(c) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Part. However, if such entities are excluded, audits of these entities shall be made in

accordance with statutory requirements and the provisions of OMB Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

(d) The auditor shall determine whether:

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

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

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

#### § 8a.6 Frequency of audit.

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

#### § 8a.7 Internal control and compliance reviews.

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

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

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

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

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

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

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

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

(A) the amounts reported as expenditures were for allowable services, and

(B) the records show that those who received services or benefits were eligible to receive them.

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

(A) matching requirements, levels of effort and earmarking limitations were met,

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

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

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

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

#### § 8a.8 Subrecipients.

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

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

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

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

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

(e) Require each subrecipient to permit independent auditors to have access to the records and financial statement as necessary to comply with this part.

#### § 8a.9 Relation to other audit requirements.

The Single Audit Act provides that an audit made in accordance with this Part shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides the Department with information and assurance it needs to

carry out its overall responsibilities, the Department shall rely upon and use such information. However, the Department shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulations. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

(a) The provisions of this part do not limit the authority of the Department to make, or contract for audits and evaluations of Federal financial assistance programs, nor does it limit the authority of the Inspector General or other Federal audit officials.

(b) The provisions of this Part do not authorize any State or local government or subrecipient thereof to constrain the Department, in any manner, from carrying out additional audits.

(c) The Department, when making or contracting for audits in addition to the audits made by recipients pursuant to this Part shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

#### § 8a.10 Cognizant agency responsibilities.

The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this part.

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

(b) A cognizant agency shall have the following responsibilities:

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

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

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

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local

law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Part. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies of repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

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

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

#### § 8a.11 Illegal acts or irregularities.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also § 8a.12(a)(3) for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

#### § 8a.12 Audit reports.

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

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

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

(2) The auditor's report on the study and evaluation of internal control

systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weakness identified as a result of the evaluation.

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

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

(ii) Negative assurance on those items not tested;

(iii) A summary of all instances of noncompliance; and

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

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

(c) All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with § 8a.12(f).

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

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

(f) In accordance with generally accepted government audit standards, report shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the end of the audit period unless a longer period is agreed to with the cognizant agency.

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

(h) Recipients shall keep audit reports on file for three years from the date of their issuance.

#### § 8a.13 Audit resolution.

(a) As provided in § 8a.10, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

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

#### § 8a.14 Audit workpapers and reports.

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

#### § 8a.15 Audit costs.

The cost of audits made in accordance with the provisions of this Part are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost of an allocated indirect cost, determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and local governments."

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

#### § 8a.16 Sanctions.

The Single Audit Act provides that no cost may be charged to Federal

assistance programs for audits required by the Act that are not made in accordance with this part. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

- (a) Withholding a percentage of assistance payments until the audit is completed satisfactorily.
- (b) Withholding or disallowing overhead costs, and
- (c) Suspending the Federal assistance agreement until the audit is made.

#### § 8a.17 Auditor selection.

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

#### § 8a.18 Small and minority audit firms.

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

- (a) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.
- (b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.
- (c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.
- (d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this

is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

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

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

Dated: July 19, 1985.

Sonya Stewart,

Director, Office of Finance and Federal Assistance.

[FR Doc. 85-17805 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-FE-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Part 899

#### Waiver Authority

##### CFR Correction

In Title 24 of the Code of Federal Regulations, Parts 700 to 1699, revised as of April 1, 1985, Part 899 was inadvertently omitted. The omitted text, as it should have appeared, is set forth below.

#### PART 899—WAIVER AUTHORITY

##### § 899.101 Waivers.

(a) *Basic Provision.* Upon determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any provision of this chapter. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

(b) *Reservation of authority by the Secretary.* The authority under subsection A is reserved to the Secretary and no delegation of this waiver authority shall be effective unless executed subsequent to the June publication date.

(Sec. 201(b), Housing and Community Development Act of 1974 (42 U.S.C. 1437); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

[41 FR 22814, June 7, 1976, as amended at 49 FR 6715, Feb. 23, 1984]

BILLING CODE 1505-01-M

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 763

[OPTS-62044; FRL 2848-9]

### Asbestos Abatement Projects

#### Correction

In FR Doc. 85-16089 beginning on page 28530 in the issue of Friday, July 12, 1985, make the following correction:

On page 28540, second column, in § 763.124(a), sixth line, insert the following after the word "asbestos": "abatement project using employees not covered by the OSHA asbestos"

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#### 40 CFR Part 799

[OPTS-42034B; TSH-FRL 2815-4]

### Identification of Specific Chemical Substance and Mixture Testing Requirements; Ethyltoluenes, Trimethylbenzenes, and the C9 Aromatic Hydrocarbon Fraction

#### Correction

In FR Doc. 85-11590 beginning on page 20662 in the issue of Friday, May 17, 1985, make the following corrections: On page 20675, in the table, in the first column, under NTIS publication No., in the first entry, "PB 83" should read "PB 82"; and in the third entry "PB 83" should read "PB 84"

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Astragalus Humillimus* To Be Endangered

#### Correction

In FR Doc 85-15390, beginning on page 26568, in the issue of Thursday, June 27, 1985, make the following correction: On page 26572 in the table contained in § 17.12(h), the scientific name under the family Fabaceae is corrected to read "*Astragalus humillimus*".

BILLING CODE 1505-01-M

## 50 CFR Part 20

**Migratory Bird Hunting; Final Frameworks for Selecting Open Season Dates for Hunting Migratory Game Birds in Alaska, Puerto Rico and the Virgin Islands for the 1985-86 Season**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes final frameworks (i.e. the outside limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed) from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory birds during the 1985-86 season. Selected season dates will then be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the *Federal Register* as amendments to §§ 20.101 and 20.102 of 50 CFR Part 20.

**DATES:** Effective on July 26, 1985. Season selections due from Alaska, Puerto Rico and the Virgin Islands by July 26, 1985.

**ADDRESS:** Season selections from Alaska, Puerto Rico and the Virgin Islands are to be mailed to: Director (FWS/MBMO), Rm 3252 U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Public documents may be inspected in the Service's Office of Migratory Bird Management, Room 536, Matomic Building, 1717 H Street NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. (202 254-3207).

**SUPPLEMENTARY INFORMATION:** On March 14, 1985, the Service published for public comment in the *Federal Register* (50 FR 10276) a proposal to amend 50 CFR 20, with a comment period ending June 20, 1985. That document dealt with the establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K of 50 CFR Part 20, including frameworks for Alaska, Puerto Rico and the Virgin Islands. A supplemental proposed rulemaking appeared in the *Federal Register* on June 4, 1985 (50 FR 23459) and another on July 5, 1985 (50 FR 27638). The July 5 document contained no information relevant to Alaska, Puerto Rico and the Virgin Islands. This

final rulemaking is the fourth in a series of proposed and final rulemaking documents for migratory bird hunting regulations and deals specifically with final frameworks for the 1985-86 season from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory game birds. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

**Public Hearing**

A public hearing was held in Washington, D.C., on June 20, 1985, as announced in the *Federal Register* dated March 14, 1985 (50 FR 10276). The public was invited to participate in the hearing and/or submit written statements.

*Presentations at Public Hearing*

Dr. James C. Bartonek, Pacific Flyway Representative, described measures taken by the Service to restore numbers of five populations of geese that nest in Alaska and have undergone recent declines. Significant restrictions on the sport harvest were initiated in 1984 and additional measures will be required for some populations this season. The Yukon-Kuskokwim Delta Goose Management Plan provides for monitoring, verification, and enforcement of harvest restrictions by subsistence hunters and addresses harvest problems while the birds are on their summering grounds. Preliminary reports on breeding conditions for all five kinds of geese suggest poor production in Alaska with a possibility of a poor fall flight similar to that of last year.

*Comments Received at Public Hearing*

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), reviewed the concerns expressed last year, in regard to Puerto Rico, about hunting harvest kill of columbids and waterfowl, lack of data on both hunted and nonhunted species, and limited law enforcement efforts to protect resident and migrant species. She commended the Service for taking steps to close the season in 1984 on the Caribbean and American coot (to protect Caribbean coots) and for a meeting held with Puerto Rico Department of Natural Resources (DNR) personnel to review past and current biological studies, hunting problems, and the population status of columbids and waterfowl. Ms. Lewis noted more work is needed in 1985 and future years and stressed the

need for: better survey information, long-term breeding biology studies of both hunted and nonhunted species, hunter surveys and banding studies, increased habitat acquisition, and improved law enforcement. She asserted that given the serious lack of data and the low populations of resident species, there is no justification for a split waterfowl season and recommended the Service close the season on columbids and waterfowl to allow time for needed studies and to eliminate further risk of reducing populations. She noted environmental assessments need be prepared on these (resident) species.

*Response.* In response to Ms. Lewis' recommendation for a closed season on columbids and waterfowl, the Service notes the hunting regulations proposed for Puerto Rico contain restrictive measures including closed seasons on selected species and areas that are closed to hunting to protect certain columbids, waterfowl and the Puerto Rican parrot. There is no information to indicate that any species in Puerto Rico is being adversely affected by the split waterfowl hunting season or dove and pigeon hunting season offered. Population and harvest surveys, breeding studies of certain resident species, and enforcement of hunting regulations are currently used to appraise and direct management programs. The Service is presently working cooperatively with Puerto Rico DNR personnel to further these programs. The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" addresses the general question of sport hunting of migratory birds in the United States (including Puerto Rico). In view of the FES, the protection afforded by closed seasons and closed areas and the current management efforts underway, the Service does not agree environmental assessments are needed or required.

Dr. Albert M. Manville, II, representing Defenders of Wildlife, recommended that restrictions be taken in Alaska to further reduce harvest of five goose populations that have been declining. Additionally, he recommended that those geese be protected during their reproductive period from disturbances by man.

*Response.* Pending information on this year's production of those species of geese that nest in Alaska and that have been declining in numbers, additional restrictive measures are likely to be taken for some, but not all, geese. The Service believes that the recently

implemented Yukon-Kuskokwim Delta Goose Management Plan addresses the concerns of Dr. Manville about providing better protection to those geese nesting and summering on the Yukon-Kuskokwim Delta.

Mr. John M. Anderson, representing the National Audubon Society, expressed support for the recently developed Yukon-Kuskokwim Delta Goose Management Plan.

#### Written Comments Received

Interested persons were given until June 20, 1985, to comment on the March 14 proposed rulemaking. They were also invited to participate in the June 20 public hearing. Since responding to comments in June 4, 1984, **Federal Register** (50 FR 23459), no additional comments were received on the proposed regulations frameworks for Alaska, Puerto Rico, and the Virgin Islands.

#### NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

#### Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." and "... by taking such action necessary to insure that any action authorized, funded, or carried out ... is not likely to jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of habitat of such species ... which is determined to be critical."

The Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, Mr. Conrad A. Fjetland, Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Examples of such consideration include closures of designated areas in Puerto Rico for the Plain pigeon (*Columba inornata wetmorei*) and the Puerto Rican parrot (*Amazona vittata*), and in Alaska for the Aleutian Canada goose (*Branta canadensis leucopareia*).

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

#### Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985, (at 50 FR 10282) the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

#### Memorandum of Law

In the **Federal Register** dated March 14, 1985, (at 50 FR 10282), the Service stated that it planned to publish its Memorandum of Law for the 1985-86 migratory bird hunting regulations with its first final rulemaking.

*Memorandum of Law.* Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public

comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701-711). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1985-86, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Five additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1985-86. Dozens of public comments summarized and responded to in **Federal Registers** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments strongly supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1985-86 migratory bird hunting regulations which are adequately supported by the Service's records.

## Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published March 14, 1985, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the period's close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the governments of Alaska, Puerto Rico, and the Virgin Islands would have insufficient time to select their season dates, shooting hours, and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701-711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which officials of the Alaska Department of Fish and Game, Puerto Rico Department of Natural Resources, and the Virgin Islands Department of Conservation and Cultural Affairs may select open season dates. Upon receipt of season selections from Alaska, Puerto Rico and Virgin Islands officials, the Service will publish in the *Federal Register* final rulemaking amending 50 CFR 20.101 and 20.102 to reflect seasons, limits, and shooting hours for these areas for the 1985-86 season.

The Service therefore finds that "good cause" exists, within the terms of 5, U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

### Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrow, Chief.

### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports,  
Transportation, Wildlife.

## Final Regulations Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1985-1986

**Outside Dates:** Between September 1, 1985, and January 26, 1986, Alaska may select seasons on waterfowl, snipe and cranes, subject to the following limitations:

**Shooting hours:** One-half hour before sunrise to sunset daily.

**Hunting seasons:**

**Ducks, geese and brant—107** consecutive days in each of the following: North Zone (State Game Management Units 11-13 and 17-26); Gulf Coast Zone (State Game Management Units 5-7, 9, 14-16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1-4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exception:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

**Snipe and sandhill cranes—An open season concurrent with the duck season.**

**Daily Bag and Possession Limits:**

**Ducks—**Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

**Geese—**A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

**Brant—**A daily bag limit of 4 and a possession limit of 8.

**Common snipe—**A daily bag limit of 8 and a possession limit of 16.

**Sandhill cranes—**A daily bag limit of 3 and a possession limit of 6.

## Final Regulations Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1985-86

**Shooting hours:** Between one-half hour before sunrise and sunset daily.

**Doves and Pigeons:**

**Outside Dates:** Puerto Rico may select hunting seasons between September 1, 1985, and January 15, 1986, as follows:

**Hunting Seasons:** Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

**Daily Bag and Possession Limits:** Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

**Closed Areas:**

**Municipality of Culebra and Desecheo Island—**closed under Commonwealth regulations.

**Mona Island—**closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

**El Verde Closure Area—**consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

**Cidra Municipality and Adjacent Areas** consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an

endangered species under the Endangered Species Act of 1973.

#### Ducks, Coots, Moorhens and Snipe

Outside Dates: Between November 5, 1985, and February 28, 1986, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common gallinules, and common snipe. The season may be split into two segments.

##### Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily or 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrio martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

#### Final Regulations Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1985-86

Shooting Hours: Between one-half hour before sunrise and sunset daily.

#### Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1985, and January 15, 1986, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

#### Local Names for Certain Birds

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

#### Ducks

Outside Dates: Between December 1, 1985, and January 31, 1986, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Dated: July 12, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-17731 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 674

[Docket No. 50694-5094]

#### High Seas Salmon Fishery Off Alaska

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

ACTION: Notice of closure.

**SUMMARY:** The Secretary of Commerce (Secretary) closes the commercial salmon fishing season in the fishery conservation zone (FCZ) off Southeast Alaska for chinook salmon and prohibits commercial fishing for all salmon in a small area of the FCZ. This action is necessary to conserve the chinook salmon stocks that contribute to the Alaska, British Columbia, Washington, Oregon, and Idaho salmon fisheries. The intent of this action is to ensure that the harvest of chinook salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar actions on the commercial troll fishery in waters managed by the State of Alaska.

**DATES:** This notice is effective at 0001 hours Alaska Daylight time (ADT), July 23, 1985, and will expire at 2400 hours

ADT, September 20, 1985. Public comments are invited until August 23, 1985.

**ADDRESSES:** Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 to 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Aven M. Andersen (Fishery Management Biologist, NMFS), 907-586-7229.

**SUPPLEMENTARY INFORMATION:** This notice implements a provision of the regulations implementing the Pacific Salmon Treaty and the Fishery Management Plan for the High Seas Salmon Fishery (FMP). The FMP was developed and amended by the North Pacific Fishery Management Council. The regulations (50 CFR Part 674) govern the salmon fisheries in the FCZ off the coast of Alaska east of 175° east longitude. They were issued under section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et seq.), and section 305 of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 et seq.).

Chapter 3 of Annex IV of the Pacific Salmon Treaty limited the 1985 harvest by all fisheries in southeast Alaska to 263,000 chinook salmon. On June 18, 1985, NMFS issued a final rule to announce that limit and set fishing periods for the 1985 commercial troll fishery in the FCZ (50 FR 25247).

Section 674.23 of the regulations provides that the Secretary may modify the fishing periods and areas by publishing a notice in the **Federal Register**. Any such modification must be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that (a) the condition of the salmon species is "substantially different from the condition anticipated in the FMP" and (b) this difference requires a modification of the fishing times and areas to adequately conserve that salmon species. The regulations specify the factors the Regional Director may consider. The regulations also specify that the Secretary must consult with the Alaska Department of Fish and Game before he makes his modifications.

In view of these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the

Alaska Department of Fish and Game (ADF and G). Also, he has reviewed the information on the 1985 salmon fishery to date, has determined that the chinook stocks in 1985 are substantially depressed from the condition anticipated in the FMP, and has determined that this difference in stock condition requires that the commercial troll salmon fishery in the FCZ be stopped from harvesting chinook salmon after midnight on July 22, 1985. Finally, he has determined that to keep the incidental hooking and release of chinook to as low a level as practicable during the fishery for other salmon, it is necessary to close one small area of the FCZ to all commercial salmon fishing.

Counts, estimates, and forecasts of harvested chinook salmon by ADF & G show that the commercial salmon troll fishery will have harvested 111,300 chinook salmon through July 22, 1985; that number includes 23,000 taken in the winter troll fishery (October 1, 1984, to April 15, 1985). In addition, the commercial net fisheries in southeast Alaska are expected to harvest about 20,000 chinook and the sport fisheries, about 22,000. Combined, these predictions total 241,300 chinook, or 21,700 less than the limit of 263,000 imposed by the Pacific Salmon Treaty. After the actual harvests have been tabulated, if the total falls considerably short of the limit, the troll fishery will be allowed to harvest the remainder before the troll season closes on September 20, 1985.

Because a substantial number of chinook salmon will be caught and released when fishermen harvest the

other species of salmon and because a high proportion of the released chinook will die, the Regional Director and ADF & G decided to close certain areas known to have high concentrations of chinook salmon to all commercial salmon fishing. This decision supports a provision of the chinook annex of the Pacific Salmon Treaty (Annex IV, chapter 3, paragraph 1(e)) that both nations shall ensure that they minimize all sources of induced fishing mortality of chinook in 1985.

The entire area of the FCZ is closed to commercial fishing for chinook salmon. In addition, the area known as the Outer Fairweather Grounds is closed to commercial fishing for *all* salmon species. This area is roughly rectangular and is bounded on the northwest by Loran C line 7960-Y-29800, on the southeast by Loran C line 7960-Y-29150, on the northeast by Loran C line 7960-X-14660, and on the southwest by Loran C line 7960-X-14400, as shown on NOAA chart #16018. We are using these Loran C lines as boundaries at the request of the fishermen. This closed area is also defined by lines connecting the following points:

58°46.7' N. lat., 138°54.5' W. long.  
58°15.9' N. lat., 137°21.5' W. long.  
57°50.0' N. lat., 138°19.5' W. long.  
58°24.5' N. lat., 139°48.8' W. long.; and  
58°46.7' N. lat., 138°54.5' W. long.

The closures will become effective after this notice has been filed for public inspection with the Office of the Federal Register and has been publicized for 48 hours through procedures of ADF & G as prescribed under § 674.23(b)(2).

Section 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which these closures are based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of the action and will publish another notice in the *Federal Register* either confirming this notice's continued effect, modifying it, or rescinding it, unless the notice has already expired.

#### Classification

This action is exempt from the requirements of Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Pub. L. 99-5, it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*)

Dated: July 23, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-17827 Filed 7-23-85; 4:58 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 50, No. 144

Friday, July 26, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

#### United States Standards for Grades of Fresh Tomatoes

##### Correction

In FR Doc. 85-17542 beginning on page 30199 in the issue of Wednesday, July 24, 1985, make the following correction:

On page 30199, third column, in § 51.1859, in the table, under "Inches—Maximum diameter" in the fourth entry, "32<sup>1</sup>/<sub>2</sub>" should read "3<sup>1</sup>/<sub>2</sub>".

BILLING CODE 1505-01-M

### Farmers Home Administration

#### 7 CFR Part 1944

#### Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) is publishing for public comment proposed regulations for the Housing Preservation Grant (HPG) program authorized by Section 533 of the Housing Act of 1949, as amended by section 522 of Title V of the Housing Urban-Rural Recovery Act of 1983 (Pub. L. 98-181).

The HPG program is intended to provide rehabilitated and repaired homeownership and rental units for low- and very low-income families in rural areas. Grants are to be made to nonprofit and public entities to establish and operate a rehabilitation and repair program. The grant funds provided will reduce the construction costs to homeowners or rental unit owners, thereby making units affordable and available to very low- and low-income families. Cost reduction may be achieved by a variety of financial assistance mechanisms, including

deferred payment loans, interest reduction on private lending, low interest direct loans, direct grants, etc., based on need of the recipient, cost of repair and rehabilitation, and repayment ability.

This action is needed to implement the HPG program as mandated by Congress for the homeowner aspect of the HPG program. FmHA intends to implement the rental repair and rehabilitation portion of HPG after gaining experience with this initial phase of the program.

**DATES:** Comments must be received on or before September 24, 1985.

**ADDRESSES:** Submit written comments in duplicate to: Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, 14th and Independence Avenue SW., Washington, D.C. 20250. All written comments will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under §3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** John H. Pentecost, Senior Loan Officer, Multi-Family Housing Processing Division, FmHA, USDA, Room 5341 South Agriculture Building, Washington, D.C. 20250; Telephone: (202) 382-8983 (this is not a toll free number).

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

This action will not create any significant recordkeeping and reporting burdens or substantially increase costs to the Government and the public. The impact on proposed budget levels is dependent upon funding levels provided by Congress. Congress has provided a total of \$20 million for the program through September 30, 1985.

The FmHA programs and projects which are affected by this instruction will be subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," (available in any FmHA office).

The Housing Preservation Grant Program does not have a Catalog of Federal Domestic Assistance number at this time. The number will be published in the final rule.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an environmental impact statement is not required.

Dwight O. Calhoun, Acting Associate Administrator, has determined that the proposed action will not have a significant impact on a substantial number of small entities because the relatively narrow scope of the program and the limited amount of current funds available which will restrict the number of applicants eligible to participate in the program. FmHA anticipates funding for FY 1985 to provide resources for less than 100 grantees in the program nationwide.

#### Alternatives for Implementation

FmHA considers the Housing Preservation Grant (HPG) program to be basically composed of two parts: (1) A single-family homeowner repair and rehabilitation program similar to FmHA Sections 502 and 504 programs in intent, except operated by a public or nonprofit entity; and (2) a multi-family repair and rehabilitation program where the grantee may provide loan or grant assistance to rental unit owners for up to 75 percent of the project's costs. The latter aspect of HPG is similar to the

Rental Rehabilitation program, operated by the Department of Housing and Urban Development (HUD) as a demonstration program for 2 years and implemented on April 20, 1984.

FmHA has considered three options for implementing the HPG program:

A. Implement a comprehensive homeowner and rental repair program.

B. Implement a homeowner repair program, holding the rental program implementation until FmHA has developed the rehabilitation standards for Section 515, Rural Rental Housing.

C. Implement the homeowner repair program, permitting rental repair on a case-by-case basis.

FmHA has selected option B as the quickest aspect of the program to implement. Program regulations are similar to the mutual self-help and the technical and supervisory assistance programs which are familiar to the Agency's field staff. The rental program will be developed consistent with the Agency's quality and performance criteria for moderate rehabilitation when additional HPG resources become available. Since no tenant subsidies are available through FmHA for the program and HUD's rental rehabilitation program includes tenant subsidies for project feasibility to service low- and very low-income families, FmHA will coordinate with HUD to receive set-asides from its voucher program when implementing the rental portion of HPG.

Respondents to the proposed rule are asked to provide FmHA information on the following areas to assist in developing the procedures for rental rehabilitation. The law provides specific requirements on this aspect of the program which control both applicants/grantees and FmHA in its administration. Respondents are encouraged to address the following questions:

1. What demand is there for a federal rental and/or cooperative housing rehabilitation program? What size rental/cooperative properties would best be served by the HPG program? What is the average unit cost for such rehabilitation?

2. Section 533(b)(4) speaks of "comparable assistance . . . designed to reduce the costs of such repair and rehabilitation." FmHA does not interpret this provision to include tenant subsidies along the line of HUD's Section 8 of FmHA's rental assistance program. What "comparable assistance" for rental projects is appropriate which will make rental costs affordable for very low- and low-income persons?

3. Section 533(e)(1)(A) requires an owner of rental or cooperative housing to enter into an agreement to assure a 5-

year compliance period with the rental provisions of the law. FmHA proposes to use a certification or delegation of responsibility to the grantee to accomplish this. Respondents are asked to comment on this requirement and provide FmHA with samples of certification or delegations that might be used for this purpose. Are there other alternatives available?

4. The provisions of section 533(e)(1)(B)(i) appears to permit refinancing of rental property. FmHA intends not to permit refinancing or restructuring of debt on rental properties unless the property is in need of substantial rehabilitation. With the limited funding available, is this a feasible approach or is it too limiting for potential rental property owners striving to keep rental units available for low- and very-low income persons?

5. HUD's approach to rental rehabilitation provides for a tenant subsidy through Section 8 or housing vouchers as well as lower debt service with a construction subsidy. FmHA's HPG program links with HUD for voucher payments under section 533(a) only for displaced. What non-federal tenant subsidies are available to potential grantees to maintain unit affordability for very-low and low income persons?

#### Need for Government Action and FmHA's Objectives

FmHA is implementing the HPG program at this time pursuant to the recently passed legislation and because funds have been appropriated in the amount of \$20 million for use through September 30, 1985. The HPG program provides an opportunity to expand the rate of upgrading rural housing conditions by using local public agencies and private nonprofit organizations to run rehabilitation programs. Instead of FmHA administering such a program for individual very low and low-income families, the HPG grantee is primarily responsible for the selection, funding and inspection process. The HPG program has been designed to have sufficient flexibility to adapt to local conditions and rehabilitation needs, without sacrificing overall quality of the end product: the decent and affordable home for a person or family with limited resources.

The Agency's objective in implementing the HPG program is to establish a grant making process that results in the selection of grantees most capable of assisting very-low and low-income families rehabilitate and repair their homes. The proposed rule establishes the framework of eligible

end-recipients (i.e. the very low and low income homeowners), permitted rehabilitation and administration activities, and the process for selection. The rule also outlines the process for allocation of funds, transfer of funds to grantees and monitoring of fund use and grantee activities. The proposed grant agreement is also published.

FmHA desires public comment on the proposed rule and requests respondents to address these additional questions:

1. What is the minimum level of HPG funds necessary to initiate and operate a feasible HPG Homeowner program for one year? For two years?

2. What is a reasonable time table for applicant submission, including HPG program development and public comment, and if selected, what start-up time is needed?

Responses to these questions will assist FmHA in fund allocation and in preparing FmHA field staff to administer the program.

#### Background Information

Section 522 of the Housing Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) amended the Housing Act of 1949 by adding section 533, Housing Preservation Grants. Reviewers of the proposed rule are encouraged to read the law as they prepare comments on the rule since the law is detailed and prescriptive. FmHA has developed the HPG regulations in accordance with the provisions of the law, providing supplementary guidance where necessary. The Agency's intent is to initiate a straight-forward repair and rehabilitation program for homeowners, moving with the more complex area of rental rehabilitation at a later time. The Agency expects applicants to present feasible approaches to homeowner rehabilitation, and has left sufficient flexibility for applicants to adapt HPG to meet the needs of their communities, credit availability and leveraging potential. Critical sections of the proposed rule are discussed in the following sections:

#### General Policies

As stated in the law, the purpose of the program is to provide assistance to very-low and low-income families for repair and rehabilitation of their living units. This is to be done through a third party, or grantee, which will administer the HPG program. The grantee must set up a local financial assistance program for homeowners to meet the costs of repair and rehabilitation work and a process to assure that such work is properly performed and then to report accomplishments to FmHA. The

program provides administrative resources up to 20 percent of the total grant to defray the direct and indirect costs associated with the grantee's operation of the HPG program.

The policies also reflect FmHA intention to encourage leveraging of other resources to complement limited HPG funds and to use the program in more rural areas. FmHA will select cost effective approaches to the HPG program and provides as much latitude as possible for grantees in designing their program with the intent of serving the most number of very-low and low-income families.

#### Definitions

"Adequate housing." Section 533 (b)(6) provides that HPG funds be used to "raise health and safety conditions to meet those specified in section 509(a)." The same law that created HPG amended section 509(a) to require the agency to accept locally adopted voluntary national building codes as well as minimum property standards (MPS). Accordingly, HPG assisted units must meet a rigorous rehabilitation standard by having all repair work brought up to local codes and meet FmHA thermal standards. FmHA is currently revising its regulation on MPS and codes to comply with the provisions of section 509(a); those revisions should be in effect to coincide with the publication of the final HPG regulations.

"Applicant or grantee" and "organization." Section 533(a) provides that eligible grantees include "private nonprofit organizations, Indian tribes, general units of local government, counties, States, and consortium of other eligible grantees." FmHA has defined each grantee type, including a definition for a "consortium." This term is new to FmHA as is the concept of how such an entity would operate an HPG program. In this regard, FmHA proposes to simplify its relationship with such a group by limiting the Agency's contact to either one designated member of the consortium or an agreed upon third party. The regulation uses the example of a council of governments. FmHA perceives the designated member to function on behalf of the grantee and not as a conduit for HPG resources to each of the other members.

"Housing preservation" this generic term is defined as those repair and rehabilitation activities necessary to remove essential health and safety hazards as well as improve the living environment. It is not intended to be interpreted in the "historic preservation" sense of restoration to original, but upgraded, condition. However, if historic properties are selected for

rehabilitation work, such work shall be completed in a manner that supports national historic preservation objectives.

#### Applicant Eligibility and Authorized Representative

FmHA has listed the characteristics and capabilities it requires of applicants and the Agency expects to have the applicant designate a representative for consistent coordination with FmHA. Such representatives must be a member of the entity operating the repair/rehabilitation program and cannot be a contractor or developer who would benefit from the grant award. For example, a nonprofit organization may be an authorized representative for a county government but may not then become a recipient of funds, either directly or indirectly after the grant award.

#### Homeowner Eligibility

FmHA has provided the broadest possible interpretation of "homeowner" in order to encompass a variety of ownership conditions of potential recipients. As presented, it is the grantee's responsibility to assure and document homeownership as part of its responsibilities in administering the HPG program. Respondents are invited to identify other forms of homeownership that meet the intent of the program.

#### Repair and Rehabilitation Activities

As discussed above, all repair and rehabilitation activities must meet locally adopted building codes, FmHA Thermal Standards and FmHA Development Standards. Development standards are considered to be any of the following codes and standards:

1. *Standards prescribed by FmHA for each State.*

2. *Voluntary national model building codes (model codes).* Nationally recognized codes which address the health and safety aspects of buildings and related structures. They include:

(A) CABO One and Two family Dwelling Code, published by the Council of American Building Officials; supplemented by the Electrical Code for One and Two Family Dwellings, NFPA 70A, published by the National Fire Protection Association.

(B) BOCA Basic/National Building Code, published by the Building Officials and Code Administrators International, Inc.

(C) Standard Building Code, supplemented by the Standard Mechanical Code and Standard Plumbing Code, all published by the Southern Building Code Congress

International, Inc.; and supplemented by the National Electrical Code, published by the National Fire Protection Association.

(D) Uniform Building Code, supplemented by the Uniform Mechanical Code and Uniform Plumbing Code, all published by the National Electrical Code, International Conference of Building Officials; and supplemented by the National Electrical Code, published by the National Fire Protection Association.

3. *Minimum Property Standards (MPS).* The Department of Housing and Urban Development (HUD) Minimum Property Standards (MPS), they include:

(A) MPS for One and Two Family Dwellings, HUD Handbook 4900.1 [24 CFR Part 200, Subpart S, § 200.929(b)(1)].

(B) MPS for Multi-family Housing, HUD Handbook 4910.1 [24 CFR Part 200, Subpart S, § 200.929(b)(2)].

The applicant is responsible for identifying the development standard it will use and may not mix code standards except for historic properties. As discussed above, FmHA will be publishing as a separate document its implementation of section 509(a) of the Housing Act of 1949, from which this requirement stems.

In addition, all units assisted under HPG must meet FmHA thermal standards in Exhibit D of Subpart A of Part 1924 of this chapter.

The proposed regulations then proceed to list major repair activities that may be undertaken as well as those which may be undertaken if done in conjunction with the major activities. The purpose of identifying both types of activities is to stress that the HPG program is not to be used for solely cosmetic or maintenance types of repair, or, in any event, for refinancing or for construction of a new unit.

#### Administrative activities:

The law permits administrative expenses by including it as a selection criterion under section 533(d)(3). FmHA proposes to limit administration funds for HPG to not exceeding 20 percent of a grant amount and, with the selection criterion of administrative costs, to encourage grantees to use even less of their HPG funds for administrative purposes. This provision permits applicants to leverage other resources for administrative purposes and thereby enhance their chances for selection.

The Agency recognizes that many rural housing organizations eligible to receive HPG assistance may need administration resources. However, the Agency believes that at least 80 percent of the limited HPG resources must be used directly to benefit very low- and

low-income families. Good grantee program administration is needed and FmHA believes that the 20 percent administrative cost ceiling will encourage grantees to use its administrative resources wisely, leading to administrative efficiency without sacrificing quality.

The proposed regulations identify unacceptable activities for use of HPG funds. These are consistent with current Agency policies and OMB circular requirements.

#### Term of Grant

The proposed rule permits a variable grant period up to two years. This flexibility will allow grantees and FmHA to negotiate a term that is reasonable for the level of grant funds available for the HPG project. FmHA believes a two-year period is best in terms of project administration, paperwork burden, and project development and execution.

However, should demand for the program nationwide exceed available resources, FmHA may have to reduce the term of grants and each project's grant request in order to comply with section 533(c)(2) of the law. This section states: "Unless there is only one eligible grantee in a State, a single grantee may not receive more than 50 per centum of a State's allocation." FmHA interprets this provision in the regulations under § 1944.680. If the agency receives two or more acceptable applications in each state, the one year term may be necessary nationwide. If demand is somewhat limited, the two year term for most grantees should be possible.

#### Project Income

Project income during the grant period falls under the requirements of OMB circulars A-102 and A-110, and must be used to further the purposes of the HPG program. Income also includes amounts recovered which must be reused for HPG purposes.

Project income after completion of the grant is to be considered miscellaneous income to the grantee and FmHA encourages its use for continuing repair and rehabilitation activities.

#### Equal Opportunity Requirements

The proposed regulations cross reference to FmHA's equal opportunity requirements in FmHA regulations, Subpart E of Part 1901. These regulations require equal opportunity and affirmative action on the part of the grantee in providing HPG assistance to very low- and low-income families.

#### Other Administrative Requirements

HPG activities that affect historic properties are required by law and FmHA regulations to be reviewed under a separate process and work performed to different standards. The provisions in the proposed regulations follow Section 533(i), which is prescriptive in approach.

Environmental review processes for HPG are also somewhat unique due to the nature of the program and the grantees flexibility in program operation. Unlike HUD's Community Development Block Grant and Rental Rehabilitation programs, HPG does not include a delegation of environmental process to grantees. Accordingly, FmHA must assure compliance with its environmental policies for all actions under HPG. The HPG proposed regulations provide for a two step process based on the general environmental provisions contained in Subpart G of Part 1940. First, applicants are to provide general environmental information on the area(s) in which they propose to operate the HPG program and include a process for an environmental review of each unit to be assisted as part of their statement of activity in their preapplication. Second, where a specific housing unit falls within the need for an environmental assessment, the grantee will work with FmHA to resolve any environmental issue before funds are used for that housing unit.

#### Consultation With Local Governments and Public Comment

This section describes the process for public comment and coordination with local governments required by section 533(d)(2) of the law as well as by Executive Order 123772 for state clearinghouse review.

#### Allocation of HPG funds to States

FmHA will allocate available HPG fund to states as provided by section 533(c)(1) and may hold a reserve in the National Office for additional distribution to states that may not have sufficient resources under the formula allocation to fund feasible projects. FmHA's intent is to provide resources to each state consistent with the allocation process, which distributes funds based on a formula reflecting need, while providing a reasonable level of funds for feasible projects and complying with the provision of not funding any one grantee more than 50 percent of the allocation if more than one eligible grantee applies in the State (section 533(c)(2)).

In accordance with the law, after funding decisions are made for HPG, any remaining balance of HPG funds

would be available to the State for use under the section 504 program.

#### Preapplication Procedure

This section contains the process and information required for a submission of a preapplication to FmHA. The preapplication is to contain the basic outline of the applicant's proposal for its HPG program. As such, it is also the primary document for project review and selection by FmHA. The information provided will reflect how the applicant will operate its HPG program and accomplish its HPG objectives. Respondents to this proposed rule are encouraged to review carefully both this section and the section on project selection. FmHA believes that the information requested with the preapplication is necessary for review under the project selection criteria and will lead to selection of the best qualified applicants with the best thought-through HPG proposal.

#### Preapplication Submission Deadline

FmHA proposes to establish deadlines for submission of preapplications. This will enable FmHA to compare all preapplications submitted in the shortest period of time and to select the best for funding. FmHA also proposes to establish fairly tight review timeframes for FmHA's staff so that funding decisions are made promptly. Obligation of funds for HPG projects must be made early enough so that any remaining funds can be used for the section 504 rural housing rehabilitation program prior to the end of the fiscal year when funds will lapse. For Fiscal Year 1985, FmHA will publish the deadline with publication of the final rule. That deadline will be 30 to 60 days after publication of final rule since all HPG funds now available must be obligated prior to September 30, 1985.

#### Project Selection

Project selection, as proposed, is a two step process. First, applicants filing a preapplication must be determined eligible and their proposed program in compliance with the HPG regulations. Then, the preapplication are evaluated against the project selection criteria. The selection criteria in the proposed regulations is that prescribed by section 533(d)(3) of the law and includes criteria to compare applicant experience and capacity. As noted, the information submitted with the preapplication will be sufficient to adequately and fairly evaluate the preapplications.

**Limitation on Grantee Selection**

This section was discussed under fund allocation.

**Application Submission**

Applicants selected by FmHA through the preapplication process will be promptly notified and requested to submit a formal application. The application submission is the final step in the process for selection of a grantee. If the application is acceptable and meets the requirements set forth in the regulations, the State Director may approve the project and obligate funds for the applicant.

Should the preapplication not be selected, FmHA will provide the reasons for its rejection and the applicant will have an opportunity to appeal FmHA's decision under the appeal procedure set forth in the Agency's regulations in Subpart B of Part 1900.

**Grant Approval and Requesting HPG Funds**

These sections cover the approval process, what happens if, at this point, a project is disapproved, and how funds are disbursed. As proposed in the regulations, applicants may choose to have grant funds advanced monthly, quarterly or annually for program activities and no less frequently than quarterly for administrative purposes. The applicant is responsible for identifying how it wishes to draw grant funds in its application which will be approved or modified by FmHA in its review and approval process.

**Reporting Requirements**

Section 533(j) of the law requires FmHA to report to Congress on progress made under the HPG projects funded. FmHA proposes a standard quarterly reporting format for grantees which should provide appropriate information for such a report and enable the Agency to track grantee progress in meeting their program objectives. At this time, the Agency sees a narrative report as being sufficient to meet the requirements. At some point in the future, FmHA may develop a report form for the program that will facilitate computer analysis.

**Extending and Revising Grant Agreements**

This section outlines the process for extensions and/or revisions to grant agreements and the conditions for a time extension. Revisions to the statement of activities may occur with a change in local conditions that affect the operation of the HPG program. Such changes will be attached to the statement of activities which, when

approved, is part of the Grant Agreement.

**Additional Grants**

FmHA sees a benefit in permitting a successful grantee to continue its operation as long as its program is operating smoothly and meets local demand. FmHA also perceives that a new applicant may serve areas of relatively greater need or have a more efficient delivery and financing concept than an existing grantee seeking refunding. This section addresses this subject and proposes a slight modification to the selection criteria for existing grantees that would not permit monopolization of grant funds.

**Grant Evaluation, Closeout, Suspension, and Termination**

This section briefly covers topics that are covered more thoroughly in the grant agreement. Of particular interest to FmHA is the final project summary report and project audit. The summary report is important for FmHA's mandated report to Congress and the final audit is critical to both grantee and FmHA: to the grantee as a final clearance of use of funds; to FmHA as a check on the monitoring and progress reports as well as HPG fund accountability.

**Exception Authority**

FmHA proposes an exception authority which will permit necessary exceptions to programs regulations when and if required and if not in conflict with the law.

**Exhibits**

Exhibit A is the Grant Agreement. Respondents to the proposed rule are encouraged to review the Agreement as a critical aspect of the regulations. Exhibit B is the extension/revision to the Grant Agreement. Exhibit C details FmHA staff responsibilities and review and approval processes. FmHA does not plan to publish Exhibit C in the final rulemaking. It is administrative in scope and deals with internal management of the program. Material relevant to both FmHA and grantees is contained and/or duplicated in the main body of the regulations. Respondents are asked to review this exhibit as well and advise us as to the benefit or lack thereof for its publication in the **Federal Register** as part of the final regulations.

**List of Subjects in 7 CFR Part 1944**

Grant programs—Housing and community development, Home improvement; Loan programs—Housing and community development; Nonprofit organizations, and Rural housing.

Therefore, as proposed, Subpart N is added to Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations, and reads as follows:

**PART 1944—HOUSING****Subpart N—Housing Preservation Grants**

- Sec.
- 1944.651 General.
- 1944.652 Policy.
- 1944.653 Objective.
- 1944.654-1944.655 [Reserved]
- 1944.656 Definitions.
- 1944.657 [Reserved]
- 1944.658 Applicant eligibility.
- 1944.659 [Reserved]
- 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.
- 1944.661 Homeowner eligibility for HPG assistance.
- 1944.662-1944.663 [Reserved]
- 1944.664 Repair and rehabilitation activities.
- 1944.665 Supervision and inspection of rehabilitation and repair work.
- 1944.666 Administrative activities and policies.
- 1944.667 [Reserved]
- 1944.668 Term of grant.
- 1944.669-1944.670 [Reserved]
- 1944.671 Project income.
- 1944.672 Equal opportunity requirements.
- 1944.673 Other administrative requirements.
- 1944.674 Consultation with local governments and public comment.
- 1944.675 Allocation of HPG funds to States and unused HPG funds.
- 1944.676 Preapplication procedure.
- 1944.677 [Reserved]
- 1944.678 Preapplication submission deadline.
- 1944.679 Project selection criteria.
- 1944.680 Limitation on grantee selection.
- 1944.681 Application submission.
- 1944.682 Grant approval and requesting HPG funds.
- 1944.683 Reporting requirements.
- 1944.684 Extending grant agreements and modifying statements of activities.
- 1944.685 [Reserved]
- 1944.686 Additional grants.
- 1944.687 [Reserved]
- 1944.688 Grant evaluation, closeout, suspension and termination.
- 1944.689 [Reserved]
- 1944.690 Exception authority.
- 1944.691-1944.700 [Reserved]

**Exhibit A—Housing Preservation Grant Agreement****Exhibit B—Amendment to Housing Preservation Grant Agreement****Exhibit C—Administrative Instructions for FmHA Field Offices****Subpart N—Housing Preservation Grants****§ 1944.651 General.**

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to

eligible applicants to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the cost of providing assistance to rural housing homeowners for loans, grants, interest reduction payments or other assistance that will reduce the cost of repair and rehabilitation. Such assistance will be used by the homeowner to remove or correct health or safety hazards of their home to meet applicable development standards or make needed repairs to improve the general living conditions of the resident(s).

(b) The Farmers Home Administration (FmHA) will provide Housing Preservation Grant (HPG) assistance to applicants responsible for providing assistance to eligible homeowners without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap if such person has capacity to contract.

#### § 1944.652 Policy.

(a) The policy of FmHA is to provide housing preservation grants to eligible applicants to operate a program which finances repair and rehabilitation to single family housing for very low- and low-income homeowners. Applicants are expected to:

(1) Coordinate and leverage funding for the repair and rehabilitation of such housing with local housing and community development organizations and/or activities; and

(2) Focus the program to rural areas and smaller communities so it serves very low- and low-income families.

(b) FmHA intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long term benefit to the greatest number of persons residing in housing needing repair and rehabilitation.

(c) Repairs and rehabilitation activities affecting properties on or eligible for listing on the National Register of Historic Places will be accomplished in a manner that supports national historic preservation objectives as specified in § 1944.673(b) of this subpart.

#### § 1944.653 Objective.

The objective of the HPG program is to upgrade substandard housing owned and occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

#### §§ 1944.654—1944.655 [Reserved]

#### § 1944.656 Definitions.

References in this subpart to County, District, State, National and Finance Offices and to County Supervisor, District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

(a) *Adequate housing.* A housing unit of size and design which meets the specific needs of low-income families and which meets the standard prescribed under § 1944.664(a) of this subpart.

(b) *Applicant or grantee.* Any eligible organization which applies for or receives HPG funds under a grant agreement.

(c) *Grant agreement.* The contract between FmHA and the applicant which sets forth the terms and conditions under which HPG funds will be made available. (See Exhibit A of this subpart.)

(d) *Very low-income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum very low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

(e) *Low-income.* An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by HUD for the county or MSA where the property is or will be located. Maximum low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

(f) *Adjusted annual income.* As defined under Section 1944.2 (b) of Subpart A of Part 1944 of this chapter.

(g) *Organization.* (1) A State or political subdivision or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An Indian tribe, band, group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512);

(3) A private nonprofit corporation which local representation from the area being served that is owned and controlled by private persons or interests and is organized and operated by private persons or interests and is organized and operated by private

persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to its members, and is authorized to undertake housing development activities; or

(4) A consortium of units of general local governments or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of general local government or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of local government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

(h) *Rural area.* The definition in § 1944.10 of Subpart A of Part 1944 of this chapter applies.

(i) *Housing preservation.* Repairs and rehabilitation activities to remove health and safety hazards or make major repairs needed to improve the general living environment of the occupant. Repairs and rehabilitation activities will meet FmHA Thermal Standards and applicable development standards recognized by FmHA in Subpart A of Part 1924 of this chapter. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the conditions of 1944.673(b) of this subpart.

(j) *Homeowner.* For the purpose of the HPG program, a homeowner is one who can meet the conditions of ownership under § 1944.661 of this subpart.

#### § 1944.657 [Reserved]

#### § 1944.658 Applicant eligibility.

To be eligible to receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.656 (f) of this subpart.

(b) Have the necessary background and experience with proven ability to perform responsibly in the field of low-income rural housing development, repair, and rehabilitation, or other business management or administrative experience which indicates an ability to operate a program providing repair and rehabilitation financial assistance;

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of

this regulation and the grant agreement. OMB Circular A-102 (Uniform Requirements for Grants to State and Local Education, Hospitals, and other Nonprofit Organizations, Uniform Administrative Requirements) as appropriate which are available in any FmHA office, and comply with the grant agreement and FmHA regulations; and

(d) If the applicant is engaged in or plans to become engaged in any other activities, provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other program or activities to which it is committed without jeopardizing the success and effectiveness of its HPG project.

**§ 1944.659 [Reserved]**

**§ 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.**

(a) FmHA will deal only with authorized representatives designated by the HPG applicant. If the authorized representative is a third party, the representative must have no pecuniary interest in any of the following as they would relate in any way to the HPG grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of any furnishings, fixtures or equipment; or purchases and/or development of land.

(b) FmHA has designated the District Office as the point of initial contact for all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. However, the State Director may, based on total program size or complexity of a particular applicant, elect to process applications and service the program at the State Office or any other FmHA office in the applicant's service area with the capacity to provide the necessary reviews and servicing.

**§ 1944.661 Homeowner eligibility for HPG assistance.**

The homeowners assisted by HPG must be the owner-occupant, at least one year prior to the time of assistance, of a single family dwelling that is located in a rural area and is in need of repairs and rehabilitation. Each homeowner is required to submit evidence of ownership for retention in the grantee files. This evidence may be a photostatic copy of the instrument evidencing ownership. Grantees may require certification or additional information from the homeowner, or may seek advice from their attorney.

(a) The following will satisfy or fulfill this requirement of ownership:

- (1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least 10 years prior to the date of requesting assistance; and

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, the co-owner(s) will also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on the leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effects of a life estate.

(b) The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the HPG recipient is listed as the owner of the property by the local taxing authority and that real estate taxes, if any, for the property are paid by the recipient.

(3) Affidavits by others in the community that the recipient has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

**§§ 1944.662—1944.663 [Reserved]**

**§ 1944.664 Repair and rehabilitation activities.**

(a) Grantees under HPG are responsible for providing loans, grants or comparable assistance to homeowners to remove or correct health or safety hazards or make needed repairs to improve the living environment of the resident(s). HPG repair and rehabilitation activities shall meet FmHA Thermal Standards and applicable development standards

accepted by FmHA under Subpart A of Part 1924 of this chapter or the requirements of § 1944.673(b) if the property to be repaired is listed on or eligible for the National Register of Historic Places.

(b) Authorized repair and rehabilitation activities include but are not limited to:

(1) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements.

(2) Payment of reasonable connection or other fees for utilities (i.e., water, sewer, electricity or gas).

(3) Energy conservation measures such as:

(i) Insulation; and

(ii) Combination screen-storm windows and doors.

(4) Repair or replacement of the heating system including the installation of alternative systems such as woodburning stoves or space heaters, when appropriate and if local codes permit.

(5) Electrical wiring.

(6) Repair of, or provision for, structural supports.

(7) Repair or replacement of the roof.

(8) Replacement of severely deteriorated siding, porches, or stoops.

(9) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped family members.

(10) For properties listed on or eligible for the National Register of Historic Places, activities associated with conforming repair and rehabilitation activities to the standards and/or design comments resulting from the consultation process contained in § 1944.673 of this subpart.

(11) Necessary repairs to manufactured homes or mobile homes provided:

(i) The recipient owns the home and the site on which the home is situated and has occupied that home on that site for at least one year prior to receiving HPG assistance; and

(ii) The manufactured home or mobile home is on a permanent foundation or will be put on a permanent foundation with HPG funds. A permanent foundation will be in accordance with the requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(12) Additions to any dwelling (conventional, manufactured or mobile) only when it is clearly necessary to remove health hazards to the occupants.

(13) Payment of incidental homeowner expenses directly related to accomplishing authorized activities such as fees for credit reports, surveys,

title clearance, loan closing, inspections, and architectural or other technical services.

(c) HPG funds may be used to make changes to the dwelling for cosmetic or convenience purposes when such work is not the primary purpose, the percentage of funds to be used for such purposes does not exceed 25 percent of the total funding, and such work is combined with improvements listed as eligible under paragraph (b) of this section. Cosmetic and convenience changes might include, but are not limited to the following:

- (1) Painting;
  - (2) Paneling;
  - (3) Carpeting;
  - (4) Improving clothes closets or shelving;
  - (5) Improving kitchen cabinets;
  - (6) Air conditioning; or
  - (7) Landscape plantings.
- (d) HPG funds may not be used to:
- (1) Assist in the construction of a new dwelling.
  - (2) Refinance any debt or obligation of the borrower/grantee other than obligations incurred for eligible items covered by this section entered into after date of agreement with HPG grantee.
  - (3) Repair or rehabilitate any property located in the Coastal Barrier Resources System as designated by the Coastal Barrier Resource Act.

**§ 1944.665 Supervision and inspection of rehabilitation and repair work.**

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. All HPG work must be inspected by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, the grantee may use qualified contract or fee inspectors.

**§ 1944.666 Administrative activities and policies.**

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for administration is a secondary purpose and must not exceed 20 percent of the HPG funds awarded to the grantee.

(a) Administrative expenses may include:

- (1) Payment of reasonable salaries or contracts for professional, technical, and clerical staff actively assisting in the delivery of the HPG project.
- (2) Payment of necessary and reasonable office expenses such as office rental, supplies, utilities, telephone services, and equipment. (Any item of nonexpendable personal

property having a unit value of \$1,000 or more, acquired with HPG funds, will be specifically identified to FmHA in writing.

(3) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, and the employer's share of Social Security and health benefits. Payments to private retirement funds are permitted if the grantee already has such a fund established and ongoing.

(4) Payment of reasonable fees for necessary training of grantee personnel.

(5) Payment of necessary and reasonable costs for an audit upon expiration of the grant agreement.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval. This may include contract of fee inspection where necessary pursuant to § 1944.665 of this subpart.

(b) HPG administrative funds may not be used for:

(1) Preparing housing development plans and strategies except as necessary to accomplish the specific objectives of the HPG project.

(2) Substitution for any financial support which would be available from any other source.

(3) Hiring personnel to perform construction.

(4) Buying property of any kind from families receiving assistance from the grantee under the terms of the HPG.

(5) Paying for or reimbursing the grantee for any expense or debts incurred before FmHA executes the grant agreement.

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving HPG assistance outside the costs of repair and rehabilitation.

(7) Any type of political activities prohibited by OMB Circular A-122.

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to homeowners, legislative expenses and any excess of cost from other grant agreements.

(c) Advice concerning ineligible costs may be obtained from the State Office as part of the HPG application review or when a proposed cost appears ineligible.

(d) The grantee may not charge fees or accept any compensation or gratuities from HPG recipients for the grantee's technical services under this program.

**§ 1944.667 [Reserved]**

**§ 1944.668 Term of grant.**

HPG projects may be funded under the terms of a Grant Agreement for a period of up to two years commencing on the date of execution of the Agreement by the State Director. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within one or two years. Applicants requesting a two year term may be asked to develop a feasible one year program if sufficient funds are not available for a two year program.

**§ 1944.669—1944.670 [Reserved]**

**§ 1944.671 Project income.**

(a) Project income during the grant period from loans made to homeowners is governed by OMB Circular A-102 or A-110 available in any FmHA office. All income, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient must be used under (and in accordance with) the requirements of the HPG program.

(b) Grantees are encouraged to establish a program which reuses income from loans after the grant period for continuing repair and rehabilitation activities.

**§ 1944.672 Equal opportunity requirements.**

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grantees under this subpart.

**§ 1944.673 Other administrative requirements.**

The following policies and regulations apply to grants made under this subpart:

(a) Subpart G of Part 1940 of this chapter regarding Environmental Assessments.

(1) To comply with Subpart G of Part 1940, applicants for HPG assistance will submit Form FmHA 1940-20, "Request for Environmental Information," on the geographical areas proposed to be served by the HPG program.

(2) In general, rehabilitation of existing single family houses is exempt from an environment assessment. However, if such units are located in floodplain or wetland, or are eligible for or listed on the National Register of Historic Places, an environmental assessment may be required. Applicants must include in their application a process for identifying specific housing repair or rehabilitation units that require an environment assessment.

(3) When such a unit requiring an environmental assessment is proposed for HPG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant and work with that office in preparing an environmental assessment and otherwise complying with Subpart F of Part 1940.

(b) The policies and regulations contained in Subpart F of Part 1901 of this chapter regarding historical and archaeological properties.

(1) In addition, the grantee may not initiate any rehabilitation activity which would affect an historic property, defined as a property that is included or is eligible for inclusion on the National Register of Historic Places, unless:

(i) Such activity will reasonably meet the standards for rehabilitation issued by the Secretary of Interior and the appropriate State historic preservation officer is afforded an opportunity to comment on the specific rehabilitation plans; or

(ii) The Advisory Council on Historic Preservation is afforded an opportunity to comment on cases for which the grantee, in consultation with the State historic preservation officer, determines that the proposed rehabilitation activity cannot reasonably meet such standards or would adversely affect historic property.

(2) Consultation procedures regarding historic properties will be accomplished on both the program and project level.

(i) In developing preapplications, applicants must request the views of their appropriate State Historic Preservation Officer (SHPO). This will be done by providing the SHPO with a copy of the proposed Statement of Activities.

(ii) Proposed sites for repair and rehabilitation work must be reviewed in accordance with § 1944.673(a) of this subpart. Any mitigation measures or operating agreements reached in the accomplishment of paragraph (b)(2)(i) of this section can serve as a replacement for individual site reviews as long as the site work will be accomplished in accordance with the agreement and the grantee so documents this in the case file and monitors such work for proper compliance.

(c) The policies, guidelines and requirements of OMB Circular Nos. A-102, and A-110, and A-122 apply to the acceptance and use of housing preservation grant funds.

**§ 1944.674 Consultation with local governments and public comment.**

(a) In preparing its Statement of Activity, the applicant is responsible for consulting with leaders from the county,

parish and/or township governments of the area where HPG activities will take place for the purpose of assuring that the proposed HPG program is beneficial and does not duplicate current activities. Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the county governments.

(b) The applicant must make its statement of activities available to the public for comment. The applicant must announce the availability of its Statement of Activities for review in a newspaper of general circulation in the project area and allow at least 15 days for comment.

(c) The HPG program is subject to 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

**§ 1944.675 Allocation of HPG funds to States and unused HPG funds.**

(a) The Administrator will allocate rehabilitation grant funds for use in each State on the basis of a formula, using the most current available information and using the average of the ratios between:

(1) The population of the rural areas in that State and the population of the rural areas of all States;

(2) The extent of poverty in the rural areas in that State and the extent of poverty in the rural areas of all States; and

(3) The extent of substandard housing in the rural areas of that State and the extent of substandard housing in the rural areas of all States.

(b) The Administrator may reserve a portion of the available funds for HPG in a National Office pool for States needing additional funds for feasible, acceptable projects.

(c) Any funds which are allocated to a State but uncommitted to grantees will be transferred to the State Office in a timely manner and be used for authorized purposes under Section 504 of the Housing Act of 1949, as amended.

**§ 1944.676 Preapplication procedure.**

(a) All applicants will file an original and two copies of Form AD-621, "Preapplication for Federal Assistance," and supporting information outlined in subparagraph (b) of this section with the appropriate FmHA office. A preapplication packet including Form AD-621 is available in all FmHA District and State Offices.

(b) All preapplications shall be accompanied by the following information which FmHA will use to determine the applicant's eligibility to

undertake a HPG program and to determine whether a grant will be awarded.

(1) A statement of activities proposed by the applicant for its HPG program, including:

(i) A complete discussion of the type of and conditions for financial assistance for repair and rehabilitation;

(ii) The process for selecting recipients of HPG assistance, determining repair and rehabilitation needs of the unit, assessing potential environmental constraints (per § 1944.673(a) of this subpart), performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard the applicant will use for the repairs and rehabilitation work;

(iv) The time schedule for completing the program;

(v) The staffing required to complete the program;

(vi) The estimated number of very low- and low-income minority and nonminority families the applicant will assist with HPG funds;

(vii) The area(s) to be served by the HPG program;

(viii) Annual estimated budget for the program year based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other costs categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant's budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.

(ix) A brief description of the accounting system to be used;

(x) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to FmHA per § 1944.683(b) of this subpart;

(xi) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(xii) The use of program income, if any; and

(xiii) Any other information necessary to explain the HPG program.

(2) Complete information about the applicant's experience and capacity to

carry out the objectives of the proposed HPG program;

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.566(g)(4) of this subpart.

(4) For a private nonprofit entity, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of repair and rehabilitation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (as related to paragraph (b)(1) of this section), and any other information necessary to specifically address the selection criteria in § 1944.679 of this subpart.

(6) A list of other activities the applicant is engaged in and expects to continue, a statement as to any other funding, and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the HPG grant agreement.

(c) An applicant must submit written statements reflecting compliance with § 1944.674(a) of this subpart on consultations between local government(s) and the applicant.

(d) The applicant is to make its Statement of Activity available to the public for comment prior to submission to FmHA pursuant to § 1944.674(b) of this subpart. The preapplication must contain a description of how this was accomplished as well as a synopsis of comments received and how the comments were addressed.

(e) An original and one copy of Form FmHA 1940-20, as well as a description of the applicant's process for determining whether an individual property requires an environment assessment per § 1944.673(a) of this subpart.

(f) An original and one copy of Form FmHA 400-1, "Equal Opportunity Agreement," and Form FmHA 400-4, "Assurance Agreement."

#### § 1944.677 [Reserved]

#### § 1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the **Federal Register**. Preapplications received after the date specified in the **Federal Register** will not be considered for funding in that fiscal year and will be returned.

#### § 1944.679 Project selection criteria.

(a) Grant applicants must meet all the following criteria:

(1) Provide a financially feasible program of repair and rehabilitation assistance as defined in § 1944.664(b) of this subpart;

(2) Serve eligible rural areas with a concentration of substandard housing for households with very low- and low-income;

(3) Be an eligible applicant entity as defined in § 1944.658 of this subpart; and

(4) Meet the requirements of consultation and public comment per § 1944.674 of this subpart.

(b) For applicants meeting the requirements listed in subparagraph (a) of this section, FmHA will use the criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated on the extent to which:

(1) The repair and rehabilitation activities will assist persons of very low- and low-income who lack adequate shelter, with priority given to applicants who propose to assist the maximum number of persons and families with very low income;

(2) The repair and rehabilitation activities include the participation of other public or private organizations in providing assistance, in addition to the

assistance provided by the proposed HPG program, in order to:

(i) Lower the cost of such activities to very low- and low-income families; or

(ii) Provide for the leveraging of available funds to supplement the proposed HPG program;

(3) The proposed program will be undertaken in rural areas identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas not contained in Metropolitan Statistical Areas with less than 10,000 population);

(4) The repair and rehabilitation activities may be expected to result in achieving the greatest degree of repair or improvement for the least cost per unit or dwelling;

(5) The program will minimize displacement;

(6) The program will alleviate overcrowding in rural residences inhabited by very low- and low-income families;

(7) The program will minimize the use of grant funds for administrative purposes, i.e., less than 20 percent of grant funds.

(8) The applicant has demonstrated its capacity in administering its programs and past performance reflecting such capacity in administering selected housing programs;

(9) The applicant is currently effective in assisting very low and low-income families obtain adequate housing; and

(10) The applicant will have the capacity to implement its proposed time schedule for starting and completing the HPG program and each phase thereof.

#### § 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director may not approve more than fifty percent of the State's allocation to a single applicant.

#### § 1944.681 Application submission.

(a) Applicants selected by FmHA will be advised to submit a full application in an original and two copies of Form AD-623, "Application for Federal Assistance (Nonconstruction Programs)," and provide additional information if necessary. Instructions on submission and timing will be provided by FmHA.

(b) Applicants not selected by FmHA will be so notified and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

**§ 1944.682 Grant approval and requesting HPG funds.**

(a) Grant approval is the process by which FmHA determines that all applicable administrative and legal conditions for making a grant have been met, the Grant Agreement is signed, and funds obligated for the HPG project. The FmHA District Office responsible for servicing and monitoring the HPG applicant's program will review the application submission. If acceptable and if the District Office is prepared to recommend the application to the State Office for approval, the applicant will sign a Form FmHA 1940-1, "Request for Obligation of Funds," and Exhibit A of this subpart, the Housing Preservation Grant Agreement. If the application is approved by the State Director, the applicant will be sent a copy of the executed Grant Agreement and Form FmHA 1940-1. Should the State Director attach any conditions to the Agreement that must be satisfied prior to the applicant receiving any HPG funds, the Agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the Agreement prior to execution by the State Director.

(b) The application may be disapproved before execution of the grant agreement if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation of its project. Except when the applicant requests cancellation, FmHA will document its findings and advise the applicant of its appeal rights under Subpart B of Part 1900 of this chapter.

(c) With the executed Grant Agreement and Form FmHA 1940-1, FmHA will send the approved applicant (now the "grantee") copies of Standard Form 270, "Request for Advance or Reimbursement." The grantee must submit an original and two copies of Standard Form 270 to the District Office. Advances or reimbursements must be in accordance with the grantee's budget and Statement of Activity, including any amendments, prior approved by FmHA. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the Grant Agreement, FmHA may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the Grant Agreement.

**§ 1944.683 Reporting requirements.**

(a) Standard Form 269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees

shall submit an original and two copies of the report to the designated FmHA servicing office. Reports will be submitted no later than February 15, April 15, July 15 and October 15 while the grant agreement is in effect.

(b) Quarterly performance reports shall be submitted by grantees with the SF-269, "Financial Status Report," in an original and two copies. The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as required by § 1944.676(b) of this subpart, the grantee established the objectives of its HPS program, including its method of evaluation to determine its effectiveness. Accordingly, the report should include, but need not be limited to, the following:

(1) The following specific information for each unit assisted:

(i) Income category of the homeowner (very low or low);

(ii) Cost, major repairs, amount financed by HPG and/or other sources of funds;

(iii) Type of financing provided (interest subsidy, direct loan, etc.); and

(iv) Results of implementing the environmental process contained in § 1944.673 of this subpart.

(2) A comparison of actual accomplishments to the objectives set for that period, including:

(i) The number of very low- and low-income, minority and nonminority families assisted in obtaining adequate housing by the HPG program through repair and rehabilitation; and

(ii) The average cost of assistance provided to homeowners.

(3) Reasons why, if established objectives are not met.

(4) Problems, delays, or adverse conditions which will materially affect attainment of the HPG grant objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of program work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to relieve the situations.

(5) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of families to be assisted, etc.

(c) The grantee should be prepared to meet with the District Office to discuss its quarterly report shortly after submission.

(d) If the reports indicate unsatisfactory progress or the grantee is not meeting its established objectives,

the State Director will recommend appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the Grant Agreement.

**§ 1944.684 Extending grant agreements and modifying statements of activities.**

(a) All requests extending the original grant agreement of modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the District Director. The State Office will respond to the applicant within 30 days of receipt of the request in the State Office.

(b) An extension of a grant beyond the project term may be granted by the State Director when:

(1) There are grant funds remaining and the grantee requests an extension of the grant period to the ending date of the Grant Agreement;

(2) The grantee has demonstrated its ability to conduct their program in accordance with the terms of its grant agreement and in a manner satisfactory to FmHA;

(3) The Grantee is likely to complete the goals outlined in the initial proposal, or

(4) The District Director recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Modification of the statement of activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the State Director when the modifications are for eligible purposes per §§ 1944.664 and 1944.666 of this subpart and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA.

(d) Exhibit B, "Amendment to Housing Preservation Grant," will be used for all extensions and modifications.

**§ 1944.685 [Reserved]****§ 1944.686 Additional grants.**

An additional HPG grant may be made to a grantee when it has achieved or nearly achieved the goals established for the previous grant. The grantee must file a new application for HPG funds that will be processed similar to an initial application and compared under the project selection criteria to others submitted at the time. Preference may be given to an existing grantee where there is a continuing need for the

program in the area currently being served by the existing grant, the program has local public and community support, and the grantee has fully complied with the HPG requirements contained herein.

§ 1944.687 [Reserved]

§ 1944.688 Grant evaluation, closeout, suspension and termination.

(a) Grant evaluation will be an ongoing activity performed by both the grantee and FmHA. The grantee will perform self-evaluations by preparing quarterly performance reports in accordance with § 1944.683 of this subpart. FmHA will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and this subpart.

(b) Within forty-five (45) calendar days after the grant ending date, the grantee will complete closeout procedures as specified in the grant agreement.

(1) The grantee will complete a final Standard Form 269 and a final performance report upon termination or expiration of the grant agreement. The final performance report will serve as the last quarterly report.

(2) The grantee will have an audit performed upon termination or completion of the project in accordance with OMB Circular A-102 or or A-110. As part of their final report, the grantee will address and resolve all audit findings.

(c) The grant can be suspended or terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be advanced when grant suspension or termination procedures have been initiated in accordance with the grant agreement. Grantees may be reimbursed for eligible costs incurred prior to the effective date of the suspension or termination. Grantees are prohibited from incurring additional obligations of funds after notification, pending corrective action by the grantee. FmHA may allow necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided they are for eligible HPG purposes.

(d) Applicants will have the opportunity to appeal a suspension or termination under FmHA's appeal procedures. Subpart B of Part 1900 of this chapter.

§ 1944.689 [Reserved]

§ 1944.690 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any

requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, or adversely affect the accomplishment of the purposes of the housing preservation grant program, or result in undue hardship by applying the requirement. The Administrator will exercise this exception authority only at the request of the State Director. The State Director will submit the request supported by information demonstrating the adverse impact, citing the particular requirement involved, recommending proper alternative courses of action, and outlining how the adverse impact could be mitigated.

§§ 1944.691-1944.700 [Reserved]

Exhibit A—Housing Preservation Grant Agreement

This Agreement dated \_\_\_\_\_ is between \_\_\_\_\_ (name), \_\_\_\_\_ (address), (grantee), organized and operating under \_\_\_\_\_ (authorizing State statute), and the United States of America acting through the Farmers Home Administration (FmHA). FmHA agrees to grant a sum not to exceed \$\_\_\_\_\_ subject to the terms and conditions of this Agreement; provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to FmHA. The Housing Preservation Grant (HPG) Statement of Activities approved by FmHA, and attached hereto, shall commence within 10 days of the date of execution of this agreement by FmHA and be completed by \_\_\_\_\_ (dated). FmHA may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this Grant Agreement of FmHA regulation related hereto. The grantee may appeal adverse decisions in accordance with the FmHA Appeal Procedures contained in Subpart B of Part 1900 of this chapter.

In consideration of said grant by FmHA to the Grantee, to be made pursuant to Section 533 of the Housing Act of 1949, Housing Preservation Grant (HPG) program, the grantee will provide such a program in accordance with the terms of this Agreement and applicable FmHA regulations.

PART A Definitions:

1. "Beginning date" means that date this agreement is executed by FmHA and costs can be incurred.
2. "Ending date" means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.
3. "Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized in accordance with applicable Federal costs principles contained in Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," and OMB Circular A-122,

"Cost Principles for Nonprofit Organizations," and other conditions contained in this Agreement and OMB Circular A-102 and A-110, as appropriate.

4. "Grant closeout" is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. "Termination" of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

PART B Terms of agreement:

FmHA and grantee agree:

1. All grant activities shall be limited to those authorized in Subpart N of 7 C.F.R. 1944.
2. This Agreement shall be effective when executed by both parties.
3. The HPG activities approved by FmHA shall commence and be completed within the dates indicated above, unless earlier terminated under paragraph B 18 below or extended.
4. Grantee shall carry out the HPG activities and process as described in the approved Statement of Activities which is made a part of this Agreement. Grantee will be bound by the activities and processes set forth in the Statement of Activities and the further conditions set forth in this Agreement. If the Statement of Activities is inconsistent with the Agreement, the latter will govern. A change of any activities and processes must be in writing and must be signed by the FmHA State Director or his or her delegated representative.

5. Grantee shall use grant funds only for the purpose and activities approved by FmHA in the HPG budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

6. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the FmHA rates will be the maximum allowed.

7. Grant funds will not be used for any of the following:

- (a) To pay obligations incurred before the effective date of this Agreement.
  - (b) To pay obligations incurred after the grant termination or ending date.
  - (c) Entertainment purposes.
  - (d) To pay for capital assets, the purchase of real estate or vehicles, improvement or renovation of grantee's office space, or repair or maintenance of privately owned vehicles.
  - (e) Any other purpose specified in §§ 1944.664(d) and § 1944.666(b) of this subpart.
  - (f) Administrative expenses exceeding 20% of HPG grant funds.
8. Grant funds shall not be used to substitute for any financial support previously provided or assured from any other source.

9. Disbursal of grants will be governed as follows:

- (a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of

title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A-102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A-110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's Statement of Activity and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than \$10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect FmHA's interests.

10. The grantee will submit performance and financial reports as indicated below to the appropriate FmHA District Office.

(a) As needed, but not more frequently than once every 30 calendar days, an original and 2 copies of Standard Form 270, "Request for Advance or Reimbursement."

(b) Quarterly (not later than January 15, April 15, July 15, and October 15 of each year), an original and 2 copies of Standard Form 269, "Financial Status Report," and a quarterly performance report in accordance with § 1944.683 of this subpart.

(c) Within forty-five (45) days after the termination or expiration of the Grant Agreement, an original and 2 copies of Standard Form 269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee for HPG. Final reports may serve as the last quarterly report.

(d) FmHA may require performance reports more frequently if deemed necessary.

11. In accordance with FMC 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds \$100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by the District Director.

13. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, as amended, and that five copies of each such publication are furnished to the District Director.

14. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

15. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of FmHA contained in Subpart E of Part 1901 of this chapter.

16. In all hiring or employment made possible by or resulting from this grant, the grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the "Equal Employment Clause" as specified by Form FmHA 400-1.

17. The grantee accepts responsibility for accomplishing the HPG program as submitted and included in the Statement of Activities. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA on the status of grantee HPG programs, projects, related activities, and problems.

(c) The grantee shall inform FmHA as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time

schedules required and any FmHA assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

(ii) The grantee shall furnish to FmHA within 45 calendar days after the date of completion of the grant a Standard Form 269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

(iii) The grantee shall account for any property acquired with HPG grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, suspend the grant pending corrective action or terminate the grant pursuant to paragraph (c) below. In such instances, FmHA may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. FmHA will withhold further advances and grantees are prohibited from further obligating grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, at any time before the date of completion, whenever FmHA determines that the grantee has failed to comply with the terms of this Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(F) Failure to maintain an accounting system acceptable to FmHA.

(ii) *Termination for convenience.* FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions,

including the effective date and, in case of partial termination, the portion to be terminated.

(d) FmHA shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination in accordance with § 1900.53 of Subpart B of Part 1900 of this chapter.

19. Upon any default under its representatives or agreements set forth in this instrument, the grantee, at the option and demand of FmHA, will, to the extent legally permissible, repay to FmHA forthwith the grant funds received with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by FmHA, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by FmHA to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

20. Extension of this Grant Agreement and/or modifications of the Statement of Activities may be approved by FmHA provided, in its opinion, the extension and/or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the Statement of Activities during the period of the extension and/or modifications as specified in § 1944.684 of this subpart.

#### PART C. Grantee agrees:

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A-102 or Attachment N of OMB Circular A-110 for State and local governments or nonprofit organizations respectively. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definitions of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, FmHA may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA.  
(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than \$1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The grantee may retain the property for other use provided that compensation in made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the

cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original Grantor agency. FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the grantee no later than 120 calendar days after the grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal shares \$100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(C) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.  
(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.  
(c) Sources of the property including grant or other agreement number.  
(d) Whether title vests in the grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget Year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(g) Location, use, and condition of the property and the date the information was reported.

(h) Unit acquisition cost.  
(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any difference between quantities determined by the physical inspection and

those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify FmHA.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) When the grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use of nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to Part B(9)(c) of this Agreement except in the following situations:

(a) If any litigation, claim, or audit is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by FmHA, the three year retention requirement is not applicable.

(c) When records are transferred to or maintained by FmHA, the three year retention requirement is not applicable. Microfilm copies may be substituted in lieu of original records. FmHA and the

Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by FmHA concerning the grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not encumber, transfer, or dispose of the property or any part thereof, furnished by FmHA or acquired wholly or in part with HPG funds without the written consent of FmHA except as provided in Part C 1 of this Agreement.

6. To provide FmHA with such periodic reports of grantee operations as may be required by authorized representatives of FmHA.

7. To execute Form FmHA 400-1, "Equal Opportunity Agreement," and to execute any other agreements required by FmHA to implement the civil rights requirements.

8. To include in all contracts in excess of \$100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 1875C-9 as amended. Violations shall be reported to FmHA and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

12. That the grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

14. That the grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, or OMB Circular A-110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

15. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as

amended, 42 U.S.C. 1471 et. seq., and related regulations, and that all rights granted to FmHA herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmHA's financial interest.

16. Standard of Conduct. No employee, officer or agent of the grantee shall participate in the selection, award or administration of a contract in which Federal funds are used where, to the knowledge of such employee, officer or agent, the employee, officer or agent or such person's immediate family members, partners or any organization in which such person or such person's immediate family award or administration of the contract, or when such person is negotiating or has any arrangement concerning future employment. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects or other persons receiving HPG assistance.

#### PART D FmHA agrees:

1. That it may assist grantee, within available appropriations, with such technical and management assistance as needed in coordinating the Statement of Activities with local officials, comprehensive plans, and any State or area plans for improving housing for very low- and low-income households in the area in which the project is located.

2. That at its sole discretion, FmHA may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be: (a) Advisable to further the purposes of the grant or to protect FmHA's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and FmHA's regulations.

This Agreement is subject to current FmHA regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this Agreement to be executed by its duly authorized \_\_\_\_\_, properly attested to and its corporate seal affixed by its duly authorized \_\_\_\_\_.

Attest: \_\_\_\_\_  
By \_\_\_\_\_

(Title)

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By \_\_\_\_\_

(Title)

Date of Execution of Grant Agreement by  
FmHA: \_\_\_\_\_

ATTACHED STATEMENT OF ACTIVITIES  
IS MADE PART OF THIS AGREEMENT

#### Exhibit B—Amendment to Housing Preservation Grant Agreement

This Amendment between \_\_\_\_\_ herein called "Grantee," and the United States of America acting through the Farmers Home

Administration, Department of Agriculture, herein called "FmHA," hereby amends the Housing Preservation Grant Agreement executed by said parties on \_\_\_\_\_, 19\_\_\_\_, hereinafter called the "Agreement."

Said Agreement is amended by extending the Agreement to \_\_\_\_\_, 19\_\_\_\_, and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Grantee has caused this Agreement to be executed by its duly authorized \_\_\_\_\_, properly attested to and its corporate seal affixed by its duly authorized \_\_\_\_\_.

Attest: Grantee: \_\_\_\_\_

By \_\_\_\_\_

(Title)

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION:

By \_\_\_\_\_

(Title)

Date of Execution of Amendment to Grant Agreement by FmHA: \_\_\_\_\_

### Exhibit C—Administrative Instructions for FmHA Field Offices Regarding Their Responsibilities in the Administration of the Housing Preservation Grant

#### 1. Overall Guidance.

(A) The State and District Offices will maintain for distribution to potential applicants, upon request, a supply of preapplication packets consisting of:

1. Form FmHA AD-621, "Preapplication for Federal Assistance."
2. Form FmHA 400-1, "Equal Opportunity Agreement."
3. Form FmHA 400-4, "Assurance Agreement."
4. Form FmHA 1940-20, "Request for Environmental Information."
5. Subpart N or Part 1944 of this Chapter, "Housing Preservation Grants."

(B) The State Office should decide whether the program will be operated out of the State Office entirely or the District Offices. If operated out of the State Office, the State Office will be responsible for the District Office tasks outlined below. If operated out of District Offices:

1. The preapplication must be submitted to the District Office serving the area in which the applicant proposes to operate the Housing Preservation Grant program. If the applicant proposes to operate in more than one District Office's area, the State Director will designate a specific District Office to serve the applicant.

2. The State Office will refer all requests for assistance in completing the preapplication to the appropriate District Office.

(C) Beyond the responsibilities of the State Office in the selection of grantees and the administration of the program, the HPG program provides an opportunity for the State Director to give priority to applicants serving the rural areas of greatest need for rehabilitation and repair activities as well as encourage the use of the program

cooperatively with other Federal and State agencies in addressing the housing needs of the residents of a proposed HPG service area. Therefore, the State Office should be prepared, before receipt of preapplications, to advise District Directors, potential applicants, and other Federal and State agencies which part(s) of the State has the greatest need for the HPG program. Proposals which are clearly inappropriate and do not meet the basic selection criterion criteria of § 1944.679(a) of this subpart should not be encouraged due to the complexity of the preapplication submission.

#### II. Preapplication.

##### (A) District Office processing of preapplications.

(1) The District Director with whom the preapplication is filed will review the preapplication, Form AD-621, and the other supporting information from the applicant submitted pursuant to § 1944.676 of this subpart. The District Director will also:

(a) Complete any required environmental review procedures as specified in Subpart G of Part 1946 of this chapter and attach it to the application.

(b) Prepare a review of the project in accordance with Subpart F of Part 1901 of this chapter and attach it to the preapplication.

(2) All District Directors receiving informational copies of the preapplication should submit their comments within five working days to the District Director with whom the preapplication is filed.

(3) The District Director receiving the original preapplication will provide written comments to be attached to the preapplication. These comments will, at a minimum, address the following items:

(a) Whether the area to be covered by the project is a "rural area" as defined in Subpart A of Part 1944 of this chapter.

(b) The District Director's knowledge of the applicant's past history.

(c) The need for the proposed activity, and its relationship to FmHA housing activities anticipated in the District.

(d) Appropriateness and applicability of this proposal for FmHA funding.

(e) Extent of citizen involvement in development of the preapplication, particularly the involvement of minority and/or low-income groups.

(f) All other criteria specified in § 1944.679 of this subpart.

(4) The original and one copy of the preapplication, together with the District Director's written comments and recommendations, will be forwarded to the State Director within 15 calendar days from the deadline for receipt of completed preapplications.

##### (B) State Office processing of preapplications.

(1) Upon receipt of a preapplication, the State Office will review and evaluate the preapplication and accompanying documents and the District Director's comments in accordance with the project selection criteria of § 1944.679 of this subpart and the procedures outline below:

(a) Review preapplications for completeness and adequacy.

(b) Request clarifications from the District Office if necessary.

(c) Evaluate the proposals in light of § 1944.679(a) of this subpart to establish applicant eligibility and select the proposal(s) under the project selection criteria in § 1944.679(b) of this subpart. Selection is a competition process and applicants best meeting the selection criteria should be asked to prepare a full application.

(d) Provide written comments to be attached to the preapplication(s) justifying the selection(s) and addressing the items in § 1944.679 of this subpart.

(e) Return the preapplication(s) not selected by the State Office to the appropriate District Office with reasons noted for nonselection. The District Director will forward to the applicant a letter of denial and notice of appeal rights under Subpart B of Part 1900 of this chapter.

(2) In accordance with § 1944.675 of this subpart, State Offices will be advised of the allocation of HPG funds. States may request additional funds from the National Office Reserve if the State's allocation is not sufficient to fund its two highest priority rated preapplications or additional highly rated preapplications.

(3) The State Office will also:

(a) Make a determination of the overall HPG program on Form FmHA 1940-21, "Environmental Assessment for Class I Action," Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Class II Environmental Assessment under Subpart B of Part 1940 of this subpart or complete an Environmental Impact Statement, if required.

(b) Prepare an historical and archaeological assessment in accordance with § 1901.255(b) and (c) of Subpart F of Part 1901 of this chapter.

(c) Review comments received in accordance with 7 CFR Part 3015, "Intergovernmental Review of Agriculture Programs and Activities," (see FmHA Instruction 940-J), and the comments and recommendations of the County Office(s), District Office(s), and the State Office.

(4) Concurrently the State Office will obtain an opinion from the Regional Office of the General Counsel (OGC) on the applicant's legal existence and authority to conduct the proposed program.

(5) Within 30 calendar days of receipt by the State Office or 45 calendar days of the closing date for receipt of preapplications, whichever is shorter, preapplications will be reviewed for completeness and compliance with this subpart and evaluated in accordance with the project selection criteria of § 1944.679 of this subpart. For preapplications which are selected, and for which funds are available, the State Director will issue Form AD-622, "Notice of Preapplication Review Action" and request the applicant to prepare Form AD-623, "Application for Federal Assistance (Nonconstruction Programs)," for submission to the District Office. The request will include instructions to the applicant for preparation of the full application as well as a copy of

Form AD-623. State Offices will send a copy to the District Offices.

(6) The State Director will notify other applicants that their preapplications were not selected using Form AD-622, "Notice of Preapplication Review Action," and advise them of their appeal rights under Subpart B of Part 1900 of this chapter.

### III. Application.

#### (A) District Office Processing of Application.

(1) After receipt of Form AD-622, the applicant will submit an application in an original and 2 copies on Form AD-623, and provide whatever additional information is requested to the District Office within 30 calendar days.

(2) Upon receipt of an application Form AD-623, by the District Office, a docket shall be assembled which will include the following:

(a) Form AD-621 and the information submitted in accordance with § 1944.676 of this subpart.

(b) Form AD-622.

(c) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-1.

(d) Form AD-623.

(e) OGC legal determination made pursuant to paragraph II B 3 of this exhibit.

(f) Housing Preservation Grant Agreement.

(g) Form FmHA 1940-1, "Request for Obligation of Funds."

(h) Form FmHA 400-1, "Equal Opportunity Agreement."

(i) Form FmHA 400-4, "Assurance Agreement."

(j) Form FmHA 1940-20, "Request for Environmental Information."

(k) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," Form FmHA 1940-21, "Environmental Assessment for Class I Actions," or Exhibit H, Subpart G of Part 1940 entitled, "Environmental Assessment for Class II Actions," or an Environmental Impact Statement, if required.

(l) The historical and archaeological assessment.

(m) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by FmHA.

(3) The District Office will review the docket to determine whether the application complies with these regulations and is consistent with the information and supporting documents submitted with the preapplication and any comments and recommendations of the State Office.

(4) If major problems occur during the development of the docket, the District Office will call upon the State Office for assistance.

(5) If a grant is recommended, Form FmHA 1940-1 and the Grant Agreement will be prepared by the District Office and forwarded to the applicant for signature as authorized in its authorizing resolution. Exhibit A, Grant Agreement, is a part of the HPG regulations.

(6) When Form FmHA 1940-1 and the Grant Agreement are received from the applicant and signed by the applicant, the docket will be forwarded to the State Director.

#### (B) State Office Processing and Approval Actions.

(1) The State Office will review the docket submitted by the District Office. If acceptable for State Director's approval, the following actions will be taken in the order listed:

(a) The State Director, or the State Director's designee, will authorize the request for obligation of HPG funds through the State Office terminal, furnishing the appropriate security identification code. Failure to furnish the security code will result in rejection of the obligation request.

(b) The individual making the request will record the date and time of the request and sign Section 43 of Form FmHA 1940-1.

(i) The terminal operator should use the State Office terminal to verify the obligation date by use of the ADPS status inquiry function (option 3 on the ADPS menu screen). If funds were not available for the project, the terminal generator will immediately advise the State Director.

(ii) The State Office will not submit the Form FmHA 440-57, to Finance Office for HPG grants.

(iii) Form FmHA 1940-1 will not be mailed to the Finance Office.

(c) The State Office will provide a completed Exhibit A to FmHA Instruction 2015-C to the Director of Legislative Affairs and Public Information Staff in the National Office and recommend that the project announcement be released under FmHA Instruction 2015-C.

(d) When the State Office determines that applicable administrative actions have been completed, the Grant Agreement (Exhibit A) will be executed by the State Director. An executed original of the Grant Agreement shall be sent to the District Director.

(e) An executed Form FmHA 1940-1 will be sent to the applicant along with a copy of the executed Grant Agreement with the approved statement of activities on or before the date set for obligation.

(i) The actual date of applicant notification will be entered on the original of Form FmHA 1940-1 and the original of the form will be included as a permanent part of the file.

(ii) Standard Form 270, "Request for Advance or Reimbursement," will be sent to the applicant for completion and return to FmHA.

(f) Upon receipt from the grantee of a properly completed SF-270, Form FmHA 440-57 will be completed and the State Office will request the check through the State Office terminal system in accordance with State Instructions.

(2) If the State Director disapproves the project at this stage in the processing, it should be based on new information about the applicant's eligibility and/or project feasibility. The State Office will fully document its findings and follow the appeal procedure in Subpart B of Part 1900 of this chapter.

(3) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the procedure under § 2015.102(c) of FmHA Instruction 2015-C will be followed.

(4) An approved grant may be canceled before execution of the Grant Agreement if

the applicant is determined to no longer be eligible, the proposal is no longer feasible, or the applicant requests cancellation. Cancellation will be accomplished as follows:

(a) The District Director will prepare Form FmHA 1940-10, "Cancellation of U.S.

Treasury Check and/or Obligation," in an original and two copies (three copies if the HPG check has been received in the District Office from the disbursing office.) Form FmHA 1940-10 will be sent to the State Director (original and two copies with the check if the Treasury check is being canceled) with the reasons for requesting cancellation.

(b) If the State Director approves the request for cancellation he/she will forward the original request for cancellation (original and one copy of Form FmHA 1940-10 with the check if the Treasury check is being canceled) to the Finance Office.

(c) The District Director will notify the applicant of the cancellation and, unless the applicant requested the cancellation, its right to appeal under Subpart B of Part 1900 of this chapter.

### IV. Requesting HPG checks.

A. The initial advance of HPG grant funds may not be requested simultaneously with the terminal request for obligation of the grant funds. The check for the initial advance should be requested through the State Office terminal system after the obligation date provided by the status inquiry function.

B. All advances will be requested only after receipt of Standard Form 270 from the grantee. The amount requested must be in accordance with the applicant's budget and statement of activity, including amendments, as approved by FmHA. Standard Form 270 will not be submitted more frequently than once every 30 calendar days. In no case will additional funds be advanced if the grantee fails to submit required reports or is in violation of the Grant Agreement.

C. FmHA may not hold HPG checks longer than 20 calendar days and only that long if necessary to obtain the necessary reports from the grantee. After 20 calendar days, the check must be returned to the Finance Office to be reissued when needed and the applicant advised in writing of the reasons for not receiving their funds.

### V. Grant monitoring.

A. Each grant will be monitored by FmHA to ensure that the grantee is complying with the terms of the grant and that the HPG project activity is completed as approved. Ordinarily, this will involve FmHA's review of quarterly and final reports submitted by the grantee pursuant to § 1944.683 of this subpart.

B. These reports will be initially reviewed by the District Office to determine satisfactory progress. The District Office will meet with the grantee quarterly after receipt of the progress report to discuss the report and to resolve any problems. The original and one copy of the reports with comments and recommendations on the following areas will be forwarded to the State Office within 15 calendar days of receipt:

(1) The accuracy of the information submitted as to number of units assisted, the cost of assistance, and the type of recipients;

(2) The accomplishment of quarterly objectives and the accuracy of the grantee's schedule.

(3) The grantee's performance in implementing environmental and historic preservation processes of § 1944.673 of this subpart.

(4) The type of assistance provided, if necessary, to the grantee to help accomplish the objectives; and

(5) Any recommendations for modifying or amending the statement of activities to reflect grantee activities.

C. The State Office will work closely with the District Office and the grantee to assure adequate HPG performance. The State Office should assist the District Office, as appropriate, in resolving any problems or taking advantage of favorable funding or program opportunities. The State Office will review the reports, comments, and recommendations forwarded by the District Office within fifteen calendar days of receipt.

(1) If the reports indicate satisfactory progress, the State Office will forward a copy to the National Office with all review comments or suggestions and return the original to the District Office and the remaining copy to the grantee through the District Office with a copy of the comments or recommendations.

(2) If the reports indicate unsatisfactory progress, the State Director will recommend appropriate action to resolve the indicated problem(s). In accordance with §§ 1944.683 and 1944.688 and the Grant Agreement, the State Director has the discretion to suspend or terminate the grant where the progress of the project is unsatisfactory. The State Director will notify the grantee in writing through the District Director of a decision to suspend or terminate the grant, providing the grantee with the reasons for such action, possible corrective measures the grantee may take, and the effective date of the action. FmHA will also advise the grantee of its appeal rights under Subpart B of Part 1900 of this chapter.

(3) A copy of the unsatisfactory report and the memorandum returning it will be forwarded to the National Office together with the State Director's decision, comments, and recommendations, as appropriate.

#### VI. Environmental Process After Grant Approval.

A. Applicants will provide environmental information on the area to be served by the HPG program on Form FmHA 1940-20 as part of their preapplication. In addition, applicants will include in their Statement of Activities their process for assessing whether an individual property requires an assessment because it is located in a floodplain or wetland or is eligible for or listed on the National Register of Historic Places.

B. Grantees are responsible for making an initial environmental review of each unit to be provided HPG assistance.

1. Where there is no wetland or floodplain location involved, or potential impact on an historic property, the grantee must so document in the recipient's file.

(2) Where the grantee finds that the unit is so located that it needs an environmental assessment, the grantee will advise FmHA under § 1944.673(a)(3) of this subpart, and assist FmHA in preparing an environmental assessment. The property to receive HPG assistance will be handled similar to a Section 502 loan, even though the financing will be from the HPG grantee. The grantee may be required, if further site information is needed, to prepare and submit an FmHA Form 1944-20 for the property, with the grantee being the "applicant". FmHA will then prepare the appropriate assessment outlined in Subpart G of Part 1940 of this chapter, working with the grantee to develop alternative actions as appropriate.

(3) Upon completion of the FmHA assessment, the grantee will be advised of appropriate action to comply with the results of the assessment. A copy of FmHA's assessment will be given to the grantee for filing in the recipient's file. FmHA will maintain a copy of the review and related correspondence in the HPG file in the servicing office.

#### VII. Extending Grant Agreements and Modifying Statements of Activities.

A. If request for a grant extension is approved under § 1944.684 of this subpart, the State Director will authorize the District Director to amend the ending date of the Grant Agreement and revise the budget, if necessary, on behalf of the Government.

B. If grantee requests any modifications to the Statement of Activities for the HPG program under § 1944.684 of this subpart, the grantee will submit the modified Statement of Activities, and HPG budget if appropriate, together with any information necessary to justify its requests. Such requests will be submitted to the State Director through the FmHA servicing office which will review and recommend approval if it concurs with the modifications.

C. Exhibit B to this subpart shall be executed upon approval of an extension of the grant period, or significant change in either the project budget or the approved HPG processes contained in the Statement of Activities.

D. If an extension or modification is not approved, the State Director will notify the applicant in writing of the decision and advise the applicant of the appeal procedures under Subpart B of Part 1900.

E. Additional grants to the HPG recipient will be considered and processed competitively, similar to an initial grant as provided in § 1944.686 of this subpart. Upon approval, a new grant agreement will be required and the grant will be coded as an initial grant on Form FmHA 1940-1.

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

Dated: March 19, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85-17748 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-07-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

#### Adjudications; Special Procedures for Resolving Conflicts Concerning the Disclosure or Nondisclosure of Information; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

**SUMMARY:** On May 22, 1985 (50 FR 21072), the Nuclear Regulatory Commission published proposed amendments to its rules of practice to provide special procedures for resolving conflicts concerning the disclosure or nondisclosure of information relating to an NRC investigation or inspection not yet concluded or which would reveal the identity of a confidential informant and deemed relevant and material to an adjudication. The notice provided a 60-day period for public comment expiring on July 22, 1985. Two interested parties have requested a thirty day extension of time. Based on the significance of the issues involved and other factors, the NRC has decided to extend the comment period to August 23, 1985.

**DATE:** The extended comment period expires August 23, 1985. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

**ADDRESSES:** Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room 1717 H Street, NW., Washington, D.C. 20555.

**FOR FURTHER INFORMATION CONTACT:** Jane R. Mapes, Senior Regulations Attorney, Regulations Division, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone: (301) 492-8695.

Dated at Washington, D.C., this 23rd day of July, 1985.

For the Nuclear Regulatory Commission.  
 Samuel J. Chilk,  
 Secretary of the Commission.  
 [FR Doc. 85-17818 Filed 7-25-85; 8:45 am]  
 BILLING CODE 7590-01-M

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### 10 CFR Part 904

#### Delay in Comment Period on Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of a Delay in Comment Period on Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project.

**SUMMARY:** The Boulder City Area Office of the Western Area Power Administration (Western) published the proposed "General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project," 10 CFR Part 904 (proposed General Regulations) in the *Federal Register* (50 FR 20732) on May 17, 1985. Interested parties were invited to submit comments concerning the proposed General Regulations to the Boulder City Area Office of Western on or before July 15, 1985.

On July 1, 1985, in response to a request by the current and proposed Boulder Canyon Project allottees, Western announced a 90-day delay in the public process on the proposed General Regulations. As a result of the 90-day delay in the public process, the deadline for comments concerning the proposed General Regulations has been extended.

**DATES:** All comments concerning the proposed General Regulations should be submitted on or before October 1, 1985.

**ADDRESS:** All written comments concerning the proposed General Regulations should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

**SUPPLEMENTARY INFORMATION:** On June 27, 1985, Western received a letter from the Colorado River Commission on Nevada on behalf of the Boulder Canyon Project renewal contractors and proposed Upgrading Program allottees, requesting a 90-day delay in the public process on the proposed General Regulations. At the public comment forum on the proposed General

Regulations held on July 1, 1985, in Las Vegas, Nevada, Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, read a letter dated July 1, 1985, addressed to Mr. Jack Stonehocker, Colorado River Commission of Nevada, from Western, granting a 90-day delay in the public process on the proposed General Regulations. The delay was granted in order to resolve the concerns expressed by Mr. Stonehocker on behalf of the parties involved.

It is Western's intent to consider all recommendations made by the parties involved for the formulation of the proposed General Regulations. If necessary, Western will publish revised proposed General Regulations in the *Federal Register* and hold a second comment forum on the proposed General Regulations.

Issued at Golden, Colorado, July 12, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-17757 Filed 7-25-85; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 25 and 121

[Docket No. 24594, Notice No. 85-10A]

#### Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

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

**ACTION:** Notice of proposed rulemaking (NPRM) reopening of comment period.

**SUMMARY:** This notice announces the reopening of the comment period for Notice of Proposed Rulemaking (NPRM) No. 85-10, which invites comments relative to amending Parts 25 and 121 of the Federal Aviation Regulations (FAR) to upgrade the fire safety standards for cabin interior materials in transport category airplanes. This reopening is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

**DATES:** Comments must be received on or before September 9, 1985.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24594, 800 Independence Avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800

Independence Avenue, SW., Washington, D.C. 20591. All comments must be marked: Docket No. 24594. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Richard Nelson, Regulations Branch, Transport Standards Staff, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2121.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in Notice No. 85-10 (50 FR 15038; April 16, 1985) are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in Notice No. 85-10 may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24594." The postcard will be date/time stamped and returned to the commenter.

##### Availability of NPRM

Any person may obtain a copy of Notice No. 85-10 by submitting a request

to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify Notice No. 85-10. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

#### Background

On April 8, 1985, the FAA issued Notice No. 85-10 (50 FR 15038; April 16, 1985), which provided a 90-day comment period, closing on July 15, 1985. In that notice the FAA proposed to amend Parts 25 and 121 of the FAR to upgrade the fire safety standards for cabin interior materials in transport category airplanes by: (1) Establishing new fire test criteria for type certification; (2) requiring that the cabin interiors of airplanes manufactured after a specified date and used in air carrier service comply with these new criteria; and (3) requiring that the cabin interiors of all other airplanes type certificated after January 1, 1958, and used in air carrier service comply with these new criteria upon the first replacement of the cabin interior.

The FAA invited interested persons to submit comments and suggestions as to future action regarding this rulemaking. Since Notice No. 85-10 was published, several requests have been received for extension of the comment period from persons wishing more time in which to study the proposal and to prepare comments. Also, subsequent to the notice, the FAA Technical Center and an industry trade association have completed a series of tests to assess the reproducibility of the specified test method among various laboratories. Based on that series of tests, the FAA Technical Center has recommended certain adjustments in test procedures and acceptance criteria, including: (1) Adjustment of the specimen exposure heat flux from 5 W/CM<sup>2</sup> to 3.5 W/CM<sup>2</sup>; (2) elimination of the oxygen depletion method of measuring heat release, leaving only the thermopile method; (3) adjustment of the pass/fail criteria for total heat release over the first two minutes of sample exposure from 40 to 65 kilowatt-minutes per square meter; and (4) inclusion of a requirement for a peak heat release rate of 65 kilowatts per square meter. These recommendations are contained in a memorandum report dated July 11, 1985, from the Manager of the Fire Safety

Branch, ACT-350, to the manager of the Regulations Branch, ANM-112. A copy of this memorandum report has been placed in the Rules Docket for public inspection and comment.

#### Reopening of Comment Period

In consideration of the need for public participation in determining future action regarding this rulemaking, the FAA concludes that the comment period should be reopened.

Accordingly, the comment period for Notice No. 85-10 is reopened for an additional 45 days.

#### Conclusion

This document reopens the comment period on an NPRM to afford the public and industry with additional time in which to review and respond to this notice. The FAA has determined that this document involves a proposed regulation which is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document is not major as defined in Executive Order 12291. The FAA certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 14 CFR Part 25

Aviation safety, Aircraft, Air transportation, Safety, Tires.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Issued in Seattle, Washington, on July 12, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-17714 Filed 7-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-ASW-45]

#### Airworthiness Directive; Hughes Helicopters, Inc., Model 269C Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a notice of proposed rulemaking (NPRM) which proposed the adoption of an airworthiness directive (AD) that would have required the removal from service of certain main rotor blades which were modified without FAA design approval

and used on Hughes Helicopters, Inc., Model 269C helicopters. The NPRM was prompted by the possibility of main rotor imbalance if one abrasion strip separated from the main rotor blades during flight. Upon further consideration and in light of additional findings, the FAA has determined that the proposed AD is not required and, accordingly, the proposed airworthiness directive is being withdrawn.

#### FOR FURTHER INFORMATION CONTACT:

Jerry Sullivan, Aerospace Engineer, Airframe Section, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, telephone (213) 536-6166.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which, if adopted, would have required that 38 specific Hughes Helicopters, Inc., Model 369 main rotor blades be removed from service until restored to original or other FAA-approved type design was published in the Federal Register on January 15, 1985 (50 FR 2059). Comments were requested from the public. The comment period closed March 1, 1985. No comments were received. The FAA arranged for specimens of the subject questionable main rotor blade/abrasion strip bond modification to be analyzed. The specimens were found to meet the original manufacturer's material and process specification with what are considered to be relatively minor variations.

Based on the findings stated above, the FAA has determined that the proposed AD is not justified and the NPRM is being withdrawn. The withdrawal of the NPRM does not preclude the FAA from issuing similar notices in the future, nor does it commit the FAA to any course of action in the future.

Since this withdrawal of an NPRM will have no impact and may be made effective in less than 30 days, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will have no significant economic impact on small entities under the criteria of the Regulatory Flexibility Act.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Withdrawal**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of the FAR as follows:

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

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

2. By withdrawing the proposed airworthiness directive, Docket No. 84-ASW-45, published in the *Federal Register* on January 29, 1985 (50 FR 3917).

Issued in Fort Worth, Texas, on July 5, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-17716 Filed 7-25-85; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 84-ASW-44]

**Airworthiness Directive; Hughes Helicopters, Inc., Model 369 Series Helicopters**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a notice of proposed rulemaking (NPRM) which proposed the adoption of an airworthiness directive (AD) that would have required the removal from service of certain main rotor blades which were modified without FAA design approval and used on Hughes Helicopters, Inc., Model 369 series helicopters. The NPRM was prompted by the possibility of main rotor imbalance if one abrasion strip separated from the main rotor blade during flight. Upon further consideration and in light of additional findings, the FAA has determined that the proposed AD is not required and, accordingly, the proposed airworthiness directive is being withdrawn.

**EFFECTIVE DATE:** Not applicable.

**FOR FURTHER INFORMATION CONTACT:** Jerry Sullivan, Aerospace Engineer, Airframe Section, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, telephone (213) 536-6166.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an

airworthiness directive which, if adopted, would have required that 13 specific Hughes Helicopters, Inc., Model 269C main rotor blades be removed from service until restored to original or other FAA-approved type design was published in the *Federal Register* on January 29, 1985 (50 FR 3917). Comments were requested from the public. The comment period closed February 25, 1985. No comments were received. The FAA arranged for specimens of the subject questionable main rotor blade/abrasion strip bond modification to be analyzed. The specimens were found to meet the original manufacturer's material and process specifications with that are considered to be relatively minor variations.

Based on the findings stated above, the FAA has determined that the proposed AD is not required and the NPRM is being withdrawn. The withdrawal of the NPRM does not preclude the FAA from issuing similar notices in the future, nor does it commit the FAA to any course of action in the future.

Since this withdrawal of an NPRM will have no impact and may be made effective in less than 30 days, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will have no significant economic impact on small entities under the criteria of the Regulatory Flexibility Act.

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

Air transportation, Aircraft, Aviation safety, Safety.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of the FAR as follows:

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

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

2. By Withdrawing the proposed airworthiness directive, Docket No. 84-ASW-44, published in the *Federal Register* on January 15, 1985 (50 FR 2059).

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

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-17715 Filed 7.25-85; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 85-ANE-24]

**Airworthiness Directives; Secur Aiglon (Formerly l'Aiglon) Model 343 Safety Belts**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require a modification of Secur Aiglon (formerly l'Aiglon) type 343, 343A, 343B, and 343C buckles used on Model 343 safety belts. The proposed AD is needed to prevent any possible blockage and failure to unlock the belt. This NPRM is consistent with the manufacturer's service bulletin (SB) which was made mandatory by French Airworthiness Authority (DGAC) AD 84-73-(AB).

**DATES:** Comments must be received on or before October 8, 1985.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Docket No. 85-ANE-24, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to the above address, to Room 311.

Comments delivered must be marked: Docket No. 85-ANE-24.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Anjou Aeronautique, Avenue de l'Osier, 49125 Tierce, France.

A copy of the applicable SB is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ted T. Ebina, Brussels Aircraft Certification Office, AEU-100, 15 Rue de la Loi, B-1040 Brussels, Belgium, telephone 513.38.30.

**SUPPLEMENTARY INFORMATION:**

Interested persons invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the

proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 85-ANE-24". The post card will be date/time stamped and returned to the commenter.

The DGAC has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a modification needed on the safety belts to correct jamming of the buckle in the locked position. An incident had indicated that the belt buckle restraint system may become jammed, prevent unlocking of the belt buckle, and entrap the occupant if it is fastened in a certain manner.

Since the condition is likely to exist or develop on other safety belts of the same design, an AD is proposed that would require a modification of type 343, 343A, 343B, and 343C belt buckle fitted on Secur Aiglon Model 343 safety belts.

#### Conclusion

The FAA has determined that this proposed regulation involves 30,000 safety belts at an approximate labor cost of \$12.50 per belt. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

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

Aircraft, Aviation safety, Incorporation by reference.

### The Proposed Amendment

#### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

**Secur Aiglon:** Applies to Secur Aiglon (formerly l'Aiglon) Model 343 safety belts equipped with type 343, 343A, 343B, 343C buckles installed in, but not limited to, Aerospatiale SA360C helicopters.

Compliance is required as indicated unless already accomplished.

To prevent any possible blockage and failure to unlock the belt, accomplish the following:

Within the next 90 days after the effective date of this AD, modify the belt buckle in accordance with the repair instructions specified in Secur Aiglon SB No. TRW 1 dated April 27, 1984, or later FAA approved revision.

**Note.**—Incorporation of the SB which repairs the defective buckle, constitutes terminating action for this AD.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, 15 Rue de la Loi, B-1040, Brussels, Belgium, telephone 513.38.30.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, AEU-100, 15 Rue de la Loi, B-1040, Brussels, Belgium, may adjust the compliance time specified in this AD.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts on July 18, 1985.

Robert E. Whittington,  
Director, New England Region.  
[FR Doc. 85-17720 Filed 7-25-85; 8:45 am]  
BILLING CODE 4910-13-M

### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Parts 16, 17, and 18

#### Reporting Requirements for Contract Markets, Futures Commission Merchants, Clearing Members and Traders

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is proposing amendments to Parts 16 and 17 of its regulations which are intended to provide the Commission with important surveillance data on a more timely basis. Proposed amendments to Part 16 would require that exchanges submit data under rules 16.00, 16.01 and 16.02 to the Commission by 12:00 noon on the business day following the day to which the information pertains. Currently the time of day for exchange submissions is not specified. Under the proposed amendments to Part 17, all futures commission merchants (FCM's), clearing members and foreign brokers would be required to submit the information specified under rule 17.00(a) in machine readable form unless otherwise directed by the Commission or its designee. FCM's and foreign brokers which are exempt from automated reporting and which mail reports would have to mail such reports not later than the day covered by the report.

The Commission is also proposing clarifying amendments to rule 16.06 which requires a contract market promptly to inform the Commission of errors and omissions in data it has provided to the Commission and to rule 18.04 concerning information provided by large traders on CFTC Form 40.

**DATES:** Comments must be submitted on or before September 24, 1985.

**ADDRESS:** Comments should be sent to the: Commodity Futures Trading Commission, 2033 K St., NW., Washington, D.C. 20581. Attn: Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Lamont Reese, Associate Director, Market Surveillance Section, Division of Economic Analysis, 2033 K Street, NW., Room 507, Washington, D.C. 20581. 202-254-3310.

**SUPPLEMENTARY INFORMATION:** The Commission has established a comprehensive reporting system through which it receives data for both futures and options markets. These data are necessary for the purposes of market surveillance which include prevention of market manipulation and congestion and enforcement of speculative limits, and for research and market analysis programs. The system includes reports from contract markets concerning options and futures data required under 17 CFR Part 16; reports from FCM's clearing members and foreign brokers concerning futures positions and transactions of large traders required under 17 CFR Part 17; and reports from

large traders required under 17 CFR Part 18.<sup>1</sup>

### I. Proposed Amendments to Part 16

Under Part 16 of the Regulations, each contract market provides information concerning the futures and options positions and transactions of members of its clearing organization, 17 CFR 16.00; futures and options trading volume, open contracts and prices, 17 CFR 16.01; large option trader reports, 17 CFR 16.02; and month-end reports, 17 CFR 16.04. These data are supplied by the contract markets in both hard copy and machine readable form. Upon receipt of the machine readable data, the Commission processes the data and updates its data base. Because of the large volume of data involved, this update can only be made once a day.

Currently, a contract market must submit the data required under rules 16.00, 16.01 and 16.02 on the business day following the day to which the information pertains. The rules, however, do not specify a time of day by which the data must be provided. (See 17 CFR 16.00(b), 16.01(d), and 16.02(b).) Data are received routinely from the exchanges at any time from noon until the close of business. When the data are received near or at the close of business, they are not timely for market surveillance purposes, and there is insufficient time to include the data in the daily update to the data base. The Commission must then forgo use of these data for another 24 hour period.

In view of the above, the Commission is proposing to amend rules 16.00(b), 16.01(d) and 16.02(b) to require that the exchanges provide the information required under rules 16.00(a), 16.01(a)(b) and 16.02(a) in both hard copy and machine readable form by 12:00 noon of the business day following the day to which the information pertains.<sup>2</sup>

The Commission is also proposing clarifying amendments to rule 16.06, 17 CFR 16.06 (1984), under which contract markets must notify the Commission of omissions or errors in the data supplied under Part 16. The proposed amendments to § 16.06 would require that corrections to errors and omissions in reports filed in machine readable form under Part 16 be provided on Commission compatible data processing

media using a format and coding structure approved by the Commission or its designee. The contract markets have an obligation at all times to provide the Commission with accurate reports. The Commission recognizes, however, that because of the time limitations for submitting Part 16 data, contract markets may not have resolved all data problems and in fact there may be further adjustments. The Commission expects that contract markets will maintain a program designed to detect errors or omissions and promptly provide corrections to the Commission.

### II. Proposed Amendments to Part 17

Commission rule 17.00 requires each FCM, clearing member and foreign broker to submit daily series '01 reports to the Commission concerning special accounts.<sup>3</sup> These reports must show reportable futures positions, exchanges of futures for cash and delivery notices issued or stopped for such accounts.

Under § 17.03 of the regulations, 17 CFR 17.03 (1984), any FCM or clearing member may provide the information required under rule 17.00 on Commission compatible data processing media or updated, Commission-supplied computer printouts using a format and coding structure approved by the Commission. Five firms currently supply daily series '01 information on magnetic tape.<sup>4</sup> These five firms report approximately 11 percent of all daily '01 information.

The Commission's experience with receiving information in machine readable form indicates that it improves data collection and saves time, money, and effort for both the Commission and respondents. The improvement in the data collection results from higher levels of accuracy in the data due to a reduction in transcription and key punch errors and the fact that machine readable data are available to the Commission on a more timely basis.

In a 1983 report to the Committee on Government Operations, House of Representatives, the Comptroller General (GAO) confirmed the Commission's experience.<sup>5</sup> The Committee on Government Operations requested that the GAO identify, in selected agencies, where information technology could improve economy and efficiency in the transfer of data from private businesses to the Federal

Government. GAO's report used case studies of reporting requirements placed on businesses by the Departments of Health and Human Services and Commerce and by the Commodity Futures Trading Commission.

In its case study of the Commission's reporting system, GAO contacted 19 firms which in total reported an average of 4,215 accounts daily. Only two of the 19 firms reported data in a machine readable form. GAO found that 12 of the remaining 17 firms were capable of or interested in reporting their data in machine readable form.<sup>6</sup> Each of these firms either had in-house capability or used a service bureau which has the capability to report on magnetic media on its behalf.

In terms of benefits, GAO found that although some firms would realize savings, the primary benefit to respondents resulted from efficiency of operation. With respect to the Commission, the GAO found that government cost-savings potential was evident, and that automated submissions to the CFTC would eliminate time-consuming steps in processing data and significantly improve surveillance through more timely data.<sup>7</sup> In light of its own experience and GAO's findings, the Commission is proposing that information required under rule 17.00 be provided to the Commission in machine readable form by FCM's, foreign brokers and clearing members.

The proposed amendments to § 17.00 specifically provide that an FCM, foreign broker or clearing member submit information in machine readable form that is compatible with the Commission's data processing system using a format and coding structure specified in new paragraph 17.00(g). Paragraph 17.00(g) allows reporting only on 1600 BPI magnetic tape with EBCDIC encoded card images and a standard IBM label unless otherwise approved by the Commission or its designee. The paragraph also specifies record formats and definitions for various fields on the tape. The information which must be provided on tape includes a five digit number assigned by the Commission to the FCM, foreign broker or clearing member, the account number assigned by the respondent to a special account, contract market identifier, report date and the position and transaction information currently specified in paragraph 17.00(a)(2) of the regulations. The rules concerning interest in or control of several accounts contained in

<sup>1</sup> Traders are considered large in futures if they own or control a position which exceeds certain levels established by the Commission. See 17 CFR 15.00(b)(1) and 15.03(a).

<sup>2</sup> The Commission is also proposing amendments to rules 16.00(b), 16.01(d), 16.02(b) and 16.04(b) to reflect accurately the types of magnetic media which are compatible with the Commission data processing system. These include only magnetic tape and diskettes.

<sup>3</sup> A special account is defined in rule 15.00(c) of the Commission's regulations to mean any commodity futures or option account in which there is a reportable position, 17 CFR 15.00(c) (1984).

<sup>4</sup> A sixth firm is in the process of automating their reporting system.

<sup>5</sup> Report to the Committee on Government Operations, House of Representatives of the United States, GAO/GGD-83-88, April 11, 1983.

<sup>6</sup> *Ibid* p. 21.

<sup>7</sup> *Ibid* pp. 22-23.

§§ 17.00 (b) and (c) and the methods for reporting positions on a net or a gross basis contained in §§ 17.00 (d) and (e), as well as the assignment of account numbers specified in § 17.01(a), will apply reporting by manual means.<sup>6</sup> The Commission welcomes specific comments from interested persons on the availability of these data in machine readable form and the cost and feasibility of transferring the data into the required format.

In proposing this amendment, the Commission anticipates that most if not all FCM's and clearing members are technologically able to comply with it, either through their own in-house data processing system or through the independent service bureaus which many FCM's and clearing members employ. Many foreign brokers may also be able to comply with these requirements. In a number of instances foreign brokers are affiliated with domestic firms which are FCM's and/or clearing members. The Commission believes that these domestic affiliates could provide a means through which the foreign brokers report series '01 information in an automated manner. Some daily series '01 reports of foreign brokers currently are reported in this fashion. Nevertheless, the Commission recognizes that in certain circumstances the respondents may not be able to comply with automated reporting requirements. Accordingly, the Commission has proposed a limited exemption in new rule 17.03 for the reporting entities who are technologically unable to meet the requirement that the information be provided in machine readable form.<sup>7</sup>

<sup>6</sup>The Commission would also like to clarify its rules with respect to assigning numbers to special accounts and is seeking comment concerning the desirability of amending § 17.01(a) to allow the use of two account numbers. Rule 17.01(a) requires that if a number is assigned to a special account for reporting futures information to the Commission, the same number must be used for reporting options information to the exchange. The number assigned for reporting futures information must be numeric. If a trader becomes reportable in options and is not reportable in futures, FCM's, clearing members and foreign brokers may report non-numeric account numbers to the exchange. However, if the account subsequently becomes reportable in futures, under current regulations, the account number will have to be changed. Alternatively in such cases, the Commission could allow the use to two account numbers, a non-numeric number for reporting options information to the exchange and a numeric account number for reporting futures information to the Commission.

<sup>7</sup>The Commission is proposing to delete current rule 17.03 which allows FCM's of clearing members to report data in machine readable form at their discretion.

Such entities may request that the Commission permit them to provide the information required under proposed rule 17.00 using series '01 reporting forms or Commission supplied computer printouts.

The Commission is also proposing to amend rule 17.02 specifying the place for, and time of, filing reports. Currently the Commission requires that series '01 reports and Form 102's be filed at the Commission office in the city in which the contract market involved in the reported transactions is located. The Commission recognizes that some FCM's or clearing members may have centralized data processing units and that it therefore may be more efficient for some firms to report all data in an automated fashion to a single Commission office. The Commission intends, therefore, to give instructions to respondents on a case-by-case basis concerning the office at which they must file reports. The Commission is proposing the amend rule 17.02 accordingly. The Commission is also proposing that the time for filing automated reports remain the same as that which currently applies to manual reporting—9:00 a.m. local time for the city in which the reports are filed.

The Commission is further proposing to delete rule 17.02(b) which allows foreign brokers to mail series '01 reports on a weekly basis, 17 CFR 17.02(b) (1984). If a foreign broker cannot comply with the Commission's requirement for automated reporting and obtains an exemption under proposed rule 17.03, the Commission is proposing to require that the foreign broker mail series '01 reports to the Commission not later than the day of the report. In certain market situations the Commission has found that weekly reporting by foreign brokers is not sufficient. The Commission believes that this proposed requirement will further its goals of receiving necessary surveillance data on a timely basis and of providing parity of treatment between domestic and foreign market participants. FCM's which mail series '01 reports are currently subject to this proposed requirement, 17 CFR 17.02(a)(2) (1984).

### III. Proposed Amendments to Part 18

Regulation 18.04 requires each reportable trader to file with the Commission a "Statement of Reporting trader" on CFTC Form 40, 17 CFR 18.04 (1984). The Form 40 provides certain biographical information about the trader as well as information concerning the Trader's financial interest in organizations which trade futures and/or options and the trader's control over

futures and/or options trading accounts. Paragraph (5), (8) and (9) of rule 18.04(a) set forth that the trader shall report certain information concerning the following:

(a) Persons whose accounts are controlled by the reporting trader, 17 CFR 18.04(a)(5);

(b) Persons who guarantee or who have a financial interest of 10% or more in the account of the trader, 17 CFR 18.04 (a)(8); and

(c) Accounts which the reporting trader guarantees or in which the trader has a financial interest of 10% or more, 17 CFR 18.04(a)(9).

The use of the term "account" in each of the above instances may be ambiguous and, if interpreted to mean a direct interest in a specific account, may deny the Commission information regarding important relationships involving financial interest or control between two or more persons who trade options or futures. The Commission is therefore proposing to modify the language in paragraph 18.04(a) (5), (8) and (9) to reflect more accurately its intentions.

In another area, paragraphs 18.04(b) (3) and 18.04(c) (6) request information concerning a trader's use of futures and/or options markets for hedging in conjunction with cash marketing activity. In a number of instances, certain traders which on the basis of other information appear to be commercial firms have stated that they do not use the options or futures markets for hedging because they did not understand these particular questions on the CFTC Form 40. To avoid this misunderstanding, the Commission is proposing clarifying amendments to paragraphs 18.04(b)(3) and 18.04(c)(6). If adopted, the CFTC Form 40 would be changed to reflect the language used in the amended regulations.

### IV. Other Related Issues

#### A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on small business. These amendments affect large traders, futures commission merchants and other similar entities. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618-18621 (April 30, 1982). In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for

purposes of the RFA. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any firm which believes that these rules would have a significant economic impact upon its operations.

#### B. Paperwork Reduction Act

Pursuant to the provisions of the Paperwork Reduction Act of 1980, the Office of Management and Budget has assigned for use control numbers 3038-0007 and 3038-0009 to the regulations which appear herein and to the series '01 reports and Forms 103, 40 and 102.

Interested members of the public may obtain a complete copy of the information collections relating to the rules contained herein by contacting Joseph Salazar at (20) 254-9735. Persons wishing to comment on the Paperwork Reduction Act implications of the proposed rule change are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, and to the OMB desk officer for the agency, Katie Lewin, Office of Information and Regulatory Affairs, Office Management and Budget, Washington, D.C. 20503.

#### List of Subjects

##### 17 CFR Part 16

Commodity futures, Reports by Contract Markets, Reporting and recordkeeping requirements.

##### 17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements, Reports by Futures Commission Merchants, Members of Contract Markets and Foreign Brokers.

##### 17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements, Reports by Traders.

In consideration of the foregoing, the Commission is proposing to amend Parts 16, 17 and 18 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 16—REPORTS BY CONTRACT MARKETS

1. The authority citation for Part 16, continues to read as follows:

Authority: Sec. 5, 8a, 42 Stat. 1000, 49 Stat. 1500, 88 Stat. 1392; (7 U.S.C. 7, 12a)

2. § 16.000 is proposed to be amended by revising paragraph (b) as follows:

##### § 16.00 Clearing member reports.

(b) Form and manner of reporting: time and place of filing reports. Unless otherwise approved by the Commission or its designee, the information required by paragraph (a) of this section shall be submitted in hard copy form and on compatible data processing magnetic tapes or magnetic diskettes using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise instructed by the Commission or its designee, such information shall be submitted by 12:00 noon on the business day following the day to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

3. § 16.01 is proposed to be amended by revising paragraph (d) as follows:

##### § 16.01 Trading Volume, Open Contracts and Prices

(d) Reports to the Commission. Unless otherwise approved by the Commission or its designee, the information specified in paragraphs (a) and (b) of this section shall be submitted to the Commission on compatible data processing magnetic tapes or magnetic diskettes, using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise instructed by the Commission or its designee, such information shall be submitted by 12:00 noon on the business day following the day to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

4. § 16.02 is proposed to be amended by revising paragraph (b) as follows:

##### § 16.02 Large Option Trader Reports

(b) Form and manner of reporting. The information required by paragraph (a) of this section shall be submitted in hard copy form and on compatible data processing magnetic tapes or magnetic diskettes, using a format and coding structure approved in writing by the Commission or its designee. For options on futures and for options on physicals that are settled in cash, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission may direct. Unless otherwise instructed by the Commission or its designee, the information shall be submitted by 12:00 noon on the business

day following that to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

5. § 16.04 is proposed to be amended by revising paragraph (b) as follows:

##### § 16.04 Month-end reports.

(b) Form and manner of reporting: time and place of filing reports. Unless otherwise approved by the Commission or its designee, the information required by paragraph (a) of this section shall be submitted in hard copy form and on compatible data processing magnetic tapes or magnetic diskettes using a format and coding structure approved in writing by the Commission or its designee, such information shall be submitted not later than the fifth business day following the day to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

6. § 16.06 is proposed to be revised to read as follows:

##### § 16.06 Errors or omissions.

Contract Markets shall file with the Commission on compatible data processing media using a format and coding structure approved by the Commission or its designee, corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00, 16.01, 16.02 or 16.04.

#### PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

7. The authority citation for Part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6f, 6g, 6i, 7 and 12a, unless otherwise noted.

8. § 17.00 is proposed to be amended by revising in paragraph (a)(1) and adding new paragraphs (a)(3) and (g) as follows:

##### § 17.00 Information to be Furnished by Futures Commission Merchants, Clearing Members and Foreign Brokers.

(a) *Special Accounts-reportable futures positions, delivery notices and exchanges of futures for cash.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all Special Accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures

commission merchant on a fully disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made on Commission compatible data processing media in accordance with the format and coding provisions set forth in paragraph (a) of this section. The report shall show each reportable futures position separately for each contract market and for each future, in each special account as of the close of the market on the day covered by the report and, in addition, the quantity of exchanges of futures for physicals and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account.

(3) Information provided by means of data processing media must also be accompanied by a complete and accurate printout of information, which shall be submitted by the future commission merchant, foreign broker or clearing member if a sole proprietorship, by a general partner of a futures commission merchant, foreign broker or clearing member which is a partnership, by the chief executive officer of a futures commission merchant, foreign broker or clearing member which is a corporation, or by a person designated by the futures commission merchant, foreign broker or clearing member for such purpose provided such designee has been identified as such in writing to the Commission.

(g) *Media and file characteristics.* (1) Except as otherwise approved by the Commission or its designee, information shall be provided on unblocked, nine track, 1600 BPI magnetic tape with EBCDIC encoded card images using a standard IBM label.

(2) All required records shall be submitted together in a single file. Each record will be 80 characters long. Specific record formats are given below as a set of Cobol Language descriptions. There are two different record descriptions. The file must begin with a Type I record identifying the sequence of type II records that follow as series '01 data.

(3) The required records are as follows:

01 O-T-Type I RECORD:  
05 Filler—PIC X(10) VALUE "X 01 REG".  
05 O-T-REPORT-DATE—PIC X(6).  
05 Filler—PIC X(64) VALUE "Spaces."  
01-O-T-TYPE II RECORD:  
05 O-T-REPORTING-FIRM-NUMBER—PIC 9(5).  
05 O-T-REPORT-DATE—PIC 9(6).  
05 O-T-ACCOUNT-NUMBER—PIC 9(12).  
05 O-T-COMMODITY-CODE—PIC 9(6).

05 O-T-DELIVERY-MONTH—PIC 9(4).  
05 O-T-LONG-POSITION—PIC 9(6).  
05 O-T-SHORT-POSITION—PIC 9(6).  
05 FILLER—PIC X(16) VALUE "Spaces".  
05 O-T-NOTICES-ISSUED—PIC 9(5).  
05 O-T-NOTICES-STOPPED—PIC 9(5).  
05 O-T-BUY-XFC—PIC 9(4).  
05 O-T-SELL-XFC—PIC 9(4).  
05 FILLER—PIC X(1) VALUE "Spaces".

(4) Field definitions for each record are as follows:

(i) *Reporting Firm Number.* A five digit number assigned by the Commission to each FCM, clearing member and foreign broker which reports series '01 data.

(ii) *Report Date.* The date on which the reported positions were held by traders. Dates are encoded in a YYMMDD format where YY is the last 2 digits of the year, MM is the month and DD is the date with a leading 0 of month and days 1-9.

(iii) *Account Number.* A unique identifier assigned by the reporting firm to each special account. The field is 0 filled with account number right justified. Assignment of the account number is subject to the provisions of §§ 17.00(b) and (c) and 17.01(a).

(iv) *Commodity Code.* A six character identifier assigned by the CFTC to identify uniquely a contract traded on a specific exchange. The code is in CCCMMS format where CCC identifies the commodity, MM identifies the exchange and S distinguishes between two or more contracts specifying delivery of the same commodity on the same exchange.

(v) *Delivery Month.* The year and month of delivery specified in the contract in YYMM format. YY is the last two digits of the year and MM specifies the month with a leading 0 for months 1-9.

(vi) *Long (Short) Position.* Reportable long (short) position (if any) in the special account held on the contract market as of the close of business on the report date specified in the same record. Long (short) positions are reported in contracts except for the grains and soybeans. In the grains and soybeans, long (short) positions are reported in thousand bushels (000 omitted). The long (short) position in right justified with the field zero filled. Positions are reported on a net or gross basis in accordance with the provisions of paragraphs (d) and (e) of this section.

(vii) *Notices Issued (Stopped).* Delivery notices issued by the clearing organization of a contract market on behalf of a special account (stopped by the account) on the report date. Notices issued (stopped) are reported in contracts except for the grains and soybeans. In the grains and soybeans,

notices issued (stopped) are reported in thousand bushels (000 omitted). Notices issued (stopped) are right justified, and the field zero filled.

(viii) *Buy (Sell) XFC's.* The quantity of long contracts opened and/or short contracts liquidated (short contracts opened and/long contracts liquidated) as a result of an exchange of futures for physicals. Buy (Sell) XFC's are reported in contracts except for the grains and soybeans. In the grains and soybeans, Buy (Sell) XFC's are reported in thousand bushels (000 omitted).

9. § 17.02 is proposed to be revised to read as follows:

#### § 17.02 Place and Time of Filing Reports.

The reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed at a Commission office in accordance with instructions by the Commission or its designee. The reports required under §§ 17.00 and 17.01 shall be filed by futures commission merchants, clearing members and foreign brokers with the appropriate Commission office on the business day following the day for which the reports are filed and not later than 9:00 am local time for the city in which the reports are filed, or at such other time as instructed by the Commission. If a foreign broker or futures commission merchant, other than a clearing member, files manual reports under §§ 17.00 and 17.01 and does not have an office in the city in which the appropriate Commission office is located, such reports may be transmitted to the appropriate Commission office by mail. Each report transmitted by mail must be mailed no later than the report date.

10. § 17.03 is proposed to be revised to read as follows:

#### § 17.03 Reporting by Means other than Data Processing Media.

Reports required under § 17.00 may be made on series '01 forms or updated Commission supplied computer printouts at the discretion of the Director of the Division of Economic Analysis upon a showing that the futures commission merchant, clearing member or foreign broker technologically is not able to provide the information in the form required by § 17.00.

#### PART 18—REPORTS BY TRADERS

11. The authority citation for Part 18 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6f, 6g, 6i and 12a unless otherwise noted.

12. § 18.04 is proposed to be amended by revising paragraphs (a)(5), (a)(8), (a)(9), (b)(3), and (c)(6) as follows. The introductory texts of paragraphs (a)(b), and (c) are shown for the convenience of the reader and remain unchanged.

§ 18.04 Statement of Reporting Trader.

(a) Information to be furnished by all traders in Part A of the Form 40 shall include:

(5) The name and address of each person whose options or futures trading is controlled by the reporting trader.

(8) The names and locations (city and state) of persons who guarantee futures or options trading accounts of the reporting trader or who have a financial interest of 10 percent or more in the reporting trader or the accounts of the reporting trader.

(9) The following information concerning other options or futures trading accounts which the reporting trader guarantees or other futures or options traders or accounts in which the reporting trader has a financial interest of 10 percent or more:

(i) The names of traders for whom the reporting trader guarantees accounts or in which the reporting trader has a financial interest;

(ii) The names of the accounts which the reporting trader guarantees or in which the reporting trader has a financial interest; and

(iii) The names and locations of the brokerage firms at which the accounts are carried.

(b) Information to be furnished in Part B of the Form 40 shall include:

(3) The following information if a trader makes transactions or holds positions in a futures or options contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the options or futures market (e.g., production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or options markets.

(iii) Futures or options markets used.

(c) Information to be furnished in Part C of the Form 40 shall include:

(6) The following information if a trader makes transactions or holds positions in a futures or options contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the options or futures market (e.g., production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or options markets.

(iii) Futures or options markets used.

Issued in Washington, D.C., on July 17, 1985 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-17427 Filed 7-25-85; 8:45 am]

BILLING CODE 8351-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 6 and 122

#### Air Commerce Regulations; Entry and Clearance of Aircraft and Transportation of Persons and Cargo by Aircraft

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Proposed revision.

**SUMMARY:** As part of the general revision of the Customs Regulations, Customs is proposing to revise its rules relating to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft. This proposed revision sets forth the general Customs requirements applicable to all air commerce. It follows a new format and includes changes or additions in language to clarify the current provisions and to make some minor substantive changes.

**DATE:** Comments must be received on or before October 24, 1985.

**ADDRESS:** Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control

Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Regulations Control Branch, as noted above, and also the Office of Information and Regulatory Affairs, Attention: Desk officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503.

#### FOR FURTHER INFORMATION CONTACT:

Legal Aspects: John A. Mathis, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

Operational Aspects: Joseph E. O'Gorman, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8151).

#### SUPPLEMENTARY INFORMATION:

##### Background

Customs has undertaken to review and revise selected parts of the Customs Regulations contained in Chapter 1, Title 19, Code of Federal Regulations (19 CFR Chapter I), with the objective of reducing and/or eliminating, to the fullest extent possible, obsolete and unnecessary regulatory requirements. This action was mandated by the Regulatory Flexibility Act, and by the Treasury Department Regulatory Flexibility Review Plan which appeared in the Federal Register on April 14, 1982 (47 FR 16033). As stated in a notice published by Customs in the Federal Register on June 10, 1983 (48 FR 26831), Part 6, Customs Regulations (19 CFR Part 6), is one of those which has been scheduled for revision under the Treasury plan. Accordingly, the revised Part 6, redesignated as Part 122, proposes to set forth all air commerce regulations administered by Customs in a clearly stated new format, which incorporates both current provisions and substantive changes. The major changes from the present regulations are deletion of the requirement that American-flag aircraft report foreign repairs and pay duty (a provision of the Trade Agreements Act of 1979), and the inclusion of a subpart dealing with requirements relating to aircraft liquor kits. The proposal also contains amendments to the regulations dealing with overflight exemptions and reporting requirements which appeared in a notice of proposed rulemaking published in the Federal Register on April 1, 1985 (50 FR 12819).

Additionally, amendments necessitated by the recent revision of the Customs bond structure (T.D. 84-213), published in the *Federal Register* on October 19, 1984 (49 FR 41152), have been incorporated into this proposal.

Revised Part 122 would be divided into 16 subparts. Following is a discussion of the proposed major changes in each of the subparts.

#### *Subpart A—Scope and General Definitions and Provisions*

1. Proposed § 122.1 is new and would set forth in general terms the geographic applicability of the revised part.

2. Proposed § 122.2(a) would substitute the statutory definition of "aircraft" from 49 U.S.C. 1301(5), for the present narrower definition of "civil aircraft."

3. Proposed § 122.2(b) is unchanged from present § 6.1(e).

4. Proposed § 122.2(c) would revise § 6.1(g) by substituting the word "agent" for the phrase "authorized person (authorized agent of an owner or operator)."

5. Proposed § 122.2(d) is new and would clarify the difference between commercial and non-commercial (private and public) flights.

6. Proposed § 122.2(e) would clarify § 6.1(h).

7. Proposed § 122.2(f) is new and defines, for the first time, a "landing rights airport."

8. Proposed § 122.2(g) is a rephrasing of present § 24.18.

9. Proposed § 122.2(h) is new and defines "private aircraft."

10. Proposed § 122.2(i) is new and defines "public aircraft."

11. Proposed § 122.2(j) is new and defines "residue cargo." The definition is loosely derived from present § 6.9(a).

12. Proposed § 122.2(k) is a rephrasing of present § 6.1(f).

13. Proposed § 122.2(l) would combine present § 6.1(b) and (c) and include Puerto Rico in the definition of "United States."

14. Proposed § 122.3 is unchanged from present § 6.10.

15. Proposed § 122.4 is a rephrasing of present § 6.6(b).

16. Proposed § 122.5 is a rephrasing of present § 6.6(a).

17. Proposed § 122.6 would significantly revise the specific requirements for reproduction of Customs forms found in present § 6.6(a).

#### *Subpart B—International Airports*

1. Proposed § 122.11(a) would rephrase present § 6.12(a), (b) and (d).

2. Proposed § 122.11(b) is a rephrasing of present § 6.12(c).

3. Proposed § 122.11(c) is a rephrasing of present § 6.12(e).

4. Proposed § 122.12(a) is a restatement of present § 6.12(f).

5. Proposed § 122.12(b) is a restatement of present § 6.12(g).

6. Proposed § 122.12(c) is a restatement of present § 6.12(h).

7. Proposed § 122.12(d) is a restatement of present § 6.12(i) with deletion of the reference to "Area."

8. Proposed § 122.12 is unchanged from present § 6.13.

#### *Subpart C—Private Aircraft*

1. Proposed § 122.21 is new and would make the subpart applicable to all private aircraft.

2. Proposed § 122.22 would make the landing requirements in proposed § 122.31 applicable to private aircraft.

3. Proposed § 122.23(a) is new and is based upon definitions found in the Department of Transportation regulations relating to exemptions for air taxi operations (14 CFR Part 298).

4. Proposed § 122.23(b), (c), (d), and (e) is a restatement of present § 6.14(a).

5. Proposed § 122.23(f) is new and would state that the final responsibility for giving adequate advance notice of arrival is that of the aircraft commander.

6. Proposed § 122.24(a) and (b) is a restatement of present § 6.14(b) and (g).

7. Proposed § 122.25(a), (b), (c) and (d) is a restatement of present § 6.14(f).

8. Proposed § 122.26 is new and would exempt private aircraft from entry and clearance requirements.

9. Proposed § 122.27 partially is new and partially a restatement of present § 148.5. It would set forth the documentation necessary for declaring baggage and cargo upon arrival of a private aircraft, as well as documentation and requirements for departing with certain cargo not for hire.

10. Proposed § 122.28 is based upon present § 148.32 and relates to a U.S. resident returning a private aircraft to the U.S. which has been taken abroad for non-commercial purposes.

11. Proposed § 122.29 is new and would set forth the changes and procedures relating to overtime services rendered by Customs in connection with an arriving private aircraft. The proposed section is based in part upon present § 24.16.

12. Proposed § 122.30 is based upon present §§ 6.10 and 6.11, and would list other regulatory requirements applying to private aircraft.

#### *Subpart D—Landing Requirements*

1. Proposed § 122.31(a) contains a complete rewording and restructuring of present § 6.2(b)(1), and would set forth reporting requirements for all non-

excepted aircraft arriving from outside the U.S. Exceptions would appear in proposed § 122.31(b).

2. Proposed § 122.31(b) is based upon present § 6.2(b)(3).

3. Proposed § 122.31(b)(1) is based upon present § 6.2(b)(1), and would set forth the procedures for giving notice of arrival, and would permit reporting by radio or other means.

4. Proposed § 122.31(c)(2) is based upon present § 6.2(b)(2).

5. Proposed § 122.31(d) is based upon present § 6.2(b)(4).

6. Proposed § 122.31(e) is based upon present § 6.2(b)(5).

7. Proposed § 122.31(f) is based upon the second sentence of present § 6.2(b)(1).

8. Proposed § 122.31(g) is based upon present § 6.2(b)(1), and names the aircraft commander as the person responsible for providing adequate advance notice of arrival.

9. Proposed § 122.32 is based upon the first sentence of present § 6.2(a).

10. Proposed § 122.33 is based upon the second sentence of present § 6.2(a). The proposed revision adds reference to two other sections relating to alternative landing sites.

11. Proposed § 122.34 is based upon the last three sentences of present § 6.2(a).

12. Proposed § 122.35 is based upon present § 6.2(h).

13. Proposed § 122.36 is based upon present § 6.2(b)(6).

14. Proposed § 122.37 is based upon present § 6.2(h).

15. Proposed § 122.38(a) is based upon the first sentence of present § 6.2 (e) and (f), and includes the purpose for a permit or special license.

16. Proposed § 122.38(b) is based upon current § 6.2 (e) and (f), and includes the instructions for applying for a permit or special license.

17. Proposed § 122.38(c) is based upon present § 6.2(g).

18. Proposed § 122.38(d) is based upon present § 6.2 (e) and (f), and provides exceptions for the need to obtain a permit or special license for each arrival or departure.

19. Proposed § 122.38(e) is based upon the second sentence of present § 6.2(e) and the first sentence of present § 6.2(f).

20. Proposed § 122.38(f) is based upon present § 6.2 (e) and (f).

21. Proposed § 122.38(g) is new and is based upon Customs Circular INS-2-EV, dated 12/14/61, and provides the procedure for requesting automatic renewal of permits and special licenses.

*Subpart E—Aircraft Entry and Entry Documents*

1. Proposed § 122.41 is based upon present §§ 6.3(a), 6.4 (a) and (b), and 6.9(c).

2. Proposed § 122.42 (a) and (b) is based upon present §§ 6.3(b) and 6.4(c).

**Note.**—Much of the remainder of Subpart E is based upon present § 6.7. It covers all of the various forms required for entry. The proposed revision is structured so that each required form is treated in a separate section.

3. Proposed § 122.43 (a) and (c) is based upon present § 6.7 (a) and (b).

4. Proposed § 122.43(b) is based upon Customs Circular AIR-4-ICS, dated 1/24/68, and would permit entry upon presentation of an air cargo manifest in lieu of a general declaration.

5. Proposed § 122.44 is new and is based upon Customs Circular BAG-3-CO (AIR-4-AIR), 8/9/65. It states that aircraft crewmembers arriving from a foreign area must file a crew baggage declaration as provided in Subpart G, Part 148, Customs Regulations (19 CFR Part 148).

6. Proposed § 122.45 is based upon present § 6.7(b)(1) and would substitute "crew list" for "crew manifest."

7. Proposed § 122.45(d) is based upon Customs Circular BAG-3-CO, 8/9/65, and sets forth requirements for crewmembers returning as passengers.

8. Proposed § 122.46(a) is based upon the last sentence of present § 6.7(b)(2). The qualifying phrase "for any aircraft required to enter by § 122.41" is added.

9. Proposed § 122.46(b) is based upon the last sentence of present § 6.7(b)(2), as well as Customs Circular AIR-4-ICS, dated 1/24/68. The proposed section includes cross-reference to Subpart G, Part 148, Customs Regulations (19 CFR Part 148).

10. Proposed § 122.46(c) is based upon the second and third sentences of present § 6.7(b)(2). The reference to "attached list" is replaced by "crew purchase list."

11. Proposed § 122.47(a) is based upon present § 6.7(f).

12. Proposed § 122.47(b) is based upon present § 6.7(f).

13. Proposed § 122.47(c)(1) is based upon present § 6.7(b)(3)(v).

14. Proposed 122.47(c)(2) is based upon present § 6.7(b)(3) (v) and (vi), and includes major changes. The proposal specifies that "other domestic supplies" may be omitted from the stores list when an appropriate statement appears on the manifest or stores list. Further, the present statement "Aircraft of scheduled airline" is deleted, thus being made applicable to all aircraft required to enter.

15. Proposed § 122.47(d) is based upon present § 6.7(f).

**Note.**—Proposed § 122.48 is taken from present § 6.7(b)(3). Subparagraphs (v) and (vi) are included in proposed § 122.47(c).

16. Proposed § 122.48(a) is based upon present § 6.7(b)(3), and the phrase "for any aircraft required to enter under § 122.41" is added for clarification.

17. Proposed § 122.48(b) is based upon present § 6.7(b)(3). There is no substantive change except as concerns the requirement that company mail be listed on the cargo manifest.

18. Proposed § 122.48(c)(1) is based upon present § 6.7(b)(3)(i).

19. Proposed § 122.48(c)(2) is based upon present § 6.7(b)(3)(ii).

20. Proposed § 122.48(c)(3) is based upon present § 6.7(b)(3)(iii), with the words "duty free" inserted for clarity.

21. Proposed § 122.48(d) is based upon present § 6.7(b)(3)(vii), as amended by T.D. 84-128, published in the **Federal Register** on June 4, 1984 (49 FR 23038).

22. Proposed § 122.48(e) is new and is based upon Customs Circular AIR-7-IEI, dated 1/31/72. This section deals with accompanied baggage in transit.

23. Proposed § 122.49(a) is based upon present § 6.7(h) (1) and (2).

24. Proposed § 122.49(b) is based upon present § 6.7(h) (1) and (3), as well as § 4.12(a). The present sections were combined and put in outline form, making it unnecessary to continually refer back to Part 4, Customs Regulations (19 CFR Part 4), to check the applicability of the vessel regulations to aircraft.

25. Proposed paragraphs (c), (d), (e), and (f) of § 122.49 are based upon present §§ 6.7(h) and 4.12. The comments relating to proposed § 122.49(b) apply to these paragraphs as well.

**Note.**—All reference to the applicability of the vessel repair statute (19 U.S.C. 1466) to repairs made to aircraft, currently reflected in § 6.7(d) and (e), are deleted in proposed Part 122 due to enactment of the Trade Agreements Act of 1979 (Title 6, Pub. L. 96-39) which relieved aircraft from the duty provisions of 19 U.S.C. 1466.

*Subpart F—Permit To Proceed*

1. Proposed § 122.51 is based upon present § 6.2(d)(3). The word "civil" is deleted and the phrase "passengers carried for hire or merchandise" is replaced by the word "commercial."

2. Proposed § 122.52(a) is based upon present § 6.2(d)(3). The word "civil" is deleted, and the term "commercial aircraft" replaces the term "international traffic."

3. Proposed § 122.52(b) is based upon present § 6.2(d)(3).

4. Proposed § 122.52(c) is based upon the last two sentences of present § 6.2(d)(3). The term "international traffic" has been changed to "commercial aircraft."

5. Proposed § 122.52(d) is based upon present § 6.2(d)(3)(ii), footnote 1, and upon T.D. 55603(1), dated 3/4/60.

6. Proposed § 122.53 is new and is based upon the Federal Aviation Administration regulations (14 CFR 121.153).

7. Proposed § 122.54(a) and (b) is based upon present § 6.2(d)(1). The term "or agent" is added to paragraph (b), and necessary information is listed for inclusion on Customs Form 7507 (Permit to Proceed).

8. Proposed § 122.54(c) is based upon present § 6.2(d)(1).

9. Proposed § 122.54 (d), (e), and (f) is based upon present § 6.2(d)(1).

10. Proposed § 122.54(g) is based upon present § 6.2(d)(2).

*Subpart G—Clearance of Aircraft and Permission To Depart*

1. Proposed § 122.61(a) is based upon present § 6.3(c), and includes a general statement covering all aircraft except public and private.

2. Proposed § 122.62 (a), (b), and (c) is based upon the third, fourth, and fifth sentences of present § 6.3(c), and names those aircraft not otherwise required to clear.

3. Proposed § 122.63(a) is based upon present § 6.5(c), and the term "authorized person" is changed to "agent" as defined in proposed § 122.2(c).

4. Proposed § 122.63(b) is based upon present § 6.5(c).

5. Proposed § 122.64 is based upon present § 6.3(d), and is basically a restatement of proposed § 122.63 (a) and (b), but deals with aircraft not using procedure outlined therein.

6. Proposed § 122.65 is new and would provide a specific time limit within which cleared aircraft must depart.

*Subpart H—Documents Required in Clearance and Permission To Depart*

1. Proposed § 122.71 is based upon present § 6.8(a) and rephrases the telephonic clearance procedures, added to the regulations by T.D. 82-92 published in the **Federal Register** on May 14, 1982 (47 FR 20750).

2. Proposed § 122.72 is based upon present § 6.8(a).

3. Proposed § 122.73 is based upon present § 6.8(b) and T.D. 82-92, and deals with the form and preparation of air cargo manifests.

4. Proposed § 122.74(a) is based upon present § 6.8(a) and the regulations of

the Bureau of The Census (15 CFR 30.24). The term "Customs officer in charge" is changed to "district director."

5. Proposed § 122.74(b) is based upon present § 6.8(a). The term "Customs officer in charge" is changed to "district director."

6. Proposed § 122.74(c) is based upon present § 6.8(a) and 15 CFR 30.24(a).

7. Proposed § 122.74(c)(1) is based upon present § 6.8(a) and 15 CFR 30.24(a), and deals with shipments to foreign countries.

8. Proposed § 122.74(c)(2) is based upon present § 6.8(a) and 15 CFR 30.24(a)(1), and deals with shipments to and from Puerto Rico.

9. Proposed § 122.74(c)(3) is based upon present § 6.8(a) and 15 CFR 30.24(a)(1), and deals with shipments to U.S. possessions.

10. Proposed § 122.74(d) is based upon present § 6.8(e). The phrase "or all required cargo documents will be filed within the 7-day bond period" is added.

11. Proposed § 122.75(a) (1) and (2) is based upon present § 6.8(e) and 15 CFR 30.21(b), and deals with the contents of a complete air cargo manifest.

12. Proposed § 122.75(b) is based upon the third and fourth sentences of present § 6.8(e).

13. Proposed § 122.76 is based upon present § 6.8(a) and 15 CFR 30.1, and sets forth the requirements for Shipper's Export Declarations.

14. Proposed § 122.77 is based upon present § 6.8(d).

15. Proposed § 122.78 is based upon present § 6.8(c). The phrase "cargo manifest" replaces "outward manifest."

16. Proposed § 122.79(a) is based upon present §§ 6.5(b) and 6.3(c), and deals with shipments to U.S. possessions, other than Puerto Rico.

17. Proposed § 122.79(b) is based upon present §§ 6.5(b) and 6.3(c), and deals with manifest requirements on direct flights to Puerto Rico.

18. Proposed § 122.80 is based upon present § 6.8(e), and deals with verification by Customs of statements made on shipping records.

#### Subpart I—Residue Cargo Procedures

1. Proposed § 122.81 is based upon present § 6.9(a).

2. Proposed § 122.82 is based upon the present §§ 6.9(a), 4.85(a), 113.13a (a) and (b), and 113.61, and details the bond requirement for aircraft seeking a permit to proceed while carrying residue cargo.

3. Proposed § 122.83(a) is based upon present § 6.9(b), footnote 6. The term "area" is deleted, and the phrase "an authorized person" is replaced by the word "agent."

4. Proposed § 122.83(b) is based upon present § 6.9(b), and includes a

provision for crew purchases and stores lists, as well as alternate procedures for unlisted items.

5. Proposed § 122.83(c) is based upon present § 6.9(b). The clarifying phrase "An abstract general declaration and manifest need not be filed at the last domestic port of discharge" is added.

6. Proposed § 122.83(d) is based upon present § 6.9(b), and relates to the contents of a permit to proceed. The word "agent" replaces the phrase "authorized person", and the phrase "Customs officer in charge" replaces "appropriate Customs officer."

7. Proposed § 122.83(e) is based upon present § 6.9, and includes a reproduction of Customs Form 7512-C, Permit to Proceed.

8. Proposed § 122.83(f) is based upon present § 6.9(b). The phrase "The documents presented by the aircraft commander or authorized person when applying for clearance shall be delivered to the aircraft commander" is replaced by ". . . must be delivered to aircraft commander or agent." The word "agent" replaces the phrase "authorized person."

9. Proposed § 122.84 (a) and (b) is based upon present § 6.9(c).

10. Proposed § 122.84(c) is based upon present § 6.9(c). The proposal provides that declarations are to be detached by Customs.

11. Proposed § 122.84(d) is based upon present § 6.9(c), and deals with departure from an intermediate airport.

12. Proposed § 122.85 is based upon present § 6.9(d). It deals with arrival at the final airport.

13. Proposed § 122.86 is new and is based upon Customs Circular AIR-7-EV, dated 11/23/59. It deals with the substitution of aircraft under the residue cargo procedures.

14. Proposed § 122.87 is based upon § 6.9(e).

#### Subpart J—Transportation in Bond and Merchandise in Transit

1. Proposed § 122.91 is based upon present § 6.15(a).

2. Proposed § 122.92(a) and (b) is based upon present § 6.15(b)(1) and (2).

3. Proposed § 122.92(c) is based upon present § 6.15(b)(3).

4. Proposed § 122.92(d) is based upon present § 6.15(b)(4).

5. Proposed § 122.92(e) is based upon present § 6.15(b)(5), and the phrase "aircraft of the same line" is changed to "aircraft of the same airline".

6. Proposed § 122.92(f) is based upon the first sentence of present § 6.15(b)(6).

7. Proposed § 122.92(g) is based upon second sentence of present § 6.15(b)(6).

8. Proposed § 122.93(a) is based upon present § 6.15(c). The word "port" is changed to "airport", the phrase

"authorized person" is replaced by the word "agent", and reference to appropriate Customs forms is inserted.

9. Proposed § 122.93(b) is based upon present § 6.15.

10. Proposed § 122.94(a) is based upon present § 6.16.

11. Proposed § 122.94(b) is based upon present § 6.16, and the phrase "authorized person" is replaced by the word "agent."

12. Proposed § 122.95 is based upon footnote 9 of present § 6.15(a).

#### Subpart K—Accompanied Baggage in Transit

1. Proposed § 122.101 and 122.102 are new and are based upon Customs Circular AIR-7-IEI, dated 1/31/72. These sections deal with entry and inspection of accompanied baggage in transit.

#### Subpart L—Transit Air Cargo Manifest (TACM) Procedures

1. Proposed § 122.111 is based upon present § 6.17.

2. Proposed § 122.112(a), (b) and (c) is based upon the definition portion of present § 6.17.

3. Proposed § 122.112(d) is based upon present § 6.18(a), and defines the use of the transit air cargo manifest.

4. Proposed § 122.113 is based upon present § 6.18(a), and discusses the form for transit air cargo manifest procedures.

5. Proposed § 122.114(a) is based upon last sentence of present § 6.18(a), and Customs Circular AIR-7-EV, dated 5/8/62.

6. Proposed § 122.114(b) is based upon the first sentence of present § 6.18(b).

7. Proposed § 122.114(b)(2) is based upon the second sentence of present § 6.18(b).

8. Proposed § 122.114(c) is based upon present § 6.18(d).

9. Proposed § 122.114(d) is based upon present § 6.18(f), and deals with the number of manifest copies required.

10. Proposed § 122.114(e) is based upon present § 6.18(e) and deals with corrections to the route shown on the original manifest.

11. Proposed § 122.115 is based upon present § 6.18(e) and Customs Circular AIR-7-EV, dated 5/8/62. The section deals with labeling of cargo.

12. Proposed § 122.116 is based upon present § 6.19.

13. Proposed § 122.117(a)(1) is based upon the first sentence of present § 6.20(c).

14. Proposed § 122.117(a)(2) is based upon the second sentence of present § 6.20(c).

15. Proposed § 122.117(b) is based upon present § 6.20(b) and (d).

16. Proposed § 122.117(c)(1) is based upon present § 6.20(c) and deals with responsibility for direct exportation of transit air cargo.

17. Proposed § 122.117(c) is based upon the fourth sentence of present § 6.20(c).

18. Proposed § 122.117(c)(3) is based upon the last sentence of present § 6.20(c).

19. Proposed § 122.117(d) is based upon present § 6.20(c) and deals with receipts for split shipments.

20. Proposed § 122.118(a) is based upon present § 6.24(a). All material in the present section following the phrase "in the United States" is deleted and the words "under this section" are added.

21. Proposed § 122.118(b) is based upon present § 6.21(c).

22. Proposed § 122.118(c) is based upon present § 6.24 (b) and (c).

23. Proposed § 122.118(d) is based upon present § 6.24(g) with the phrase "air carrier" being replaced by the word "airline."

24. Proposed § 122.118(f) is based upon Customs Circular AIR-7-CO, dated 3/17/65. It concerns the exportation of post-entered air cargo.

25. Proposed § 122.118(g) is based upon present § 6.24(d).

26. Proposed § 122.119(a) is based upon present § 6.22(a).

27. Proposed § 122.119(b) is based upon present § 6.21(a).

28. Proposed § 122.119(c) is based upon present § 6.22(a) and Customs Circular TRA-1-IMS, dated 7/15/68.

29. Proposed § 122.119(d) (1) and (2) is based upon present § 6.22 (c) and (d), and deals with failure to deliver transit air cargo in a timely fashion.

30. Proposed § 122.119(e), is based upon present § 6.22(a) and deals with the transfer of cargo between carriers.

31. Proposed § 122.120(a) is based upon present § 6.23(a) and establishes the authority for transporting cargo to another port for exportation.

32. Proposed § 122.120(b)(1) is based upon the first sentence of present § 6.23(a). The phrase "may be" is changed to "shall."

33. Proposed § 122.120(b)(2) is based upon the second sentence of present § 6.23(c). The phrase "when the goods are ready for lading" is replaced by the phrase "when transit air cargo is ready for lading."

34. Proposed § 122.120(c) is based upon present § 6.21(b), and deals with the time limit for delivery of transit air cargo for exportation.

35. Proposed § 122.120(d) is based upon present § 6.23 and sets forth new procedures for using Customs Form 7512-C.

36. Proposed § 122.120(e) is based upon present § 6.23(b) and details the requirements for presentation of the carrier manifest copy.

37. Proposed § 122.120(f) is based upon the first sentence of present § 6.23(c).

38. Proposed § 122.120(g) is based upon present § 6.23(e).

39. Proposed § 122.120(h) is based upon present § 6.23(d). The phrase "these documents (including the clearance copies of transit air cargo manifest)" is replaced by the phrase "the exportation and clearance copies of transit air cargo manifests."

40. Proposed § 122.120(i) is based upon present § 6.23(h).

41. Proposed § 122.120(j) is based upon present § 6.23(h) and deals with cargo laden on more than one aircraft of the same airline.

42. Proposed § 122.120(k) is based upon present § 6.23(g).

#### Subpart M—Aircraft Liquor Kits

**Note.**—Proposed §§ 122.131 through 122.137, the aircraft liquor kit provisions, do not appear in Part 6, Customs Regulations. The procedures outlined in the proposed subpart are of general applicability and appear by virtue of the requirements of Pub. L. 89-487 (5 U.S.C. 1002). The subpart is based upon Customs Circular AIR-7-AIR, dated 6/16/64.

#### Subpart N—Flights to and From the U.S. Virgin Islands

1. Proposed § 122.141 is a new definition section, inserted to help clarify the subpart.

2. Proposed § 122.142 is based upon present § 6.25(a).

3. Proposed § 122.143 is based upon present § 6.25(b).

4. Proposed § 122.144(a)(1) is based upon present § 6.25(c)(1).

5. Proposed § 122.144(a)(2) is based upon present § 6.25(c)(2).

6. Proposed § 122.144(b) is based upon present § 6.25(c)(3).

7. Proposed § 122.144(c) is based upon present § 6.25(c)(4).

8. Proposed § 122.144(d) is based upon present § 6.25(c)(5).

9. Proposed § 122.144(d)(1) is based upon present § 6.25(c)(5)(i).

10. Proposed § 122.144(d) (2), (3), and (4) is based upon present § 6.25(c)(5)(ii).

#### Subpart O—Public Aircraft

1. Proposed § 122.151 is new and is based upon present § 4.5, government vessels.

#### Subpart P—Penalties

1. Proposed § 122.161 is based upon present § 6.10.

2. Proposed § 122.162 is based upon present § 6.7(h).

3. Proposed § 122.163 is based upon present § 6.22(e).

4. Proposed § 122.164 is based upon present § 6.23(g).

5. Proposed § 122.165 is new and is based upon Customs Circular AIR-4-CR, date 11/12/72. It concerns the Air Cabotage statute, 49 U.S.C. 1508(b), U.S.C. 1508(b).

#### Editorial Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the present air commerce regulations in Part 6.

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

#### Regulatory Flexibility Act

Pursuant to the provisions of section 606(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, et seq.), it is certified that this proposed revision will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Paperwork Reduction Act

This document is subject to section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511. Public comments relating to the information collection aspects of the proposal should be addressed to the Office of Management and Budget and to Customs at the addresses set forth in the ADDRESS portion of this document.

#### Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and

Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports, Cuba, Freight.

### PART 6—AIR COMMERCE REGULATIONS [REMOVED]

It is proposed to amend Chapter I of title 19, Code of Federal Regulations, by removing Part 6 (19 CFR Part 6).

It is proposed to further amend Chapter I of title 19, Code of Federal Regulations, by adding a new part, Part 122, to read as follows:

### PART 122—AIR COMMERCE REGULATIONS

#### Subpart A—Scope and General Definitions and Provisions

- Sec.
- 122.1 Scope.
- 122.2 General definitions.
- 122.3 Other Customs laws and regulations.
- 122.4 Availability of forms.
- 122.5 English language required.
- 122.6 Reproduction of Customs forms.

#### Subpart B—International Airports

- 122.11 Designation as international airport.
- 122.12 Operation of international airports.
- 122.13 List of international airports.

#### Subpart C—Private Aircraft

- 122.21 Application.
- 122.22 Notice of arrival.
- 122.23 Special reporting requirements for private aircraft arriving from areas south of the U.S.
- 122.24 Landing requirements.
- 122.25 Exemption from special landing requirements.
- 122.26 Entry and clearance.
- 122.27 Documents required.
- 122.28 Private aircraft taken abroad by U.S. residents.
- 122.29 Overtime services.
- 122.30 Other Customs laws and regulations.

#### Subpart D—Landing Requirements

- 122.31 Notice of arrival.
- 122.32 Aircraft required to land.
- 122.33 Place of first landing.
- 122.34 Landing rights airport.
- 122.35 Emergency or forced landing.
- 122.36 Responsibility of aircraft commander.
- 122.37 Precleared aircraft.
- 122.38 Permit and special license to unlade and lade.

#### Subpart E—Aircraft Entry and Entry Documents

- 122.41 Aircraft required to enter.
- 122.42 Aircraft entry.
- 122.43 General declaration.
- 122.44 Crew baggage declaration.
- 122.45 Crew list.
- 122.46 Crew purchase list.
- 122.47 Stores list.
- 122.48 Air cargo manifest.

- 122.49 Correction of air cargo manifest.

#### Subpart F—Permit to Proceed

- 122.51 Aircraft of domestic origin registered in the U.S.
- 122.52 Aircraft of foreign origin registered in the U.S.
- 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.
- 122.54 Aircraft of foreign registry.

#### Subpart G—Clearance of Aircraft and Permission to Depart

- 122.61 Aircraft required to clear.
- 122.62 Aircraft not otherwise required to clear.
- 122.63 Scheduled airlines.
- 122.64 Other aircraft.
- 122.65 Failure to depart.

#### Subpart H—Documents Required for Clearance and Permission To Depart

- 122.71 Aircraft departing with no commercial export cargo.
- 122.72 Aircraft departing with commercial export cargo.
- 122.73 Air cargo manifest.
- 122.74 Incomplete (pro forma) manifest.
- 122.75 Complete manifest.
- 122.76 Shipper's Export Declarations and inspection certificates.
- 122.77 Clearance certificate.
- 122.78 Entry or withdrawal for exportation or for transportation and exportation.
- 122.79 Shipments to U.S. possessions.
- 122.80 Verification of statement.

#### Subpart I—Residue Cargo Procedures

- 122.81 Application.
- 122.82 Bond requirements.
- 122.83 Forms required.
- 122.84 Intermediate airport.
- 122.85 Final airport.
- 122.86 Substitution of aircraft.
- 122.87 Other statutes.

#### Subpart J—Transportation in Bond and Merchandise in Transit

- 122.91 Application.
- 122.92 Procedure at port of origin.
- 122.93 Procedure at destination or exportation airport.
- 122.94 Certificate of landing for exportation.
- 122.95 Other provisions.

#### Subpart K—Accompanied Baggage in Transit

- 122.101 Entry of accompanied baggage.
- 122.102 Inspection of baggage in transit.

#### Subpart L—Transit Air Cargo Manifest (TACM) Procedures

- 122.111 Application.
- 122.112 Definitions.
- 122.113 Form for transit air cargo manifest procedures.
- 122.114 Contents.
- 122.115 Labeling of cargo.
- 122.116 Identification of manifest sheets.
- 122.117 Requirements for transit air cargo transport.
- 122.118 Exportation from port of arrival.
- 122.119 Transportation to another U.S. port.
- 122.120 Transportation to another port for exportation.

#### Subpart M—Aircraft Liquor Kits

- 122.131 Application.
- 122.132 Sealing of aircraft liquor kits.
- 122.133 Stores list required on arrival.
- 122.134 When airline does not have in-bond liquor storeroom.
- 122.135 When airline does have in-bond liquor storeroom.
- 122.136 Outgoing stores list.
- 122.137 Certificate of use.

#### Subpart N—Flights to and From the U.S. Virgin Islands

- 122.141 Definitions.
- 122.142 Flights between the Virgin Islands and a foreign area.
- 122.143 Flights from the U.S. to the Virgin Islands.
- 122.144 Flights from the Virgin Islands to the U.S.

#### Subpart O—Public Aircraft

- 122.151 Public aircraft of the U.S. or foreign countries.

#### Subpart P—Penalties

- 122.161 In general.
- 122.162 Failure to notify and explain differences in air cargo manifest.
- 122.163 Transit air cargo traveling to U.S. ports.
- 122.164 Transportation to another port for exportation.
- 122.165 Air cabotage.

Authority: 5 U.S.C. 301, 19 U.S.C. 60, 1624, 1644, 49 U.S.C. 1509.

#### Subpart A—Scope and General Definitions and Provisions

##### § 122.1 Scope.

The regulations in this part relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, and Johnston Island and other insular possessions not specified herein. They do apply to the U.S. Virgin Islands as stated in subpart N (§§ 122.141–122.144).

##### § 122.2 General definitions

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft*. An "aircraft" is any device now known, or hereafter invented, used, or designed for navigation or flight in the air.

(b) *Aircraft commander*. An "aircraft commander" is any person serving on an aircraft who is in charge of has command of its operation and navigation.

(c) *Agent*. An "agent" is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a non-scheduled airline, by power of attorney, the authority to act shall be in writing and satisfactory to the district director.

(d) *Commercial aircraft.* A "commercial aircraft" is any aircraft transporting passengers and/or cargo for some payment of other consideration, including money or services rendered.

(e) *International airport.* An "international airport" is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport.* A "landing rights airport" is any airport, other than an international airport, at which flights from a foreign area may be allowed to land.

(g) *Preclearance.* "Preclearance" is the tentative examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be used only for passengers and their baggage.

(h) *Private aircraft.* A "private aircraft" is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes;

(2) Leaving the U.S. in ballast to land passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft.* A "public aircraft" is any aircraft owned by, or under the complete control of, the U.S., its agencies, or any foreign nation. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) In ballast.

(j) *Residue cargo.* "Residue cargo" is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in

the U.S., for final delivery in a foreign area.

(k) *Scheduled airline.* A "scheduled airline" is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Civil Aeronautics Board.

(l) *United States.* The "U.S." means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

(m) *Place.* The term "place", as used in this Part, means anywhere outside of the airspace of the United States.

#### § 122.3 Other Customs laws and regulations.

Except as otherwise provided for in this part, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels arriving or having arrived from any foreign port or place, to the extent that such laws and regulations are administered by Customs.

#### § 122.4 Availability of forms.

The forms mentioned in this part may be purchased from the district director at a port of entry. A small number of each form is set aside by each district director for free distribution and official use.

#### § 122.5 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written in a foreign language.

#### § 122.6 Reproduction of Customs forms.

(a) *Specifications.* The Customs forms mentioned in this part may be printed by private parties if the same size, wording, arrangement, style and size of type, and quality and color of paper are used.

(b) *Exceptions.* District directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The private forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration.* Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on

the reverse side of the official form may be omitted.

(2) *Air cargo manifest.* Customs Form 7509 may be changed to allow for additional information used by the airline.

### Subpart B—International Airports

#### § 122.11 Designation as international airport.

(a) *Procedure.* International airports, as defined in § 122.2(e), will be designated after due investigation to establish the fact that a sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen, rather than a general area or district. International airports will be publicly owned, unless circumstances require otherwise.

(b) *Withdrawal of designation.* The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government.* Each international airport shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

#### § 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge. Charges may be made by the airport when commercial or private aircraft use the airport:

(1) For taking on or discharging passengers or cargo; or

(2) As a base for other commercial or private operations.

(b) *Servicing of aircraft.* when an aircraft enters or clears through an international airport, it shall be promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges shall not be greater than the

schedule of charges in effect at the airport in question. A copy of the schedule of charges shall be posted in a prominent place at the offices of Federal agencies at the airport.

(c) *Federal Aviation Administration rules.* International airports shall follow and enforce any requirements for airport operations, including airport rules, that are set out by the Federal Aviation Administration.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the district served by the airport demand.

#### § 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury without time limit.

Location	Name
Akron, Ohio	Akron Municipal Airport.
Albany, N.Y.	Albany County Airport.
Baudette, Minn.	Baudette International Airport.
Bollingham, Wash.	Bollingham International Airport.
Brownsville, Tex.	Brownsville International Airport.
Burlington, Vt.	Burlington International Airport.
Calexico, Calif.	Calexico International Airport.
Caribou, Maine	Caribou Municipal Airport.
Chicago, Ill.	Midway Airport.
Cleveland, Ohio	Cleveland Hopkins International Airport.
Cut Bank, Mont.	Cut Bank Airport.
Del Rio, Tex.	Del Rio International Airport.
Detroit, Mich.	Detroit City Airport.
Detroit, Mich.	Detroit Metropolitan Wayne County Airport.
Douglas, Ariz.	Bisbee-Douglas International Airport.
Duluth, Minn.	Duluth International Airport.
Duluth, Minn.	Sky Harbor Airport.
Eagle Pass, Tex.	Eagle Pass Municipal Airport.
El Paso, Tex.	El Paso International Airport.
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport.
Friday Harbor, Wash.	Friday Harbor Seaplane Base.
Grand Forks, N.Dak.	Grand Forks International Airport.
Great Falls, Mont.	Great Falls International Airport.
Havre, Mont.	Havre City-County Airport.
Houlton, Maine	Houlton International Airport.
International Falls, Minn.	Falls International Airport.
Juneau, Alaska	Juneau Municipal Airport.
Juneau, Alaska	Juneau Harbor Seaplane Base.
Ketchikan, Alaska	Ketchikan Harbor Seaplane Base.
Key West, Fla.	Key West International Airport.
Laredo, Tex.	Laredo International Airport.
Masonia, N.Y.	Richards Field.
McAllen, Tex.	Miller International Airport.
Miami, Fla.	Chalk Seaplane Base.
Miami, Fla.	Miami International Airport.
Minot, N.Dak.	Minot International Airport.
Nogales, Ariz.	Nogales International Airport.
Ogdensburg, N.Y.	Ogdensburg Harbor.
Ogdensburg, N.Y.	Ogdensburg International Airport.
Oroville, Wash.	Dorothy Scott Airport.
Oroville, Wash.	Dorothy Scott Seaplane Base.
Pembina, N.Dak.	Pembina Municipal Airport.
Portal, N.Dak.	Portal Municipal Airport.
Port Huron, Mich.	St. Clair County International Airport.
Port Townsend, Wash.	Jefferson County International Airport.
Rainier, Minn.	Rainier International Seaplane Base.
Rochester, N.Y.	Rochester-Monroe County Airport.
Rouses Point, N.Y.	Rouses Point Seaplane Base.
San Diego, Calif.	San Diego International Airport (Lindbergh Field).
Sandusky, Ohio	Gritting-Sandusky Airport.
Sault Ste. Marie, Mich.	Sault Ste. Marie City-County Airport.
Seattle, Wash.	King County International Airport.

Location	Name
Seattle, Wash.	Lake Union Air Service (Seaplanes).
Tampa, Fla.	Tampa International Airport.
Tucson, Ariz.	Tucson International Airport.
Watertown, N.Y.	Watertown New York International Airport.
West Palm Beach, Fla.	Palm Beach International Airport.
Williston, N.Dak.	Siouxlin Field International Airport.
Wrangell, Alaska	Wrangell Seaplane Base.
Yuma, Ariz.	Yuma International Airport.

#### Subpart C—Private Aircraft

##### § 122.21 Application.

This subpart applies to all private aircraft as defined in § 122.2(h). All other provisions of this part do not apply to private aircraft, except where stated in this subpart.

##### § 122.22 Notice of arrival.

When arriving in the U.S. from a foreign area, all private aircraft not covered by § 122.23 shall give advance notice of arrival as required in § 122.31.

##### § 122.23 Private aircraft arriving from areas south of the U.S.

(a) *Private aircraft defined.* For the purpose of this section, "private aircraft" means all aircraft except public aircraft and those aircraft operated, on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Civil Aeronautics Board, or its successor, the Department of Transportation, authorizing interstate, overseas air transportation, and those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. 1372 and 14 CFR Part 298).

(b) *Advance report of penetration of U.S. airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the U.S. via the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 122.2(l) from Puerto Rico, shall furnish a notice of intended arrival to Customs at the nearest designated airport to the point of crossing listed in § 122.24(b) for the first landing in the U.S.

(c) *Notice of arrival.* Aircraft covered by this section shall give advance notice of arrival to Customs not less than 1 hour before crossing the U.S. border or coastline.

(d) *Notice procedures.* Advance notice of arrival shall be given at the intended

place of first landing, as specified in paragraph (f) of this section, either:

(1) Through Federal Aviation Administration flight notification procedures (see International Flight Information Manual, Federal Aviation Administration; or

(2) To the district director or Customs officer in charge.

(e) *Contents of notice.* The advance notice of arrival shall include the following:

(1) Aircraft registration number;  
 (2) Name of aircraft commander;  
 (3) Number of U.S. citizen passengers;  
 (4) Number of alien passengers;  
 (5) Place of last foreign departure;  
 (6) Estimated time and location of crossing U.S. border/coastline.

(7) Estimated time of arrival.  
 (8) Name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25.

(f) *Responsibility for notice.* The aircraft commander has the final responsibility for giving adequate advance notice of arrival, regardless of the method of notice used.

##### § 122.24 Landing requirements.

(a) *In general.* Private aircraft arriving in the U.S. from a foreign area shall follow the landing requirements set out in §§ 122.23 and 122.36.

(b) *Special requirements.* All private aircraft required to give advance notice of arrival under § 122.23 shall land for Customs processing at the following airport which is nearest to the point of crossing the U.S. border or coastline, unless an exemption has been granted under § 122.25.

Location	Name
Beaumont, Tex.	Jefferson County Airport.
Brownsville, Tex.	Brownsville International Airport.
Calexico, Calif.	Calexico International Airport.
Corpus Christi, Tex.	Corpus Christi International Airport.
Del Rio, Tex.	Del Rio International Airport.
Douglas, Ariz.	Bisbee-Douglas International Airport.
Eagle Pass, Tex.	Eagle Pass Municipal Airport.
El Paso, Tex.	El Paso International Airport.
Fort Lauderdale, Fla.	Fort Lauderdale Executive Airport.
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport.
Fort Pierce, Fla.	St. Lucie County Airport.
Houston, Tex.	William P. Hobby Airport.
Key West, Fla.	Key West International Airport.
Laredo, Tex.	Laredo International Airport.
McAllen, Tex.	Miller International Airport.
Miami, Fla.	Miami International Airport.
Miami, Fla.	Ops-Locke Airport.
New Orleans, La.	New Orleans International Airport (Moisant Field).
New Orleans, La.	New Orleans Lakefront Airport.
Nogales, Ariz.	Nogales International Airport.
Presidio, Tex.	Presidio-Lely International Airport.
San Diego, Calif.	Brown Field.
San Diego, Calif.	San Diego International Airport (Lindbergh Field).
Tampa, Fla.	Tampa International Airport.
Tucson, Ariz.	Tucson International Airport.
West Palm Beach, Fla.	Palm Beach International Airport.
Yuma, Ariz.	Yuma International Airport.

**§ 122.25 Exemption from special landing requirements.**

(a) *Request.* An owner or aircraft commander required to give advance notice of arrival under § 122.23 may request an exemption from the special landing requirements in § 122.24. An exemption permits the aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall still follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the district director at the airport of first landing at which Customs processing is desired. The request shall be submitted:

(1) At least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of one year; or

(2) At least 15 days before the anticipated arrival if the request is for a single flight.

(c) *Content of request.* A request for exemption from the special landing requirements shall include the following information:

- (1) Aircraft registration number;
  - (2) Identity of the aircraft (make, model number, color and type, such as turboprop, reciprocating, helicopter, etc.);
  - (3) A statement that the aircraft is equipped with a functioning transponder which will be in use during overflight.
  - (4) Names, addresses, and dates of birth of owners of the aircraft (if the aircraft is being operated under a lease, the name and address of the lessee, in addition to that of the owner);
  - (5) Names, addresses, and dates of birth of all crewmembers;
  - (6) Names, addresses, and dates of birth of usual or potential passengers to the extent possible;
  - (7) Description of usual or anticipated cargo or baggage;
  - (8) Description of company's usual business activity, if aircraft is company-owned;
  - (9) Name of intended airport of first landing in the U.S.;
  - (10) Foreign places from which the flight(s) will begin;
  - (11) Detailed reasons for overflight exemption, stated in terms of savings in cost and time, safety considerations, and convenience.
- (d) The owner or aircraft commander or a private aircraft granted an exemption from the landing requirement shall:

- (1) Notify Customs of a change of Federal Aviation Administration

registration number for the aircraft;

(2) Notify Customs of the sale of the aircraft;

(3) Notify Customs of changes of usual or anticipated pilots or crewmembers, as specified in paragraph (c)(5) of this section. One pilot or crewmember as identified in paragraph (c)(5) of this section shall be present on every flight to maintain exemption status. The notifications specified in this paragraph shall be given to Customs within 5 working days of the change or sale, or before a flight for which there is an exemption, whichever occurs earlier.

**§ 122.26 Entry and clearance.**

Private aircraft, as defined in § 122.2(h), are not required to enter or to clear.

**§ 122.27 Documents required.**

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in Part 148 of this Chapter. An oral declaration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059-B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059-B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR Part 30) and the Export Administration (15 CFR Parts 368-399) regulations shall be followed. A foreign landing certificate or copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than \$100.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

**§ 122.28 Private aircraft taken abroad by U.S. residents.**

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in § 148.32 of this chapter.

(a) *Repairs.* Repairs made in a foreign area which are incidental to the use of the aircraft abroad are not subject to duty. Incidental repairs under this section means a repair which was not anticipated before the aircraft left the U.S.

(b) *Equipment.* Equipment or accessories acquired in a foreign area and imported separately are subject to payment of duty. Equipment or accessories not incidental to use of the aircraft abroad are also subject to duty.

(c) *Assessment.* Any repairs made to, or equipment and accessories installed on, a private aircraft which are not incidental to the use of the aircraft abroad are subject to the duty rate at which the aircraft would be dutiable if imported.

(d) *Entry.* Entry on a baggage declaration or on a regular entry shall be made if the repair, equipment or accessory is subject to duty.

**§ 122.29 Overtime services.**

(a) *Application.* Private aircraft arriving in the U.S. and requiring Customs services to be performed outside the regular hours of duty are subject to overtime charges. The overtime charges to be assessed against the operator of a private aircraft in connection with each arrival are limited to a maximum of \$25.

(b) *Procedure.* An application must be made on Customs Form 3171 to receive overtime services. The application shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of Part 113 of this chapter, or a cash deposit, and may be effective up to one year. See § 24.16(c) of this chapter.

**§ 122.30 Other Customs laws and regulations.**

Sections 122.3 and 122.161 apply to private aircraft.

**Subpart D—Landing Requirements****§ 122.31 Notice of arrival.**

(a) *Application.* All aircraft entering the U.S. from a foreign area shall give advance notice of arrival. Exceptions to this requirement are found in paragraph (b) of this section. When a private aircraft enters the U.S. from a foreign area in the Western hemisphere south of the U.S., advance notice shall be given as stated in § 122.23.

(b) *Exception—(1) Scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule shall have been filed with the district director for the district in which the first

landing is made. Scheduled airlines shall also submit a copy of their schedules to the Regional Commissioner of the region in which the scheduled aircraft will land. This notice shall be given 30 days before the effective date of the schedule.

(2) *Public aircraft.* Public aircraft are covered by Subpart O.

(c) *Giving notice of arrival—*

*Procedure.* The commander of an aircraft covered by this section shall give the advance notice of arrival. Notice shall be given to the district director at or nearest the place of first landing, either:

(i) Directly by radio or other method; or

(ii) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent. This shall be done before coming into the U.S. If necessary, radio equipment may be used to give required notice.

(d) *Contents of notice.* The advance notice of arrival shall state:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by Customs;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival shall be sent and received far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft.

(f) *Notice to other Federal agencies.* When advance notice is received, the district director shall inform any other Federal agency connected with landing.

(g) *Responsibility of aircraft commander.* The aircraft commander has the responsibility for giving adequate advance notice of arrival, regardless of the method of notice used.

#### § 122.32 Aircraft required to land.

Any aircraft coming into the U.S., including Puerto Rico, from an area outside the U.S., is required to land, unless exempted by the Federal Aviation Administration, Washington, D.C.

#### § 122.33 Place of first landing.

The first landing of an aircraft entering the U.S. from a foreign area

shall be at an international airport (see § 122.13, International airports). Permission to land at another place may be given under § 122.34 (Landing rights airport) or § 122.35 (Emergency or forced landing).

#### § 122.34 Landing rights airport.

(a) *Permission to Land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the regional commissioner of the region in which first landing is made.

(2) *Other aircraft.* All other aircraft may be allowed to land at a landing rights airport by the district director at the port of entry or station nearest the first place of landing.

(3) *Addition flights, charters or changes in schedule:*

(i) *Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the regional commissioner.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the district director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(4) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (see § 122.35).

(b) *Notice to Federal agencies.* If an aircraft is given permission to land at a landing rights airport, the Customs officer who granted the landing rights shall notify the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other interested Federal agency at once.

(c) *Payment of expenses.* The owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given. When permission to land is given to scheduled aircraft of a scheduled airline, no inspection charge is made except for the overtime expenses of Customs officers. (see § 24.16 of this chapter).

#### § 122.35 Emergency or forced landing.

(a) *Application.* This section applies to emergency or forced landings made by aircraft:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice.* When an emergency or forced landing is made, notice shall be given:

(1) To the Customs officer at the intended place of first landing, nearest international airport, or nearest port of entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers.* The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs officers.

(d) *Merchandise and baggage.* The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers arrive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail.* Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

#### § 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and inspection officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until inspection officers arrive.

#### § 122.37 Precleared aircraft.

(a) *Application.* This section applies when aircraft carrying precleared crew, passengers and baggage or merchandise makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice.* The airline commander or agent shall give written notice to the Customs office at:

(1) The intended place of unloading; and

(2) The place of preclearance.

(c) *Time of notice.* Notice shall be given within 7 days unless other arrangements have been made in advance between the carrier and the district director.

**§ 122.38 Permit and special license to unlade and lade.**

(a) *Application.* A permit and/or special license to unlade passengers, baggage, and merchandise, or to lade baggage and merchandise, may be issued at any airport.

(1) *Permit to unlade and lade.* A permit is necessary to obtain Customs supervision of unloading and lading during official Customs duty hours.

(2) *Special license to unlade and lade.* A special license is necessary under this section to obtain Customs supervision of unloading and lading at any time not within official Customs duty hours.

(b) *Procedure.* The application for a permit and/or special license to unlade and lade shall be made on Customs Form 3171. An application will not be granted unless supported by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, unless this requirement is waived under § 122.38(c). A request for a permit may be included with a request for a special license. Application shall be made to the district director for the district in which the unloading or lading will take place.

(c) *Waiver.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the district director may waive the requirement under § 122.38(b) that a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, be furnished, if he is convinced that the revenue is protected and that all Customs requirements are satisfied.

(d) *Term permit and term special license.* A separate application for a permit and/or special license is not required for each arrival or departure when:

- (1) An aircraft is covered by a term permit or a term special license; or
- (2) Local arrangements have been made to notify Customs before services are needed.

The notice to Customs shall include the specific kind of service requested, and the exact time it will be needed.

(e) *Separate applications.* If the aircraft is not covered by a term permit or a term special license, and arrangements for notice to Customs have not been made, a separate application for a permit and/or a special license shall be made for arrival and departure.

(f) *Other statutes.* A permit or special license will not be issued, and any term permit or term special license already issued will be revoked, if the carrier does not follow the employee list and terminal facilities requirements of § 4.30 of this chapter.

(g) *Automatic renewal.* An aircraft which has a bond on Customs Form 301 containing the appropriate bond set forth in Subpart G of Part 113 of this chapter, on file may request automatic renewal of a permit and/or special license. The request shall be for successive annual periods which conform to the automatic renewal periods of the airline's consolidated bond. An application for automatic renewal will be approved by the district director unless specific reasons exist for non-approval. If a request for automatic renewal is not approved, the district director shall notify the airline, and shall set out the reasons for the denial. To apply for automatic renewal, item 10 on Customs Form 3171 shall be changed by adding the following words after the period of time indicated:

And automatic annual renewal thereof for so long as the bond is renewed and remains in effect.

**Subpart E—Aircraft Entry and Entry Documents****§ 122.41 Aircraft required to enter.**

All aircraft coming into the U.S. from a foreign area shall make entry under Subpart E except:

- (a) Public and private aircraft; and
- (b) Aircraft traveling from airport to airport in the U.S. under Subpart I, relating to Residue Cargo Procedures.

**§ 122.42 Aircraft entry.**

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry—(1) First landing at International airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at an international airport, the aircraft commander or an agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

**§ 122.43 General declaration.**

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under § 122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see § 122.48) may be filed in place of

the general declaration, whether or not cargo is on board. The air cargo manifest shall state the following:

I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.

Signature \_\_\_\_\_  
Aircraft Commander or Agent

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under § 122.6. The form shall contain all required information, unless the information is given in some other manner under Subpart E.

**§ 122.44 Crew baggage declaration.**

When an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in Subpart G, Part 148 of this chapter.

**§ 122.45 Crew list.**

(a) *When required.* A crew list shall be filed by all aircraft required to enter under § 122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

(1) On the general declaration in the column headed "total Number of Crew"; or

(2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

**§ 122.46 Crew purchase list.**

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required when an aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under Subpart G of Part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* When a crewmember enters articles for which a written crew declaration is not required (see Subpart G, Part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

(1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and

(2) The statement "Crew purchases as per attached crew declaration" appears on the general declaration or crew list.

#### § 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement "Stores List Attached" must appear on the cargo manifest.

(c) *Contents—(1) Required listing.* The stores list shall include all of the following:

(i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;

(ii) Bonded merchandise arriving as stores;

(iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement "Domestic supplies and equipment and fuel for immediate flight only, except as noted" appears on the cargo manifest or on the separate stores list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930 as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

#### § 122.48 Air cargo manifest.

(a) *When required.* An air cargo manifest for all cargo on board shall be filed together with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a

foreign country on the same through flight. Any cargo manifest already on board may be inspected. Any arms, ammunition or implements of war on board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The cargo manifest shall be on Customs Form 7509, except when the use of Customs Form 5119A or 7523 is required.

(1) *Customs Form 7509.* When this form is used, it shall contain all required information. A more complete description of the cargo shipped under air waybills may be included by attaching a copy of each air waybill to the cargo manifest. The statement "Cargo as per air waybills attached" shall appear on the cargo manifest when this is done. Each air waybill number shall also be listed on the cargo manifest.

(2) *Custom Form 5119A.* This form may be used as the cargo manifest when the value of the cargo on board is not greater than \$1000.00.

(3) *Customs Form 7523.* This form may be used as the cargo manifest when the cargo on board may be entered duty free as described on the form.

(d) *Unaccompanied baggage.* Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited shall be shown on the cargo manifest in columns under the following headings:

Check No.	description of package	Where from	Destination

On the right of the foregoing columns two blank columns, one headed "Name of examining officer" and on the right thereof another headed "Disposition," shall be provided on the cargo manifest for the use of Customs officers. Unaccompanied unchecked baggage arriving as air express or freight shall be manifested as other air express or freight.

(e) *Accompanied baggage in transit.* This section applies when accompanied baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage during the flight, the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

#### § 122.49 Correction of air cargo manifest.

(a) *Shortages—(1) Reporting.* Shortages (merchandise listed on the manifest but not found) shall be reported to the district director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked "Shortage Declaration," and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in Part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* To avoid penalties, the aircraft commander or agent shall supply adequate proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages—(1) Reporting.* Overages (merchandise found but not listed on the manifest) shall be reported by the aircraft commander or agent to the district director. The report must be made:

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked "Post Entry" and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* When the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify

that evidence to support the explanation of the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.

Signature \_\_\_\_\_  
Aircraft Commander or Agent

(d) *Notice by district director.* The district director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. Once notice is received, the aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required.* A correction in the manifest is not required when:

(1) The district director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable.* When an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompanied baggage for which a manifest must be filed, sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply.

#### Subpart F—Permit To Proceed

##### § 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

##### § 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in § 122.2(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* When an aircraft covered by this section is entered as an imported article, and any applicable duty for the

aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. This is allowed when the aircraft commander files a declaration that states the:

- (1) Port where entry was made;
- (2) Date duty, if any, was paid.
- (3) Number of the entry.

(c) *Aircraft not entered as imported article.* (1) *Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in § 122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

- (i) Is used only for commercial purposes between the U.S. and foreign areas; and
- (ii) Will leave the U.S. for a foreign destination in commercial use or in ballast.

(2) *Treatment as an imported article.* Any aircraft covered by this section which was not entered as an imported article shall make entry if it: is withdrawn from commercial use between the U.S. and foreign areas; or

(ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(d) *Aircraft damage and duty payment—* (1) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(2) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commercial use and is not subject to entry or to duty as imported merchandise.

(3) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft, or any salvageable part of it, is not exported, then:

- (i) Entry is required to be made for the damaged aircraft or any salvageable part of it; and
- (ii) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

##### § 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft under this subpart.

##### § 122.54 Aircraft of foreign registry.

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for a permit to proceed when the aircraft:

- (1) Is not an imported article; and
- (2) Is ferried (proceeds in ballast) from the airport of first arrival to one or more airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for release in the U.S., see Subpart I of this Part).

(b) *Permit to proceed.* The permit to proceed shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following information:

- (1) Type of aircraft;
- (2) Nationality and registration number of aircraft;
- (3) Name and country of aircraft manufacturer;
- (4) Name of aircraft commander;
- (5) Country from which aircraft arrived;
- (6) Name and location of airport where permit to proceed is given;
- (7) Date permit to proceed is given;
- (8) Name and location of airport to which aircraft is proceeding;
- (9) Purpose of stay in the U.S.;
- (10) Signature of Customs officer giving permit.

(c) *Permit on board.* The permit to proceed shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note on the permit:

- (1) The name and location of the airport;
- (2) The date and arrival time;
- (3) The purpose of the visit;
- (4) The name and location of the next airport to be visited; and
- (5) The date and time of departure.

(e) *Final airport.* The permit to proceed shall be given to the appropriate Customs officer at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that

the aircraft was properly inspected by Customs in the U.S.

(f) *Port of Issue.* The permit to proceed shall be returned after final clearance to the district director at the port where the permit was issued, to be kept on file.

(g) *Enforcement.* Once the permit to proceed has been issued for an aircraft, the district director at the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the district director shall report the matter to the Customs agent in charge of the area for investigation.

#### Subpart G—Clearance of Aircraft and Permission To Depart

##### § 122.61 Aircraft required to clear.

All aircraft, except public and private aircraft, leaving the U.S. for a foreign area are required to clear if:

- (a) Carrying passengers and/or merchandise for hire; or
- (b) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

This includes any aircraft used by members of air travel clubs. Foreign aircraft traveling under a permit to proceed shall also clear.

##### § 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR part 30.1), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Bureau of International Commerce.* Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Office of Export Administration (Department of Commerce) is required for the aircraft under the Export Control Regulations (15 CFR Part 370). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State.* Aircraft not covered by Export Control Regulations are subject to the Department of State export licensing authority as set out in 22 CFR Parts 121.123. Such aircraft may leave the U.S. only with the proper Department of the State license.

##### § 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft covered by this subpart.

(a) *Clearance at other than airport of final departure.* Aircraft may clear at each airport where merchandise and/or passengers are taken on board for

transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (whether or not an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport.* Clearance or permission to depart may be requested at the Customs port of entry (whether or not an international airport) nearest the last departure airport, unless some other place is chosen by the district director.

##### § 122.64 Other aircraft.

Clearance or permission to depart shall be requested for aircraft covered by this subpart by the aircraft commander or agent. The request must be made to the district director at the Customs port of entry (whether or not an international airport) nearest the final departure airport, unless some other place is designated by the district director.

##### § 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart, the aircraft commander or agent shall report to the district director if departure is delayed or cancelled. The report shall be made within 72 hours after the aircraft received clearance or permission to depart.

#### Subpart H—Documents Required for Clearance and Permission To Depart

##### § 122.71 Aircraft departing with no commercial export cargo.

(a) *Application.* This section applies to aircraft departing for foreign territory with no export cargo.

(1) Such aircraft may clear by telephone in advance with the district director nearest the departure place if departing empty or carrying only:

- (i) Passengers for hire; or
- (ii) Non-commercial cargo for which shipper's export declarations are not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, shall be submitted to Customs:

I declare that there is no cargo on board this aircraft

Signed \_\_\_\_\_  
(Aircraft Commander or Agent)

(b) *Timeliness.* The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may

undertake any necessary examination of the aircraft and cargo.

(c) *Documentation.* When clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

##### § 122.72 Aircraft departing with commercial export cargo.

This section applies when an aircraft leaves the U.S. for any foreign area. An air cargo manifest and any required Shipper's Export Declarations shall be filed for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See § 122.79 for special requirements for shipments to U.S. possessions.

##### § 122.73 Air Cargo manifest.

(a) *Form.* The air cargo manifest shall be on Customs Form 7509, and shall show all information required. The following statement shall appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signed \_\_\_\_\_  
(Aircraft Commander or Agent)

(b) *Preparation and filing.* The aircraft commander or agent shall file two copies of the air cargo manifest with the district director of the departure airport. Three copies of the air cargo manifest shall be filed if the aircraft is covered by § 122.77(b). The air cargo manifest must be filed in:

- (1) Complete form, with all required Shipper's Export Declarations (see § 122.75); or
- (2) Incomplete form (pro forma) under § 122.74.

##### § 122.74 Incomplete (pro forma) manifest.

(A) *Application.* Clearance or permission to depart may be given to an aircraft by the district director before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed.

(b) *Exceptions.* An incomplete manifest will not be accepted:

- (1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or
  - (2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign area in the country groups listed W, Y, or Z in the Export Regulations of the Bureau of International Commerce (15 CFR Part 370, Supplement No. 1).
- In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with

the district director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required Shipper's Export Declarations and a complete air cargo manifest shall be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments between the U.S. and Puerto Rico, the complete manifest (when required) and all Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure.

(3) *Shipments to U.S. Possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure. See § 122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the four-day bond period; or  
 (2) All required documents will be filed within the seven-day bond period. Once all documents have been filed, a statement as required by § 122.75(b) shall be made.

#### § 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest shall list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. When an item does not require a Shipper's Export Declaration, it shall be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement "Cargo as per Air Waybill Attached" must appear on the air cargo manifest when this is done.

(2) *Direct departure.* This subsection applies only to direct departures of shipments requiring a Shipper's Export Declaration. A copy of each declaration may be attached to the air cargo manifest, and the number of each declaration shall be listed on the air cargo manifest in the column for air

waybill numbers. The statement "Cargo as per export Declarations Attached" must appear on the manifest when this is done.

(b) *Statement required.* When all required documents are ready for filing, the following statement must appear on the air cargo manifest or on the general declaration form when an air cargo manifest is not required:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

When an incomplete set of documents has been filed and is later completed, the following statement shall accompany the Shipper's Export Declarations and any required air cargo manifests:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. \_\_\_\_\_, Flight No. \_\_\_\_\_ cleared direct for \_\_\_\_\_, on \_\_\_\_\_ except cargo listed on any cargo manifest required to be filed for such flight.

Airline \_\_\_\_\_  
 Authorized Agent \_\_\_\_\_

#### § 122.76 Shipper's Export Declarations and inspection certificates.

At the time of clearance, the aircraft commander or agent shall file with the district director at the departure airport any Shipper's Export Declarations required by the Bureau of Census (see § 122.62(a)). The aircraft commander or authorized agent also shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR Part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine or goats.

#### § 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the district director to show that clearance is granted.

(b) *Scheduled aircraft.* When a scheduled aircraft clears at an airport which is not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed at the port by the district director at the port where clearance is obtained, and the second copy shall be attached to the first or use at later U.S. ports.

#### § 122.78 Entry or withdrawal for exportation or for transportation and exportation.

When a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show for each entry or withdrawal the:

(a) Number;  
 (b) Date; and  
 (c) Class of entry or withdrawal, as follows:

(1) Transportation and exportation;  
 (2) Withdrawal for transportation and exportation;  
 (3) Immediate exportation;  
 (4) Withdrawal for exportation; or  
 (5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where merchandise is laden for exportation, shall also appear on the air cargo manifest.

#### § 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico.* An air cargo manifest shall be filed for aircraft transporting cargo between the U.S. and U.S. possessions. Shipper's Export Declarations are not required for shipments from the U.S. or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the U.S., Puerto Rico or another U.S. possession.

(b) *Puerto Rico.* This subsection applies when an aircraft carries merchandise on a direct flight between the U.S. and Puerto Rico. If the requirements contained in Subpart I, Residue Cargo Procedures, have been satisfied, an air cargo manifest is required only for:

(1) Merchandise transported as cargo for which a Shipper's Export Declaration is not required; or  
 (2) Cargo for which a Shipper's Export Declaration cannot be filed on time. (See 15 CFR 30.21).

Any required air cargo manifest or Shipper's Export Declarations shall be filed with the district director at the departure place.

#### § 122.80 Verification of statement.

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

### Subpart I—Residue Cargo Procedures

#### § 122.81 Application.

(a) *Aircraft arriving with cargo.* Aircraft arriving in the U.S. from a foreign area with cargo, shown on the

manifest to be traveling to other airports in the U.S. or foreign areas, may proceed under the provisions of this Subpart.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate clearance, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, has been filed and covers the aircraft.

#### § 122.82 Bond requirements.

A bond on Customs Form 306 containing the bond provisions set forth in Subpart G of Part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the district director at the entry airport.

(a) *Traveling general declaration and manifest.* When applying for clearance from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest—(1) Crew purchase and stores list.* The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list.* A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the airport with his or her purchases at the first entry port.

The crew member's declaration must be attached at the port where the articles list on the declaration receive clearance.

(c) *Abstract general declaration and manifest.* The abstract general declaration and manifest is one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet cleared by Customs or other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed.* A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

#### Permit To Proceed From One Airport to Another

Airport of Departure \_\_\_\_\_

Date \_\_\_\_\_

Permission is hereby given aircraft \_\_\_\_\_

to proceed to \_\_\_\_\_

(Next Domestic Airport)

The Aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed. Number of crew members not cleared by Public Health Service for: Quarantine \_\_\_\_\_; medical examination of aliens \_\_\_\_\_. Number of passengers not cleared by Public Health Service for: Quarantine \_\_\_\_\_; medical examination of aliens \_\_\_\_\_. Number of crew members not cleared by Customs. \_\_\_\_\_

Number of passengers not cleared by Customs. \_\_\_\_\_

Number of pieces of cargo not cleared. \_\_\_\_\_

(Customs Officer and Title)

#### Declaration on Entry of Aircraft at Following Airport

Airport of Arrival \_\_\_\_\_

Date \_\_\_\_\_

I, \_\_\_\_\_, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of \_\_\_\_\_, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

(1) The abstract general declaration;

(2) The traveling general declaration when an abstract general declaration is not required; or

(3) A separate sheet of paper.

(e) *Permit to proceed to nonscheduled aircraft.* For each permit to proceed issued to a nonscheduled aircraft

carrying residue cargo, a numbered Customs Form 7512-C shall be filled out and filed. The number on the form shall be placed in the upper right hand corner of the permit to proceed. The original copy of Customs Form 7512-C shall be forwarded to the Data Center by the issuing port and the duplicate must be attached to the permit and given to the aircraft commander. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed and Customs Form 7512-C (duplicate) to Customs.

(f) *Use of form.* When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the appropriate Customs officer at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

#### § 122.84 Intermediate airport.

(a) *Application.* The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

(b) *Entry.* When an aircraft at the next airport, the aircraft commander or agent shall make entry by filing the:

- (1) Abstract general declaration and manifest;
- (2) Traveling general declaration and manifest; and
- (3) Permit to proceed.

The Declaration on Entry of Aircraft at Following Airport, found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations.* The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the appropriate Customs officer and are kept at the airport.

(d) *Departure.* When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not yet cleared by Customs or an other interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under § 122.84(c), shall be returned to the aircraft commander or agent for filing at the next entry airport.

**§ 122.85 Final airport.**

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

**§ 122.86 Substitution of aircraft.**

(a) *Application.* The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors.

(b) *Clearance and entry.* Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification.* An identification of all substitute aircraft shall be clearly made on all clearance and entry documents.

(d) *Transporting cargo—(1) Forwarding.* The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions.* All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo. No other cargo may be laden on the substitute aircraft.

**§ 122.87 Other statutes.**

Section 4.85 of the chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in the subpart.

**Subpart J—Transportation in Bond and Merchandise in Transit****§ 122.91 Application.**

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

- (a) For immediate transportation to another airport without appraisal; or
- (b) For transportation through the U.S. and later exportation by aircraft.

**§ 122.92 Procedure at port of origin.**

(a) *Forms required—(1) Customs Form 7512.* Customs Form 7512 shall be used for both entry and manifest. Three copies of the form are required at the port of origin for merchandise for immediate transportation without appraisal. Four copies of the form are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a)

of this chapter). Each copy shall be signed by the carrier or agent.

(2) *Customs Form 7512-C.* The "Origin" copy of Customs Form 7512-C shall be filed with Customs Form 7512. It shall be dated and its number and date shall be placed on all copies of Customs Form 7512.

(b) *Delivery of Customs form to carrier—(1) Merchandise entered for immediate transportation without appraisal.* When merchandise is entered for immediate transportation without appraisal, two copies of Customs Form 7512, and the duplicate copy of Customs Form 7512-C shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs Form 7512 and one copy of Customs Form 7512-C shall be delivered to the carrier.

(3) *After delivery.* Once the forms are delivered, they shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond.

(d) *Split shipment—(1) Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* When any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be used as notice of each arrival at the destination airport.

(e) *Transshipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. When merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in § 18.4(e) of this chapter, to each bonded package.

**§ 122.93 Procedure at destination or exportation airport.**

(a) *Delivery to district director.* When a bonded shipment arrives at the destination airport, the aircraft commander or agent shall deliver one copy of the entry and manifest (Customs Form 7512) covering the shipment to the district director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the district director.

(b) *Delivery to consignee.* When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in § 141.11(a)(4) of this chapter.

**§ 122.94 Certificate of lading for exportation.**

(a) *Required filing.* This section applies to merchandise entered for transportation and exportation by aircraft. A certificate of lading for exportation, Customs Form 7512 (see § 122.93 of Subpart J) or Customs Form 7520 shall be filed when the merchandise reaches the final departure airport. Either form shall be filled out and signed at the place where aircraft clearance for the merchandise is given. Customs Form 7512-C (duplicate) shall also be submitted at this time.

(b) *Clearance not at place of final departure.* Whenever an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

**§ 122.95 Other provisions.**

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of

merchandise under this subpart unless stated otherwise.

#### Subpart K—Accompanied Baggage in Transit

##### § 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in transit procedures. When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in § 122.48 of this chapter.

##### § 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the district director.

(b) *Before delivery to passenger.* In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

#### Subpart L—Transit Air Cargo Manifest (TACM) Procedures

##### § 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through or from the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See Subparts I and J of this part, and Parts 18 and 123 of this chapter).

##### § 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* "Transit air cargo" is cargo, including manifested baggage, transported under the requirements of this subpart:

(b) *Port of arrival.* The "port of arrival" is the port in the U.S. where imported cargo must be documented for further transportation under this subpart:

(c) *Transfer or transferred.* "Transfer or transferred" means the document change of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by

air or surface movement to the port of destination;

(d) *Transit air cargo manifest.* "Transit air cargo manifest" is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

##### § 122.113 Form for transit air cargo manifest procedures.

A manifest on Customs Form 7509 is required to transport cargo as transit air cargo. The words "Transportation Entry and Transit Air Cargo Manifest" shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

##### § 122.114 Contents.

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Number of shipments shown on manifest—(1) Shipments from one country.* Each transit air cargo manifest sheet may list:

(i) Only air cargo shipments from one exporting country, with the name shown in the heading; or

(ii) The name of the exportation country for each shipment, shown in the "Nature of Goods" column.

(2) *Shipment to the same port.* A single transit air cargo manifest may list only those shipments manifested at the port of arrival for:

(i) The same Customs port of destination;

(ii) The same Customs port for later exportation; or

(iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

(1) The foreign port of lading;

(2) The date the aircraft arrived at the port of arrival;

(3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Number of copies.* The transit air cargo manifest shall be supplied as follows:

(1) Three copies for transit air cargo exported directly from the port of arrival;

(2) Four copies for transit air cargo moving from the port of arrival to a port of destination in the U.S.; and

(3) Five copies for transit air cargo moving from the port of arrival to another U.S. port for exportation.

(e) *Corrections.* When corrections in the route shown on the original manifest for the cargo are required at the port of arrival to make a manifest sheet workable as a transit air cargo manifest, the district director at the port of arrival may allow the corrections.

##### § 122.115 Labeling of cargo.

A warning label, as required by § 18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival, before the cargo leaves the port of arrival.

##### § 122.116 Identification of manifest sheets.

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander or agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

##### § 122.117 Requirements for transit air cargo transport.

(a) *Transportation—(1) Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in § 122.117(b). The receipt may be given only by an airline which:

(i) Is a common carrier for the transportation of bonded merchandise; and

(ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only when covered by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of Part 113 of this chapter, as provided in § 18.25 of this Chapter.

(b) *Receipt—(1) Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the lay order period, or by an authorized extension period (see § 4.37 of this chapter).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo

manifest, clearly signed and dated if required, in the following form:

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

Name of Carrier (or Exporter) \_\_\_\_\_  
 Attorney or Agent of Carrier (or Exporter) —  
 Date \_\_\_\_\_

(c) *Responsibility for transit air cargo—(1) Direct exportation.* The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in § 122.117(b), is presented to Customs.

(2) *Other than direct exportation.* When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in § 122.117(b), is presented to Customs.

(3) *Carting.* When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under Part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines.* An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

- (i) Give a receipt for the air cargo;
- (ii) File an appropriate bond; and
- (iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments.* A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

- (1) By § 122.92(d) under a single combined entry and manifest;
- (2) By § 122.118(d); or
- (3) By § 122.119(e), permitting the use of a surface carrier for transport.

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See Subpart J).

#### § 122.118 Exportation from port of arrival.

(a) *Application.* Transit air cargo may be transferred for exportation from any port of arrival under this section. The district director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time.* Transit air cargo shall be exported from the port of arrival within 10 days from the date the exporting airline receives the cargo.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy.* The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt of the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy.* The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy.* The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting aircraft's receipt for the cargo, number, flight number, and the date.

(d) *Direct export on different aircraft.* Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. When this occurs, an additional copy of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* When shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by § 18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., overages) which has been post entered under § 122.49(b) may be exported from the port of origin under this subpart. Four copies of the air cargo manifest, Customs Form 7509, marked "Post Entry", shall be provided. All requirements of § 122.44(b) and of this section shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in § 122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required

license must be placed under constructive Customs custody in a special area of the airline's terminal until the license is obtained.

#### § 122.119 Transportation to another U.S. airport.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The district director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 15 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest, and two copies of Customs Form 7512-C (original and duplicate) shall be filed by the airline giving a receipt for moving the cargo shipments to destination.

(1) *Permit copy.* This copy is used and kept by Customs at the port of arrival.

(2) *Customs Form 7512-C (duplicate).* This copy accompanies the transit air cargo to the port of destination.

(d) *Failure to deliver on time—(1) Procedure.* If transit air cargo does not arrive at the destination port on time, the district director at the port of arrival shall take action as provided in §§ 18.6 and 18.8 of this chapter. When Customs Form 3861 is used by the district director for reporting, the amount of duty or tax due shall not be indicated on the form when the amount is uncertain. Instead, the amount of tax and duty shall be decided at the port of arrival on the basis of information:

- (i) On Customs Form 3861;
- (ii) On the permit copy kept at the port of arrival; and

(ii) obtained from the carriers as necessary. The district director at the port of arrival shall notify the airline that gave a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that gave a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the district director at the port of arrival. The answer shall provide any information or documents related to value and description of the cargo involved that the receiving airline and the importing airline can produce.

(e) *Port of arrival to port of destination.* When an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo

may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

- (1) The importing airline's bond must cover the transfer and surface movement;
- (2) The description of the cargo on the transit air cargo manifest must be complete;
- (3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface movement; and
- (4) Section 122.114(b) must be followed.

**§ 122.120 Transportation to another port for exportation.**

(a) *Application.* Air cargo may be transferred as transit air cargo at the port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision—(1) From port of arrival to exportation port.* The district director at the port of arrival may order may supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and any other Federal agency checks, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest and a Customs Form 7512-C (original and duplicate) shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as "permit" and "control" copies, and Customs Form 7512-C (original) shall be filed with Customs at the port of arrival. Filing shall be made when the arriving aircraft enters, or before the lay order period ends, by the airlines which gives receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies marked separately as "exportation" and "clearance" copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest in one storage space. The storage space shall be separate from the area in which special shipments which require a license under § 122.120(g) are stored.

(g) *Export license—(1) Review.* The Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information Inadequate.* If the manifest information is not enough for Customs to determine that a license or other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When License or Other Requirement Applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline's cargo terminal.

(h) *Filing of exportation and clearance copies—(1) Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show the aircraft:

- (i) number;
- (ii) flight number; and
- (iii) the date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline—(1) Procedure.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Forms 7512 and

7512-C are required for each cargo shipment listed:

- (i) for transportation and exportation under Subpart J of this part; or
- (ii) for direct exportation under § 18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, § 122.118(d) applies.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 40 days, the district director at the port of arrival shall take action as provided in § 122.119(d).

**Subpart M—Aircraft Liquor Kits**

**§ 122.131 Application.**

(a) *Liquor and tobacco.* Subpart M applies to:

- (1) Duty-free and tax-free liquor and tobacco; and
- (2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft.* Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

- (1) Duty-free and tax-free liquor and tobacco withdrawn from bond under § 309 of the Traff Act of 1930, as amended (19 U.S.C. 1309); or
- (2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

**§ 122.132 Sealing of aircraft liquor kits.**

(a) *Sealing Required.* Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be under seal while on the ground unless taken to an authorize airline in-bond liquor storeroom.

(b) *Exception.* When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

- (1) The liquor kits are kept on board the aircraft;
- (2) The district director finds that sealing is not required for revenue protection.

(c) *Seals to be used.* Aircraft liquor kits shall be sealed with U.S. Customs serially numbered, orange colored, button-type seals, or other approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in Part 24 of this chapter. A small number of seals may be obtained from the district director.

(d) *Removing seals.* When sealed liquor kits are on board any aircraft that is on the ground, the Customs seals may be broken only by:

- (1) A customs officer; or
- (2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing.* When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an uncolored button seal.

#### § 122.133 Stores list required on arrival.

(a) *When required, contents.* Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores shall state for each type of liquor and bottle size the:

- (1) Number of full bottles;
- (2) Number of partially filled bottles; and
- (3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies.* One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

- (1) One copy of the stores list shall be filed with the inward cargo manifest; and
- (2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear.* If an aircraft is not required to enter and/or clear:

- (1) One copy of the stores list shall be given to the Customs officer upon arrival; and
- (2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.*

When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by

crew members under Customs supervision.

#### § 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the district director, may be:

- (1) Kept on board the aircraft;
- (2) Removed and replaced upon the aircraft; or
- (3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseat the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by § 122.134. The lading shall be done under any supervision the district director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

#### § 122.135 When airline does have in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board the aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the district director. The inventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the district director:

- (1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and
- (2) signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall

immediately report to the district director any:

- (1) Evidence of seal tampering;
- (2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and
- (3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits—(1) Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in § 122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

#### § 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax paid stock and added to liquor kits. The outgoing stores list shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of Copies.* The two copies of the outgoing stores list shall be used as follows:

- (1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and
- (2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in § 122.133(c). In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See § 122.133(c)).

#### § 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

#### Subpart N—Flight to and From the U.S. Virgin Islands

##### § 122.141 Definitions.

Under Subpart N, the following definitions apply:

(a) *United States.* The term "U.S." includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term "foreign area" means any area other than the several States, the District of Columbia and Puerto Rico.

**§ 122.142 Flights between the U.S. Virgin Islands and a foreign area.**

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in a State from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving a State for a foreign area.

**§ 122.143 Flights from the U.S. to the U.S. Virgin Islands.**

(a) *In general.* Aircraft on flights from the U.S. to the Virgin Islands are governed by the provisions of this part that apply to aircraft on a flight between two States.

(b) *Bureau of the Census.* When Bureau of the Census regulations (15 CFR Part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the district director. Permission to depart shall not be given unless:

(1) A complete manifest and Shipper's Export Declarations as required by 15 CFR Part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.24 is filed and the complete manifest and Shipper's Export Declarations are filed within 7 business days after departure.

**§ 122.144 Flights from the U.S. Virgin Islands to the U.S.**

(a) *Aircraft not inspected—(1) On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in a State from a foreign area.

(b) *Supervision.* When aircraft are inspected by customs in the U.S. Virgin Islands, the district director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands

arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S. and:

(i) Of domestic origin; or  
(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding in ballast, or with cargo and/or passengers solely from the U.S. Virgin Islands. Two copies of the certificate shall be given to the inspecting officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

(i) of foreign origin;  
(ii) not duty paid; and  
(iii) proceeding in ballast.

The permit to proceed, as required by § 122.57, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding in ballast. The permit to proceed, as required by § 122.56, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under Subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

**Subpart O—Public Aircraft**

**122.151 Public aircraft of the U.S. or foreign countries.**

(a) *Report of arrival, entry and clearance.* No report of arrival, entry or clearance is required for any public aircraft of the U.S. or a foreign country when used exclusively in governmental service and not carrying passengers or merchandise for commercial purposes.

Aircraft time chartered by the U.S. Government or a foreign government and government owned aircraft engaged in the carriage of persons or property for commercial purposes are not considered public aircraft.

(b) *Manifest.* The commander of any public aircraft arriving from abroad with cargo on board shall file a manifest, in duplicate, listing all such cargo. The original manifest shall be filed with the district director within 48 hours after arrival of the aircraft. The duplicate copy shall be made available to the discharging inspector at the airport.

(c) *Other agency requirements—(1) Agriculture.* The Department of Agriculture has the authority to inspect any aircraft arriving in the U.S. pursuant to Title 7, United States Code, Section 150ff.

(2) *Department of Defense.* All civilian or military aircraft operated by or for the Department of Defense are subject to the requirements of Department of Defense Regulations 5030.49-R, Section III, chapter 7.

**Subpart P—Penalties**

**§ 122.161 In general.**

Any person who violates any Customs requirements stated in Part 122, or any regulation that applies to aircraft under § 122.3, is subject to a civil penalty of \$500.00. Any aircraft used as part of such violation is subject to seizure or forfeiture, as provided in the Customs laws. A penalty or forfeiture may be mitigated under Part 171 of this chapter.

**§ 122.162 Failure to notify and explain differences in air cargo manifest.**

(a) *Application.* Penalties shall be assessed when differences in an air cargo manifest (overages or shortages) are discovered and:

(1) The required notice and explanation are not made in time;  
(2) The district director is not satisfied that the differences were caused by clerical error or other mistake;  
(3) There has been a loss of revenue to the U.S.; or  
(4) The district director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, "clerical error or other mistake" means a non-negligent, inadvertent, or typographical mistake, made when the manifest is prepared, assembled or submitted.

(c) *Repeated differences.* When repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

**§ 122.163 Transit air cargo traveling to U.S. ports.**

(a) *Application.* When transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this Chapter if there has been:

- (1) Shortage in delivery;
- (2) Irregular delivery; or
- (3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond. The basis for assessing the liquidated damages is the value of the merchandise.

(c) *Value of merchandise.* The district director determines the value of merchandise for assessment purposes. Valuation is based on:

(1) Any data or documents available to the airline which gave a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and

(2) Other information available to the district director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the district director shall determine value on the basis of other information available to him. The transit air cargo manifest does not reflect value.

**§ 122.164 Transportation to another port for exportation.**

When transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

**§ 122.165 Air cabotage.**

The air cabotage law (49 U.S.C. 1508(b)) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term "foreign civil aircraft" includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, 14 CFR 121.153, and those aircraft used exclusively in the service of any government. Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Carrier Rulings Branch. Liability should not be assessed under 49 U.S.C. 1471 pending instructions from

Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Civil Aeronautics Board (14 CFR Part 375).

William von Raab,

*Commissioner of Customs.*

Approved: June 13, 1985.

John M. Walker, Jr.,

*Assistant Secretary of the Treasury.*

**PARALLEL REFERENCE TABLE**

[This table shows the relationship of sections in revised Part 122 to Superseded Part 61]

Revised section	Superseded section
122.1	New.
122.2(a)	New.
122.2(b)	6.1(e).
122.2(c)	6.1(g).
122.2(d)	New.
122.2(e)	6.1(h).
122.2(f)	New.
122.2(g)	Based on 19 CFR 24.18.
122.2(h)	New.
122.2(i)	New.
122.2(j)	New.
122.2(k)	6.1(f).
122.2(l)	6.1 (b), (c).
122.3	6.10.
122.4	6.9(b).
122.5	6.6(a).
122.6	6.6(a).
122.11(a)	6.12 (a), (b), (d).
122.11(b)	6.12(c).
122.11(c)	6.12(e).
122.12(a)	6.12(f).
122.12(b)	6.12(g).
122.12(c)	6.12(h).
122.12(d)	6.12(i).
122.13	6.13.
122.21	New.
122.22	New.
122.23(a)	New.
122.23 (b), (c), (d), (e)	6.14(a).
122.23(f)	New.
122.24 (a), (b)	6.14 (b), (g).
122.25 (a), (b), (c), (d)	6.14(f).
122.26	New.
122.27	Based on 19 CFR 148.5.
122.28	Based on 19 CFR 148.32.
122.29	New.
122.30	6.10 and 6.11.
122.31(a)	6.2(b)(1).
122.31(b)	6.2(b)(3).
122.31(b)(1)	6.2(b)(1).
122.31(c)(2)	6.2(b)(2).
122.31(d)	6.2(b)(4).
122.31(e)	6.2(b)(5).
122.31(f)	6.2(b)(1).
122.31(g)	6.2(b)(1).
122.32	6.2(a).
122.33	6.2(a).
122.34	6.2(a).
122.35	6.2(n).
122.36	6.2(b)(6).
122.37	6.2(h).
122.38(a)	6.2 (e), (f).
122.38(b)	6.2 (e), (f).
122.38(c)	6.2(g).
122.38(d)	6.2 (e), (f).
122.38(e)	6.2 (e), (f).
122.38(f)	6.2 (e), (f).
122.38(g)	New. Based on Customs Circular INS-2-EV, dated Dec. 14, 1961.
122.41	6.3(a), 6.4 (a), (b) and 6.9(c).
122.42 (a), (b)	6.3(b) and 6.4(c).
122.43 (a), (c)	6.7 (a), (b).
122.43(b)	New. Based on Customs Circular AIR-4-ICS, dated Jan. 24, 1968.

**PARALLEL REFERENCE TABLE—Continued**

[This table shows the relationship of sections in revised Part 122 to Superseded Part 61]

Revised section	Superseded section
122.44	New. Based on Customs Circular BAG-3-CO (AIR-4-AIR), dated Aug. 9, 1965.
122.45	6.7(b)(1).
122.45(d)	New. Based on Customs Circular BAG-3-CO (AIR-4-AIR), dated Aug. 9, 1965.
122.46(a)	6.7(b)(2).
122.46(b)	6.7(b)(2). Also based on Customs Circular AIR-4-ICS, dated Jan. 24, 1968.
122.46(c)	6.7(b)(2).
122.47(a)	6.7(f).
122.47(b)	6.7(f).
122.47(c)(1)	6.7(b)(3)(v).
122.47(c)(2)	6.7(b)(3)(v), (vi).
122.47(d)	6.7(f).
122.48 (a), (b), (c), (d)	6.7(b)(3).
122.48(e)	New. Based on Customs Circular ATR-7-IEI, dated Jan. 31, 1972.
122.49(a)	6.7(h) (1), (2).
122.49 (b), (c), (d), (e), (f)	6.7(h) (1), (3). Also based on 19 CFR 4.12(a).
122.51	6.2(d)(3).
122.52 (a), (b), (c)	6.2(d)(3).
122.52(d)	6.2(d)(3)(iv). Also based on T.D. 55063(1), dated Mar. 4, 1960.
122.53	New. Based on 14 CFR 121.153.
122.54 (a), (b), (c), (d), (e), (f)	6.2(d)(1).
122.54(g)	6.2(d)(2).
122.61(a)	6.3(c).
122.62 (a), (b), (c)	6.3(c).
122.63 (a), (b)	6.5(c).
122.64	6.3(d).
122.65	New.
122.71	6.8(a).
122.72	6.8(a).
122.73	6.8(b). Also based on T.D. 82-92, dated Mar. 22, 1982.
122.74(a)	6.8(a). Also based on 15 CFR 30.24.
122.74(b)	6.8(a).
122.74(c)	6.8(a). Also based on 15 CFR 30.24(a).
122.74(c)(1)	6.8(a). Also based on 15 CFR 30.24 (a).
122.74(c)(2)	6.8(e). Also based on 15 CFR 30.24(a)(1).
122.74(c)(3)	6.8(a). Also based on 15 CFR 30.24(a)(1).
122.74(d)	6.8(e).
122.75(a) (1), (2)	6.8(e). Also based on 15 CFR 30.21(b).
122.75(b)	6.8(e).
122.76	6.8(a). Also based on 15 CFR 30.1.
122.77	6.8(d).
122.78	6.9(c).
122.79 (a), (b)	6.9(c) and 6.5(b).
122.80	6.8(e).
122.81	6.9(a).
122.82	6.9(a). Also based on 19 CFR 4.85(A), 19 CFR 113.13a (a), (b) and 19 CFR 113.61.
122.83 (a), (b), (c), (d)	6.9(b).
122.83(e)	6.9.
122.83(f)	6.9(b).
122.84(a), (b), (c), (d)	6.9(c).
122.85	6.9(d).
122.86	New. Based on Customs Circular AIR-7-EV, dated Nov. 23, 1959.

## PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 122 to Superseded Part 6]

Revised section	Superseded section
122.87	6.9(e).
122.91	6.15(a).
122.92 (a), (b)	6.15(b), (1), (2)
122.92(c)	6.15(b)(3).
122.92(d)	6.15(b)(4).
122.92(e)	6.15(b)(5).
122.92 (f), (g)	6.15(b)(6).
122.93(a)	6.15(c)
122.93(b)	6.15
122.94 (a), (b)	6.16
122.95	6.15(a).
122.101	New. Based on Customs Circular AIR-7-IE1, dated Jan. 31, 1972.
122.102	New. Based on Customs Circular AIR-7-IE1, dated Jan. 31, 1972.
122.111	6.17.
122.112 (a), (b), (c)	6.17.
122.112(d)	6.18(a)
122.113	6.18(a).
122.114(a)	6.18(a). Also based on Customs Circular AIR-7-EV, dated May 8, 1962.
122.114(b)	6.18(b).
122.114(b)(2)	6.18(b).
122.114(c)	6.18(d)
122.114(d)	6.18(f)
122.114(e)	6.18(e).
122.115	6.18(e). Also based on Customs Circular AIR-7-EV, dated May 8, 1962.
122.116	6.19
122.117(a)	6.20(c).
122.117(b)	6.20 (b), (d).
122.117 (c), (d)	6.20(c).
122.118(a)	6.24(a).
122.118(b)	6.21(c).
122.118(c)	6.24 (b), (c).
122.118(d)	6.24(g).
122.118(e)	6.25(a).
122.118(f)	6.25(b).
122.118(g)	6.25(c)(1).
122.118(h)	6.25(c)(2).
122.118(i)	6.25(c)(3).
122.118(j)	6.25(c)(4).
122.118(k)	6.25(c)(5).
122.119(d)	6.22 (c), (d).
122.119(e)	6.22(a).
122.120(a)	6.23(a).
122.120(b)(1)	6.23(a).
122.120(b)(2)	6.23(c).
122.120(c)	6.21(b).
122.120(d)	6.23.
122.120(e)	6.23(b).
122.120(f)	6.23(c).
122.120(g)	6.23(e).
122.120(h)	6.23(d).
122.120 (i), (j)	6.23(h).
122.120(k)	6.23(g).
122.131 through 122.137	New. Based on Customs Circular AIR-7-AIR, dated June 16, 1964.
122.141	New definition section.
122.142	6.25(a).
122.143	6.25(b).
122.144(a)(1)	6.25(c)(1).
122.144(a)(2)	6.25(c)(2).
122.144(b)	6.25(c)(3).
122.144(c)	6.25(c)(4).
122.144(d)	6.25(c)(5).
122.151	New. Based on 19 CFR 4.5.
122.161	6.10
122.162	6.7(h).
122.163	6.22(e).
122.164	6.23(g).

## PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 122 to Superseded Part 6]

Revised section	Superseded section
122.165	New. Based on Customs Circular AIR-4-CR, dated Nov. 12, 1972.
PARALLEL REFERENCE TABLE	
[This table shows the relationship of sections in Part 6 to revised Part 122]	
Superseded section	Revised section
6.1 (b), (c)	122.2(1)
6.1(e)	122.2(b)
6.1(f)	122.2(i).
6.1(g)	122.2(c).
6.1(h)	122.2(e).
6.2(a)	122.32, 122.33, 122.34.
6.2(b)	122.31.
6.2(b)(6)	122.36.
6.2(d)(1)	122.54 (a) through (f).
6.2(d)(2)	122.54(g).
6.2(d)(3)	122.51 and 122.52.
6.2 (e), (f)	122.38 (a), (b), (d), (e) and (f).
6.2(g)	122.36(c).
6.2(h)	122.35 and 122.37.
6.3(a)	122.41.
6.3(b)	122.42 (a), (b).
6.3(c)	122.61(a), 122.62 (a), (b), (c) and 122.79(a).
6.3(d)	122.64.
6.4 (a) and (b)	122.41.
6.4(c)	122.42(b).
6.5 (b), (c)	122.63 (a), (b) and 122.79(b).
6.6(a)	122.5 and 122.6.
6.6(b)	122.4.
6.7(a)	122.43(a).
6.7(b)	122.43(c), 122.45, 122.46 (a), (b), (c) and 122.47(c).
6.7(f)	122.47 (a), (b), and (d).
6.7(h)	122.46, and 122.162.
6.8(a)	122.71, 122.72, 122.74 (a), (b), and (c) (1) and (3), and 122.76.
6.8 (b)	122.73.
6.8(c)	122.76.
6.8(d)	122.77.
6.8(e)	122.74(c)(2), 122.74(d), 122.75(a), (1) and (2), 122.75(b) and 122.80.
6.9(a)	122.81 and 122.82.
6.9(b)	122.83.
6.9(c)	122.84.
6.9(d)	122.85.
6.9(e)	122.87.
6.10	122.3, 122.30 and 122.161.
6.11	122.30.
6.12 (a), (b), (d)	122.11(a).
6.12(c)	122.11(b).
6.12(e)	122.11(c).
6.12 (f), (g), (h), (i)	122.12.
6.13	122.13.
6.14(a)	122.23 (b), (c), (d), (e).
6.14 (b), (g)	122.24 (a), (b).
6.14(f)	122.25.
6.15(a)	122.91 and 122.95.
6.15(b)	122.92.
6.15(c)	122.93.
6.16	122.94.
6.17	122.111 and 122.112(a), (b), (c)
6.18(a)	122.112(d), 122.113, and 122.114(a).
6.18(b)	122.114(b).
6.18(d)	122.114(c).
6.18(e)	122.114(d).
6.18(f)	122.114(e).

## PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in Part 6 to revised Part 122]

Superseded section	Revised section
6.18(f)	122.114(d).
6.19	122.116.
6.20 (b), (d)	122.117(b).
6.20(c)	122.117 (a), (c), and (d).
6.21(a)	122.119(b).
6.21(b)	122.120(c).
6.21(c)	122.118(b).
6.22(a)	122.119 (a), (c), and (e).
6.22 (c), (d)	122.119(d).
6.22(e)	122.163.
6.23(a)	122.120 (a) and (b)(1).
6.23(b)	122.120(e).
6.23(c)	122.120 (b)(2) and (f).
6.23(d)	122.120(h).
6.23(e)	122.120(g).
6.23(g)	122.120(i) and 122.164.
6.23(h)	122.120 (f), (j).
6.24(a)	122.118(a).
6.24 (b), (c)	122.118(c).
6.24(d)	122.118(g).
6.24(g)	122.118(d).
6.25(a)	122.142.
6.25(b)	122.143.
6.25(c)(1)	122.144(a)(1).
6.25(c)(2)	122.144(a)(2).
6.25(c)(3)	122.144(b).
6.25(c)(4)	122.144(c).
6.25(c)(5)	122.144(d).

[FR Doc. 85-17770 Filed 7-25-85; 8:45am]

BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 449

[Docket No. 85N-0136]

## Nystatin Tablets; Revision of Disintegration Standard

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

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug regulations by revising the disintegration standard for nystatin film-coated tablets. This action will assure better quality control of this product.

DATES: Comments by September 24, 1985; request for an informal conference by August 26, 1985.

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

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

**SUPPLEMENTARY INFORMATION:** At the request of a manufacturer, FDA is proposing to amend the antibiotic drug regulations by revising the disintegration standard for nystatin film-coated tablets from 30 minutes to 2 hours.

The disintegration test for film-coated tablets (21 CFR 436.212(e)(1)) measures the rate of disintegration of this dosage form by immersion in simulated gastric fluid for the time specified in the individual monograph (regulation). The monograph providing for nystatin tablets specifies a disintegration time period of 30 minutes for film-coated tablets. If the tablets have not disintegrated in 30 minutes, they do not meet the standard for disintegration.

The manufacturer contends that the current disintegration standard is unnecessarily stringent for nystatin film-coated tablets because the availability of nystatin is necessary only in the intestine for the treatment of intestinal candidiasis. The manufacturer noted that the monograph providing for nystatin tablets specifies a disintegration standard of 2 hours for plain-coated tablets that are used for the same treatment. Thus, the manufacturer believes that a disintegration standard of 2 hours for nystatin film-coated tablets would also be sufficient to give adequate assurance of nystatin's availability in the intestine.

FDA has reviewed the manufacturer's request and has tentatively concluded that a disintegration standard of 30 minutes is unnecessarily stringent for nystatin film-coated tablets. Therefore, FDA is proposing that the disintegration standard of 2 hours be established for nystatin film-coated tablets.

In addition, FDA is proposing to amend the regulation (monograph) for nystatin tablets by deleting (1) the provision for the plain-coated tablets because they are no longer marketed, and (2) the reference to film-coated tablets containing a starch filler because all nystatin tablets currently marketed fit this description.

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has considered the economic impact of this proposed rulemaking and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would refine

an existing technical provision to provide a less stringent requirement. Accordingly, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before September 24, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before August 26, 1985, submit to the Dockets Management Branch (address above) a request for an informal conference. The participants in an informal conference, if one is held, will have until September 24, 1985, or 15 days after the day of the conference, whichever is later, to submit their comments.

#### List of Subjects in 21 CFR Part 449

Antibiotics, Antifungal.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 449 be amended as follows:

#### PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 449 is revised to read as follows:

Authority Secs. 507, 701, 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371); 21 CFR 5.10.

2. In § 449.150a by revising paragraph (a)(1) to read as follows:

#### § 449.150a Nystatin tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Nystatin tablets are tablets composed of nystatin and suitable and harmless buffer substances, diluents, binders, lubricants, colorings, and flavorings. Each tablet contains 500,000 units of nystatin. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of nystatin that it is represented to contain. The loss on drying is not more than 8 percent. The tablets shall disintegrate within 2 hours. The nystatin used conforms to the standards prescribed by § 449.50(a)(1).

Dated: July 19, 1985

Daniel L. Michels,

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

[FR Doc. 17732 Filed 7-25-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### 33 CFR Parts 322 and 325

#### National Fishing Enhancement Act

**AGENCY:** Corps of Engineers, Department of the Army, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed changes are to implement the National Fishing Enhancement Act of 1984 (Pub. L. 98-623). Procedures implementing the authority to assess civil penalties, as provided by the Act, will be proposed at a later date.

**DATE:** Comments must be submitted on or before September 24, 1985.

**ADDRESS:** Office of the Chief of Engineers, ATTN: DAEN-CWO-N, Washington, D.C. 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Pierce or Mr. Burt Paynter, Regulatory Branch, (202) 272-0199.

**SUPPLEMENTARY INFORMATION:** We are hereby issuing a proposed rule which governs the regulatory program of the Corps of Engineers. The major changes of these regulations are to implement the National Fishing Enhancement Act of 1984 (Pub. L. 98-623). Many of these procedures are verbatim from the statute. We will review all comments and determine whether any changes are necessary.

The National Fishing Enhancement Act of 1984 also authorized the Secretary of the Army to assess a civil penalty on any person who, after notice and an opportunity for a hearing, is found to have violated any provision of a permit issued for an artificial reef. Procedures for implementing such civil penalties will be proposed at a later date.

*Environmental Documentation:* We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Appropriate environmental documentation is prepared for all permit decisions.

*Part 322—Permits for Structures or Work in or Affecting Navigable Waters of the United States*

*Section 322.2(g):* This section adds the definition of the term "artificial reefs" from the National Fishing Enhancement Act and clarifies what activities or structures the term does not include.

*Section 322.2(h):* This section adds the definition of the term "outer continental shelf" from Outer Continental Shelf Land Act.

*Section 322.5(b):* This section is a new section establishing procedures to comply with the National Fishing Enhancement Act of 1984. The specific provisions are taken directly from the statute.

*Part 325—Processing of Department of the Army Permits*

*Section 325.1(d)(6):* This is a new section requiring an applicant to include provisions for siting, constructing, monitoring and managing of the artificial reef as part of his application for a permit.

**Determinations Under Executive Order 12291 and the Regulatory Flexibility Act**

The Department of the Army has determined that the revisions to its regulations do not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12291. The Department of the Army certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that these regulations will not have a significant economic impact on a substantial number of entities.

**Note 1.**—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

**List of Subjects**

*33 CFR Part 322*

Continental shelf, Navigation.

*33 CFR Part 325*

Administrative practices and procedure, Environmental protection, Navigation.

Dated: July 12, 1985.

**Robert K. Dawson,**

*Acting Assistant Secretary of the Army (Civil Works).*

Accordingly, the Department of the Army is amending 33 CFR Parts 322 and 325 as set forth below:

**PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES**

1. The authority cite for Part 322 continues to read as follows:

Authority: 33 U.S.C. 403.

1. Section 322.2 is amended by adding new paragraphs (g) and (h) as follows:

**§ 322.2 Definitions.**

(g) The term "artificial reef" means a structure which is constructed or placed in the navigable waters of the United States or in the waters overlying the outer continental shelf for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities. The term does not include activities or structures, such as wing deflectors, bank stabilization, grade stabilization structures, or low flow key ways, all of which may be useful to enhance fisheries resources.

(h) The term "outer continental shelf" means all submerged lands lying seaward and outside of the area of lands beneath the three mile territorial seas, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

2. Section 322.5 is amended by adding a new paragraph (b), previously reserved, as follows:

**§ 322.5 Special policies.**

(b) *Artificial Reefs.* (1) When considering an application for an artificial reef, as defined in 33 CFR 322.2(g), the district engineer will review the applicant's provisions for siting, constructing, monitoring, operating, maintaining, and managing the proposed artificial reef and shall determine if those provisions are consistent with the following standards:

(i) The enhancement of fishery resources to the maximum extent practicable;

(ii) The facilitation of access and utilization by United States recreational and commercial fishermen;

(iii) The minimization of conflicts among competing uses of the navigable waters or waters overlying the outer continental shelf and of the resources in such waters;

(iv) The minimization of environmental risks and risks to personal health and property;

(v) Generally accepted principles of international law; and

(vi) The prevention of any unreasonable obstructions to navigation.

If the district engineer decides that the applicant's provisions are not consistent with these standards, he shall deny the permit. If the district engineer decides that the provisions are consistent with these standards, and if he decides to issue the permit after the public interest review, he shall make the provisions part of the permit.

(2) In addition, the district engineer will consider the National Artificial Reef Plan developed pursuant to Section 204 of the National Fishing Enhancement Act of 1984, and if he decides to issue the permit, will notify the Secretary of Commerce of any need to deviate from that plan.

(3) The district engineer will comply with all coordination provisions required by a written agreement between the DOD and the Federal agencies relative to artificial reefs. In addition, if the district engineer decides that further consultation beyond the normal public commenting process is required to evaluate fully the proposed artificial reef, he may initiate such consultation with any Federal agency, State or local government, or other interested party.

(4) The district engineer will issue a permit for the proposed artificial reef only if the applicant demonstrates, to the district engineer's satisfaction, that he hold unambiguous title to the artificial reef construction materials, and that he is financially able to assume responsibility for all damages which may arise with respect to the artificial reef and for which that applicant may be liable. The permittee and his insurer will be liable, to the extent determined under applicable law, for all damages which may arise with respect to the artificial reef unless those damages result from activities required to be undertaken by the terms and conditions of the permit. The permittee must be acting in compliance with those terms and conditions for this exception from liability to apply.

**PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS**

4. The authority cite for Part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

5. Section 325.1 is amended by adding a new paragraph (d)(6) as follows:

**§ 325.1 Applications for permits.**

(d) . . .

(8) If the activity would involve the construction or placement of an artificial reef, as defined in 33 CFR 322.2(g), in the navigable waters of the United States or in the waters overlying the outer continental shelf, the application must include provisions for siting, constructing, monitoring, and managing the artificial reef.

[FR Doc. 85-17454 Filed 7-25-85; 8:45 am]

BILLING CODE 3710-02-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300132; PH-FRL 2853-9]

#### Ammonium Polyphosphate; Tolerance Exemption

##### Correction

In FR Doc. 85-15102 beginning on page 26388 in the issue of Wednesday, June 26, 1985, make the following correction: On page 26389, in the second column, in § 180.1001, "(D) \* \* \*" should read "[d] \* \* \*".

BILLING CODE 1505-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 302

#### Civil Defense; State and Local Emergency Management Assistance Program (EMA); Correction

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Corrections to proposed rule.

**SUMMARY:** This document modifies certain document references in a proposed rule appearing on July 5, 1985 at 50 FR 27627.

**FOR FURTHER INFORMATION CONTACT:** Edward E. Sergent, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202-646-3509).

**SUPPLEMENTARY INFORMATION:** Items 2 and 3 of the Notice of Proposed Rulemaking (see first column p. 27628) would among other matters add to paragraphs (n) and (o) of 44 CFR 302.2 references to Civil Preparedness Guides and Appendices to such Guides. These references to Guide materials contain errors. There is a similar reference to a rescinded Guide in item 8 in the revision to § 302.5(j). Additionally, there are references in item 6 to CPG 1-8 and to CPG 1-8A. The latter document is proposed to be distributed September 1,

1985. Revised CPG 1-8 with a revised title as shown in the proposed regulation is scheduled to be distributed September 15, 1985.

Therefore, the Notice of Proposed Rulemaking which appears in the *Federal Register* of July 5, 1985 at 50 FR 27627 is corrected in the following manner:

(a) Item 2 is revised to read: in section 302.2, paragraph (n) is amended by removing the entire parenthetical phrase at the end of the paragraph and adding "(See CPG 1-32, Financial Assistance Guidelines)".

(b) Item 3 is revised to read: In section 302.2, paragraph (o) is amended by removing the entire parenthetical phrase at the end of the paragraph and adding "(See CPG 1-32, Financial Assistance Guidelines)".

(c) Item 8 is revised by deleting from proposed paragraph (i) of section 302.5 "and CPG 2-12, Financial Guidelines for State Comprehensive Cooperative Agreements".

Samuel W. Speck,

*Associate Director, State and Local Programs and Support.*

[FR Doc. 85-17727 Filed 7-25-85 8:45 am]

BILLING CODE 6718-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 672

[Docket No. 50720-5120]

#### Groundfish of the Gulf of Alaska

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues a proposed rule to implement Amendment 14 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The seven measures proposed in this amendment will allocate the sablefish resource to prevent potential gear conflicts and ground preemptions, establish a new starting date for the harvest of sablefish, reduce optimum yields to prevent overfishing of certain groundfish species, define a new regulatory district to provide NMFS with more timely catch information with which to make inseason management decisions regarding rockfish species, provide a flexible method for establishing prohibited species catch limits for Pacific halibut, revise the reporting system for catcher/processors, implement the NMFS habitat

conservation policy, and introduce a definition of directed fishing. Each measure is intended to respond to biological, ecological, or socioeconomic problems that have been identified by the fishing industry and the management agencies. Implementation of these measures is necessary for conservation and management of the groundfish resources and for the orderly conduct of the fishery.

**DATE:** Written comments must be received on or before September 9, 1985.

**ADDRESSES:** Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 10668, Juneau, AK 99602. Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-274-4563.

#### FOR FURTHER INFORMATION CONTACT:

Ronald J. Berg (Fishery Biologist, NMFS), 907-588-7230.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fishery in the fishery conservation zone (FCZ) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented December 1, 1978 (43 FR 52709, November 14, 1978).

Prior to 1984, the Council would receive proposals to amend the FMP during any of its scheduled meetings. At its April 1984 meeting, the Council adopted a policy whereby proposals for amendments would be received only once a year. Proposals contained in Amendment 14 were requested by the Council in September 1984 with a deadline set at December 7, 1984. By the deadline, over thirty proposals were submitted to the Council, which then instructed its Plan Team to review and rank each proposal. At its February 1985 meeting, the Council reviewed the recommendations of the Plan Team, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP), and selected six proposals for inclusion in Amendment 14. Other proposals were identified for development and consideration for inclusion in a future amendment. The Council directed its Plan Team to analyze the biological, ecological, and socioeconomic impacts of each of the six proposals and

alternatives to each, as required by the National Environmental Policy Act of 1969 and other applicable laws. The Plan Team then prepared drafts of an environmental assessment and a regulatory impact review. The Council reviewed these documents at its March 26-29, 1985, meeting and added a seventh proposal—sablefish seasons—in response to requests from the fishing industry. The Council then released these documents for public review, and invited comments from the interested public, fishing associations, and government agencies until May 3, 1985. In response to comments received, the Plan Team revised the draft analyses for consideration by the Council at its May 21-24, 1985, meeting. At that meeting, the Council reviewed the analyses, heard further public comment, and voted to recommend that the Secretary implement its preferred alternatives for the seven parts of Amendment 14.

Description of and reasons for each part of Amendment 14 follow:

1. *Allocate sablefish among gear types.* Legal commercial fishing gear used in the directed domestic sablefish fishery is limited to hook-and-line gear, pots, and trawls; sablefish quotas are allocated among the legal gear categories by regulatory area, and a schedule for phasing out pot gear is established.

The Magnuson Act encourages domestic development of fishery resources. The Alaska fishing industry has responded by rapidly increasing effort in the sablefish fishery off Alaska, creating jobs for hundreds of fishermen and providing economic growth to Alaska and Pacific Northwest fishing communities. Development of the sablefish resource has been undertaken principally by fishermen using hook-and-line gear, although regulations implementing the FMP did not prevent the use of other types of gear used in the harvest of any groundfish species.

Many domestic fishermen operating in the FCZ of Alaska use hook-and-line gear when targeting on sablefish because they are experienced in the halibut fishery which employs only hook-and-line gear and because little modification of this type of fishing gear is necessary on vessels moving from one fishery to the other.

Pots have been used periodically in the sablefish fishery off Alaska since the mid-1970s. In 1973, 42 percent of the total domestic harvest of 90 metric tons (mt), or 38 mt, was taken by one vessel fishing pots. Since then, no more than six pot vessels have fished in the Gulf during any one season. Since 1973, hook-and-line vessels have dominated the fishery. As many as 200 hook-and-line

vessels fished in 1984, harvesting 95 percent of the total domestic harvest of sablefish taken off Alaska, or 7,128 mt. Directed fishing for sablefish using trawls and gillnets has been minimal to date.

In 1982 the sablefish optimum yield (OY) was fully harvested by U.S. fishermen in the Southeast Outside District. In 1983, the OY was again harvested by U.S. fishermen in this district and in the East Yakutat District. In 1984, the OY was harvested by U.S. fishermen for the first time in both the Eastern and Central Regulatory Areas of the Gulf of Alaska. With this achievement came the realization that the sablefish resource would be insufficient to accommodate all users.

This fact became apparent in the Southeast Alaska fishery during the first two months of 1985. Historically, the Southeast Alaska sablefish fishery did not begin until spring, when weather and fishing conditions improved and the fish had recovered from spawning. In January 1985, however, three large vessels began fishing for sablefish using pot gear. Pot gear is set within a narrow depth range (250-500 fathoms), as is hook-and-line gear. Fishing was good and the catch by pot gear was about 34 percent of the combined Southeast-East Yakutat District OY. When the pot vessels left the area to unload their catch, some pots were stored on the grounds, preempting the grounds and creating a potential for gear conflicts. When hook-and-line gear, which is relatively lightweight, becomes entangled with the heavier pot gear, the hook-and-line gear breaks and is often lost. Gear conflicts are likely between these two gear types since fishing is concentrated along the narrow shelf edge. Hook-and-line fishermen testified to the Council that the presence of just one or two vessels using pot gear can preempt a substantial area, forcing hook-and-line fishermen to move to avoid gear loss. Pots lost or stored on the fishing grounds over a long period of time can also contribute to this problem.

As an interim solution, the Council voted at its February 1985 meeting to request the Secretary to implement an emergency rule under section 305(e) of the Magnuson Act that would prohibit the use of pots in the directed sablefish fishery in the Eastern Regulatory Area. The Secretary implemented the emergency rule (50 FR 12809, April 1, 1985), to be effective until June 25, 1985.

After considering extensive public testimony and receiving recommendations from the AP and SSC, the Council adopted this measure, which makes hook-and-line gear the only legal gear type for the directed sablefish

fishery in the Eastern Regulatory Area, starting in 1986 (Table I). It also makes hook-and-line and trawl gear the only legal gear types for the directed sablefish fishery in the Central Regulatory Area, starting in 1987, and in the Western Regulatory Area, starting in 1989. The measure establishes a schedule for phasing out the use of pot gear in the Central and Western Regulatory Areas, by which pot gear may harvest sablefish in the Central Regulatory Area in 1986, and in the Western Regulatory Area in 1986, 1987, and 1988.

The measure also allocates the sablefish OYs among the gear types. In the Eastern Regulatory Area, 95 percent of the OY is allocated to hook-and-line gear; the remaining 5 percent is allocated to trawl gear as a bycatch to support target fisheries for other species. In the Central Regulatory Area in 1986, 55, 25, and 20 percent of the OY is allocated to hook-and-line, pot, and trawl gear, respectively. When pot gear is phased out of the Central Regulatory Area in 1987, the portion of the sablefish OY for that area that is allocated to pot gear in 1986 will be reallocated to hook-and-line gear; the share allocated to trawl vessels will remain at 20 percent. In the Western Regulatory Area in 1986, 1987, and 1988, 55, 25, and 20 percent of the OY is allocated to hook-and-line, pot, and trawl gear, respectively. When pot gear is phased out of the Western Regulatory Area in 1989, the portion of the sablefish OY for that area that is allocated to pot gear during those three years will be allocated to hook-and-line gear; the share allocated to trawl gear will remain at 20 percent.

This schedule for phasing out pot gear and allocating the sablefish OYs among the gear types was determined by the Council in recognition of several important factors. These included the historical economic dependence of hook-and-line vessels on the sablefish fishery, their development of the market in a fishery that was largely foreign-dominated until 1983, and the problems of grounds preemption and potential for gear conflicts between hook-and-line and pot gear. The Council's choice was the result of extensive debate and was consistent with a recommendation from the AP. The Council's decision to ban pot gear in the Eastern Regulatory Area, starting in 1986, reflects the traditional dependence by Southeast Alaska communities on the sablefish hook-and-line fishing industry. The one-year and three-year schedules for phasing out pot gear in the Central and Western Regulatory Areas reflect the concerns voiced by the public and certain AP

members that some pot vessel operators have invested substantial funds in converting their vessels to pot gear and that sufficient time is needed to convert to the use of other gear for sablefish fishing or for entry into some other fishery.

TABLE I.—PERCENTAGES OF SABLEFISH ALLOCATED BY YEAR AMONG HOOK-AND-LINE (H&L), POT, AND TRAWL GEAR USERS FOR EACH REGULATORY AREA IN THE GULF OF ALASKA

	1986	1987	1988	1989	1990
Eastern:					
H&L	95	(*)	(*)	(*)	(*)
Pot	0	(*)	(*)	(*)	(*)
Trawl	5	(*)	(*)	(*)	(*)
Central:					
H&L	55	80	(*)	(*)	(*)
Pot	25	0	(*)	(*)	(*)
Trawl	20	20	(*)	(*)	(*)
Western:					
H&L	55	55	55	80	(*)
Pot	25	25	25	0	(*)
Trawl	20	20	20	20	(*)

\* 1987 and subsequent years—same as 1986.

† 1988 and subsequent years—same as 1987.

‡ 1989 and subsequent years—same as 1989.

The proposed Council action is also intended to provide sufficient bycatch amounts of sablefish to trawl vessels conducting fisheries on other target species.

2. *Change the starting date for the directed sablefish fishery.* The current season starting date for all groundfish, including sablefish, is January 1. This measure changes the starting date for the directed sablefish fishery from January 1 to April 1. Comments received from the fishing industry indicate that a later starting date is desirable for reasons of vessel safety, quality of sablefish product, and a fair start for commercial vessels of all sizes. A similar winter closure was adopted by the State of Alaska in 1959. It remained in effect until 1977 when it was rescinded to allow U.S. vessels to compete more effectively with the foreign trawl fleet operating off Southeast Alaska. However, inclement weather conditions are frequent during the late winter months, rendering fishing unsafe for the many smaller vessels that make up a portion of the fleet operating off Southeast Alaska and Kodiak Island. These vessels are now forced to compete disadvantageously with the larger vessels, which are less affected by inclement weather. Because of increased fishing effort during the late winter months the OYs are now being achieved much earlier than in previous years. For example, in 1985 the combined OYs for the Southeast and East Yakutat Districts were reached on April 21; in 1984 they were reached on June 29.

Delaying the season starting date has the effect of providing safer weather conditions for smaller vessels and thus apportioning the sablefish resource among a wider group of participants. Smaller vessels that are forced to remain in port when weather conditions are unsafe risk losing a share of the harvest to larger vessels that are able to remain at sea and harvest a greater share of the OY before smaller vessels are able to fully participate. Implementation of the April 1 starting date would give smaller vessels a better chance to participate before the OYs are reached.

A portion of the sablefish stock spawns in February and March. The flesh of the spawning fish is of poor quality and the fishermen refer to them as "jelly bellies." Some fishermen apparently discard the low quality fish at sea due to their lower value. Implementation of this season change will mitigate such wastage.

Before selecting the April 1 date, the Council considered the effects that a delay in the starting date for the directed sablefish fishery might have on the resource and the fishing industry. The April 1 date was selected, because it will (1) provide adequate fishing time to harvest the OY given the amount of effort employed in this fishery; (2) promote safety for the fleet; and (3) minimize the discard of sablefish in poor condition.

3. *Establish lower optimum yields.* New optimum yields by regulatory area are established for certain species as follows: pollock—Western/Central=305,000 metric tons (mt); Pacific ocean perch—Western=1,302 mt, Central=3,906; Atka mackerel—Central=500 mt, Eastern=100 mt; "other rockfish"—Gulf-wide=5,000 mt; and "other species"—Gulf-wide=22,460 mt.

At the request of the Council, these reduced OYs were implemented by emergency rule under section 305(e) of the Magnuson Act (50 FR 29681, July 22, 1985). A full description of the reasons for the OY reductions can be found in the environmental assessment prepared for Amendment 14, which is available from the Council at the address above. Further amounts of reserves were apportioned to DAH and TALFF on July 17, 1985 (50 FR 29681, July 22, 1985).

The Council, in adopting the reduced OYs, considered the effects on prices that the reduced harvests might have. Assuming the entire 305,000 mt OY for pollock were caught, the 95,000 mt decrease from the present OY represents only 6.4 percent of the 1984 U.S. and foreign catch from the FCZ off Alaska and only 2.1 percent of the 1982

worldwide harvest of pollock. The amount of decrease is too small to influence price at any level. Data are not available to compare total reductions of the Pacific ocean perch, rockfish, and Atka mackerel OYs with worldwide catches, but any effects on world prices are believed to be insignificant.

The reductions are conservation measures and, to the extent that overfishing is prevented and some stocks are able to rebuild, the measure provides a benefit.

4. *Define a new regulatory district.* A new regulatory district—the Central Southeast District—between 56°00' and 57°30' N. latitude is established for purposes of better managing demersal shelf rockfish, which are part of the "other rockfish" category. The harvest of "other rockfish" in this new district is limited to 600 mt.

The category "other rockfish" includes about 25 species of *Sebastes* that are currently managed under a Gulf-wide OY. The maximum sustained yield (MSY) for this complex is based on amounts caught incidentally along the continental slope in the foreign trawl fishery for Pacific ocean perch between 1973 and 1976. The Gulf-wide OY has been set at the lower end of the MSY range, or 7,600 mt.

In November 1984 the Alaska Department of Fish and Game (ADF&G) submitted to the Plan Team a report on the rapidly expanding domestic fishery for bottom-dwelling (demersal) rockfish that occur in water less than 100 fathoms deep overlying the continental shelf off Southeast Alaska. Over 20 species of rockfish are regularly landed. Predominant species are yelloweye rockfish (*S. ruberrimus*), canary rockfish (*S. pinniger*), tiger rockfish (*S. nigrocinctus*), and rosethorn rockfish (*S. helvomaculatus*) in the 40-100 fathom depth zone and quillback rockfish (*S. maliger*), china rockfish (*S. nebulosus*) and copper rockfish (*S. caurinus*) in depths of less than 40 fathoms. Yelloweye rockfish and quillback rockfish are the primary target species. Longline gear is the predominant gear type and accounts for well over 90 percent of the harvest. That report pointed out that this fishery is targeting on a geographically discrete species group. This fishery has grown from less than 64 mt (round weight) in 1970 to nearly 400 mt (round weight) in 1983. The round weight catch for 1984 doubled to approximately 800 mt.

Until recently, the majority of the landings were assumed to be from waters within State jurisdiction. However, approximately 50 percent of the fishable grounds are within the FCZ.

Based on interviews with fishermen conducted by ADF&G in 1983 and 1984, approximately 25 percent of the landings were taken by vessels fishing only in the FCZ, 21 percent were taken by vessels fishing only within State waters, and the remaining 54 percent were taken by vessels that fished areas under both State and Federal jurisdiction.

Aging studies conducted in recent years conclude that rockfish are much longer-lived and slower-growing than early literature suggests. Many of the demersal species can live over 50 years and many do not reach maturity until after age 10. Because rockfish are extremely long-lived and slow-growing, the sustainable yield that can be taken from a stock is much lower than for a comparable biomass of faster-growing species such as pollock or cod. As a result, rockfish stocks can be easily and quickly overfished. Since information on appropriate harvest levels for the demersal shelf rockfish stocks in Southeastern Alaska is lacking, the risk of overharvesting this resource is great.

After reviewing the ADF&G rockfish issue paper, the Plan Team recommended in its November 1984 report to the Council that "other rockfish" category should be redefined to include three separate species groups: Slope rockfish, shelf pelagic rockfish, and shelf demersal rockfish. Further, the management of the shelf demersal category should be conducted in cooperation with the State of Alaska.

At the joint Alaska Board of Fisheries (Board) and Council meeting in early February 1985, ADF&G staff presented alternative management proposals for establishing a separate management category of shelf rockfish stocks in order to reduce the risk of overharvesting demersal shelf rockfish and to eliminate the possibility of harvesting the entire Gulf-wide OY in any one portion of the Gulf of Alaska.

After considering the ADF&G proposals, actions by the Alaska Board of Fisheries, public testimony, and recommendations from the AP and SSC, the Council voted to implement an OY of 600 mt for demersal shelf rockfish in waters between 56°00' N. and 57°30' N. latitude. The 600 mt quota will be subtracted from the "other rockfish" OY for the remainder of the Gulf of Alaska. Thus, the remainder of the "other rockfish" OY, or 4,400 mt, is available for harvest elsewhere in the management unit. A 600-mt OY in the newly established Central Southeast district for demersal shelf rockfish will allow for a fishery based on historical levels of fishing effort, but will limit further expansion of the fishery until a more comprehensive management

program can be developed. Hence, the risk of overfishing rockfish will be mitigated.

The Council also approved language to be incorporated into the FMP that recognizes the State of Alaska's management regime for demersal shelf rockfish which is directed at managing these rockfish stocks within smaller management units than are provided for by the FMP. Such State regulations are in addition to and stricter than Federal regulations and are authorized by the FMP as long as they are (1) not in conflict with the management objectives of the FMP and are (2) limited to establishing smaller areas and quotas, which would result in a harvest of demersal shelf rockfish in each FMP management area at levels no greater than provided for by the FMP. Imposition of such State regulations is limited to vessels registered under the laws of the State of Alaska.

5. *Establish procedure for setting PSC limits for halibut.* A framework procedure is established for setting the prohibited species catch (PSC) limits for Pacific halibut in the joint venture and domestic trawl fisheries, the taking of which will result in a ban on the use of bottom trawl gear for the remainder of the fishing year.

Regulations implementing the FMP contain restrictions on foreign and domestic fishermen in the Western and Central Regulatory Areas that are designed to minimize the taking of halibut, an important commercial species to a separate domestic target fishery. Foreign fishermen are restricted to the use of off-bottom gear when trawling in the Western and Central Regulatory Areas from December 1 through May 31, a period when juvenile halibut are subject to high rates of incidental capture.

Domestic fishermen may use on-bottom gear during this period, but if the total take of Pacific halibut by domestic trawl operations in the Western or Central Areas reaches 29 or 52 mt, respectively, all further trawling by domestic fishermen is prohibited until June 1.

These PSCs were implemented in 1978 and at that time approximated one percent of the weight of Pacific cod expected to be taken by domestic fishermen in 1979 or soon thereafter. Domestic groundfish catches have increased annually since 1979 as market opportunities developed. Most of the increase is attributed to large quantities of pollock taken in joint venture fisheries operating in the Shelik Strait region of the Central Area. Relatively few halibut are taken in this fishery, however, because only off-bottom trawl

gear has been employed. For example, in 1983 only about 4 mt of Pacific halibut were taken incidentally to a pollock catch of 132,000 mt. However, domestic catches of other groundfish species (primarily cod and flounder), that do involve a significant halibut bycatch, have also been increasing.

Regulations at § 672.20(d) require that all trawl-caught halibut must be released. Some of the halibut may survive, but survival varies with the type of operation. Observer data suggest very low survival in operations which involve the transfer of codends at sea and where the halibut cannot be released immediately; these operations are typically joint ventures or large freezer/processor operations. On the other hand, potential survival is relatively high in smaller shore-based trawl operations where the catch is typically sorted on deck and the halibut can be immediately released. The survival rate for halibut released from small shore-based trawlers fishing off British Columbia is estimated to be 50 percent.

Halibut have become more abundant in the Gulf of Alaska, and their greater prevalence has increased their potential catch rates in the trawl fisheries. Recognizing the probability of a greater incidental catch in the groundfish fisheries, the Council voted to request the Secretary to implement an emergency rule to increase the PSC limits for halibut to 270 mt and 768 mt in the Western and Central Areas, respectively, during December-May. Recognizing that few halibut are taken with off-bottom trawl gear, the Council also voted to request the Secretary to exempt users of off-bottom trawl gear from the restriction. The Secretary has implemented these requests by emergency regulation in 1984 and again in 1985 (49 FR 8616, March 8, 1984, and 49 FR 48049, December 10, 1984).

Recent data also suggest that halibut are vulnerable to trawls during periods other than the December-May period specified in the FMP. An annual PSC would provide protection for halibut during all seasons.

After considering the merits of the alternatives to provide protection for halibut without unduly restricting domestic groundfish fishermen, the Council adopted a framework procedure to allow the Secretary to establish annual management measures to control and limit the incidental halibut catch in joint venture and domestic trawl fisheries. These measures include (1) the establishment of halibut PSC limits; (2) the apportionment of PSC limits among regulatory areas or parts thereof; (3) the

apportionment of PSC limits among gear types and/or individual operations; and (4) the designation of gear types and modes of operation to be either prohibited or permitted after a PSC limit has been reached. As soon as practicable after October 1 of each year and after consultation with the Council, the Secretary publishes in the *Federal Register* the proposed halibut PSC management measures for domestic and joint venture fisheries. The measures are based on criteria contained in the proposed § 672.20(e) below and comments are invited on the proposed PSC measures for 30 days. The Secretary, after considering comments received, then publishes final PSC measures in the *Federal Register* as soon as practicable after December 15 of each year. When the applicable share of PSC allocated to the domestic or joint venture fishery is reached, the Regional Director will, by notice published in the *Federal Register*, prohibit fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies; except that he may by such notice allow certain vessels to continue fishing with bottom trawl gear subject to the considerations listed in the proposed § 672.20(e)(2)(iv) below.

Imposing limits on the amounts of halibut that may be taken incidentally by domestic and joint venture fishermen will convey a benefit to halibut fishermen, who have earned as much as \$30.5 million in recent years. It will also benefit groundfish fisheries by assuring that halibut PSCs are based on the best available annual information regarding the abundance of halibut and the distribution of the expected groundfish harvest. Thus, the groundfish fisheries will run less risk of being terminated as a result of out-of-date PSC limits.

6. *Establish a weekly catch reporting system.* A reporting system is established whereby applicants are required to indicate on their Federal groundfish permit applications whether their vessels are to be used for (1) harvesting/processing, (2) mothership processing, (3) harvesting only, or (4) support only. If vessel usage fits (1) or (2), vessel operators will be required to check in and out of regulatory areas or districts. Such harvesting/processing vessels and motherships that catch and hold, or receive and hold, groundfish for periods of 14 days or more will be required to submit a weekly catch report to the NMFS Regional Director, Alaska Region. Vessels that freeze or dry-salt their catches are considered to be in these categories. This requirement is directed at those vessels that are

expected to remain at sea for periods of time sufficiently long that catch estimates are needed by fishery managers for inseason management decisions.

The objective of this proposal is to ensure that fishery managers receive timely estimates of catch by all domestic vessels so that fishery closure notices can be promptly issued when OYs are reached. With the recent rapid growth of the domestic fishing fleet, increasing importance is placed on timely reporting of domestic harvests to ensure that OYs are not exceeded. Vessels which deliver their catch to shore-based processors land their catch frequently enough to allow timely estimation of total catch under existing regulations. However, vessels which freeze, salt, or otherwise preserve their catch aboard can remain at sea for extended periods. These vessels are not currently required to report their catch until landing.

Some 25 catcher/processor vessels could be operating in the Gulf of Alaska in 1985. Based on past catcher/processor landing records, the combined hold capacity of these vessels is approximately 13,000 mt. Because OYs for some regulatory areas or districts are significantly smaller than this, these vessels are capable of harvesting entire OYs or significant portions of them on a single trip. Existing fishing regulations do not require reports of the catch aboard these vessels until landing. In addition, vessels are not required to notify fishery managers when they begin fishing operations. Since domestic groundfish fishing vessels are not marked for identification by enforcement overflights, the number of catcher/processor vessels actually fishing in any regulatory area is not known until they land. Without knowledge of effort levels, fishery managers are not able to make projections of catch aboard.

Delayed catch reporting by domestic motherships is also a problem. In these operations, catcher vessels without processing capability deliver their catch, usually by cod-end transfers, to a mothership which processes it. Current regulations at § 672.5 require an ADF&G fish ticket to be filled out each time a catcher vessel lands fish or delivers them to a mothership [processor] at sea, and require these fish tickets to be forwarded to ADF&G within 7 days of the date that fish were delivered. To date, domestic mothership operations have all occurred in sheltered waters with at least periodic access to U.S. mail service so that compliance with this requirement has been feasible. However, these mothership operations

are expected to occur with greater frequency in the FCZ, where no method of filing the fish tickets with ADF&G within the 7-day period required by law is available.

With such large processing capacities and increasing numbers of catcher/processor and mothership vessels, the risks of overharvesting groundfish resources under the current system are high. Because of the delays in catch reporting under current regulations, groundfish resources could be significantly overharvested before fishery managers discover that OYs have been exceeded. Since many of the groundfish species concerned are slow-growing and long-lived, overharvesting can have considerable impacts on future production.

The Council considered the importance to NMFS of receiving timely catch information on which to make its inseason management decisions and the importance to the fishing industry of obtaining reasonably accurate projections of upcoming fishery closures. The Council then adopted a three-part proposal for the collection of additional information from catcher/processors and motherships. The first part requires the operators of catcher/processors and motherships to indicate on their applications for Federal fishing permits their capability and intent to preserve their catch at sea and to remain at sea for more than 14 days between landings. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a regulatory area. This requirement enables the NMFS and/or the Coast Guard to check compliance with fishery openings and closures and weekly catch report requirements, and to verify fishing effort by regulatory area. The third part requires each operator of a catcher/processor or mothership to provide the Regional Director a weekly written report of the amounts of groundfish caught by species or species group in metric tons by fishing area.

A definition of "directed fishing" is also proposed. The purpose of this definition is to establish a rebuttable presumption that when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period or time, such fishing was directed fishing for such fish during that period.

In addition, NMFS has prepared some minor changes to the information required from applicants for a Federal permit to fish for groundfish in the Gulf of Alaska. This information will allow

enforcement officials better to identify groundfish fishing vessels at sea and will improve NMFS's enforcement of the groundfish fishery regulations.

These proposals will allow NMFS to make informed and well-reasoned inseason management decisions on the adjustment of fishing areas and seasons and on the apportionment of surplus groundfish among the user groups. This is a conservation measure that is intended to optimize the harvest of any one species or species group and mitigate the risks of overfishing, thereby conveying a long-term benefit to the U.S. fishing industry.

7. *Implement the NMFS habitat conservation policy.* This part of amendment 14 modifies and adds sections to the FMP to address the habitat requirements of individual species in the Gulf of Alaska groundfish fishery. It describes the diverse types of habitat within the Gulf of Alaska, delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to the Habitat Conservation Policy of NMFS (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in the development or amendment of FMPs and the strengthening of NMFS' partnerships with States and the councils on habitat issues.

The habitat policy is not implemented by a codified regulation. It serves as a framework within which to develop regulations specific to habitat conservation objectives. One such regulation was adopted by the Council and is proposed along with regulations implementing the other six parts of Amendment 14. It requires vessel operators to retrieve their own fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that may encounter.

Incorporation of the NMFS habitat policy into the FMP will highlight the Council's concerns not only for the fishery resources under management, but also for the marine environment and the quality of the habitat in which resources live. The policy also gives the Council authority to consider and recommend the implementation of regulations designed to protect the integrity of the marine habitat.

NOAA has made changes to certain regulations, which were submitted by the Council, that pertain to reporting requirements.

First, the definition of "directed fishing" at § 672.2 is changed. The definition submitted by the Council reads "Directed fishing, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of any significant quantity of such fish. It shall be a rebuttable presumption that, when any species, stock, or other aggregation of fish composes 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time, such fishing was directed for such fish during that period." NOAA changes this definition to read as proposed so that the definition is more enforceable.

Second, the requirement that vessels check in and check out of regulatory areas or districts is changed to limit the requirement more specifically to only those vessels that are expected to remain at sea for periods of time sufficiently long that catch estimates are needed by fishery managers for inseason management decisions. NOAA considers vessels that freeze or drysalt their catches to be in this category. The Council's requirement at § 672.5(a)(3) reads "The operator of any fishing vessel regulated under this part that retains any part of its catch of groundfish on board that vessel for a period of more than 14 days from the time it is caught shall, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements [i.e., the check-in and check-out requirements]. NOAA changes this requirement to read as proposed and makes this change in order to impose the requirement only on vessels that are not expected to land their catches frequently enough for fishery managers to obtain catch reports through ADF&G procedures.

#### Classification

This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, which requires the Secretary to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the

environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address above.

This rule, if approved, will have a significant beneficial economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This determination is also based on the RIR/IRFA. These benefits have been discussed earlier in this document relative to each specific action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

#### List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: July 23, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

#### PART 672—GROUND FISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, Part 672 is amended as follows:

1. The authority citation for Part 672 continues to read as follows:

Authority: 18 U.S.C. 1801 *et seq.*

2. In the table of contents, new sections are added in proper order to read as follows:

#### Subpart B—Management Measures

Sec.

\* \* \* \* \*

672.23 Seasons.

\* \* \* \* \*

672.25 Disposal of fishing gear and other articles.

\* \* \* \* \*

3. In § 672.2, the following definition is added in proper alphabetical order to read:

§ 672.2 Definitions.

*Directed fishing.* with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

4. In § 672.4, paragraphs (b), (d), and (e) are revised to read as follows:

§ 672.4 Permits.

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

- (1) The vessel's owner's name, mailing address, and telephone number;
- (2) The name and the vessel;
- (3) The vessel's U.S. Coast Guard documentation number or State registration number;
- (4) The home port of the vessel;
- (5) The type of fishing gear to be used, if any;
- (6) The length and net tonnage of the vessel;
- (7) The hull color of the vessel;
- (8) The names of all operators and/or lessees of the vessel;
- (9) Whether the vessel is to be used in fish harvesting or for support operations, including the receipt of fish from U.S. vessels at sea; and
- (10) The signature of the applicant.

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director

under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, unless it is earlier revoked, suspended, or modified under Part 621 (Civil Procedures) of this chapter.

5. In § 672.5, a new paragraph (a)(3) is added to read as follows:

§ 672.5 Reporting requirements.

(a) \* \* \*

(3) *Catcher/processor vessels.* (i) The operator of any fishing vessel regulated under this part who retains and freezes or dry-salts any part of its catch of groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(A) Twenty-four hours before starting and upon stopping fishing in a regulatory area or district, the operator of that vessel must notify the Regional Director of the date and hour in Greenwich mean time (GMT) and the regulatory area and district of such activity. No such operator may retain any part of that vessel's catch on board that vessel for a period of more than 14 days from the time it is caught unless the Regional Director has been notified as required under this paragraph during that period.

(B) When shifting fishing operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of the shift to the new regulatory area and district, and the position of the new fishing activity. This notice must be delivered to the Regional Director within 48 hours of shifting.

(C) The notices required in paragraphs (a)(3)(i) (A) and (B) of this section should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(D) After the first catch of groundfish by that vessel during that period and continuing until that vessel's entire catch has been off-loaded, the operator of that vessel must submit a weekly catch report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught. Catch reports must be sent to the Regional

Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. These reports must contain the following information:

- (1) Name and radio call sign of vessel;
- (2) Federal permit number of the Gulf of Alaska Groundfish fisheries;
- (3) Month and days fished;
- (4) The estimated round weight of all fish caught by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;
- (5) The regulatory area or district in which each species or species group was caught, in which an OY for that species or species group is specified; and

(e) If any species or species groups were caught in more than one regulatory area or district during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by regulatory area or district.

(i) The operator of any vessel regulated under this part who receives groundfish at sea from a fishing vessel regulated under this part must meet the following requirements:

(A) Twenty-four hours before starting and upon stopping the receipt of fish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the regulatory area and district of such activity. No such operator may retain any part of that vessel's cargo of fish on board that vessel for a period of more than 14 days from the time it is received unless the Regional Director has been notified as required under this paragraph during that period.

(B) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning to receive fish in the new regulatory area and district, and the position of the new activity. This notice must be sent to the Regional Director within 48 hours of shifting.

(C) The notices required in paragraphs (a)(3)(i) (A) and (B) of this section should be delivered by private or commercial communications facilities to the U.S. Coast Guard at Juneau, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(D) After the first receipt of groundfish by that vessel during that period and continuing until that vessel's entire

cargo of fish has been off-loaded, the operator of that vessel must submit a weekly receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were received at sea. Receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. These reports must contain the following information:

- (1) Name and radio call sign of vessel;
- (2) Federal permit number of the Gulf of Alaska Groundfish fisheries;
- (3) Month and days during which fish were received at sea;
- (4) The estimated round weight of all fish received at sea by that vessel during the reporting period by species or species group, rounded to the nearest 0.1 mt, whether retained, discarded, or off-loaded;
- (5) The regulatory area or district in which each species or species group was caught, according to the statement

of the operator of the catching vessel, in which an OY for that species or species group is specified; and,

(6) If any species or species groups were caught in more than one regulatory area or district during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by regulatory area or district.

6. In § 672.20, Table 1 in paragraph (a) and paragraph (e) are revised to read as follows:

**§ 672.20 Optimum yield.**

(a) \* \* \*

TABLE 1.—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF; DAH=DAP+JVP.

Species/species code area <sup>1</sup>	OY	DAH	DAP	JVP	Reserve	TALFF
Pollock 701:						
Western/Central	305,000	256,871	44,371	220,500	0	40,128
Eastern	16,600	13,280	13,280	0	3,320	0
Total	321,600	270,151	57,651	220,500	3,320	40,128
Pacific cod 702:						
Western	16,580	5,748	2,539	3,209	3,212	7,600
Central	33,540	24,332	19,901	4,431	6,608	2,600
Eastern	9,900	7,920	7,920	0	1,980	0
Total	60,000	38,000	30,360	7,640	11,800	10,200
Flounders 129:						
Western	10,400	8,320	7,398	922	1,880	200
Central	14,700	11,760	8,292	3,468	2,690	250
Eastern	8,400	6,720	6,720	0	1,680	0
Total	33,500	26,800	22,410	4,390	6,250	450
Pacific ocean perch <sup>2</sup> 780:						
Western	1,302	1,302	1,302	0	0	0
Central	3,906	3,906	3,906	0	0	0
Eastern	875	875	875	0	0	0
Total	6,083	6,083	6,083	0	0	0
Sablefish <sup>3</sup> 703:						
Western	1,670	1,670	1,670	0	0	0
Central	3,080	3,080	3,080	0	0	0
West Yakutat	1,880	1,880	1,880	0	0	0
East Yakutat	850-1,135	850-1,135	850-1,135	0	0	0
Southeast Outside	470-1,435	470-1,435	470-1,435	0	0	0
Total	7,330-8,980	7,330-8,980	7,330-8,980	0	0	0
Atka Mackerel 297:						
Western	4,678	3,742	50	3,692	636	100
Central	500	380	350	30	100	20
Eastern	100	80	80	0	20	0
Total	5,278	4,202	480	3,722	956	120
Other rockfish <sup>4</sup> 849:						
Gulf-wide	5,000	4,733	4,600	133	267	0
Thornyhead rockfish 749:						
Gulf-wide	3,750	3,000	2,990	10	700	30
Squid 509:						
Gulf-wide	5,000	4,000	3,990	10	950	50
Other species <sup>5</sup> 499:						
Gulf-wide	22,480	17,944	16,544	1,400	4,191	325

<sup>1</sup> See figure 1 of § 672.20 for description of regulatory areas and districts.

<sup>2</sup> The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleuticus* (rougeye rockfish), *S. borealis* (shortfin rockfish), and *S. zacentrus* (sharpchin rockfish).

<sup>3</sup> Excludes values for the Southeast Inside District, which is not governed by these regulations.

<sup>4</sup> The category "Other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 2 above and *Sebastes* (thornyhead rockfish).

<sup>5</sup> The category "Other species" includes sculpins, sharks, skates, eulachon smelts, capelin, and octopus. The OY for "Other species" is equal to 5% of the target species.

(e) *Halibut*. (1) If, during any year, the Regional Director determines that the catch of halibut for that year by U.S. vessels delivering their catch to foreign vessels (JVP vessels) or U.S. vessels delivering their catch to U.S. fish processors (DAP vessels) will reach the applicable prohibited species catch (PSC) limit for halibut established under paragraph (e)(2) of this section, he will

publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, subject to paragraph (e)(3) of this section.

(2)(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC

limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is published in the **Federal Register**. The Secretary will consider all timely comments in determining, after consultation with the Council, the final halibut PSC limits for

the next year. A notice of these final halibut PSC limits will be published in the *Federal Register* as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

(ii) The Secretary will base the annual halibut PSC limits upon the following types of information:

(A) Estimated halibut bycatch in prior years;

(B) Expected changes in groundfish catch;

(C) Expected changes in groundfish biomass;

(D) Current estimates of halibut biomass and stock condition;

(E) Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries;

(F) The methods available for and costs of reducing halibut bycatches in groundfish fisheries; and

(G) Other biological and socioeconomic information that affects the consistency of halibut PSC limits with the objectives of this part.

(iii) The Secretary may, by notice in the *Federal Register*, change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (e)(2)(ii) of this section.

(iv) When the JVP or DAP vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the *Federal Register*, allow some or all of those vessels to continue to fish for groundfish using bottom-trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning each continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(D) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that

adherence to the prescribed conditions can be assured in light of available enforcement resources.

7. A new § 672.23 is added to read as follows:

**§ 672.23 Seasons.**

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from January 1 to December 31, subject to the other provisions of this part, except as provided in paragraph (b) of this section.

(b) Directed fishing for sablefish with hook-and-line and pot gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31, subject to the other provisions of this part.

8. In § 672.24, the text is redesignated as paragraph (a), and a new paragraph (b) is added to read as follows:

**§ 672.24 Gear limitations.**

(b) *Sablefish gear restrictions and allocations.*—(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear in fishing for groundfish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested as bycatch 5 percent of the OY for sablefish during any year, the Regional Director will close the Eastern Area to all fishing with trawl gear.

(2) *Central and Western Areas.* During 1986 in the Central Area, and during 1986, 1987 and 1988 in the Western Area, hook-and-line gear may be used to take up to 55 percent of the OY for sablefish; pot gear may be used to take up to 25 percent of that OY; and trawl gear may be used to take up to 20 percent of that OY. After the years specified above, hook-and-line gear may be used to take up to 80 percent of the sablefish OY in each area and trawl gear may be used to take up to 20 percent of that OY. When the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph has been taken, the Regional Director will close that regulatory area or district to all fishing for groundfish with the type of gear, subject to § 672.2(b) of this part. No person may use any gear other than hook-and-line, pot, or trawl gear in fishing for groundfish in these areas during the years specified above. After those years, no person may use any gear other than hook-and-line or trawl gear in fishing for groundfish in the Gulf of Alaska.

9. A new § 672.25 is added to read as follows:

**§ 672.25 Disposal of fishing gear and other articles.**

(a) *Intentionally discarded or abandoned gear.* No fishing vessel may intentionally discard or abandon fishing gear, net fragments, or other articles which could interfere with fishing activities or cause damage to fishery resources and other marine animals. Exception to this rule will be allowed in case of an emergency involving the safety of the ship and/or crew or when officially authorized to do so.

(b) *Encountered abandoned or discarded gear.* If abandoned or discarded fishing gear, net fragments, or any other article is encountered, or in the event of accidental or emergency placing of such an article into the FCZ, the operator of the vessel must make a reasonable attempt to recover the article or immediately report the incident to the appropriate official, giving the:

- (1) Name of the reporting person and his vessel;
- (2) Nature of the article;
- (3) Location of the article; and
- (4) Time and date of the incident.

[FR Doc. 85-17826 Filed 7-24-85; 8:45 am]  
BILLING CODE 3510-22-M

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 926 and 944**

**Tokay Grapes Grown in San Joaquin County, Imports of Tokay Grapes; Proposed Handling Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites comments on a proposal that would set quality requirements for shipments of fresh California Tokay grapes and Tokay grapes imported into the United States. The proposed regulation would require that such grapes meet the minimum grade and size requirements for U.S. No. 1 Table grade, with an additional color requirement for the berries on the lower portion of the bunch. The proposal would also require domestically produced grapes to meet certain container marking requirements. These proposed actions are designed to assure domestic shipment and imports of ample supplies of grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

**DATES:** Comments must be received by August 2, 1985. The proposed effective date is August 8 through November 15, 1985.

**ADDRESS:** Interested persons are invited to submit written comments in duplicate to: Docket Clerk, Room 2069-S, F&V, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Comments should reference the date and page number of the *Federal Register* and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Williams J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under Secretary's memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Proposed California Tokay Grape Regulation 22 is issued under the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of fresh Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Industry Committee, established under the order, and upon other information.

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, a Tokay Grape Import Regulation 4 is also proposed under Section 8e (7 U.S.C. 608e-1). This section requires that whenever specified commodities, including Table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The proposed grade and size requirements for imports of Tokay grapes are the same as those proposed grade and size requirements for domestically produced Tokay grapes.

The Tokay Grape Industry Committee met on June 25, 1985, and unanimously recommended grade, size, and container marking requirements for Tokay grapes grown in San Joaquin County, California, to be effective August 8 through November 15, 1985.

The proposal would require that shipments of Tokay grapes meet the minimum grade and size requirements specified in the U.S. No. 1 Table grade of the U.S. Standards for Grades of Table Grapes (European or Vinifera type), except that at least 30 percent, by count, of the berries in the lower 25 percent, by count, of each bunch shall show characteristic color. The proposal would also require that each container of California Tokay grapes bear a Federal-State Inspection Service lot stamp number in plain letters and figures on one outside end. The committee reports that the minimum grade and container marking requirements for grapes are necessary to maintain orderly marketing conditions by preventing the shipment of immature, poor quality, and excessively small fruit in fresh commercial marketing outlets. Shipment of such low quality fruit would disrupt orderly marketing and tend to depress prices of all grapes since low quality fruit undermines consumer confidence in the quality of all fruit sold in the market and discourages repeat purchases. The proposed grade requirements are consistent with the quality and size composition of the available crop and are designed to provide ample supplies of good quality fruit in the interest of producers and consumers consistent with the declared policy of the act. Fruit not meeting these requirements could be sold within San Joaquin County, or utilized in processing outlets such as crushing.

Production of California Tokay grapes for the 1985 season is estimated by the committee at 136,800 tons, compared with production of 130,112 tons in 1984. In recent years approximately 10 percent of the crop has been shipped fresh. Tokay grapes not shipped fresh are utilized in crushing.

Interested persons may file comments on the proposed regulations by August 2, 1985. This is the maximum comment period which can be provided because the proposed rules must be in effect prior to the beginning of the shipping season which begins around August 8. The proposed requirements are the same as those which have been in effect for the past several years and such requirements are considered by the industry to be the minimum standards of quality necessary to assure orderly marketing of the crop. The proposed requirements were recommended by the committee at an open meeting on June 25, 1985, and no opposition was expressed at that meeting. All comments received by the Docket Clerk by July 31, 1985, will be considered prior to the issuance of any final rule.

#### List of Subjects in 7 CFR Parts 926 and 944

Marketing agreements and orders, Grapes, California, Fruits, Import regulations.

1. The authority citation for 7 CFR Parts 926 and 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. The proposals are to add §§ 926.323 and 944.604 to read as follows:

#### PART 926—[AMENDED]

##### § 926.323 California Tokay Grape Regulation 22.

(a) During the period August 8, 1985, through November 15, 1985, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade, and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definitions.* "U.S. No. 1 Table grade" and "characteristic color" shall mean the same as in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880-51.912).

#### PART 944—[AMENDED]

##### § 944.604 Tokay Grape Import Regulation 4.

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 8, 1985, through November 15, 1985, the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, as set forth in the U.S. Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880-51.912), and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch, which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, and quality of Tokay grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of Tokay grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7

CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) *Minimum Quantity Exemption:* Any person may import up to 250 pounds of grapes in any one shipment

exempt from the requirements of this section.

(f) It is determined that imports of Tokay grapes, during the effective time of this regulation, are in most direct competition with Tokay grapes grown in San Joaquin County, California, under M.O. 926 (7 CFR Part 926). The grade, size and quality requirements of this section are the same as those applicable to Tokay grapes grown in the San Joaquin County of California.

Dated: July 23, 1985.

**William J. Doyle,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 85-17807 Filed 7-25-85; 9:14 am]

BILLING CODE 3410-02-M

# Notices

Federal Register

Vol. 50, No. 144

Friday, July 26, 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

### Foreign Agriculture Service

#### Agriculture Export Enhancement Advisory Group; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. I), the U.S. Department of Agriculture announces the following meeting, the holding of which is contingent upon timely establishment of the Agricultural Export Enhancement Advisory Group:

Name: Agricultural Export Enhancement Advisory Group.

Date: August 14, 1985.

Time: 2:00 p.m. to 4:00 p.m.

Place: U.S. Department of Agriculture.

Purpose: To provide advice on the administration of the Agricultural Export Enhancement Program.

Agenda: Review Progress of Export Enhancement Program

Type of Meeting: Closed

Reason for Closing: The premature disclosure of information about the proposed Agricultural Export Enhancement Program would likely significantly frustrate implementation of the proposed program.

Authority to Close Meeting: This determination that this meeting falls within exemption 9(b) of the Government in the Sunshine Act was made by the Secretary of Agriculture pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act.

Contact Person: Melvin E. Sims, General Sales Manager and Assistant Administrator 447-5173.

Done at Washington, D.C., this seventeenth day of July, 1985.

Melvin E. Sims,

Acting Administrator, FAS.

[FR Doc. 85-17712 Filed 7-23-85; 8:45 am]

BILLING CODE 3410-10-M

### Forest Service

#### Montana; Custer National Forest Plan Draft Environmental Impact Statement.

AGENCY: Forest Service, USDA.

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

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

**ADDRESSES:** Requests for further information should be addressed to: Dave Filius, Supervisor, Custer National Forest, P.O. Box 2556, Billings, MT 59103. James E. Reid,

Acting Regional Forester.

[FR Doc. 85-17516 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-11-M

### Soil Conservation Service

#### Muskrat Lake Basin Watershed, ND; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Muskrat Lake Basin Watershed, Mountrail County, North Dakota.

**FOR FURTHER INFORMATION CONTACT:** August J. Dornbusch, Jr., State Conservationist, Soil Conservation Service, Third Street and Rosser Avenue, Bismarck, North Dakota, 58502, telephone 701-255-4011 ext. 421.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, August J. Dornbusch, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concern a plan for watershed protection. The planned works of improvement include land treatment measures on 8,030 acres of

cropland to protect the resource base from deterioration and increase net income to the landowners.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting August J. Dornbusch, Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Dated: July 17, 1985.

L. Dean Stratton,

Deputy State Conservationist.

[FR Doc. 85-17722 Filed 7-25-85; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### Economic Advisory Board; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the meeting of the Department of Commerce Economic Advisory Board will be held on Tuesday, September 10, 1985, from 9:30 a.m. to 4:00 p.m. in Room 4830, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Board was established by the Secretary of Commerce on January 13, 1967. The purpose of the Board is to advise the Secretary of Commerce on economic policy issues. The intended agenda for this meeting is as follows:

- A review of the economic outlook by major sector.
- A discussion of the outlook for prices and employment and of strategies for sustaining noninflationary economic growth.

A limited number of seats will be available to the public on a first-come, first-served basis. Public participation will be limited to requests for clarification of items under discussion. Additional statements or inquiries may be submitted to the chair before or after the meeting. Copies of the minutes will be available on request 30 days after the meeting.

Additional information concerning this meeting may be obtained by contacting Mrs. Virginia R. Marketti, Confidential Assistant to the Under Secretary for Economic Affairs, Room 4838, Department of Commerce, Washington, DC 20230 (202) 377-3523.

Dated: July 22, 1985.

Sidney L. Jones,

Under Secretary for Economic Affairs.

[FR Doc. 85-17745 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-18-M

#### International Trade Administration

[A-549-502]

##### Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Postponement of Preliminary Antidumping Duty Determination

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The preliminary antidumping duty determination involving certain circular welded carbon steel pipes and tubes from Thailand is being postponed until not later than September 26, 1985.

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

**FOR FURTHER INFORMATION CONTACT:**

John J. Kenkel, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-3965.

**SUPPLEMENTARY INFORMATION:** On March 20, 1985, we announced the initiation of an antidumping duty investigation to determine whether certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value (50 FR 12068). The notice stated that we would issue a preliminary determination by August 7, 1985.

As detailed in that notice, the petition alleged that imports from Thailand of certain circular welded carbon steel pipes and tubes are being, or are likely to be, sold in the United States at less than fair value.

On July 16, 1985, counsel for petitioner, the Committee on Pipe and

Tube Imports, requested that the Department postpone the due date for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Accordingly, the due date for preliminary determination in this investigation is hereby postponed. We intend to issue a preliminary determination not later than September 26, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: July 18, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-17735 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-05-M

[C-559-001]

##### Certain Refrigeration Compressors From the Republic of Singapore; Final Results of Administrative Review of Suspension Agreement

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of administrative review of suspension agreement.

**SUMMARY:** On February 13, 1985, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period November 7, 1983, through December 31, 1983, and six programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all of the comments timely received, the final results of the review are the same as the preliminary results.

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

**FOR FURTHER INFORMATION CONTACT:**

Philip Otterness or Al Jemott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 13, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 6025) the preliminary results of its administrative review of the agreement

suspending the countervailing duty investigation on certain refrigeration compressors from Singapore (48 FR 51167, November 7, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of the Review

Imports covered by the review are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under item 661.0900 of the Tariff Schedules of the United States Annotated. The review covers a producer, Matsushita Refrigeration Industries (Singapore) Pte. Ltd., and a related exporter, Matsushita Electric Trading (Singapore) Pte. Ltd. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period November 7, 1983, through December 31, 1983, and six programs: (1) An income tax exemption on export earnings as provided for in Part IV of the Economic Expansion Incentives Act; (2) grants received from the Skills Development Fund; (3) the Public Utilities Board surcharge exemption; (4) financing provided by the rediscount facility of the Monetary Authority of Singapore; (5) the payment of income taxes in installments; and (6) the payment of technical assistance fees.

#### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely written comments from the petitioner, Tecumseh Products Company. We also received comments from the two signatory companies. Because we received those comments after the close of the comment period, we have not considered them in reaching these final results.

*Comment 1:* The petitioner argues that the "export sales value" used as the denominator by the Department in calculating the *ad valorem* benefit should be based on the f.o.b. price of the goods rather than the c.i.f., c. & i., c. & f. and f.o.b. prices recorded by Matsushita Electric. The petitioner argues that, if the Department calculates the benefit based on c.i.f., c. & i., c. & f., and f.o.b. prices and the duty is collected based only on the f.o.b. value of the merchandise, the amount collected will be less than the full value of the benefit to the product.

*Department's Position:* It is true a duty collected on the f.o.b. price of a product

should be based on a subsidy calculated using f.o.b. prices. However, in this case, the export payment is collected on a shipment-by-shipment basis by the Singapore government based on the sales price recorded on the invoice, whether f.o.b., c. & i., c. & f., or c.i.f. This method may undervalue or overvalue the benefit on an individual shipment, but it should represent the cumulative benefit on all shipments. However, since the export tax is collected only on shipments to the United States and the *ad valorem* subsidy rate is based on all export shipments, our calculation may not be completely accurate if the mix of the terms on the shipments to the United States differs significantly from the mix of the terms on shipments to other parts of the world. Our information indicates this is not the case, but we will re-examine the issue in the next requested administrative review.

*Comment 2:* The petitioner states that it orally requested, and we denied access to, the verification exhibits submitted by the respondents to the Department. The petitioner argues that such withholding of business proprietary data collected at verification excludes it from meaningful participation in the administrative review and is contrary to Congressional intent under section 777 of the Tariff Act.

*Department's Position:* The Department will only consider written requests for release of proprietary material under administrative protective order, submitted in accordance with the Department's regulations.

As a general practice, the Department does not release verification exhibits containing business proprietary information because the Department believes that the need for continued non-release outweighs the need of the person requesting the information. First, most documents reviewed during the verification include not only proprietary information needed to verify submitted figures but also proprietary information that is not relevant to the administrative review. Without some guarantee of non-release of photocopies of source materials used to verify questionnaire responses, companies involved in verifications might reasonably believe they had more to lose by allowing the Department to retain copies for its convenience than if they only allowed the Department to examine, but not copy, source documents during verification. Second, exhibits that the Department collects at verification are used only to substantiate figures submitted in the questionnaire response and subsequent arguments. The figures in the response are the basis of the

Department's calculations and are available under administrative protective order. The withholding of these documents is in no way contrary to Congressional intent to allow petitioners access to materials necessary to obtain relief under the countervailing duty law.

*Comment 3:* the petitioner argues that two programs under the Skills Development Fund are countervailable because they are grant programs that do not operate by reference to tax laws. The petitioner relies on a decision of the Court of International Trade (*Bethlehem Steel Corporation v. United States* 590 F. Supp. 1237 (1984)) to support its view that the general availability criteria should not apply to such grant programs.

*Department's Position:* We disagree. We do not consider generally available programs to be countervailable. See, *Carlisle Tire and Rubber Co. v. United States*, 564 F. Supp. 834 (1983). The petitioner's reliance on *Bethlehem Steel* is misplaced since the court in that case upheld our determination that a generally available tax benefit is not countervailable. The court's further comments in *Bethlehem Steel* on general availability are dicta.

*Comment 4:* The petitioner states that, although the Public Utilities Board has three criteria for eligibility for exemption from its surcharge, the Board may exempt companies from the surcharge payment without meeting any of those three criteria. The petitioner argues that this demonstrates that the Public Utilities Board has a great deal of discretion in deciding which companies will or will not receive the surcharge exemption. Without the strict application of the same criteria to all companies, a program of this type cannot be termed generally available.

*Department's Position:* The petitioner relies on the verification report's reference to three criteria for eligibility for the surcharge exemption, but the report also indicates that these are not the only three criteria and that the meeting of other criteria can independently qualify a firm for the exemption. In fact, the Board's main goal through this program is to encourage energy efficiency, and if a company can demonstrate such efficiency or can show that it is working toward the goal of greater energy efficiency, the Board grants the exemption. We saw no evidence at verification that the Board granted exemptions for any reasons other than energy efficiency. The criteria, as outlined in the verification report and found in published sources, include not only the three alluded to by the

petitioner (decrease in energy use per unit of output, decrease in energy use per dollar of output, or investment in energy-saving equipment equal to 15 percent or more of a company's annual earnings) but also include, for energy efficient firms, continuation of a high level of energy efficiency. The important point is that the Board uses energy efficiency as the overriding criterion for qualifying for the exemption and that it applies this criterion to all companies.

*Comment 5:* The petitioner claims that, in determining whether Matsushita Refrigeration's technical assistance fee payments to its Japanese parent were excessive (and therefore countervailable) reductions of the taxable income of the subsidiary, the Department did not adequately examine the extent to which the payments exceed the value of the assistance provided. Instead of analyzing the assistance provided to Matsushita Refrigeration for the fees paid, the Department relied on the Economic Development Board's approval of tax exempt status for the payments. The Department should have made the comparison itself.

*Department's Position:* As pointed out in the verification report, not only the Economic Development Board but also the Inland Revenue Department reviews applications for tax exempt status for technical assistance fee payments. We reviewed the procedures used by both agencies. Though only the Economic Development Board can actually reject applications, the Inland Revenue Department has extensive records of existing royalty agreements and can disallow portions of amounts applied for if the portions are excessive when compared to other agreements.

At Matsushita Refrigeration, we also examined the types of assistance received by the company from its parent in return for its payments and the approximate costs to the parent company of that assistance. Contrary to the petitioner's concern that the payments were excessive, the records indicated that the technical assistance fees did not cover the costs of the assistance provided. In fact, the parent company has subsequently decided to increase the fee, and Matsushita Refrigeration has informed us that it has requested approval from the Singapore government for a tax exemption on this higher payment.

The Department has no evidence that the technical assistance fees paid by Matsushita Refrigeration are excessive or that the company is somehow using payments to disguise its true profitability.

*Comment 6:* The petitioner questions the numerator used by the Department in calculating the tax benefit under the Export Expansion Incentives Act. The petitioner points out that at verification the Department had to add Matsushita Electric's Malaysian sales, which were listed as domestic sales in the company's books, to the company's total exports as reported in the questionnaire response. The petitioner argues that the Department should have also checked to see if Malaysian sales were included in Matsushita Refrigeration's calculation of its export profit. Since the Department uses both these numbers to calculate the subsidy, the petitioner argues the Department could be undervaluing the subsidy if the numbers do not refer to the same number of goods.

*Department's Position:* The Department has no reason to believe that the export profits Matsushita Refrigeration reported in its tax returns did not include profits from exports to Malaysia. It would work to the detriment of Matsushita Refrigeration not to include such exports because it receives a tax exemption on 90 percent of its export profits. Finally, it should be noted that Matsushita Electric's manner of recording export and domestic sales was pointed out in the verification report simply to show how a number provided in the questionnaire response was derived.

*Comment 7:* The petitioner requests that the Department scrutinize the source of and reason for large sums listed in Matsushita Refrigeration's financial statements as money due from related companies. The petitioner suggests that those funds may represent an intra-company subsidy.

*Department's Position:* In the notes to its financial statements, Matsushita Refrigeration explains that amounts due from or to related companies reflect the fact that the company "purchases most of its raw materials and parts from, and sells substantially all its production through companies in the Matsushita Group." The petitioner made this allegation too late in the review for our consideration. If the petitioner wishes the Department to investigate those transactions further, it should raise the issue in a future review and should explain how such transactions might constitute countervailable subsidies under U.S. law.

*Comment 8:* The petitioner alleges that Matsushita Refrigeration's financial statements show that the company made use of accelerated depreciation charges. The petitioner feels the use of accelerated depreciation may constitute

a benefit in contravention of the suspension agreement.

*Department's Position:* It is not clear from Matsushita Refrigeration's financial statement that the depreciation charges the petitioner refers to are actually accelerated depreciation or simply reflect a re-evaluation of the actual useful life of certain assets. The petitioner made this allegation too late for our consideration in this review. The Department will examine the issue in the next requested administrative review.

#### Final Results of the Review

After review of the comments received, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be 4.92 percent *ad valorem* for the review period.

The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department. Following the methodology outlined in section B.4. of the agreement, the Department determines that, in order to reach a final export charge of 4.92 percent *ad valorem*, a negative adjustment of 0.94 percent *ad valorem* may be made to the provisional export charge of 5.86 percent established in the Department's notice of suspension of countervailing duty investigation. The Government of Singapore may refund this amount to the companies.

The Department will notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of this notice shall be 4.92 percent *ad valorem*.

In addition, we determine that the two companies have complied with the terms of the suspension agreement, including the payment of the provisional export charge, for the period November 7, 1983, through December 31, 1983.

The agreement can remain in force only as long as shipments covered by the agreement account for at least 85 percent of imports of Singaporean refrigeration compressors into the United States. The companies accounted for 100 percent of imports into the United States of such refrigeration compressors during the review period.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: July 17, 1985.

C. Christopher Parlin,  
Acting Deputy Assistant Secretary, Import  
Administration.  
[FR Doc. 85-17747 Filed 7-25-85; 8:45 am]  
BILLING CODE 3510-06-M

#### Semiconductor Technical Advisory Committee; Partially Closed Meeting

Summary: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1984 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: August 27, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Ave., NW., Washington, D.C.

#### Agenda:

##### General Session

1. Opening remarks by the Chairman
  - a. Summary of TAC chairmen's meeting
  - b. Outline of 1985 TAC goals
2. Presentation of papers or comments by the public
3. Solicitation of inputs on needed area of commodity decontrol or relaxation of export controls
4. Old committee business
5. New committee business
6. Action items underway
7. Action items due at next meeting.

##### Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto

Public participation: The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Supplementary information: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: July 22, 1985.

Milton M. Baltas,

Director of Technical Programs, Office of  
Export Administration.

[FR Doc. 85-17746 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-DT-M

### National Oceanic and Atmospheric Administration

#### Emergency Striped Bass Research Study; Meeting

**AGENCY:** National Marine Fisheries  
Service, NOAA, Commerce.

**SUMMARY:** The National Marine  
Fisheries Service and the U.S. Fish and  
Wildlife Service will hold a joint  
meeting to discuss programs on the  
Emergency Striped Bass Research Study  
as authorized by the amended  
Anadromous Fish Conservation Act  
(Pub. L. 96-118).

**DATE:** The meeting will convene on  
Wednesday, August 28, 1985, at 10:00  
a.m., and will adjourn at approximately  
4:00 p.m. The meeting is open to the  
public.

**ADDRESS:** Room 7000 A&B, Department  
of the Interior Building, C Street  
between 18th and 19th NW.,  
Washington, DC 20240.

#### FOR FURTHER INFORMATION

**CONTACT:** David G. Deuel, Office of  
Resource Investigations, National  
Marine Fisheries Service, Washington,  
DC 20235, Telephone: (202) 634-7466.

Dated: July 18, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science  
and Technology.

[FR Doc. 85-17414 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-22-M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries  
Service, NOAA, Commerce.

A special public meeting of the Pacific  
Fishery Management Council's Salmon  
Plan Development Team will begin at 10  
a.m., July 29, at the Council's office, 526  
S.W. Mill Street, Portland, OR, to  
develop information and draft  
documents necessary for the evaluation  
of proposed amendments to the salmon  
fishery management plan. For further  
information, contact Joseph C. Greenley,

Executive Director, Pacific Fishery  
Management Council, 526 SW. Mill  
Street, Portland, OR 97201; telephone:  
(503) 221-6352.

Dated: July 23, 1985.

Joseph W. Angelovia,

Deputy Assistant Administrator For Science  
and Technology, National Marine Fisheries  
Service.

[FR Doc. 85-17831 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-22-M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries  
Service; NOAA, Commerce.

The Pacific Fishery Management  
Council will convene a public meeting  
via teleconference at 11 a.m., July 24, to  
review the coho harvest of the July 15-  
18 troll fishery off the coast of  
Washington, between Leadbetter Point  
and Cape Alava, to clarify the impact of  
that harvest on the coho quotas in the  
two remaining north of Cape Falcon troll  
fisheries. The Council will also review  
the first three weeks of the recreational  
salmon fishery north of Cape Falcon  
where a five-day-per-week fishery has  
been established to prolong the season.

Meeting rooms will be provided in  
two or three key locations within the  
region to allow members of the public to  
participate in the conference call. For  
further information contact Joseph C.  
Greenley, Executive Director, Pacific  
Fishery Management Council, 526 SW.  
Mill Street, Portland, OR 97201;  
telephone: (503) 221-6352.

Dated: July 23, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science  
and Technology, National Marine Fisheries  
Service.

[FR Doc. 85-17830 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-22-M

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

July 22, 1985.

The Chairman of the Committee for  
the Implementation of Textile  
Agreements (CITA), under the authority  
contained in E.O. 11651 of March 3, 1972,  
as amended, has issued the directive

published below to the Commissioner of  
Customs to be effective on July 23, 1985.  
For further information contact Diana  
Solokoff, International Trade Specialist,  
Office of Textiles and Apparel, U.S.  
Department of Commerce, (202) 377-  
4212.

#### Background

On February 27, 1985 and April 1, 1985  
notices were published in the **Federal  
Register** (50 FR 7947 and 12849) which  
established staged entry periods for  
cotton and wool textile products in  
Categories 313 (cotton sheeting), 317  
(cotton twill and sateen), and 433 (men's  
and boys' wool suit-type coats),  
produced or manufactured in the  
People's Republic of China and  
exported, in the case of Categories 313  
and 433, during the twelve-month period  
which began on February 28, 1984 and  
extended through February 27, 1985,  
and, in the case of Category 317,  
exported during the period which began  
on March 29, 1984 and extended through  
March 28, 1985. Inasmuch as it has been  
determined that these staged entry  
periods are no longer needed, they are  
being cancelled.

A description of the textile categories  
in terms of T.S.U.S.A. numbers was  
published in the **Federal Register** on  
December 13, 1982 (47 FR 55709), as  
amended on April 7, 1983 (48 FR 55175),  
May 3, 1983 (48 FR 19924), December 14,  
1983 (48 FR 55607), December 30, 1983  
(48 FR 57584), April 4, 1984 (49 FR  
13397), June 28, 1984 (49 FR 26622), July  
16, 1984 (49 FR 28754), November 9, 1984  
(49 FR 44782), and in Statistical  
Headnote 5, Schedule 3 of the **TARIFF  
SCHEDULES OF THE UNITED STATES  
ANNOTATED** (1985).

Ronald I. Levin,

Acting Chairman, Committee for the  
Implementation of Textile Agreements.

July 22, 1985.

Commissioner of Customs.

Department of the Treasury, Washington,  
D.C. 20229

Dear Mr. Commissioner: To facilitate  
implementation of Bilateral Cotton, Wool and  
Man-Made Fiber Textile Agreement, effected  
by exchange of notes dated August 19, 1983,  
as amended between the Governments of the  
United States and the People's Republic of  
China, I request that, effective on July 23,  
1985, you cancel the directives of February  
22, 1985 and March 28, 1985 concerning cotton  
and wool textile products in Categories 313,  
317 and 433, produced or manufactured in the  
People's Republic of China.

This letter will be published in the **Federal  
Register**.

Sincerely,

Ronald I. Levin.

*Acting Chairman, Committee for the  
Implementation of Textile Agreements.*  
[FR Doc. 85-17744 Filed 7-25-85; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Defense Nuclear Agency

#### Scientific Advisory Group on Effects (SAGE); Meeting

The Scientific Advisory Group on Effects (SAGE) will meet in closed session September 4 to September 6, 1985, at the Department of Energy, Nevada Operations Office, Las Vegas, Nevada. AGENDA: September 4 to September 6 (0830-1700): Presentations, discussions and executive session on issues related to the programs which support the Defense Nuclear Agency's underground test program. The presentations and discussions in the above cited agenda will focus on current and planned activities of the DNA in regards to the underground test program. Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of sections 552b(c) (1) and (3), Title 5, U.S.C., this meeting is closed to the public.

Any additional information concerning the meeting may be obtained from: Lt. Col. Gary C. Gibson, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, Attn: DDST, Washington, D.C. 20305-1000.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 85-17753 Filed 7-2-85; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Navy

### Draft Supplemental Environmental Impact Statement for the Proposed Northeast Surface Action Group Homeport Facility, Stapleton-Fort Wadsworth Complex, Staten Island, NY

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, Title 40 CFR and the requirements of executive Order 12372, Intergovernmental Review of Federal

Programs, and the Department of Navy Policy for intergovernmental coordination of land and facility plans, programs, and projects, the Navy announces its intention to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the proposed Northeast Surface Action Group Homeport Facility, Stapleton-Fort Wadsworth Complex, Staten Island, NY.

On October 20, 1984 and February 8, 1985 respectively, the Navy filed Draft and Final Environmental Impact Statements with the U.S. Environmental Protection Agency on the Navy's proposed homeport facility in Staten Island. The Secretary of the Navy decision on this project was published in the *Federal Register* on March 21, 1985.

The establishment of a Surface Action Group (SAG) homeport in Staten Island will require the relocation of approximately 2200 Navy families. The DEIS prepared for this project assumed that these families would disperse throughout the New York-New Jersey area. No one community would be impacted significantly by the relocation of these families. However, more in depth data on housing availability and affordability obtained by the Navy has revealed a potential housing shortage, particularly for junior enlisted personnel. In order to reduce this potential deficit in affordable housing units, the Navy is proposing to construct family housing at Fort Wadsworth. Additionally, Navy housing may also be constructed at Floyd Bennett Field in Brooklyn. The Navy is also investigating housing opportunities that may result from a direct Navy leasing program whereby the Navy enters a long term lease agreement(s) with private developer(s) who would build new housing for Naval personnel. These housing options will be fully documented in the DSEIS.

Also, the DSEIS will assess impacts that may result from additional real estate acquisition in the vicinity of the Stapleton waterfront site.

Land acquisition is proposed to offset the need for filling 2.6 acres of the harbor to realign the existing bulkhead. The Navy does not propose to create this upland but will seek additional real estate through acquisition. Additional land will reduce the need for the proposed multi-level parking structure.

Other changes that have been proposed include modification to the Waterfront Development Plan—notably the proposal to build one pier vice two (although a second pier could be added in the future) and changes in the Fort Wadsworth Development Plan, and they will be assessed in the DSEIS.

Publication of the DSEIS is tentatively planned for October 1985. A Public Hearing Schedule will be announced. Local and regional concerns over the Navy's proposed changes in the SAG Homeport project as described above will be considered carefully in the preparation of the scope of work under which the DSEIS will be prepared. Comments and concerns should be forwarded to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Bldg 77L, Naval Base, Philadelphia, Philadelphia, PA 19112. Atten: Code 09P.

Comments will be received until August 26, 1985. If further information is required in regard to this Notice of Intent, please contact Robet Ostermueller at 215-897-6262.

Dated: July 23, 1985.

William F. Roos, Jr.,  
Lieutenant, JAGC, USNR, Federal Register  
Liaison Officer.

[FR Doc. 85-17785 Filed 7-25-85; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

#### Graduate and Professional Opportunity Fellowships Program; Application Notice for Fiscal Year 1986

This notice invites applications from institutions of higher education for grants to make fellowship awards under the Graduate and Professional Opportunity Fellowships Program (G\*POP).

Authority for this program is contained in Part B of Title IX of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1134d-1134g)

The Graduate and Professional Opportunity Fellowships Program provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who are predominantly from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

*Closing date for transmittal of applications.* An application for a grant must be mailed or hand delivered by October 1, 1985.

*Applications delivered by mail:* An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center,

Attention: 84.094B, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

*Applications delivered by hand:* An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The application Control Center will accept a hand delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

*Available funds:* The Administration's budget request for fiscal year 1986 does not include funds for the Graduate and Professional Opportunity Fellowships Program. However, applications are invited to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for this program. If funds are appropriated, the Congress will be asked again to enact legislation overriding the \$75,000 minimum grant that can be made to an institution under section 922 (b)(2) of the statute.

The Secretary will give first priority to providing continuation support for qualified students, who were awarded fellowships in a previous year and who are maintaining satisfactory progress as determined by the institution. See 34 CFR 649.11(a)(2) (i) and (ii).

*Program information:* Each institution applying for new fellowships will be ranked according to the selection criteria set out in the regulations in 34 CFR 649.12 governing the Graduate and Professional Opportunity Fellowships Program. Under these criteria, institutions may apply for new fellowships in up to six academic or professional areas of study, providing, among other criteria, that the choice of study area is justified by providing evidence of underrepresentation, and evidence of national need.

Generally, the Secretary makes only one-year grant awards to institutions allocated new fellowships. As provided in 34 CFR Part 649.11(a)(2) of the Department's regulations and subject to the availability of funds, continuation support for students to complete degree programs may be provided in the subsequent fiscal years.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations. The regulations for this program are contained in 34 CFR Part 649.

*Application forms:* Application forms and program information packages are expected to be ready for mailing by August 20, 1985, and may be obtained by writing to the Division of Higher Education Incentive Programs (Graduate and Professional Opportunity Program, G\*POP), U.S. Department of Education, (Room 3022, ROB-3), 400 Maryland Avenue, S.W. Washington, D.C. 20202. Telephone: 202-245-3253. (OMB 1840-0506)

Applications must be prepared and submitted in accordance with the regulations, funding criteria, instructions, and forms included in the program information packages. The program information package is only intended to aid applicants applying for a grant under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary strongly urges that the narrative portion of the grant application be double-spaced and not exceed 40 pages in length.

*Applicable regulations:* The regulations applicable to this program include the following:

(1) The regulations governing the Graduate and Professional Opportunity Fellowships Program, in 34 CFR Part 649.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

*Further information:* For further information contact Charles H. Miller/Barbara J. Harvey of the Division of Higher Education Incentive Programs (Graduate and Professional Opportunity Fellowships Program), U.S. Department of Education, (Room 3022, ROB-3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: 202-245-3253.

(20 U.S.C. 1134d-1134g)

(Catalog of Federal Domestic Assistance No. 84.094B, Graduate and Professional Opportunity Fellowships Program)

Dated: July 23, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-17781 Filed 7-25-85; 8:45 am]

BILLING CODE 4000-01-M

## Office of Vocational and Adult Education

### Bilingual Vocational Programs; Application

**AGENCY:** Application Notice for New Awards under the Bilingual Vocational Programs for Fiscal year 1986.

**SUMMARY:** Applications are invited for new projects for the Bilingual Vocational Training Program, Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program for fiscal year-1986.

Authority for these programs is contained in section 441 of Part E, Title IV of the Carl D. Perkins Vocational Education Act, Pub. L. 98-524.

(20 U.S.C. 2441)

The purpose of awards for the Bilingual Vocational Training Program is to provide financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare them for jobs in recognized occupations and new and emerging occupations.

The purpose of awards for the Bilingual Vocational Instructor Training Program is to provide financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

The purpose of awards for the Bilingual Vocational Materials, Methods, and Techniques Program is to provide financial assistance for the development of instructional and

curriculum materials, methods, or techniques for bilingual vocational training for individuals with limited English proficiency.

#### Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered by September 9, 1985.

#### Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.077A, for Bilingual Vocational Training; CFDA No. 84.099A, for Bilingual Vocational Instructor Training, and CFDA No. 84.100 for Bilingual Vocational Materials, Methods, and Techniques), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

#### Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

### Program Information

#### Bilingual Vocational Training Program

The following types of projects may be funded under this program:

(a) Bilingual vocational training projects for individuals who have completed or left elementary or secondary school and who are available for education in a postsecondary educational institution.

(b) Bilingual vocational education and training projects for individuals who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment.

(c) Training allowances for participants in bilingual vocational training projects.

Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupation in an English language environment.

In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

State agencies, local education agencies, postsecondary educational institutions, private nonprofit vocational training institutions, and other nonprofit organizations specially created to serve individuals who normally use a language other than English are eligible to apply for awards under this program.

#### Bilingual Vocational Instructor Training

The following types of projects may be funded under this program:

(a) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating or preparing to participate in bilingual vocational training programs.

(b) Fellowships and traineeships for individuals participating in preservice or inservice training.

The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational training program in the field in which participants will be trained and can provide instructors with adequate language capabilities in the language other than English to be used in the project.

State agencies and public and private nonprofit educational institutions are eligible to apply for awards under this program.

#### Bilingual Vocational Materials, Methods, and Techniques Program

The following types of projects may be funded under this program:

(a) Research in bilingual vocational training.

(b) The development of instructional and curriculum materials, methods, or techniques.

(c) Training projects to familiarize State agencies and training institutions with research findings and with successful pilot and demonstration projects in bilingual vocational education and training.

(d) Experimental, developmental, pilot, and demonstration projects.

State agencies, educational institutions, and nonprofit organizations are eligible to apply for awards under this program.

#### Selection Criteria

Applications for awards will be evaluated in accordance with the selection criteria contained in the proposed regulations (34 CFR 407, 408, and 409) for the Carl D. Perkins Act. As stated in the regulations, the Secretary may distribute a reserved 15 points among the criteria for each competition held. These 15 points have been assigned as follows:

(a) For the Bilingual Vocational Training Program: 5 points for *Plan of operation*, 5 points for *Program factors*, and 5 points for *Quality of key personnel*.

(b) For the Bilingual Vocational Instructor Training Program: 5 points for *Need* and 10 points for *Quality of key personnel*.

(c) For the Bilingual Vocational Materials, Methods, and Techniques Program: 10 points for *Quality of key personnel* and 5 points for *Evaluation plan*.

Projects may be proposed for a period of 18 months.

#### Intergovernmental Review

On June 24, 1983, the Secretary published final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) in the *Federal Register*. This implemented Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination

and review of proposed Federal financial assistance.

**The Executive Order—**

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance.

- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and

- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following are the current lists of States that have established a process, designated a single point of contact, and have selected these programs for review:

**States To Review Program 84.077A, Bilingual Vocational Training**

Alabama	New York
Arizona	North Dakota
Arkansas	Ohio
California	Oklahoma
Connecticut	Oregon
Delaware	Pennsylvania
Florida	Rhode Island
Hawaii	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Louisiana	Utah
Maine	Vermont
Massachusetts	Virginia
Michigan	Washington
Missouri	West Virginia
Montana	Wyoming
Nebraska	Puerto Rico
Nevada	Virgin Islands
New Hampshire	Guam
New Jersey	Northern Mariana Islands
New Mexico	

**States To Review Program 84.099A, Bilingual Vocational Instructor Training**

Alabama	New Mexico
Arizona	New York
Arkansas	North Dakota
California	Ohio
Connecticut	Oklahoma
Delaware	Oregon
Florida	Pennsylvania
Hawaii	South Carolina
Indiana	South Dakota
Kansas	Texas
Louisiana	Utah
Maine	Vermont
Massachusetts	Virginia
Michigan	Washington
Missouri	Wyoming
Nebraska	Virgin Islands
Nevada	Guam
New Hampshire	Northern Mariana Islands
New Jersey	

The Bilingual Vocational Materials, Methods, and Techniques Program (84.100) is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for these programs.

In States that have not established a process or chosen these programs for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 24, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA Nos. 84.077, 84.099, or 84.100), 40 Maryland Avenue, SW., Washington, DC 20202. Proof of mailing will be determined on the same basis as that used for applications.

**PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.**

**Available Funds**

Although grants under this program will be awarded during fiscal year 1986, this notice invites applications for funds from both the fiscal year 1985 appropriation and the fiscal year 1986 appropriation. Beginning with the fiscal year 1986 appropriation, the Department of Education has proposed to shift appropriations for this program from forward funding to a current-year basis.

The fiscal year 1985 funds have been appropriated. After awards are made to noncompeting continuations, the Department expects to have the following fiscal year 1985 funds available for new grants under this competition: approximately \$1,800,000

for Bilingual Vocational Training, with average grants of \$200,000 each and approximately \$368,000 for Materials, Methods, and Techniques, with average grants of \$150,000 each.

The Congress has not yet appropriated fiscal year 1986 funds. If, in appropriating these funds, the Congress accepts the Administration's proposed change to current-year funding, additional amounts will be available for new awards under this competition. With the requested 1986 appropriation, the following amounts will be available for new awards: approximately \$4,500,000 for Bilingual Vocational Training, with average grants of \$200,000 each; approximately \$776,000 for Materials, Methods, and Techniques, with average grants of \$150,000 each, and \$553,000 for Bilingual Vocational Instructor Training, with average grants of \$110,000 each.

These estimates do not bind the U.S. Department of Education to a specific number of grants, nor to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

**Application Forms**

Application forms and program information packages will be available on July 29, 1985. These packages may be obtained by writing to the Office Vocational and Adult Education, U.S. Department of Education, (Room 5028, Regional Office Building 3) 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty-five pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1830-0013)

**Applicable Regulations**

The following regulations apply to this program:

(a) The regulations governing the three Bilingual Vocational Training Programs, as proposed to be codified in 34 CFR Parts 400, 407, 408, and 409. The proposed regulations were published on January 25, 1985 (50 FR 3650-3653). Applicants should prepare their applications based on these proposed regulations. Applicants will be given an opportunity to amend or resubmit their applications if the final regulations are changed significantly from the proposed regulations.

(b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 78, and 79.

#### For Further Information

For further information, contact Ron Castaldi, Office of Vocational and Adult Education, U.S. Department of Education, (Room 5023, Regional Office Building 3) 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245-2775.

[20 U.S.C. 347(a)]

(Catalog of Federal Domestic Assistance Nos. 84.077 (Bilingual Vocational Training Program), 84.089 (Bilingual Vocational Instructor Training Program), and 84.100 (Bilingual Vocational Materials, Methods, and Techniques Program))

Dated: July 23, 1985.

Robert M. Worthington,  
Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85-17782 Filed 7-25-85; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Marjorie Linder Cooley v. Clifton Power Corp.; Complaint

July 22, 1985.

Take notice that on June 27, 1985 Marjorie Linder Cooley submitted for filing a complaint against Clifton Power Corporation pursuant to the Commission's Rule 206, 18 CFR 385.206. Mrs. Cooley seeks an order finding Clifton Power Corporation to be in violation of certain provisions of Parts II and III of the Federal Power Act, and of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests

should be filed on or before August 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17754 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-39-000]

#### Municipal Electric Utilities Association of New York State v. Consolidated Edison Company of New York, Inc.; Complaint

July 22, 1985.

Take notice that on July 5, 1985, Municipal Electric Utilities Association of New York State ("MEUA"), by and through its undersigned counsel and pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, submitted for filing its complaint against Consolidated Edison Company of New York, Inc. ("Con Edison").

MEUA stated in this complaint that Con Edison is in violation of section 203 of the Federal Power Act, 16 U.S.C. 824b, because it has leased or otherwise disposed of part of its facilities subject to the jurisdiction of the Commission, without first having secured an order of the Commission authorizing such transaction.

MEUA further stated that its customers are suffering substantial injury as a result of the Con Edison lease because Con Edison is obtaining thereby preference power properly allocable to MEUA members under the preference provisions of the Niagara Redevelopment Act, 16 U.S.C. 836.

MEUA also stated that the lease is not in the public interest.

Wherefore, MEUA requests that:

The Commission order Con Edison to show cause why the lease has not been submitted for review by the Commission.

The Commission initiate an evidentiary hearing to determine whether the lease is in the public interest.

The Commission order Con Edison to file all documents pertaining to the lease.

The Commission declare that the lease is not in the public interest and should not be approved pursuant to

section 203 or 205 of the Federal Power Act (16 U.S.C. 824b, 824d).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17755 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-36-001]

#### ANR Pipeline Co.; Tariff Filing Pursuant to Order Approving Settlement Agreement

July 22, 1985.

Take notice that on July 17, 1985, ANR Pipeline Company (ANR) tendered for filing Second Substitute Second Revised Sheet No. 667A under Rate Schedule X-64 of First Revised Volume No. 2 of its F.E.R.C. Gas Tariff. This revised Sheet No. 667A is proposed to be effective January 1, 1985.

ANR states that the purpose of this filing is to reflect a settlement of Docket No. RP85-36-000 approved by a Federal Energy Regulatory Commission Letter Order issued June 18, 1985, in that it reflects the settled rate of \$507,713 per month to the High Island Offshore System.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this

filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17791 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2828-001]

**City of Redding, CA; Intent To Prepare Environmental Impact Statement and Notice of Scoping Session and Public Meeting**

July 22, 1985.

The City of Redding, California, on February 19, 1982, filed an application for a license for the Lake Redding Power Project, FERC No. 2828, to be located on the Sacramento River in Shasta County, California. The new dam would be constructed about thirty feet downstream from, and replace, the existing Anderson Cottonwood Irrigation District Dam. The proposed project would be operated in a run-of-river mode with a minimum flow of 50 cubic feet per second spilled over the dam at all times. The new dam would increase the existing maximum normal water surface elevation 4.5 feet.

Public notice of the acceptance of the application by the Commission was issued on November 30, 1982, with January 27, 1983, as the due date for comments, protests, and motions to intervene. The application was also mailed to interested agencies for their review and comments. Motions to intervene by the California Department of Fish and Game and the U.S. Department of the Interior have been granted. The Commission staff issued a draft environmental assessment of the application on October 5, 1984, and circulated it for comment. The Commission staff has determined that issuance of a license for the proposed project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. Possible alternatives to the proposed action will be addressed in the EIS.

**Scoping Session**

Interested persons and agencies are invited to participate in a scoping meeting to identify and discuss the significant environmental impacts resulting from the proposed Lake Redding Project No. 2828. The scoping session will be convened by the Commission staff at 10:00 a.m. on August 20, 1985, in the Redding City

Council Chambers at 1313 California Street, Redding, California. The purposes of the scoping session are to:

(1) Present environmental issues, currently identified for treatment in the EIS, to the public and experts familiar with the proposed project; (2) receive information and views from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the scoping session and assist Commission staff with the determination of issues to be addressed in the EIS.

**Public Hearing**

Interested officials and members of the general public are invited to express their views about the proposed project and significant environmental impacts in a public hearing to be held at 7:00 p.m. on August 20, 1985, in the Redding City Council Chambers at 1313 California Street, Redding, California. The public hearings will be conducted by the Commission staff.

At the public hearing persons may give their statements orally or in writing. All statements will be recorded by a stenographer and will become part of the public files associated with this proceeding. In addition, the public record for this hearing will remain open until September 4, 1985, and anyone may submit written comments on these matters until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should clearly show the project name and number (Project No. 2828-001) on the first page.

For further information, please contact James R. Kirby at (202) 376-9070.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17792 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-37-000]

**Commonwealth of Pennsylvania, Department of Environmental Resources and Environgas Inc.; Petition To Reopen and Vacate Final Well Category Determinations**

Issued: July 22, 1985.

In the matter of Commonwealth of Pennsylvania, Department of Environmental Resources, Section 102 Determinations, Environgas, Inc., Alvin Eliason #1 Well, FERC JD No. 80-21432; Richard Brunner #1

Well, FERC JD No. 80-21480; James Fiske #2 Well, FERC JD No. 80-22636, J. Wasielewski #1 Well, FERC JD No. 80-42810.

Take notice that on July 1, 1985, the Commonwealth of Pennsylvania, Department of Environmental Resources (Pennsylvania), filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate final well category determinations under section 102(c)(1)(B) of the Natural Gas Policy Act of 1978 (NGPA) for the wells listed in the caption of this order, each of which is located in the Summit Storage Field, Erie County, Pennsylvania. Environgas, Inc. is the owner and operator of the wells.<sup>1</sup>

Pennsylvania states that the wells do not qualify under section 102 of the NGPA because of the location of existing marker wells within the Summit Storage Field and that this information was inadvertently omitted at the time the determinations were made.

The question of whether refunds, plus interest calculated under § 154.102(c) of the regulations, will be required is a matter which will be considered by the Commission in ruling on the subject petition.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days following publication of this notice in the Federal Register. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17793 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

<sup>1</sup> Notices of Pennsylvania's determinations were received for the Alvin Eliason well on March 20, 1980, for the Richard Brunner well on March 20, 1980, for the James Fiske well on March 27, 1980, and for the J. Wasielewski well on June 26, 1980. Pursuant to § 275.202(a) of the Commission's regulations, these determinations became final 45 days following notification.

[Docket Nos. ER85-623-000, et al.]

**Electric Rate and Corporate Regulation Filings; Illinois Power Co., et al.**

July 22, 1985.

Take notice that the following filings have been made with the Commission:

**1. Illinois Power Company**

[Docket No. ER85-623-000]

Take notice that on July 11, 1985, Illinois Power Company ("Illinois Power") tendered for filing a maintenance agreement ("Agreement") supplementing the Interconnection Agreement, dated March 1, 1983, between Southern Illinois Power Cooperative ("SIPC") and Illinois Power.

Illinois Power indicates that this filing is made for the purposes of FERC approval of (1) a maintenance agreement between these two utilities for equipment at the Baldwin Power Plant Substation and (2) a Letter Agreement concerning the sharing of a microwave radio system of benefit to both utilities.

Illinois Power states that a copy of the filing was served upon SIPC and the Illinois Commerce Commission.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

**2. Central Hudson Gas & Electric Corporation**

[Docket No. ER85-616-000]

Take notice that on July 11, 1985, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1984 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1984 amounted to \$1,4004 per Mw.-day to Con Edison and \$4,6661 per Mw.-day to Niagara Mohawk and are the basis on which charges for 1985 have been estimated.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1985 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Hudson Gas & Electric Corporation**

[Docket No. ER85-617-000]

Take notice that on July 11, 1985, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1984 related to subsection service provided to Consolidated Edison of New York, Inc. (Con Edison) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost for 1984 amounted to \$336,830 and will be the basis on which estimated charges for 1985 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1985 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

**4. Consolidated Edison Company of New York, Inc.**

[Docket No. ER85-621-000]

Take notice that on July 11, 1985, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing as an initial rate schedule a Lease and Operating Agreement dated February 28, 1985 between Con Edison and the County of Westchester acting by and through the County of Westchester Public Utility Service Agency ("Westchester"). The rate schedule provides for Westchester to pay a charge for use of Con Edison's facilities to sell and distribute hydroelectric power and energy to Westchester's customers (who are retail consumers of electricity) equal to the charges that would have been billed to such customers under Con Edison's retail electric rate schedule on file with the New York State Public Service Commission less Con Edison's fuel and purchased power costs reflected in such rate schedule.

Con Edison requests a waiver of notice requirements so that the rate schedule can be made effective as of July 1, 1985.

Con Edison states that copies of this filing have been served by mail upon Westchester and the Power Authority of the State of New York, from whom Westchester is purchasing the hydroelectric power and energy to be sold and distributed to Westchester's customers.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

**5. The Cleveland Electric Illuminating Company**

[Docket No. ER85-626-000]

Take notice that on July 12, 1985, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 22 MW of power from the 345 kv interconnection point on CEI's Ashtabula/Erie-West Line with Pennsylvania Electric Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on July 1, 1985.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

**6. Indiana & Michigan Electric Company**

[Docket No. ER85-609-000]

Take notice that on July 8, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate operating subsidiary Indiana and Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Modification No. 13 dated May 31, 1985 to the Agreement dated January 2, 1977 between I&ME and the City of Richmond, Indiana (RP&L). The Commission has previously designated the 1977 Agreement as I&ME's Rate Schedule FERC No. 70.

Section 1 and 2 of Modification No. 13 provide for an increase in transmission demand rate for Short Term Power when I&ME is the supplying party to \$0.46 per kilowatt per week and to \$0.092 per kilowatt per day. Sections 3 and 4 increase the Limited Term Power and Transmission Service demand rates when I&ME is the supplying party to \$2.00 per kilowatt per month. These proposed rates are the same as those which have been filed and accepted for filing by the Commission on behalf of I&ME. In addition, Section 5 of this Modification revises the Billing and Payment provisions of the 1977 Agreement to become consistent with the provisions presently used by the AEP system and have been accepted for filing by the Commission.

AEP requests an immediate effective date, which will allow AEP to offer similar services at similar rates to

electric utility systems interconnected with AEP affiliated operating subsidiaries as established in previous AEP filings, and therefore requests waiver of this Commission's Notice requirements.

Copies of this filing were served upon RP&L, the Public Service Commission of Indiana and the Michigan Public Service Commission.

*Comment date:* August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

#### 7. Kansas Gas and Electric Company

[Docket No. ER84-136-004]

Take notice that on July 8, 1985, Kansas Gas and Electric Company tendered for filing the original and five (5) copies of the refund report for Chanute, Fredonia and Iola, Kansas in accordance with the Commission's letter order dated June 5, 1985. The refund amount reflects the settled rates for Service Schedule A under Docket No. ER84-136-000. There is no refund due Fredonia and Iola since they did not buy firm demand during the refund period.

The refund amounts include interest from the date payment was received through July 5, 1985 at the appropriate interest rate in accordance with 18 CFR 35.19(a).

*Comment date:* August 2, 1985, in accordance with Standard Paragraph H at the end of this notice.

#### 8. Sierra Pacific Power Company

[Docket No. ER85-406-002]

Take notice that on June 21, 1985, Sierra Pacific Power Company, (Sierra) submitted for filing, in compliance with the Commission's suspension order of May 31, 1985, six (6) copies of original sheet No. 4A to Original Volume No. 1 which reflects the deletion of Sierra's proposed purchase power adjustment clause.

*Comment date:* August 2, 1985, in accordance with Standard Paragraph H at the end of this notice.

#### 9. Union Electric Company

[Docket No. ER85-618-000]

Take notice that Union Electric Company, on July 11, 1985, tendered for filing a Letter Agreement dated May 31, 1985, between City of Columbia, Missouri, and Union Electric Company.

Union Electric states the purpose of the Letter Agreement is to revise the rate formula for Transmission Service.

*Comment date:* August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Washington Water Power Company

[Docket No. ER85-594-000]

Take notice that on June 27, 1985, Washington Water Power Company (WWP) tendered for filing a Firm Capacity and Energy Sales Agreement between WWP and Nevada Power Company. WWP states that this agreement provides for WWP to make capacity and energy sales to the Nevada Power Company transacted from purchases made available to WWP by reason of its contract with Arizona Public Service Company (APS). Wholesale Power Agreement, Contract No. 3124-040.00, designated as APS FERC Rate Schedule No. 84.

*Comment date:* August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 85-17789 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-521-000 and ER85-522-000]

#### Kansas Gas & Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Ordering Summary Disposition, Granting Waivers, Establishing Hearing Procedures, and Consolidating Dockets

Issued July 19, 1985.

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

On May 20, 1985, Kansas Gas and Electric Company (KG&E) tendered for filing in Docket No. ER85-521-000: (1) Proposed modifications to fuel adjustment clauses applicable to service to 12 full requirements customers,<sup>1</sup> 12 partial requirements customers,<sup>2</sup> and Kansas Electric Power Cooperative, Inc. (KEPCO)<sup>3</sup>; and (2) a request for waiver of section 35.14 of the Commission's regulations (18 CFR 35.14) to permit the company to retain the fuel cost savings which occur during the testing of new generating units. KG&E has also tendered for filing, in Docket No. ER85-522-000, a proposed agreement with KEPCO providing for the transmission of KEPCO's share of test energy from the Wolf Creek Generating Station (Wolf Creek).<sup>4</sup> The rate for transmission service is set at KG&E's incremental cost to provide transmission losses or 1 mill/kWh of total energy delivered, whichever is greater.<sup>5</sup> KG&E requests waiver of the notice requirements to permit the transmission agreement and the proposed modifications to the fuel adjustment clauses to become effective on June 1, 1985, when Wolf Creek is expected to begin testing.

In seeking a waiver of § 35.14 of the Commission's regulations and proposing modification to its fuel adjustment clause, KG&E requests that the fuel adjustment charges collected from the wholesale customers be determined as though energy provided by generating plants undergoing test operations were not available to KG&E for supply to such customers. The company represents that

<sup>1</sup> The Cities of Acordia, Arma, Blue Mound, Elsmore, Erie, Haven, La Harpe, Moran, Mount Hope, Mulberry, Oxford and Savonburg, Kansas.

<sup>2</sup> The Cities of Augusta, Burlington, Chanute, Coffeyville, Fredonia, Girard, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas, and Missouri Public Service Company.

<sup>3</sup> See Attachment for rate schedule designations.  
<sup>4</sup> Wolf Creek is jointly owned by KG&E, KEPCO and Kansas City Power & Light Company (KCP&L). KG&E and KCP&L each own 47% of Wolf Creek while KEPCO owns the remaining 6%.

<sup>5</sup> Incremental cost is defined as fuel and O&M expenses plus 10%, not to exceed 2 mills/kWh.

it is presently constructing the Wolf Creek station, and that Wolf Creek is expected to begin an estimated three months of test operation soon, during which it will generate approximately 580 million kWh of test energy.

KG&E contends that since the output of Wolf Creek would become part of the energy supply to KG&E's system, the output and fuel consumption of KG&E's other generating units would be reduced substantially.<sup>6</sup> The company states that the savings due to test energy should not automatically flow through the fuel adjustment clauses to wholesale customers because it will not begin to recover its investment in Wolf Creek through rates until commercial operation. KG&E seeks to modify its fuel adjustments clause procedures to value the test energy at an amount equal to the displacement cost of fuel, i.e., fuel costs related to the test energy if that test energy had not been available to serve customers' load. The displacement cost is, thus, the difference between actual costs and a reconstruction of costs without the test power. The company proposes to credit this amount to the investment cost of Wolf Creek. KG&E contends that this will result in valuing test energy at its "fair value" as required by the Uniform System of Accounts, Electric Plant Instructions, Section 3, Paragraph 18 (18 CFR Part 101). The company states that the proposed modifications will affect all wholesale customers entitled to firm power service on an equal basis except the Cities of Chanute, Fredonia and Iola.<sup>7</sup> KG&E states that it will maintain clear and detailed work papers from which the entire process can be verified by auditors.

Notice of the company's filings were published in the *Federal Register*,<sup>8</sup> with comments due on or before June 10, 1985. Kansas Municipal Utilities (Cities) filed timely motions to intervene in both dockets.

Cities request that KG&E's filing in Docket No. ER85-521-000 be suspended and that the company's petition for waiver of § 35.14 of the Commission's regulations be denied. Cities state that KG&E's petition for waiver of § 35.14 should be denied on the grounds that the company failed to submit detailed cost support data to justify the proposed amendments to fuel clauses or to enable the Commission to determine that the

credit to Wolf Creek rate base has, in fact, been made. Cities allege that KG&E could, and should, have referred to rate base data filed in Docket No. ER85-461-000 [KG&E's current general rate increase under investigation) that presumably reflect the rate base credits at issue. Accordingly, Cities request that KG&E's filing in Docket No. ER85-521-000 be suspended and consolidated with Docket Nos. ER85-522-000 and ER85-461-000.

In their motion to intervene in Docket No. ER85-522-000, Cities request consolidation with Docket Nos. ER85-461-000 and ER85-521-000. They state that KG&E's transmission of inexpensive test-run nuclear energy under the terms of the proposed service schedule gives KEPCO a competitive advantage over Cities, but do not otherwise raise any specific issues regarding the filing.

On June 25, 1985, KG&E filed separate answers to Cities' motions to intervene in Docket Nos. ER85-521-000 and ER85-522-000. With respect to Docket No. ER85-521-000, KG&E agrees that no rate base offset has been reflected in its filing in Docket No. ER85-461-000 and that, if the Commission approves modifications to its fuel adjustment clauses, an adjustment to rate base will ultimately be required. KG&E contends, however, that the lack of a rate base adjustment at this time does not warrant denial of its request for waiver. KG&E opposes Cities, request for suspension; in the event that the Commission does suspend its filing, the company asks that the suspension be for a nominal period so that the rates become effective on June 1, 1985.<sup>9</sup> In support, KG&E states that, if the proposed modifications to the fuel adjustment clauses are suspended for five months, it will extend beyond the testing period and result in an irretrievable loss of revenues. The company does not oppose the consolidation of Docket No. ER85-521-000 with Docket No. ER85-461-000 so long as consolidation does not delay the effective date. In Docket No. ER85-522-000, KG&E opposes Cities' intervention and objects to consolidation of that docket with either ER85-461-000 or ER85-521-000, stating that the transmission of KEPCO's ownership share of test energy does not affect Cities.

#### Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely,

<sup>6</sup>KG&E states that Wolf Creek was synchronized to the transmission grid on June 13, 1985 and that, therefore, the filing should be made effective at least by that date.

unopposed motion to intervene in Docket No. ER85-521-000 serves to make Cities a party to the proceeding. Notwithstanding the company's opposition, we find that good cause exists to grant their motion to intervene, given their interest as customers of KG&E, in Docket No. ER85-522-000.

With respect to KG&E's proposed treatment of test energy in its fuel adjustment clauses, the Commission has previously accepted several similar applications by utilities, including one by KCP&L for its 47% share of test energy from Wolf Creek filed in Docket No. ER84-594-000. In *Pennsylvania Power & Light Co.*, Opinion No. 176, 23 FERC ¶ 61,395, we granted the company's request for waiver and approved its modifications to its fuel adjustment clauses. In that case, we found that, absent waiver of the fuel clause regulations, the current ratepayers would receive the benefits of the test energy in the form of decreased fuel costs while the future ratepayers would incur all the cost associated with the test energy through higher rates which result from inclusion of such cost in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, the future ratepayers who ultimately bear the costs associated with the facility undergoing testing will receive benefits through lower rates.

The situation in this case is similar, although not identical, to that in *Pennsylvania Power & Light Co.* Here, KG&E's wholesale customers have not been paying for the total carrying costs associated with Wolf Creek CWIP; thus, some retention of test energy savings by KG&E is appropriate. However, unlike *Pennsylvania Power & Light Co.*, KG&E's present rates (filed in Docket No. ER83-628-000) became effective on February 29, 1984, and include substantial amounts of CWIP investment in Wolf Creek (22.5% of test year balances). Thus, KG&E's wholesale customers have been paying higher rates since February 29, 1984, to compensate KG&E for part of its carrying costs on Wolf Creek. Therefore, we believe that the current customers should be given credit for some of the low-cost test energy that will be generated during the testing of Wolf Creek to reflect the portion of Wolf Creek carrying costs that have been recovered through rates. Accordingly, we shall grant waiver of the fuel clause regulations, accept KG&E's proposed modifications to its fuel adjustment clauses for filing, and suspend them.

<sup>7</sup>KG&E estimates that the reduction in the energy costs during the testing of Wolf Creek will be approximately \$6.8 million on a total company basis due to avoided fuel and purchases power costs.

<sup>8</sup>KG&E's contracts with these cities preclude further rate changes under Service Schedule A until such contracts have terminated.

<sup>9</sup>50 FR 23757 (1985).

We agree with Cities that KG&E has failed to demonstrate that its firm rates have been designed to appropriately reflect the required reduction in Wolf Creek investment cost. KG&E's filed increased rates, which are under investigation in Docket No. ER85-461-000, do not reflect the requisite reduction of investment cost by the additional revenues that will be collected due to the modified fuel adjustment clauses. The rates submitted in Docket No. ER85-461-000 were filed less than a month before the proposed test energy clause, have an effective date tied to Wolf Creek's commercial operation date, and should therefore reflect a Wolf Creek investment net of retained test energy savings. Accordingly, we shall order summary disposition with respect to this issue. The precise level of the offset should be resolved at hearing and KG&E shall reflect the offset in the final compliance rates.

Our review of the company's filing in Docket No. ER85-521-000 and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates filed in Docket No. ER85-521-000 may not yield substantially excessive revenues. Further, since maximum suspension would extend the effectiveness of the fuel adjustments beyond the testing stage and result in the company retaining none of the benefits of test energy, we believe that a nominal suspension is appropriate. We also believe, for this latter reason, that good cause exists to grant waiver of the notice requirements. Accordingly, we shall accept KG&E's submittal in Docket No. ER85-521-000, as modified by summary disposition, and suspend it for one day, to become effective as of June 2, 1985, subject to refund.

Based on our review of the company's proposed transmission agreement filed in Docket No. ER81-521-000, we find that the proposed rates will not produce excessive revenues. The proposed transmission rate is on file in other

KG&E rate schedules. Further, Cities do not state what specific relief they seek and simply request consolidation with KG&E's ongoing rate case. While it is true that KEPCO will receive its ownership share of low cost test energy, and that such low cost test energy may give KEPCO a competitive advantage over Cities, this simply reflects the fact that KEPCO has assumed the cost and risk of constructing 6% of Wolf Creek. Under these circumstances, no reasonable grounds appear to warrant a hearing in this docket. Accordingly, we shall accept the transmission agreement for filing, without suspension or hearing, to become effective June 1, 1985.

We find that common questions of law and fact may be presented in Docket Nos. ER85-521-000 and ER 85-461-000. As a result, we shall consolidate those dockets for purposes of hearing and decision.

The Commission orders:

(A) Summary disposition is hereby ordered with respect to the required reduction of Wolf Creek investment cost by the additional revenues that will be collected due to the modified fuel adjustment clauses. KG&E shall file revised fuel clauses reflecting the offset in the final compliance rates at the conclusion of this proceeding.

(B) KG&E's request for waiver of § 35.14 of the Commission's regulations is hereby granted.

(C) KG&E's request for waiver of the notice requirements is hereby granted.

(D) KG&E is hereby ordered to file within thirty (30) days of the date of issuance of this order or the end of the testing of Wolf Creek, whichever is later, the accounting entries made to effect its treatment of test power, including a detailed explanation of the derivation of all figures.

(E) KG&E's proposed rates, as modified by summary disposition, in Docket No. ER85-521-000 are hereby accepted for filing and suspended for one day, to become effective June 2, 1985, subject to refund.

(F) KG&E's proposed transmission agreement in Docket No. ER85-522-000 is hereby accepted for filing without suspension or hearing to become effective June 1, 1985.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing

shall be held concerning the justness and reasonableness of KG&E's rates in Docket No. ER85-521-000.

(H) Docket Nos. ER85-521-000 and ER85-522-000 are hereby terminated. The evidentiary proceedings established herein are designated as Docket No. ER85-521-001.

(I) Docket No. ER85-521-001 is hereby consolidated with Docket No. ER85-461-001 for purposes of hearing and decision.

(J) The administrative law judge designated to preside in Docket No. ER85-461-001 shall determine procedures best suited to accommodate consolidation of Docket No. ER85-521-001 with the pending proceeding.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

ATTACHMENT.—KANSAS GAS & ELECTRIC  
COMPANY RATE SCHEDULE DESIGNATIONS

DOCKET NO. ER85-521-000

Designation	Other party
(1) Supplement No. 16 to Rate Schedule FPC No. 124	City of Arcadia
(2) Supplement No. 17 to Rate Schedule FPC No. 114	City of Arma
(3) Supplement No. 15 to Rate Schedule FPC No. 117	City of Blue Mound
(4) Supplement No. 14 to Rate Schedule FPC No. 120	City of Bronson
(5) Supplement No. 12 to Rate Schedule FPC No. 116	City of Elmore
(6) Supplement No. 17 to Rate Schedule FPC No. 122	City of Haven
(7) Supplement No. 16 to Rate Schedule FPC No. 115	City of La Harpe
(8) Supplement No. 16 to Rate Schedule FPC No. 125	City of Mindammines
(9) Supplement No. 15 to Rate Schedule FPC No. 118	City of Moran
(10) Supplement No. 15 to Rate Schedule FPC No. 123	City of Mount Hope
(11) Supplement No. 16 to Rate Schedule FPC No. 119	City of Mulberry
(12) Supplement No. 11 to Rate Schedule FPC No. 121	City of Searnsburg
(13) Supplement No. 6 to Rate Schedule FPC No. 159	City of Erie
(14) Supplement No. 8 to Rate Schedule FPC No. 157	City of Oxford
(15) Supplement No. 9 to Rate Schedule FPC No. 135	City of Oxford
(16) Supplement No. 10 to Rate Schedule FPC No. 152 (Supersedes Supplement No. 5)	Missouri Public Service Company
(16) Supplement No. 21 to Rate Schedule FPC No. 151	Kansas Electric Power Cooperative, Inc.
(19) Supplement No. 21 to Rate Schedule FPC No. 134 (Supersedes Supplement No. 9)	City of Augusta
(20) Supplement No. 14 to Rate Schedule FPC No. 149 (Supersedes Supplement No. 5)	City of Cotteyville
(21) Supplement No. 14 to Rate Schedule FPC No. 154	City of Mulvane
(22) Supplement No. 14 to Rate Schedule FPC No. 153	City of Neodesha
(23) Supplement No. 19 to Rate Schedule FPC No. 156 (Supersedes Supplement No. 2)	City of Wellington
(24) Supplement No. 14 to Rate Schedule FPC No. 155	City of Winfield
(25) Supplement No. 7 to Rate Schedule FPC No. 157	City of Grant

ATTACHMENT.—KANSAS GAS & ELECTRIC  
COMPANY RATE SCHEDULE DESIGNATIONS—  
Continued

Designation	Other party
(26) Supplement No. 12 to Rate Schedule FERC No. 144.	City of Burlington.

## DOCKET No. ER85-522-000

Designation	Description
Kansas Gas & Electric Company Rate Schedule FERC No. 161.	Test Energy Transmission Service Schedule.

[FR Doc. 85-17794 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

## [Docket No. ST81-260-005]

**Mustang Fuel Corp. Application for Approval of Revised Rates for Transportation of Gas Pursuant to § 284.123(b)(2) of the Commission's Regulations**

July 19, 1985.

Take notice that on May 1, 1985, Mustang Fuel Corporation (Mustang), an Oklahoma intrastate pipeline company, filed in the above-captioned docket an application pursuant to Subpart C of Part 284 of the Commission's regulations for approval of a revised rate for the transportation of natural gas on behalf of El Paso Natural Gas Company (El Paso) in Docket No. CP82-206, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Mustang has proposed to charge El Paso 41.54 cents per Mcf, effective May 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17795 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

## [Docket Nos. TA85-3-28-000, 001]

**Panhandle Eastern Pipe Line Co.;  
Change in Tariff**

July 22, 1985.

Take notice that on July 17, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-Second Revised Sheet No. 3-A  
Twenty-Ninth Revised Sheet No. 3-B  
Thirteenth Revised Sheet No. 3-C.1  
Thirteenth Revised Sheet No. 3-C.2  
Thirteenth Revised Sheet No. 3-C.3

The proposed effective date of these revised tariff sheets is September 1, 1985.

Panhandle states that these revised tariff sheets reflect a net decrease in the commodity PGA rate adjustment of (20.78¢) per Dt. This adjustment includes: (1) In the projected purchased gas cost a (0.42¢) per Dt. decrease component; (2) a (9.27¢) per Dt. decrease in the surcharge to recover the current deferred account balance at May 31, 1985 and related carrying charges; and (3) an (11.09¢) per Dt. decrease in the surcharge for the current period amortization of the deferred account balance at May 31, 1983, pursuant to Docket No. TA83-2-28-000.

In addition, the revised tariff sheets filed herewith reflect the termination, as of August 31, 1985, of the mechanism whereby customers, under certain conditions, could receive a 14¢ per dt reduction in the gas cost portion of the applicable commodity volume charges for all volumes delivered during the June 1 through August 31, 1985 period, as approved by the Commission's order dated May 31, 1985 in Docket Nos. TA85-2-28-000 and TA85-2-28-001. The customers could elect to participate in the interim reduction by not nominating or participating in the 10% contractual entitlement option provided for in the Commission's omnibus SMP order of September 28, 1984 in Docket No. CI83-269-000, *et al.* In accordance with Ordering Paragraph (B)(5) of the Commission's Order dated May 31, 1985 in Docket No. TA85-2-28-000, Panhandle is reflecting the credit of the full current PGA recovery rate to Account No. 191 for all sales during the June 1, 1985 through August 31, 1985 period in which the interim rate reduction was in effect.

Panhandle has included in this filing projected gas purchase volumes from its suppliers for the six-month period commencing September 1, 1985, as detailed in section 18.2, Schedule A. All projected gas costs for purchases from producer suppliers reflected in this PGA

filing have been calculated utilizing the "historical cost" procedures consistent with the requirements of the Commission's PGA regulations.

Panhandle further states that the revised tariff sheets filed herewith also reflect net decreases of (\$.01) and (0.14¢) to Panhandle's D<sub>1</sub> and D<sub>2</sub> demand rates, respectively.

Panhandle's previous PGA filing in Docket No. TA85-1-28-000 (March 1, 1985 PGA) included a line-item adjustment which projected a reduction in the cost of gas associated with its ongoing negotiations with its producer-suppliers during that PGA period, with respect to those suppliers that became deregulated at January 1, 1985. The Commission's Order issued February 28, 1985 in Docket Nos. TA85-1-28-000 and TA85-1-28-001, accepted this adjustment, subject to Panhandle assuming the risk of any undercollection that might result and the burden of showing why it should be permitted to recover any such undercollection. Panhandle acknowledges that the undercollection at-risk condition imposed by the Commission's February 28, 1985 Order remains in effect for the remainder of the March PGA period, that is, through August 31, 1985.

Inasmuch as the instant filing includes only the first 3 months of that period (March-May) Panhandle is unable to determine at this time the full impact of its renegotiation efforts related to this projected cost of gas reduction. Panhandle's next regularly scheduled PGA filing, to be effective March 1, 1986 will include the remaining 3 months of the March PGA period (June-August).

Therefore, Panhandle will be able to demonstrate in its next PGA filing, the effect of its renegotiation efforts and meet the burden of responsibility it has with respect to undercollections that occurred, if any, during the six-month period, when it can review the deferred account activities for the entire March through August 1985 period. The Commission has recognized this PGA timing dichotomy in a recent PGA order, where it reserved decision on the appropriateness of these type costs until it can review the Account No. 191 balances for the entire six-month period.

Trunkline Gas Company (Trunkline) is filing concurrently herewith revised rates in compliance with a letter order issued by the Commission on July 9, 1985 in Docket No. TA84-2-30-003 (PGA84-a). With respect to the pricing of its purchases from Trunkline, Panhandle has, during this PGA period, utilized Trunkline's interim rates which are currently in effect as further described below, subject to the outcome

of Trunkline's Docket No. RP83-93 *et al.* proceeding, and as adjusted for compliance with the Commission's order of July 9, 1985.

On March 25, 1985 Trunkline filed revised tariff sheets to implement interim reduced rates which rates were approved by the Commission's letter order dated April 10, 1985 in Docket No. RP83-93-006, subject to restoration of the amount of the reduction if the Stipulation and Agreement in Docket No. RP83-93 (Phase I), *et al.* is disapproved or withdrawn. Accordingly, the reflection of Trunkline's interim rates in the instant Panhandle PGA filing is dependent upon and coextensive with the duration of the interim Trunkline rate reduction, and the outcome of Trunkline's Docket No. RP83-93 proceeding.

Panhandle has also included in this filing a continuation of the three-year amortization of the deferred account balance at May 31, 1983 as approved in Docket No. TA83-2-28-000. Consistent with the Commission's Order dated August 31, 1983, Opinion No. 223 dated June 1, 1984, and Order on Rehearing dated July 25, 1984, no carrying charges on the amortized deferred account have been included herein. On September 11, 1984 Panhandle filed for court review of the Commission's Orders dated June 1, 1984 (Opinion No. 223) and July 25, 1984. This filing is being made without prejudice to Panhandle's claims as stated in its request for court review.

In accordance with the Commission's Order dated February 28, 1984 in Docket No. TA84-1-28-002 (March 1, 1984 PGA) Panhandle flowed-through during the twelve-month period ending February 28, 1985, refunds provided for in Article V, Section 4 of the Stipulation and Agreement in Docket No. RP82-58, which related to the Tax Normalization and related issues in Docket No. RP78-62 (Remand) and RP80-78.

In Docket No. TA85-1-28-000, *et al.* (March 1, 1985 PGA) Panhandle reflected the transfer of the estimated negative remaining balance at February 28, 1985 of approximately \$4.4 million related to the tax normalization refund in Sub-Account 191.1008, to Sub-Account 191.1009. The Commission's Order dated February 28, 1985 accepted Panhandle's proposal but (1) required Panhandle to adjust its refund sub-account to reflect actual sales during the last three months of the amortization period and (2) required Panhandle to assume the risk of any underrecovery of its gas cost associated with this proposal.

Panhandle submits that since the actual balance at February 28, 1985 in Sub-Account 191-1008 was less than it

had estimated (negative \$5.4 million as compared to the estimated negative \$4.4 million) that no undercollection occurred, due to the fact that the actual sales for the December 1984 through February 1985 were lower than the projected sales volumes. In accordance with the Commission's Order dated February 28, 1985, Panhandle has reflected in the instant filing the transfer of the actual negative remaining balance of approximately \$5.4 million in Sub-Account 191.1008 to Sub-Account 191.1009. Likewise, the actual associated carrying charge balance has been transferred to the appropriate current sub-account.

Additionally, the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with section 21 of the General Terms and Conditions of Panhandle's tariff.

In accordance with section 18 of the General Terms and Conditions of its tariff, Panhandle has estimated sales volumes for the six-month period, September 1, 1985 through February 28, 1986. A tabulation of these estimated sales volumes for the six-month period beginning September 1, 1985 is submitted herewith in section 18.2.

Panhandle's Schedule A included herein reflects costs under the Commission's Order No. 94-A for gas to be acquired by Panhandle during the six-month period commencing September 1, 1985. Panhandle will supply to the Commission within thirty days hereof, under separate cover, additional workpapers containing the information required under section 271.1104(f) of the Commission's Regulations for production-related costs reflected in this filing.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith to become effective September 1, 1985.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17796 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-7-002, *et al.*]

### Southwestern Gas Pipeline, Inc., *et al.*; Extension Reports

July 19, 1985

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before August 19, 1985, file with the Federal Energy Regulatory Commission.

Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission

will be considered by it in determining the associate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

Docket No.	Transporter/owner	Recipient	Date filed	Part 294 subpart	Effective date	Expiration date <sup>1</sup>
ST89-7-002	Southwestern Gas Pipeline, Inc., P.O. Box 4000, The Woodlands, TX 77387.	Natural Gas Pipeline Co. of America	06-21-85	C	10-01-85	
ST82-10-002	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	Bay State Gas Co.	06-27-85	B	10-01-85	
ST82-164-002	Seagull Energy Corp., 1001 Fannin, Houston, TX 77062.	El Paso Natural Gas Co.	06-19-85	C	10-08-85	
ST82-298-002	Pacific Gas Transmission Co., 245 Market St., San Francisco, CA 94105.	Pacific Interstate Transmission Co.	09-24-85	G	10-01-85	
ST83-620-001	Arkansas Western Gas Co., P.O. Box 1408, Fayetteville, AR 72702.	Natural Gas Pipeline Co. of America	06-28-85	C	10-03-85	
ST83-728-001	Florida Gas Transmission Co., P.O. Box 1188, Houston, TX 77001.	Winnie Pipeline Co.	06-19-85	B	09-19-85	
ST84-44-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79976.	Endevco Pipeline Co.	06-25-85	B	09-23-85	
ST84-51-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Transcontinental Gas Pipe Line Corp.	06-19-85	G	09-26-85	
ST84-73-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Intrastate Gathering Corp.	06-27-85	B	10-01-85	
ST84-83-002 <sup>2</sup>	Delta Natural Gas Co., Inc., Rt. 1, Box 30-A, Winchester, KY 40391.	Columbia Gas Transmission Corp.	06-28-85	G(HT)	07-01-85	09-26-85

<sup>1</sup> The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.  
<sup>2</sup> These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noting of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-17798 Filed 7-25-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER85-534-000, et al.]

**Southwestern Electric Power Co.;  
Order Accepting for Filing and  
Suspending Rates, Denying Waiver,  
Ordering Summary Disposition,  
Establishing Hearing Procedures, and  
Consolidating Dockets**

Issued: July 22, 1985.

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

On May 23, 1985, Southern Power Company (SWEPCO) submitted for filing a proposed rate increase for firm power service to the City of Bentonville, Arkansas (Bentonville).<sup>1</sup> SWEPCO provides service to Bentonville pursuant to a firm power agreement which provides for a formula rate. Beginning with the in-service date of SWEPCO's Pirkey Unit No. 1, the firm power agreement provides for an annual true-up to recompute the prior year's rate based on actual cost data, including SWEPCO's actual earned return. The rate developed under the true-up will also become the interim rate to be charged until the next true-up. Based on SWEPCO's 1984 data, SWEPCO proposes to increase the common equity component from 15.7% to 18.75%. This would increase revenues by about

\$136,000. The firm power agreement provides that the revised rates will become effective on the first day of the month following the commercial operation date of SWEPCO's Pirkey Unit No. 1. SWEPCO states that Pirkey Unit No. 1 was placed in commercial operation on January 3, 1985, and, therefore, SWEPCO requests waiver of the notice requirements to permit an effective date of February 1, 1985.

Notice of the filing was published in the *Federal Register*<sup>2</sup> with comments, protests, or motions to intervene due on or before June 25, 1985. No comments were filed.

**Discussion**

In *Southwestern Electric Power Co.*, Docket No. ER85-468-000, 31 FERC ¶ 61,389 (1985) and *New England Power Co.*, Docket No. ER85-475-000 et al., 31 FERC ¶ 61,376 (1985), we announced that, in the future, we would reject all filings which contain an automatic formula rate for return on common equity. Because SWEPCO's filing in this docket predates our orders in Docket Nos. ER85-468-000 and ER85-475-000, we shall not reject SWEPCO's submittal in its entirety. However, we shall reject SWEPCO's return formula in this docket and accept for filing a rate which incorporates a fixed return on common equity of 18.75%, the current result of the formula. SWEPCO shall file an appropriate rate schedule within 30 days.

Our review of SWEPCO's submittal indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable and may yield substantially excessive revenues, as described in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary review suggests that the rates in this docket may yield substantially excessive revenues. We shall therefore suspend SWEPCO's rates, as modified, for five months.

SWEPCO requests waiver of the notice requirements to permit an effective date of February 1, 1985. In support of the requested waiver, SWEPCO states that it tendered the filing as soon as practicable and that the customer supports the proposed waiver. SWEPCO knew at least by January 3, 1985 (the day the Pirkey Unit No. 1 became operational), that the agreement provided for a revised equity return; however, SWEPCO did not tender its filing until May 23, 1985. Consistent with the Commission's action in Docket Nos. ER85-424-000 and ER85-425-000<sup>3</sup> we

<sup>1</sup> SWEPCO's submittal is designated as Supplement No. 9 to Rate Schedule FERC No. 69.

<sup>2</sup> 50 FR 24680 (1985).

<sup>3</sup> 31 FERC ¶ 61,286 (1985).

do not find that SWEPCO has demonstrated good cause for waiver and, therefore, we shall deny the company's request. Accordingly, we shall suspend SWEPCO's rates, as modified by summary disposition, for five months from sixty days after filing to become effective on December 23, 1985, subject to refund.

We find that common questions of law and fact may be presented in Docket Nos. ER85-424-001, ER85-425-001, ER85-468-001, and ER85-534-000. As a result, we shall consolidate this docket with Docket Nos. ER85-424-001, *et al.*, for purposes of hearing and decision.

The Commission orders:

(A) Summary disposition is hereby ordered, as noted in the body of this order, with respect to SWEPCO's proposed equity adjustment mechanism. SWEPCO is hereby ordered to file, within thirty (30) days of the date of this order, a revised rate schedule which establishes a fixed return on common equity of 18.75%.

(B) SWEPCO's request for waiver of the notice requirements is hereby denied.

(C) SWEPCO's proposed rates, as modified by summary disposition, are hereby suspended for five months from sixty days after filing to become effective on December 23, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rates.

(E) Subdocket -000 in Docket No. ER85-534-000 is hereby terminated, and Docket No. ER85-534-001 is assigned to the evidentiary hearing ordered herein.

(F) Docket Nos. ER85-424-001, ER85-425-001, ER85-468-001, and ER85-534-001 are hereby consolidated for purposes of hearing and decision.

(G) The presiding administrative law judge designated to preside in Docket Nos. ER85-424-001, *et al.* shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17797 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-30-000]

**State of West Virginia, Department of Mines, Oil and Gas Division, Section 108 Determination Consolidated Gas Transmission Corp., W. W. McDonald Land Co. No. 11212 Well, FERC JD No. 84-24582; Petition To Reopen and Vacate Final Well Category Determination and Request To Withdraw**

July 22, 1985.

Take notice that on May 18, 1985, Consolidated Gas Transmission Corporation (Consolidated) filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate a final well category determination under section 108 of the Natural Gas Policy Act of 1978 for the W. W. McDonald Land Co. No. 11212 well, located in Mingo County, West Virginia, and to withdraw its request for the determination. Notice of West Virginia's section 108 determination was received on March 14, 1984, and became final on April 28, 1984, 45 days following notification, pursuant to section 275.202(a) of the Commission's regulations. Consolidated states that based on production records, no basis exists for the section 108 determination.

The question of whether refunds, plus interest calculated under § 154.102(c) of the regulations, will be required is a matter which will be considered by the Commission in ruling on the subject petition.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, not later than 30 days following publication of the notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this

petition are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17799 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-1106-000]

**THC Pipeline Co.; Petition for Approval of Fair and Equitable Rate**

July 19, 1985.

Take notice that on June 10, 1985, THC Pipeline Company (THC), a Hinshaw pipeline subject to the jurisdiction of the Railroad Commission of Texas, filed in Docket No. ST85-1106-000 a petition pursuant to Subpart C of Part 284 of the Commission's regulations. The petition requests approval of a fair and equitable rate of 13.29 cents per Mcf or 12.9 cents per MMBtu for service under a blanket certificate issued in Docket No. CP85-107-000 for the transportation of natural gas through its system, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-17800 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-141-002]

**Texas Gas Transmission Corp.; Tariff Filing**

July 19, 1985.

Take notice that on July 15, 1985, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Tariff Sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2, to become effective on November 1, 1985.

The tariff sheets are being submitted, under protest, with supporting work

papers, as ordered by the Commission's "Order Accepting for Filing and Suspending Proposed Tariff Sheets Subject to Refund and Conditions, Rejecting Proposed Tariff Sheets and Granting Late Interventions," 31 FERC Para. 61,236. That Order directed Texas Gas to file revised tariff sheets in compliance with the Commission's interpretation of the *North Penn* methodology concerning its claimed working capital allowance for current gas in storage.

Copies of the filing were served upon the intervenors, jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17801 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-411-005]

#### Transcontinental Gas Pipe Line Corp.; Petition To Amend

July 18, 1985.

Take notice that on July 10, 1985, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas, 77251, filed in Docket No. CP79-411-005 a petition to amend further the order issued December 3, 1979, in Docket No. CP79-411, pursuant to section 7(c) of the Natural Gas Act, so as to authorize an additional point of delivery for natural gas transported for the account of Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP79-411 it was authorized to transport up to 150,000 Mcf of natural gas per day for the account of Northern. Petitioner further states it receives this gas at the interconnection of its Southwest

Louisiana Gathering System and the tailgate of the separation plant of U-T Offshore System (UTOS) in Johnson's Bayou, Cameron Parish, Louisiana. Petitioner states that it then delivers equivalent quantities of natural gas for the account of Northern at one or more of the following: (1) The interconnection between the facilities of Petitioner and Northern at Northern's Starks Compressor Station located in Calcasieu Parish, Louisiana; (2) the interconnection between Petitioner and Florida Gas Transmission Company near Vinton, Calcasieu Parish, Louisiana; (3) the interconnection between Petitioner and Houston Pipe Line Company (HPL) at Katy, Waller County, Texas; (4) the interconnection between Petitioner and HPL at Fulshear, Fort Bend County, Texas; and (5) the interconnection between Petitioner and HPL at Bammel, Harris County, Texas. Petitioner states that this gas is purchased by Northern from eleven blocks located offshore Texas and Louisiana. Petitioner states further that this gas is transported to UTOS by High Island Offshore System.

Petitioner states that the proposed amendment will add a further delivery point at the interconnection between Petitioner and Louisiana Resources Company in Johnson's Bayou, Cameron Parish, Louisiana. Petitioner proposes to perform this transportation service under the terms and conditions of its Rate Schedule X-219.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 29, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest, in accordance with the requirements of Rule 214 or Rule 211, respectively, of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Commission's Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17790 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-4-29-000, 001]

#### Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 22, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on July 17, 1985, tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2. The sheets are proposed to become effective on September 1, 1985 and were filed in accordance with Article X of Transco's "Settlement Agreement As To Rates" approved by Commission order dated July 25, 1984 in Docket No. RP83-137. The revised tariff sheets reflect a "tracking" rate reduction of 0.3¢ per dt in the commodity rate or delivery charge of Transco's sales and long-haul transportation rate schedules.

Article X of the settlement agreement provides for adjustments to Transco's jurisdictional rates to give effect to inclusion in rate base of any decreases in the amount of Transco's outstanding advance payments after March 31, 1984. The rate reduction proposed is occasioned by a decrease of \$12,381,587 in the advance payment balance of Transco from that which existed at December 31, 1984.

Transco further states that copies of the instant filing have been mailed to each of its customers, and State Commissions and other parties to Docket No. RP83-137.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17802 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-19-000]

**Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff**

July 19, 1985.

Take notice that on July 15, 1985, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2. The tariff sheets are proposed to be effective August 15, 1985 with the exception of First Revised Sheet No. 233A which is proposed to be effective November 1, 1979.

Transco states that these tariff sheets are being filed in order to update Transco's tariffs by revising the Title Page (designating a new person to whom correspondence in regard to the tariff should be directed), Table of Contents, Preliminary Statement, System Maps, Index of Purchasers, etc. The cover pages of Rate Schedules X-213 and X-225 have been filed to change the name of Carolina Pipeline Company, Inc. to South Carolina Pipeline Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17803 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-30-009]

**Trunkline Gas Co.; Change in Tariff**

July 22, 1985.

Take notice that on July 17, 1985 Trunkline Gas Company (Trunkline) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

**Description and Proposed Effective Date**

Second Substitute Forty-Sixth Revised Sheet No. 3-A—September 1, 1984

First Substitute Forty-Seventh Revised Sheet No. 3-A—March 1, 1985

These revised tariff sheets are being filed at this time in compliance with a letter order issued by the Commission on July 9, 1985, in Docket No. TA84-2-30-003 (PGA84-a). In the July 9, 1985 order the Commission directed Trunkline to recompute its Deferred Purchased Gas Account (Account No. 191), eliminating an adjustment of \$5,638,222 related to an exchange imbalance, and related carrying charges which occurred at the time Trunkline changed the basis of its PGA tariff from a unit of purchase to a unit of sales method.

The revised tariff sheets submitted herewith reflect this adjustment to Account No. 191, and related carrying charges, and are proposed to be effective September 1, 1984 and March 1, 1985, as further described below.

**September 1, 1984**

The September 1, 1984 revised tariff sheet reflects a reduced PGA rate adjustment of (1.96¢) per Dt. in Trunkline's applicable commodity and one-part rates.

This proposed rate reduction represents a downward revision of the PGA rate adjustment which became effective September 1, 1984 in Docket No. TA84-2-30-000, *et al.*, and is being filed at this time in compliance with the Commission's letter order dated July 9, 1985.

The instant filing reflecting these revisions results in: (1) A (1.95¢) per Dt. decrease in the surcharge to recover the current Deferred Account Balance at May 31, 1984 and (2) a (0.01¢) per Dt. decrease in the related carrying charges.

This change in Trunkline's September 1, 1984 rates also impacts the subsequent change in rates at March 1, 1985, as described below.

**March 1, 1985**

On March 25, 1985 Trunkline filed revised tariff sheets to implement interim reduced rates which were approved by the Commission's letter order dated April 10, 1985 in Docket No. RP83-93-006, subject to restoration of the amount of the reduction if the Stipulation and Agreement in Docket No. RP83-93 (Phase I), *et al.* is disapproved or withdrawn. Accordingly, the March 1, 1985 revised tariff sheet transmitted herewith is likewise dependent upon and coextensive with, the duration of the interim Trunkline rate reduction and the outcome of Trunkline's Docket No. RP83-93 proceeding.

The March 1, 1985 revised tariff sheet reflects Trunkline's interim settlement

rates, adjusted to reflect the (1.96¢) per Dt. reduced PGA rate adjustment described above in connection with Trunkline's September 1, 1984 PGA.

Copies of this filing were served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-17804 Filed 7-25-85; 8:45 am]

BILLING CODE 6717-01-M

**Western Area Power Administration****Parties Indicating Interest in Spring Canyon Pumped Storage Project Arizona; Non-Federal Participation in Proposed Planning Investigation**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Parties Indicating Intent to Participate in Spring Canyon Pumped Storage Project, Arizona, Planning Investigation; Deadline for Letters of Intent.

**SUMMARY:** In accordance with the March 29, 1985, Federal Register notice (50 FR 12622-12623), the Bureau of Reclamation (Bureau) and Western Area Power Administration (Western) held a public information forum to explain the Spring Canyon Pumped Storage Project and the public access on April 23, 1985, at the Showboat Hotel, Las Vegas, Nevada. During the public information forum, Western explained that the public process was to seek to identify additional participants and to identify future needs for peaking power development in the Lower Colorado River Basin. The Bureau explained the planning investigation process and technical details of the proposed project, including the estimated costs. At the April 23 forum, any additional interested parties were asked to submit their

letters of intent to participate. Listed below are all entities that have at this time expressed an intent to participate in this project. The planning cost for non-Federal participants is estimated to be \$1,500 per megawatt (MW) of specified capacity. A firm estimate of the project planning cost will be developed prior to execution of the planning agreement. Non-Federal entities are expected to fund at least 50 percent of the project planning cost. Each entity will bear a share of such cost in proportion to the amount of capacity specified in its letter of intent. The United States' funding goal is 50 percent of the project planning costs which includes the specified amount of capacity for the United States and United States consideration, not yet determined, for the use of Federal property.

Non-Federal entity	Specified amount of capacity <sup>1</sup> (megawatt)
Arizona Electric Power Cooperative	20
Arizona Public Service Company	100
Citizens Utilities Company	20
Colton, City of	5
Colorado River Commission of NV	15
Imperial Irrigation District	25
Los Angeles Department of Water and Power	150
Nevada Power Company	250
Public Service Company of New Mexico	100
Riverside, City of	30
Salt River Project	200
San Diego Gas & Electric Company	200
Southern California Edison Company	250
Tucson Electric Power Company	200
Wellton-Mohawk Irrigation and Drainage District	5
Total (including U.S.)	1,870

<sup>1</sup> United States specified amount of capacity is 300 MW.

Letters of interest were also received from Electrical District Number One, Electrical District Number Three, and Pacific Gas and Electric Company with no specific levels of participation indicated; therefore, they have not been listed among entities intending to participate.

**DATES:** Any additional letters of intent to participate must be submitted to the address listed below within 30 days of the publication date of this notice. This will be the final opportunity to participate and failure to file the requested letters of intent will preclude participation.

**ADDRESS:** Any additional letters of intent to participate should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293-8800.

Issued at Golden, Colorado, July 18, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-17756 Filed 7-25-85; 8:45 am]

BILLING CODE 8450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51578; TSH-FRL 2860-6]

### Certain Chemicals Premanufacture Notices

#### Correction

In FR Doc. 85-16143, beginning on page 27845, in the issue of Monday, July 8, 1985, make the following correction:

On page 27846, second column, under the heading P85-1119, seventh line, "300,000" should read "30,000".

BILLING CODE 1505-01-M

[OPP-66120; FRL-2861-3]

### Certain Pesticide Products; Intent To Cancel Registrations

#### Correction

In FR Doc. 85-16249, appearing on page 28121, in the issue of Wednesday, July 10, 1985, make the following correction:

In the table in the middle of the page, the entry with Registration No. 655-336, in the Product name column, "Prenton Sulfoxide" should read "Prenton Sulfoxide Technical".

BILLING CODE 1505-01-M

[OPP-30229A; FRL-2852-7]

### Glyco Inc.; Approval of Pesticide Product Registrations

#### Correction

In FR Doc. 85-14866 appearing on page 26408 in the issue of Wednesday, June 26, 1985, make the following corrections:

1. In the first column, in the **SUMMARY**, the fifth line should read:

"Glycoserve™ Lad", which contain active.

2. In the second column, the eighth line should read:

Glycoserve™ and Glycoserve™ Lad.

3. In the second column, in the second paragraph, the second, third and fourth lines should read:

March 8, 1985 for Glycoserve™ (EPA Reg. No. 38906-6) and Glycoserve™ Lad (EPA Reg. No. 38906-5) for uses as a.

4. In the second column, in the fifth paragraph, in the second line, "provide" should read "provides".

5. In the third column, in the third line, "MC No. 2" should read "CM #2".

BILLING CODE 1505-01-M

[OPTS-51581; FRC-2869-8]

### Certain Chemicals Premanufacture Notices

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 85-1187, 85-1188 and 85-1189—October 9, 1985.

P 85-1190, 85-1191, 85-1192 and 85-1193—October 12, 1985.

P 85-1194, 85-1195, 85-1196, 85-1197, 85-1198, 85-1199, 85-1200, 85-1201, 85-1202, 85-1203, 85-1204, 85-1205, 85-1206, 85-1207, 85-1208, 85-1209, 85-1210, 85-1211, 85-1212, and 85-1213—October 13, 1985.

P 85-1214 and 85-1215—October 14, 1985.

P 85-1216—October 15, 1985.

Written comments by:

P 85-1187, 85-1188 and 85-1189—September 9, 1985.

P 85-1190, 85-1191, 85-1192 and 85-1193—September 12, 1985.

P 85-1194, 85-1195, 85-1196, 85-1197, 85-1198, 85-1199, 85-1200, 85-1201, 85-1202, 85-1203, 85-1204, 85-1205, 85-1206, 85-1207, 85-1208, 85-1209, 85-1210, 85-1211, 85-1212 and 85-1213—September 13, 1985.

P 85-1214 and 85-1215—September 14, 1985.

P 85-1216—September 15, 1985.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51581]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection

Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

**FOR FURTHER INFORMATION CONTACT:**

Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**P 85-1187**

*Manufacturer.* Confidential.

*Chemical.* (S) Polymer of di propylene glycol, 1,3 butylene glycol, tetra hydro phthalic anhydride, dibutyl tin oxide.

*Use/Production.* (G) Polymer for coating metal parts. Prod. range: 14,500-20,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 4 workers, up to 3 hrs/da, up to 7 da/yr.

*Environmental Release/Disposal.* 20 kg/batch incinerated and disposed of by landfill and publicly owned treatment works (POTW).

**P 85-1188**

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted bis phenyl isobenzofuranone.

*Use/Production.* (G) Captive intermediate used in manufacturing a minor component for paper coatings. Prod. range: Confidential.

*Toxicity Data.* Ames Test: Negative.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Disposal by POTW.

**P 85-1189**

*Manufacturer.* Allied Corporation.

*Chemical.* (S) 2-Butanone, O,O'-(ethenyl methyl silylene)dioxime, (E-Z).

*Use/Production.* (S) Chain extender for silicone polymers used in industrial and construction applications. Prod. range: Confidential.

*Toxicity Data.* Acute oral: Between 2.0 and 3.0 mL/kg; Acute dermal: Between 0.5 and 2.0 mL/kg; Irritation: Skin—Severe, Ames Test: Negative; Skin sensitizer: Extreme sensitizer.

*Exposure.* Manufacture: dermal, a total of 8 workers, up to 8 hrs/da, up to <40 da/yr.

*Environmental Release/Disposal.* No release.

**P 85-1190**

*Manufacturer.* General Electric Company.

*Chemical.* (G) Reaction of products of polycarbonate and poly(butadiene styrene).

*Use/Production.* (S) Automotive, electrical appliances, business machines and other. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Release to land. Disposal by local, state and federal regulations.

**P 85-1191**

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy amine polymer.

*Use/Production.* (S) Component of matrix resin and adhesive for structural composites. Prod. range: Confidential.

*Toxicity Data.* Acute oral: Low order; Acute dermal: Low order; Irritation: Skin—Mild, Eye—Mild.

*Exposure.* Confidential.

*Environmental Release/Disposal.* 0.5 kg/batch released to air and land. Disposal by incineration and approved landfill.

**P 85-1192**

*Manufacturer.* Confidential.

*Chemical.* (G) Amine epoxy polymer.

*Use/Production.* (S) Component of matrix resin for manufacture and adhesives for structural composites. Prod. range: Confidential.

*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* 0.5 kg/batch released to air and land. Disposal by incineration and approved landfill.

**P 85-1193**

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy amine polymer.

*Use/Production.* (S) Component of matrix resin and adhesive for structural composites. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* 0.5 kg/batch released to air and land. Disposal by incineration and approved landfill.

**P 85-1194**

*Manufacturer.* Essex Specialty Products, Inc.

*Chemical.* (G) Silylated isocyanate functional aliphatic polyurea lacquer.

*Use/Production.* (S) Site-limited intermediate for use in polymer in coating manufacture. Prod. range: 7,500-20,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da.

*Environmental Release/Disposal.* No release.

**P 85-1195**

*Manufacturer.* Essex Specialty Products, Inc.

*Chemical.* (G) Partially silylated aliphatic isocyanate oligomer.

*Use/Production.* (S) Site-limited intermediate for use in polymer in coating manufacture. Prod. range: 1,125-3,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da.

*Environmental Release/Disposal.* No release.

**P 85-1196**

*Manufacturer.* Essex Specialty Products, Inc.

*Chemical.* (G) Amino functional polysilane adduct.

*Use/Production.* (S) Site-limited intermediate for use in polymer in coating manufacture. Prod. range: 5,850-15,600 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da.

*Environmental Release/Disposal.* No release.

**P 85-1197**

*Manufacturer.* Essex Specialty Products, Inc.

*Chemical.* (G) Hydroxyl terminated silylated isocyanate functional aliphatic polyurea lacquer.

*Use/Production.* (S) Industrial polymer for use in coating manufacture. Prod. range: 15,000-40,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da.

*Environmental Release/Disposal.* No release.

**P 85-1198**

*Manufacturer.* Reichhold Chemicals, Inc.

*Chemical.* (G) Amine functional acrylic terpolymer.

*Use/Production.* (S) Industrial curing agent for epoxy coatings, fiberglass reinforced plastics, adhesives and flooring. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 10 workers, up to 3 hrs/da, up to 4 da/yr.

*Environmental Release/Disposal.* Nil release to air with 1 to 2 kg/batch to land. Disposal by incineration and landfill.

**P 85-1199**

*Manufacturer.* Spencer Kellogg Division of Textron, Inc.  
*Chemical.* (G) Polyurethane prepolymer resin.

*Use/Production.* (G) A polyurethane prepolymer resin to be used in an open, non-dispersive manner. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.* No data submitted.

**P 85-1200**

*Manufacturer.* Confidential.  
*Chemical.* (S) 1,3 bis-(dimethyl stearyl ammonium chloride)-2-propanol.

*Use/Production.* (S) Consumer ingredient to be used in formulating conditioners for animal fur and an industrial specialty fabric softener. Prod. range: 50,000-1,500,000 kg/yr.

*Toxicity Data.* Irritation: Skin—Non-irritant, Eye—Mild.

*Exposure.* Manufacture: dermal, a total of 10 workers, up to 3 hrs/da, up to 100 da/yr.

*Environmental Release/Disposal.* 50 kg/batch released to water. Disposal by POTW.

**P 85-1201**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Cationic latex.  
*Use/Production.* (G) Pigment/fiber binder. Prod. range: Confidential.

*Toxicity Data.* Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Moderate; 48 hr (Daphnid): 160 mg/L; 96 hr (Fathead minnow): 19 mg/L.

*Exposure.* Manufacture: dermal.  
*Environmental Release/Disposal.* Release to air and water. Disposal by incineration and navigable waterway after treatment.

**P 85-1202**

*Manufacturer.* Fritzsche Dodge and Olcott Inc.

*Chemical.* (S) 2-Naphthalenecarboxaldehyde, 5, 6, 7, 8-tetrahydro-1-methoxy-3, 5, 5, 8, 8-pentamethyl-

*Use/Production.* (S) A consumer component of fragrance compounds which may find end use in household chemicals such as dish washing and laundry detergents, air fresheners, etc. Prod. range: 450-2,250 kg/yr.

*Toxicity Data.* Acute oral: > 5 g/kg; Irritation: Skin—Not a primary irritant.

Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: non-sensitizer; Maximization test: Non-irritant/non-allergic; Phototoxicity test: Non-phototoxic; Photo maximization assay: Non-allergic.

*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

**P 85-1203**

*Manufacturer.* Fritzsche Dodge and Olcott Inc.

*Chemical.* (S) 1-Cyclopentene-1-propanol, beta, beta, 2-trimethyl-5-(1-methylethenyl)-, propanoate.

*Use/Production.* (S) A consumer component for fragrance compounds which may find end use in household chemicals such as dish washing and laundry detergents, air fresheners, etc. Prod. range: 450-2,250 kg/yr.

*Toxicity Data.* Acute oral: > 5,000 g/kg; Irritation: Skin—Slight, Eye—Slight.

*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

**P 85-1204**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.  
*Use/Production.* (S) Site-limited and industrial coatings. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

**P 85-1205**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.  
*Use/Production.* (S) Site-limited and industrial coatings. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

**P 85-1206**

*Manufacturer.* Confidential.

*Chemical.* (G) Blocked isocyanate homopolymer.  
*Use/Production.* (S) Site-limited and industrial coatings. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

**P 85-1207**

*Importer.* Confidential.

*Chemical.* (G) [Bis(alkylphenylamino)-(xanthenyl)-isobenzofuranone]((alkylimidazolyl)methylidene) deriv., (mixed salts).

*Use/Import.* (S) Paper dye. Import range: Confidential.

*Toxicity Data.* Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Irritant, Eye—Practically non-irritant; Ames test: Weak mutagenic; LC<sub>50</sub> 96 hr (Golden orfe): 147 mg/L.

*Exposure.* Use: a total of 4 workers, up to 3-4 hrs/da, up to 4-5 da, 6 times yr.

*Environmental Release/Disposal.* No data submitted.

**P 85-1208**

*Importer.* Confidential.

*Chemical.* (G) Cobalt acylate complex.

*Use/Import.* (G) Rubber bonding agent. Import range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* No data submitted.  
*Environmental Release/Disposal.* No data submitted.

**P 85-1209**

*Importer.* Confidential.

*Chemical.* (G) Cobalt acylate complex.

*Use/Imports.* (G) Rubber bonding agent. Import range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* No data submitted.  
*Environmental Release/Disposal.* No data submitted.

**P 85-1210**

*Manufacturer.* Chem-Fleur.

*Chemical.* (S) Benzoic acid, 2-[[3a,4,5,6,7,7a-hexahydro-5(or 6) methoxy-4,7-methanoindan]-methylidene] amino, methyl ester.

*Use/Production.* (S) An industrial and consumer aroma chemical for fragrances. Prod. range: 500-2,500 kg/yr.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 2 da/yr.

*Environmental Release/Disposal.* 10 to 20 kg/batch released to water. Disposal by POTW.

**P 85-1211**

*Manufacturer.* Chem-Fleur.

*Chemical.* (S) Benzoic acid, 2-(3-phenyl, butylidene) amino, methyl ester.

*Use/Production.* (S) An industrial and consumer aroma chemical for fragrances. Prod. range: 500-2,500 kg/yr.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 2 da/yr.

*Environmental Release/Disposal.* 10 to 20 kg/batch released to water. Disposal by POTW.

**P 85-1212**

*Manufacturer.* Chem-Fleur.

**Chemical.** (S) Benzoic acid, 2-[3-(4-methyl, cyclohex-3-enyl)butylidene]amino, methyl ester.

**Use/Production.** (S) An industrial and consumer aroma chemical for fragrances. Prod. range: 500-5,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 2 da/yr.

**Environmental Release/Disposal.** 10 to 20 kg/batch released to water. Disposal by POTW.

**P 85-1213**

**Manufacturer.** Confidential.

**Chemical.** (G) Polyurethane dispersion.

**Use/Production.** (G) An additive used in the building and construction industry. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: dermal, a total of 1 worker, up to 3 to 4 hrs/da.

**Environmental Release/Disposal.** 25 kg/day released to washout. Disposal by city sewer system.

**P 85-1214**

**Manufacturer.** Confidential.

**Chemical.** (C) Further clarification needed before information can be released to the public file.

**Use/Production.** (G) Intermediate reacted in another resin. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential.

**P 85-1215**

**Manufacturer.** Confidential.

**Chemical.** (G) Further clarification needed before information can be released to the public file.

**Use/Production.** (S) Binder for transparent wood finishes. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential.

**P 85-1216**

**Manufacturer.** J. M. Huber Corporation.

**Chemical.** (S) Silicon monoxide.

**Use/Production.** (S) Industrial strength reinforcing agent in organic and inorganic composite materials (e.g., plastics, metals, and ceramics) and in paints and coatings (e.g., field applied structural coatings, marine coatings, and heavy equipment coatings) and papers, felts and mats of compacted whiskers (e.g., filter media and preforms for production of composites). Prod. range: 72,000-185,000 kg/yr estimated.

**Toxicity Data.** Acute oral: 5 g/kg. Irritation: Skin—Not a primary irritant. Eye—Not a primary irritant; Inhalation: 0.172 g/m<sup>3</sup>.

**Exposure.** Manufacture: inhalation, a total of 18 workers, up to 4.5 hrs/da, up to 225 da/yr.

**Environmental Release/Disposal.** 1.1 to 11 kg/da released to air. Disposal by approved landfill.

Dated July 19, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-17764 Filed 7-25-85; 8:45 am]

BILLING CODE 0560-50-M

[OPTS-59724; FRL-2869-7]

**Certain Chemicals Premanufacture Notices**

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

Y 85-109—August 1, 1985.

Y 85-110 and 85-111—August 4, 1985.

Y 85-112—August 5, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460. (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

**Y 85-109**

**Manufacturer.** Confidential.

**Chemical.** (S) Polymer of: isophthalic acid, terephthalic acid, adipic acid, ethylene glycol, neopentyl glycol, 1,6 hexanediol and dibutyl tin oxide.

**Use/Production.** (G) Polymer for industrial metal coatings. Prod. range: 90,000-180,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: dermal, a total of 4 workers, up to 3 hrs/da, up to 15 da/yr.

**Environmental Release/Disposal.** Released to air and land. Disposal by publicly owned treatment works (POTW) with 20 kg/batch incinerated.

**Y 85-110**

**Manufacturer.** The Upjohn Company.

**Chemical.** (G) Polyurethane resins.

**Use/Production.** (G) Industrial thermoplastic resin. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: dermal and inhalation, a total of 4 workers.

**Environmental Release/Disposal.** Less than 20 kg released to land. Disposal by sanitary landfill.

**Y 85-111**

**Importer.** Huels Corporation.

**Chemical.** (G) Unsaturated polyester resin from dibasic acids and polyol.

**Use/Import.** (S) Industrial coatings and adhesives. Import range: 30,000-150,000 kg/yr.

**Toxicity Data.** Acute oral: (Male and female)—> 5,000 mg/kg. Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Non-mutagenic.

**Exposure.** Processing and use: dermal, inhalation and ocular.

**Environmental Release/Disposal.** No release.

**Y 85-112**

**Manufacturer.** Confidential.

**Chemical.** (G) Ethylene olefin terpolymer.

**Use/Production.** (G) Polymer compound for wire and cable jacketing, drip irrigation tubing and for miscellaneous industrial tubing. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: dermal and inhalation, a total of 30 workers, up to 8 hrs/da, up to 188 da/yr.

**Environmental Release/Disposal.** No release.

Dated: July 19, 1985.

V. Paul Fuschini,

Acting Director, Information Management  
Division.

[FR Doc. 85-17762 Filed 7-25-85; 6:45 am]

BILLING CODE 6560-50-M

(OPTS-211014A; FRL 2858-8)

**Testing Requirement Rule for Certain  
Toxic Chemical Substances and  
Mixtures Found in Southeast Chicago  
Denial of Citizens' Petition**

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

**ACTION:** Notice of Denial of Citizens'  
Petition.

**SUMMARY:** This notice announces the decision of the Administrator of the Environmental Protection Agency to deny a citizens' petition filed under section 21 of the Toxic Substances Control Act (TSCA). Two groups, Citizens for a Better Environment and Irondealers Against the Chemical Threat, have petitioned EPA to issue a rule under section 4 of TSCA, requiring the scientific testing of certain toxic chemical substances and mixtures, which have been identified as environmental pollutants in Southeast Chicago, for their combined health and environmental effects.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

In EPA Region V, contact:  
Mitchell J. Wrich, Chief, Toxic Materials Branch (5HT-16), Environmental Services Division, U.S. Environmental Protection Agency, Rm. 1680, 230 South Dearborn St., Chicago, Illinois 60604, (312) 353-2192.

**ADDRESS:** A copy of the petition and all related information, under docket number OPTS-211014A, is located in: Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

This material is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620 (a) and (b), provides that any person may petition the Administrator of EPA to

initiate a proceeding for the issuance, amendment, or repeal of a rule under various sections of the Act. The Administrator may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not the petition should be granted. If the Administrator grants the petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the **Federal Register**. The petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such civil action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after the petition is filed, within 60 days following expiration of the 90-day response period.

On July 17, 1984, EPA received a citizens' petition, under section 21 of TSCA, from Robert Ginsburg, Ph.D. (representing Citizens for a Better Environment) and Mary Ellen Montes (representing Irondealers Against the Chemical Threat). The petitioners requested that the Administrator (1) issue a rule under section 4(f)(2) and/or section 6(a) of TSCA, "to remedy the unreasonable risk of injury to health and the environment in the Southeast portion of the City of Chicago;" (2) prior to issuing a rule, conduct a "full field investigation" to determine the immediate and cumulative health effects of multiple toxic substances from multiple sources in air, land, and water in the Southeast Chicago area; and (3) use the authorities of TSCA "to assess and remedy the overall impact on public health and safety from the combined effects of exposure to the different pollutants," instead of "piecemeal enforcement and regulatory actions taken under other Federal statutes."

EPA issued a notice denying the petition which was published in the **Federal Register** of October 31, 1984 (49 FR 43764). The principal basis for the denial was that the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act can adequately address the issues raised by the petition and that these other acts are more appropriate than TSCA to address the majority of the environmental pollution problems caused by toxic chemicals in the Southeast Chicago area. Although the

Agency denied the petition, it indicated in the administrative record that various environmental investigations would be undertaken to address the petitioners' concerns.

On April 23, 1985, EPA received another citizens' petition under section 21 of TSCA from the petitioners indicated above. This section petition presented five specific requests:

1. The petitioners requested that the Administrator determine the name and nature of business of each person and business entity in the Southeast Chicago area whose business includes the manufacture, distribution in commerce, processing, use or disposal of any one or more of the following "Identified Substances" detected in the air, water, and land of the area: coke oven emissions, benzene, chromium, arsenic, cadmium, nickel, toluene, xylene, acetone, copper, and lead.

2. The petitioners requested that the Administrator compel the persons and business entities identified above, to commence testing of the Identified Substances and such other chemical substance and mixtures, as soon as practicable, which testing shall include the following environmental and health effects:

(1) The cumulative effect over an extended period of time, of each Identified Substance individually and in combination with every other Identified Substance (i.e., benzene alone; benzene with chromium; benzene with chromium and arsenic, etc.);

(2) The synergistic/antagonistic effect of each Identified Substance in combination with every other Identified Substance, occurring at one time;

(3) The effect of multi-media exposure to each of the Identified Substances individually, and in combination with every other Identified Substance;

(4) The cumulative, synergistic/antagonistic and multi-media effect, as set forth above, for each and every other chemical substance and mixture which may create an unreasonable risk of injury to the residents' health or their environment, as determined by the Administrator, individually and in combination with each other and with each of the Identified Substances; and

(5) All other health and environmental effects set forth at section 4(b)(2)(A) of each of the Identified Substances and such other chemical substances and mixtures as so determined by the Administrator, individually and in combination with each and every other Identified Substance and such other chemical substances and mixtures.

3. The petitioners requested that the Administrator set reasonable deadlines

for the completion of all the environmental investigations resulting from their first petition and of all other actions EPA may take as a result of the current petition.

4. The petitioners requested that the Administrator allow public participation and input with regard to any proposals resulting from the current petition and any actions undertaken as a result of their first petition.

5. The petitioners also requested "[t]hat the Administrator establish such other and further rules and orders as may be allowed under the Act which the Administrator deems appropriate to expeditiously result in the reduction of the health and environmental risks affecting this community."

## II. The Administrator's Decision

EPA is denying this petition under section 21 of TSCA for the following reasons:

In order to issue a testing requirement rule under section 4 of TSCA, the Agency must specify standards for the development of the test data. These standards, which must be included in each testing requirement rule issued under section 4(a) of TSCA, are to be issued in order to assure that the resulting test data are "reliable and adequate" (See section 3(12)(B) of TSCA). However, no such standards exist at present for the testing of multiple chemicals for their toxicological interactions, and the state of the art in this area is insufficient for prescribing how the testing which the petitioners request should be conducted, or for assuring that the test data be reliable and adequate.

The Agency is aware of the importance of considering the potential added health and environmental risks posed by multiple chemical exposures, and has ongoing and planned activities to address this area of concern. EPA invited public comments on its "Proposed Guidelines for the Health Risk Assessment of Chemical Mixtures," as published in the Federal Register of January 9, 1985 (50 FR 1170). These guidelines, which are expected to be published in final form in the summer of 1985, will be useful for the assessment of cumulative risks posed by mixtures of toxic chemicals such as the ones cited by the petitioners; however, the available toxicity information for mixtures on which the guidelines are based does not allow for the estimation of synergistic or antagonistic effects. Following the recent review of these proposed guidelines by EPA's Science Advisory Board, a comprehensive technical support document is being prepared which will discuss and

summarize the present knowledge on the toxicity and testing of chemical mixtures.

An ongoing major EPA research project, the Integrated Air Cancer Project, involves the performance of short-term mutagenicity and animal carcinogenicity tests on ambient air samples collected from simple and subsequently more complex air sheds. This effort will identify airborne carcinogens, determine which emission sources are the major contributors of carcinogens to ambient air, and improve the estimate of comparative human cancer risk from specific air pollution emission sources. Another long-range EPA research project, the Strategy for Assessment and Control of Complex Pollutant Mixtures, is still in the early planning stage and is being considered for funding; it is designed to develop and validate an approach for assessing and predicting potential health and ecological effects from complex pollutant mixtures and interactions. In a 1984 report to Congress, the National Advisory Environmental Health Sciences Council made recommendations on the research needs concerning multiple chemical exposures and toxicological interactions. (National Advisory Environmental Health Sciences Council, 1984. Report of the Third Task Force for Research Planning in Environmental Health Science. A Report to the Committee on Appropriations, United States House of Representatives, dated December 1984.) The report highlighted the many complexities of toxicological interactions and emphasized the need for "an orderly, systematic research approach with frequent analysis and redirection." The Agency believes that its research program addressing multiple chemical exposures is consistent with these recommendations.

In addition to requesting the issuance of testing requirement rules for multiple chemicals in combination with each other, the petitioners requested that EPA compel the testing of each of the 11 "Identified Substances" individually. This part of the petitioners' request is denied because the toxicological properties of these 10 substances and 1 mixture (coke oven emissions) are already well documented, and therefore regulatory decisions concerning them can be made without requiring further testing.

For a number of reasons, EPA is also denying the petitioners' request concerning the identification of businesses in the Southeast Chicago area which are the sources of the 11 "Identified Substances." First, as the petition indicates, the Illinois

Environmental Protection Agency (IEPA) has already identified 44 local businesses which emit pollutants into the air in the area of Southeast Chicago. Also, in response to that previous petition, EPA stated that it would conduct a variety of environmental investigations, including preparation of an inventory of probable emission sources. EPA Region V, together with EPA Headquarters staff, has initiated its effort to develop an emissions inventory for Southeast Chicago. The petitioners are invited to meet with EPA Region V staff to discuss this ongoing project.

The petitioners' requests for the setting of "reasonable deadlines" and for public participation are denied because those activities are not subject to petition under section 21 of TSCA, which states that "[a]ny person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2)." Although the setting of deadlines and the allowing of public participation are not among the enumerated petitionable items under section 21, the Agency invites the petitioners to meet with officials of EPA Region V in Chicago to discuss the progress of the various environmental investigations being undertaken as a result of their first petition. Also, the petitioners are invited to provide input with regard to the research efforts directed toward assessing the risks posed by multiple chemical exposures.

Concerning the petitioners' request for "such other and further rules and orders as may be allowed under the Act," EPA believes that the petitioners' concerns are being addressed by actions under the authority of statutes other than TSCA, as explained in the Agency's response to the first petition concerning Southeast Chicago (49 FR 43764).

## III. Public Record

EPA has established a record for the decision denying this citizens' petition under section 21 of TSCA (docket control number OPTS-211014A). This record, along with a complete index, is available for inspection in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, D.C. 20460. The public record contains basic information considered by the Agency in reaching this decision and includes:

1. This notice and the citizens' petition to which it responds.

2. The public record for the previous citizens' petition by the same petitioners.

3. Records of communications between EPA personnel concerning the development of the Agency's response to this petition.

4. Reports on the toxicological properties of the 11 "Identified Substances" cited in the petition.

Dated: July 18, 1985.

Lee M. Thomas,  
Administrator.

[FR Doc. 85-17761 Filed 7-25-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2870-2]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 8, 1985 through July 12, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated October 19, 1984 (49 FR 41108).

#### Draft EISs

ERP No. D-AFS-E65033-FL, Rating LO, Florida Nat'l Forests, Land and Resource Mgmt. Plan, FL. **SUMMARY:** EPA has no objections to the implementation of the preferred plan.

ERP No. D-AFS-E65034-AL, Rating LO, Alabama Nat'l Forests, Land and Resource Mgmt. Plan, AL. **SUMMARY:** EPA's review concludes that the proposed alternative is consistent with good environmental practices. Therefore, EPA lacks objection to the proposal as outlined.

ERP No. D-AFS-J61065-MT, Rating EC2, Hyalite-Porcupine Buffalo Horn Wilderness Study Areas, Designation and Mgmt., Gallatin Nat'l Forest, MT. **SUMMARY:** EPA is concerned with possible water quality degradation and soil erosion if the preferred alternative or any alternative involving timber harvesting and road construction is selected. Insufficient information has been provided to evaluate the impact of alternatives involving timber harvesting and road construction on water quality and soil erosion.

ERP No. D-AFS-J61066-00, Rating EC2, Blue Joint and Sapphire Montana Wilderness Study Act Areas, Land and

Resource Mgmt. Plan, Bitterroot, Deerlodge and Salmon Nat'l Forests, MT and ID. **SUMMARY:** EPA is concerned with possible water quality degradation and soil erosion. Insufficient information is available to evaluate the impact of alternatives involving timber harvesting and road construction on these two environmental concerns.

ERP No. D-AFS-J65136-00, Rating EC2, Bitterroot Nat'l Forest, Land and Resource Mgmt. Plan, MT and ID. **SUMMARY:** EPA is concerned because the proposed alternative calls for an approximate ten percent increase in sediment production potential over baseline. EPA is concerned that unacceptable water quality degradation and soil erosion may occur. EPA believes a water quality monitoring and environmental impact evaluation effort should be included as part of the cost of harvesting timber and/or road construction.

ERP No. D-AFS-J65137-MT, Rating EC2, Gallatin Nat'l Forest, Land and Resource Mgmt. Plan, MT. EPA believes that the DEIS/Plan does not provide specific procedures to achieve water quality standards or describe monitoring practices to demonstrate compliance or identify problems. EPA also believes that the soil and water monitoring budget to evaluate water quality problems, verify compliance with water quality standards, and evaluate Best Management Practice (BMP) effectiveness is insufficient to ensure that unacceptable impacts are avoided. A four percent sedimentation rate increase forest wide is projected if the preferred alternative is implemented. EPA is concerned about the water quality impact of this sediment increase.

ERP No. D-BLM-J70002-WY, Rating EC2, Kemmerer Resource Area, Resource Mgmt. Plan, WY. **SUMMARY:** EPA's review has identified several concerns and recommendations for management as identified activities in relation to water quality standards, air quality, riparian and wetland areas, ground water, and rangeland ecosystem, and soils. A concern for fisheries and stream improvements has been expressed. Additionally, EPA has requested additional impact analyses, and further description of BLM resource management requirements, resource conditions, best management practices, watershed planning, monitoring, and intergovernmental/public coordination.

ERP No. D-COE-C36058-NY, Rating LO, Saw Mill River Basin Flood Control Project, Construction, Nepera Park, NY. **SUMMARY:** EPA's review of the DEIS did not identify any potential environmental impacts requiring substantive changes to the preferred alternative. EPA

requested that mitigation measures proposed in the DEIS be implemented to the greatest extent practicable and that measures to control turbidity in the river be employed in order to reduce potential environmental impacts to water quality from trace levels of toxic pollutants.

ERP No. D-COE-E30032-FL, Rating EC2, Palm Beach County Beach Erosion Control Project, FL. **SUMMARY:** EPA's review concludes that the potential for significant short- and long-term water quality degradation due to depositing fine textural material on a high energy shore face is one of the most obvious environmental concerns. EPA has some environmental concerns with the selection of borrow sites and requests additional information on same for evaluation as soon as it becomes available.

ERP No. D-COE-K36084-CA, Rating EO2, Lower San Joaquin River and Tributaries Flood Control, Channel Clearing and Modification, CA. **SUMMARY:** The EPA review identified potentially significant impacts to riparian habitat, fish, wildlife and water quality. EPA recommended mitigation to alleviate these potential impacts.

ERP No. RD-NOA-A91053-00, Rating LO, Taking of Marine Mammals Associated With Tuna Purse Seining Operations, 1986 Amendments to Regulations. **SUMMARY:** EPA has reviewed the DEIS and has no comment.

#### Final EISs

ERP No. F-AFS-F61009-MI, Manistee River Wild and Scenic Area Study, Designation, Manistee Nat'l Forest, MI. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS-BLM-L65039-OR, Josephine and Jackson-Klamath Sustained Yield Units, Ten-Year Timber Mgmt. Plan, OR. **SUMMARY:** EPA made no formal comments. EPA reviewed the FEIS and has no objection to implementation of the preferred alternative as proposed.

ERP No. F-BLM-L65092-ID, Medicine Lodge Resource Area, Resource Mgmt. Plan, ID. **SUMMARY:** EPA made no formal comment. EPA reviewed the FEIS and found it to be satisfactory.

ERP No. F-COE-K30014-HI, Hilo Bayfront Beach Shoreline Improvements Study, HI. **SUMMARY:** The FEIS addresses the concerns EPA raised on the DEIS and adequately assesses the environmental impact of the proposed action.

ERP No. F-FHW-D40153-PA, Exton Bypass Linkage, Coatesville Downingtown Bypass, and US 202, Construction, PA.

**SUMMARY:** EPA recommended further study and reevaluation of the selected alternative due to the adverse wetland impacts. EPA prefers the widen US 30 alternative. The selected alternative must also be reevaluated in consideration of Sec. 404 guidelines.

ERP No. F-FHW-K40144-CA, I-80 At-Grade Access Closure, Pedrick Road and Putah Creek, Construction, CA.

**SUMMARY:** The FEIS addressed the concerns EPA raised on the DEIS.

ERP No. F-NRC-C06011-NY, Nine Mile Point Nuclear Station Unit 2, Operating License, Lake Ontario, NY.

**SUMMARY:** The FEIS adequately responded to EPA's DEIS comments regarding potential impacts relating to groundwater, air quality, and human health. Radiological aspects were addressed in the FEIS and EPA concurs that the project will not adversely affect the environment. Thus, EPA lacks objections to the issuance of a license to operate this facility. EPA will review the Final Safety Analysis Report to assess NRC's information concerning groundwater aspects of the project.

ERP No. F-SFW-L64029-AK, Izembek Nat'l Wildlife Refuge, Mgmt. and Comprehensive Conservation Plan and Wilderness Review, AK. **SUMMARY:** EPA made no formal comment. EPA reviewed the FEIS and has no objection to implementation of the preferred alternative as proposed.

ERP No. F-UMT-L54002-WA, Downtown Seattle Transit Project, WA. **SUMMARY:** EPA made no formal comment. EPA reviewed the FEIS and found it to be satisfactory and responsive to comments.

Dated: July 23, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-17828 Filed 7-25-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2870-1]

### Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed July 15, 1985 through July 19, 1985 Pursuant to 40 CFR 1506.9

EIS No. 850301, DSuppl, COE, NB, Harlan County Lake Multiple Purpose Project, Continuing Operation and Maintenance, Harlan County, Due: September 9, 1985, Contact: Richard Lenning (816) 374-3245.

EIS No. 850302, Report, COE, LA, Mississippi River-Gulf Outlet Navigation Channel, Operation and Maintenance,

Allowable Overdepth Removal and Advance Maintenance, Lake Borgne Vicinity, St. Bernard and Claquemines Parishes, Contact: E. Scott Clark (504) 838-2521.

EIS No. 850303, Draft, CDB, NY, Rochester Science Park Development, Expansion and Replacement, CDBG, Monroe County, Due: September 9, 1985, Contact: William Andreas (718) 428-6895.

EIS No. 850304 Draft, SFW, AK Tetlin National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Designation, Due: November 1, 1985, Contact: William Knauer (907) 786-3399.

EIS No. 850305, Draft, NHT, REG, 1986 Model Year Passenger Cars, Average Fuel Economy Standards, Due: September 9, 1985, Contact: L. Robert Shelton (202) 755-9384.

EIS No. 850306, Final, BLM, CA, Amselco Colosseum Gold Mine Extraction and Milling Operation, Reopening and Expansion, Approval, San Bernardino County, Due: August 26, 1985, Contact: Roger Britton (619) 326-3896.

EIS No. 850307, Final, FAA, CA, John Wayne Airport, Expansion, Improvements and Land Acquisition Approval, Orange County, Due: August 26, 1985, Contact: James Wiggins (213) 536-6248.

EIS No. 850308, Draft, FHW, TN-20 Corridor Improvements, I-40 in Jackson to the west end of Dyersburg Bypass, Madison, Crockett and Dyer Counties, Due: September 9, 1985, Contact: Thomas Ptak (615) 251-5394.

EIS No. 850309, Final, DEA PRO, Cannabis Eradication on Federal Lands and Intermingled Forest and Rangelands, Continental United States, Due: August 26, 1985, Contact: Rodolfo Ramirez (202) 633-5628.

EIS No. 850310, Final, COE, NY, Newtown Creek Federal Navigation Channel Maintenance Project, Dredging and Ocean Disposal, Kings and Queens Counties, Due: August 26, 1985, Contact: Bob Will (212) 264-4662.

EIS No. 850311, Draft, AFS, UT, WY, Ashley National Forest, Land and Resource Management Plan, Due: October 25, 1985, Contact: Jack Watson (801) 789-1181.

EIS No. 850312, Draft, AFS, ID, Challis National Forest, Land and Resource Management Plan, Due: October 25, 1985, Contact: Gordan Reid (208) 879-2285.

### Amended Notices

EIS No. 850145, Draft, AFS, MT, Deerlodge National Forest, Land and Resource Management Plan, Due:

September 3, 1985, Published FR 4-19-85—Review extended.

EIS No. 850214, Draft, COE, FL, Occidental Wetland Phosphate Mining Operations, Dredge and Fill Permit, Section 404, Hamilton County, Due: August 5, 1985, Published FR 5-31-85—Review extended.

EIS No. 850274, Final, BLM, NV, Walker Resource Area, Mina and Walker Units, Land and Resource Management Plan, Due: August 9, 1985, Published FR 7-5-85—Review extended.

Dated: July 23, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-17829 Filed 7-25-85; 8:45 am]

BILLING CODE 6560-50-M

### FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-739-DR]

#### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-739-DR), dated July 18, 1985, and related determinations.

**DATE:** July 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

#### Notice

Notice is hereby given that, in a letter of July 18, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq., Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of California resulting from grass, wildlands, and forest fires beginning on or about June 26, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the

designated area. Public Assistance will be limited to damage resulting from major fires as defined by the Federal Emergency Management Agency.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

City of Los Angeles and the Counties of Monterey, San Diego, San Luis Obispo, Santa Clara, Santa Cruz, and Ventura for Individual Assistance and Public Assistance.

Public Assistance will be provided as authorized by the President's declaration. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-17728 Filed 7-25-85; 8:45 am]

BILLING CODE 6716-02-M

[Docket: FEMA-REP-4TN-2]

### Tennessee Multi-Jurisdictional Emergency Response Plan for Watts Bar Nuclear Plant

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of Receipt of Plan.

**SUMMARY:** For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the State of Tennessee has submitted its radiological emergency plan to the FEMA Regional Office. These plans support nuclear power plants which impact on Tennessee and include those of local governments near the Tennessee Valley Authority's Watts Bar Nuclear Plant located in Rhea County, Tennessee.

**DATE:** Plans Received: July 12, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Major P. May, Regional Director, FEMA Region IV, 1371 Peachtree Street, NE, Atlanta, Georgia 30309, (404) 881-2400.

#### Notice

In support of the Federal requirement for emergency response plans, FEMA has a Rule describing its procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," **Federal Register**, Volume 48, Number 189, page 44338, the *Tennessee Multi-Jurisdictional Emergency Response Plan For Watts Bar Nuclear Plant* was received by the Federal Emergency Management Agency Region IV Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone of the nuclear plant. For the Watts Bar Nuclear Plant plans are included for McMinn, Meigs and Rhea Counties.

Copies of the Plan are available for review at the FEMA Region IV office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 884 pages in the document; reproduction fees are \$.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Major P. May, Regional Director, at the above address within thirty days of this **Federal Register** notice.

FEMA Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plan. Details of this meeting were announced at least two weeks prior to the scheduled meeting and local radio and television stations were requested to announce the meeting. The required public meeting was held on October 30, 1984, at 7:00 p.m. at the Meigs County High School in Decatur, Tennessee. The meeting was announced in the *Daily Post—Athenian*, Athens, Tennessee, the *Dayton Herald*, Dayton, Tennessee, and the *Monroe County Advocate*, Sweetwater, Tennessee.

Dated: July 19, 1985.

Major P. May,

Regional Director.

[FR Doc. 85-17729 Filed 7-25-85; 8:45 am]

BILLING CODE 6716-01-M

### FEDERAL MARITIME COMMISSION

#### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000150-078.

Title: Trans-Pacific Freight Conference of Japan/Korea.

#### Parties:

American President Lines, Ltd.  
Barber Blue Sea Line  
Hapag-Lloyd AG  
Japan Line, Ltd.  
Kawaski Kisen Kaisha, Ltd.  
Lykes Bros. Steamship Co., Inc.  
Mitsui O.S.K. Lines, Ltd.  
A.P. Moller-Maersk Line  
Neptune Orient Lines, Ltd.  
Nippon Yusen Kaisha  
Orient Overseas Container Line, Inc.  
Sea-land Service, Inc.  
Showa Line, Ltd.  
United States Lines, Inc.  
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would increase to \$120,000 the amount of security required to be posted by each member to guarantee faithful performance of its obligations under the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202-003103-079.

Title: Japan/Korea-Atlantic & Gulf Freight Conference.

#### Parties:

Barber Blue Sea Line  
Japan Line, Ltd.  
Kawaski Kisen Kaisha, Ltd.  
Lykes Bros. Steamship Co., Inc.  
Mitsui O.S.K. Lines, Ltd.  
A.P. Moller-Maersk Line  
Neptune Orient Lines, Ltd.  
Nippon Yusen Kaisha  
Orient Overseas Container Line, Inc.  
United States Lines, Inc.

**Yamashita-Shinnihon Steamship Co., Ltd.**

Synopsis: The proposed amendment would increase to \$120,000 the amount of security required to be posted by each member to guarantee faithful performance of its obligations under the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Dated: July 23, 1985.

By Order of the Federal Maritime Commission.

Mary F. Whitmore,

*Assistant to the Secretary.*

[FR Doc. 85-17810 Filed 7-25-85; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Green Mountain Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in 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 15, 1985.

**A. Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Green Mountain Financial Services Corporation*, Wilmington, Delaware; to acquire 20.83 percent of the voting shares of The Green Mountain Bank, Winhall Township (Bondville), Vermont.

**B. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Commercial Bancshares, Inc.*, Jersey City, New Jersey; to acquire 100 percent of the voting shares of Lenape State Bank, West Deptford, New Jersey.

2. *Rock Financial Corporation*, North Plainfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of North Plainfield State Bank, North Plainfield, New Jersey.

**C. Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The National Bancorp of Kentucky, Inc.*, Lexington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Cynthiana, Cynthiana, Kentucky, and The First National Bank of Falmouth, Falmouth, Kentucky.

**D. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Century Bancshares, Inc.*, Washington, D.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Century National Bank, Washington, D.C.

**E. Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *People First Corporation*, Paducah, Kentucky; to acquire 100 percent of the voting shares of First Liberty Bank of Calvert City, Calvert City, Kentucky.

Board of Governors of the Federal Reserve System, July 22, 1985.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 85-17713 filed 7-25-85; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 19, 1985.

### Health Care Financing Administration

Subject: Early Periodic Screening Diagnostic and Treatment Report—HCFA-420—Revision (0938-0291)

Respondents: State/local government

Subject: Provider Overpayment Report—HCFA-481—Existing Collection

Respondents: Businesses or other for-profit, non-profit institutions

Subject: Survey of Self-Insured Health Plans—HCFA-475—Revision (0938-0389)

Respondents: Businesses or other for-profit, non-profit institutions, small businesses or organizations

Subject: Peer Review Organization Semiannual Resources Allocation Report—HCFA-515—New

Respondents: Businesses or other for-profit institutions

Subject: Medicaid Management Information System Conditions of Approval and Reapproval and Procedures for Reductions of Federal Financial Participation 42 CFR 433.112, 433.116, and 433.117—HCFA-R-62—New

Respondents: State/local governments

OMB Desk Officer: Fay S. Iudicello

### Social Security Administration

Subject: Claimant's Statement when Request for Hearing is Filed and the Issue is Disability—HA-4485—Extension (0960-0316)

Respondents: Individuals

OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: [name of OMB Desk Officer].

Dated: July 22, 1985.

K. Jacqueline Holz,  
*Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 85-17767 Filed 7-25-85; 8:45 am]

BILLING CODE 4150-04-M

**Food and Drug Administration**

[Docket No. 85E-0268]

**Determination of Regulatory Review Period for Purposes of Patent Extension; Lupron Injection****AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product, Lupron Injection, and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

**FOR FURTHER INFORMATION CONTACT:**

James C. Shehan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for

a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lupron Injection, an injectable preparation of leuprolide acetate, which is indicated for the palliative treatment of advanced prostatic cancer in certain patients.

Based on the recent approval of Lupron Injectable, Abbott Laboratories applied for patent term restoration. FDA has determined that the applicable regulatory review period for Lupron Injection is 3,088 days. Of this time, 2,619 days were spent in the testing phase and 469 days were spent in the approval phase. These periods of time were derived from the following information.

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: October 27, 1976.* The applicant claimed September 23, 1976, as the date that commenced the testing phase. FDA received the exemption application on September 27, 1976. The exemption became effective, under FDA regulations (21 CFR 312.1(b)(4)), on October 27, 1976, 30 days after receipt of the claimed investigational exemption.

2. *The date the new drug application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: December 28, 1983.* The applicant claimed April 15, 1983, as the date which commenced the approval phase. Only a presubmission of data was received by the agency at that time. The full application for new drug approval was received on December 28, 1983.

3. *The date the application was approved: April 9, 1985.* FDA has verified that the application (NDA 19-010) was approved on April 9, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 24, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 20, 1985, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation (See H. Rept. 857, Part 1, 98th Cong., 2nd Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 24, 1985.

**Kenneth Flieger,***Acting Associate Commissioner for Health Affairs.*

[FR Doc. 85-17887 Filed 7-25-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0312]

**Labeling of Surimi-Based Seafood Products; Availability of Policy****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the labeling policy for processed and/or blended seafood (surimi) products. This policy is stated in FDA Compliance Policy Guide 7108.16.

**ADDRESS:** Requests for single copies of FDA Compliance Policy Guide 7108.16 should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Newberry, Center for Food Safety and Applied Nutrition (HFF-314), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0232.

**SUPPLEMENTARY INFORMATION:** FDA has been aware of an expanding trade in surimi-based seafood products in recent years. Some of these products are made to resemble and are promoted as substitutes for crabmeat, shrimp, lobster, scallops, and other natural seafoods. The labeling of these seafood products is of great concern not only to FDA but also to the National Marine Fisheries Service and the marine trade associations. Therefore, FDA, with the cooperation of all the interested parties, has developed a policy which addresses the acceptable labeling of surimi-based seafood products.

Surimi is a fish product which consists of minced fish meat (usually pollock) which has been washed to remove fat and undesirable matter (such as blood, pigment, and odorous substances) and then mixed with cryoprotectants, such as sugar and or sorbitol, to ensure good frozen shelflife. Surimi may be blended with additional ingredients and additives (natural shellfish meat, shellfish flavoring, salt, water, etc.) and heat processed into fibrous, flaked, chunked, or composite-molded consumer products. These consumer products may or may not resemble specific types of seafood or seafood body parts and may or may not be frozen and/or breaded.

FDA is offering guidance as to the proper labeling for surimi-based seafood products in its issuance of Compliance Policy Guide 7108.16, which states the agency's policy as follows:

1. If the surimi-based product purports to be or is represented as any specific type of natural seafood, including shape or form representations, but is nutritionally inferior to that seafood, it must be labeled as imitation in accordance with 21 CFR 101.3. To date, FDA has not encountered any surimi-based product in which nutritional equivalency with a given seafood has been achieved.

2. An additional statement of product identity must appear on the principal display panel, such as "A Blend of Fish with \_\_\_\_\_." The blank is to be filled in with the common or usual name of the ingredient or component, such as "snow crab". Because the fish used in the surimi base has been decharacterized, the word "fish" is adequate for the statement of product identity. If an artificial flavor or color is added, the label must comply with 21 CFR 101.22.

3. The specific names of all seafoods used in the product must appear in the ingredient statement in descending order of predominance ("pollock" must be used rather than "white fish"; "snow crab" rather than "crab"). All other ingredients present must also be declared in descending order of predominance.

**Note.**—The intermediate surimi product usually contains sugar and/or sorbitol and phosphate compounds as cryoprotectants. These should be listed in the ingredient statement unless removed during the manufacturing process.

4. Products that are not purported or represented to be a specific type of seafood (or seafood body part) need not be labeled "imitation" and may lawfully be marketed, provided that the label properly reflects their composition.

5. The labeling of surimi-based products may contain a statement that the products may be used in recipes in place of natural seafood products. The statement should be general, such as "use like crabmeat, lobster, or shrimp in all seafood recipes."

Background information supporting this labeling policy is on file in the Dockets Management Branch (address above). Requests for single copies of FDA Compliance Policy Guide 7108.16 should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch.

Dated: July 22, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-17734 Filed 7-25-85; 8:45 am]

BILLING CODE 4150-01-M

#### Office of Human Development Services

##### Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: The Federal Council on the Aging (FCA) is holding its August meeting in conjunction with the National Training Conference of the National Association of Area Agencies on Aging and the National Association of State Units on aging. The FCA regular business meeting will occur on August 14, from 9:30 am-12:30 pm, followed by a forum on the "Future of Health Care for Older Americans," from 2:00 pm-4:30 pm. The FCA will reconvene on August 15 from 9:30 am-12:00 pm for Committee meetings, followed by adjournment.

Place: Sheraton Washington Hotel, Warren Room, 2660 Woodley Road NW., Washington, DC 20008.

Status: The FCA portion of this meeting, to be held in the Warren Room, is open to the public.

Contact Persons: James Conroy/Rita Lowry, Room 4243, HHS North Building, 245-2451 for further information and clarification.

The Federal Council on the aging was established by the 1973 Amendments to the Older Americans Act of 1965 (P.L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will conduct a meeting

on August 14 and 15, 1985 from 9:30 am-4:30 pm and from 9:30 am-12:00 pm respectively at the Sheraton Washington Hotel, Warren Room, 2660 Woodley Road, NW, Washington, DC.

The agenda will include a forum on "The Future of Health Care for Older Americans," with a panel comprised of "presenters" and "reactors" from the American Enterprise Institute, the American Association of Retired Persons, the American Medical Association, the Health Care Financing Administration, and aging network representatives (area agency director, state aging director, ombudsman, and an advisory council member), and will also include the FCA's regularly scheduled business and Committee meetings.

Dated: July 17, 1985.

Adelaide Attard,

Chairperson, Federal Council on the Aging.

[FR Doc. 85-17692 filed 7-25-85; 8:45 am]

BILLING CODE 4130-01-M

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### Peregrine Falcon; Emergency Exemption; Issuance

On July 16, 1985, a letter waiving the 30-day public comment period was issued to Mr. Bruce Haak, Eagle, Idaho (ref: PRT 696909), authorizing emergency action to enhance the survival of one male peregrine falcon (*Falco p. peregrinus*). This waiver was granted to allow the re-export of one peregrine falcon which was to be destroyed by the U.S. Department of Agriculture unless re-exported, because although it tested negatively for Newcastle's disease, it had been quarantined with birds that tested positively. The bird will be quarantined at Dubai Wildlife Research, Dubai, U.A.E., for 90 days.

It was determined by the U.S. Fish and Wildlife Service that an emergency does in fact exist, that the health and life of the falcon is threatened and that no reasonable alternative to the proposed action is available to the applicant.

This emergency waiver is provided in accordance with the Endangered Species Act of 1973, as amended (Pub. L. 94-359 (90 Stat. 911)).

Dated: July 19, 1985.

R.K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 85-17784 Filed 7-25-85; 8:45 am]

BILLING CODE 4810-55-M

**Bureau of Land Management**

[A-20347(A)]

**Exchange of Public Land in Graham and Greenlee Counties, AZ****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Realty Action, Exchange of Public Land in Graham and Greenlee Counties, Arizona.**SUMMARY:** Certain public lands within the following described townships have been determined to be suitable for disposal by exchange to the State of Arizona pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716).**Selected Public Lands—Gila Box Group***Gila and Salt River Meridian, Arizona*T. 4 S., R. 30 E.  
T. 5 S., R. 30 E.  
T. 5 S., R. 31 E.

The involved public lands within the townships described above comprise 3,069.45 acres, more or less, in Greenlee County.

**Selected Public Lands—Hackberry Group***Gila and Salt River Meridian, Arizona*T. 8 S., R. 29 E.  
T. 9 S., R. 29 E.  
T. 10 S., R. 29 E.  
T. 8 S., R. 30 E.  
T. 9 S., R. 30 E.  
T. 10 S., R. 30 E.  
T. 9 S., R. 31 E.  
T. 10 S., R. 31 E.  
T. 11 S., R. 31 E.

The involved public lands within the townships described above comprise 184 acres, more or less, in Greenlee County and 24,087.27 acres, more or less, in Graham County.

In exchange, the State of Arizona has offered lands in the following described townships to the United States.

**Offered State Lands—Gila Box Group***Gila and Salt River Meridian, Arizona*T. 6 S., R. 28 E.  
T. 5 S., R. 29 E.  
T. 5 S., R. 30 E.

The involved State lands within the townships described above comprise 4,536.05 acres, more or less, in Greenlee County.

**Offered State Lands—Hackberry Group***Gila and Salt River Meridian, Arizona*T. 7 S., R. 27 E.  
T. 8 S., R. 27 E.  
T. 9 S., R. 27 E.  
T. 7 S., R. 28 E.  
T. 8 S., R. 28 E.  
T. 9 S., R. 28 E.  
T. 10 S., R. 28 E.  
T. 7 S., R. 29 E.  
T. 8 S., R. 29 E.  
T. 9 S., R. 29 E.

The involved State lands within the townships described above comprise 23,618.38 acres, more or less, in Graham County.

The above identified non-federal lands are being acquired to enhance resource management programs and continue the land tenure adjustment program prescribed in the land use plan. The overall exchange program will block up Federal and State-owned lands and consolidate ownership and management with the predominant land holder for the areas involved. The public interests will be well served.

The values of the lands to be exchanged are approximately equal and the acreages will be adjusted to equalize values upon completion of the final appraisal of the lands.

Patents for the public lands, when issued shall contain the following reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
2. A reservation to the United States of a right-of-way granted to the Arizona Department of Transportation under serial number PHX-060452 for a highway under the authority of the Act of November 9, 1921 (42 Stat. 212), affecting the NW 1/4 NE 1/4 SW 1/4, Section 8, T. 5 S., R. 30 E.

The public lands shall also be patented subject to all valid existing rights and the terms and conditions of the authorized uses.

The State lands, when conveyed to the United States, will be subject to such terms and conditions as are necessary to protect the permittees and lessees. The permittee/lessee will be able to either continue his/her use under the existing terms of the State's authorization or may be issued a new authorization by the Bureau of Land Management.

**DATE:** For a period of 45 days from date of publication in the **Federal Register** interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange including the land use plan supporting this exchange and the environmental considerations reviewed in making this

decision to exchange, are available for review at the Safford District Office.

Dated: July 19, 1985.

Lester K. Rosenkrance,

*District Manager.*

[FR Doc. 85-17738 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-32-M

[CA 16396]

**Realty Action; Exchange of Public Lands in San Diego County, CA****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Realty Action-Exchange of Public Lands, CA 16396.**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 October 21, 1976 (43 U.S.C. 1716):T. 8 S., R. 4 W., SBM.,  
Sec. 32: W 1/2 SE 1/4

Containing 80.00 acres.

In exchange, the Federal Government will acquire non-Federal land in San Diego County from Mr. Jack Stone, 5722 Skylark Place, La Jolla, California 92037. These lands are described as follows:

T. 18 S., R. 2 E., SBM.,

Sec. 7: SE 1/4

Sec. 17: NW 1/2 NE 1/4, N 1/2 NE 1/4

Sec. 18: lot 1, N 1/2 NE 1/4, NE 1/4 NW 1/4

Containing 441.11 acres ±.

The purpose of this exchange is to obtain non-Federal lands for use in Federal programs. This exchange conforms with the Southern California Metropolitan Project's Escondido Management Framework Plan/Management Action Summary. The public interest will be well served by making this exchange. The values of the lands exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize values upon completion of the final appraisal of the lands.

The terms and conditions applicable to this exchange are:

1. The non-Federal lands involve an exchange of the surface estate only; all minerals, together with the right to prospect for, mine and remove the minerals are already vested in the United States.

2. The Federal lands involve an exchange of the surface estate and the mineral estate; excepting geothermal resources, together with the right to prospect for, develop and utilize geothermal resources pursuant to the

Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 101-1025).

3. The Federal lands will have a reservation to the United States of a right-of-way for ditches or canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the **Federal Register** shall segregate the public lands described herein from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchange is expected to be consummated before the end of that period.

Detailed information concerning this exchange, including the planning documents, environmental assessment and the land report is available for review at the Bureau of Land Management's California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

The publication date of this notice will commence the 45 days comment period. For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: July 12, 1985.

**Wes Chambers,**

*Acting District Manager.*

[FR Doc. 85-17686 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-40-M

### Minerals Management Service

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget

Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to Mr. David A. Schuenke, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Projected Maximum Attainable Rate (MAR) of OCS Oil and Gas Production for Significant OCS Fields  
Abstract: Respondents are required to provide to the Minerals Management Service (MMS) oil and gas production information and projections of future production rates. This information is used by MMS to determine the maximum attainable rate of production of crude oil and natural gas from significant OCS fields. This information is reported to Congress biennially.

Bureau Form Number: Form MMS-2013 (see attachment)

Frequency: Biennially

Description of Respondents: Lessees which operate significant fields on the Federal Outer Continental Shelf.

Annual Responses: 75

Annual Burden Hours: 900

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: April 17, 1984.

**John B. Rigg,**

*Associate Director for Offshore Minerals Management.*

OMB Approval No. \_\_\_\_\_

Expiration Date \_\_\_\_\_

### U.S. DEPARTMENT OF THE INTERIOR

#### Minerals Management Service

Projected Maximum Attainable Rate (MAR) of Oil and Gas Production for Significant OCS Fields

January 1, \_\_\_\_\_ through December 31, \_\_\_\_\_

1. Operator \_\_\_\_\_

2. Field Name \_\_\_\_\_

3. OCS Lease or Leases \_\_\_\_\_

4. For Each Lease or Group of Commonly Operated Leases Within the Field:

a. Expected Increase or Decrease in Number of Producing Oil and Gas Completions Over the Next 2 Years \_\_\_\_\_

b. Any Information, Constraining or Otherwise, Considered Pertinent to the MAR Determination \_\_\_\_\_

c. Estimated MAR for 2-Year Period, Either by Projected Curve (attached) or by Midpoint (or average) of Calendar Quarters:  
 Initial  Revision (indicate in "Remarks" reason for revision)

Calendar Year \_\_\_\_\_

1st Qtr. \_\_\_\_\_

2nd Qtr. \_\_\_\_\_

3rd Qtr. \_\_\_\_\_

4th Qtr. \_\_\_\_\_

Calendar Year \_\_\_\_\_

1st Qtr. \_\_\_\_\_  
2nd Qtr. \_\_\_\_\_  
3rd Qtr. \_\_\_\_\_  
4th Qtr. \_\_\_\_\_  
5. Remarks or Discussion \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

The Paperwork Reduction Act Statement. This information is being collected and used to prepare the biennial report to the Congress on the availability of oil and natural gas on the Outer Continental Shelf. Response to this request is mandatory (43 U.S.C. 1865). Failure to report this information can result in a fine of not more than \$10,000 for each day of continuance of such failure (43 U.S.C. 1350).

Form MMS-2013

[FR Doc. 85-17736 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR

#### Announcement of an International Workshop on the Quality of Underwater Welding of Offshore Structures and Pipelines

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Announcement of an International Workshop on Underwater Welding.

**SUMMARY:** The Technology Assessment and Research Program of the Minerals Management Service will sponsor an international workshop on the quality of underwater welding of offshore structures and pipelines to assess the current state-of-the-art and to determine future research needs. The workshop will be conducted by the Center for Welding Research at the Colorado School of Mines, Golden, Colorado, on November 13-14, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Charles E. Smith, Research Program Manager, Minerals Management Service, MS 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone 703-860-7865.

Dated: July 15, 1985.

**Carolita Kallaur,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 85-17721 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

#### Outer Continental Shelf; Development Operations Coordination Document; Conoco Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0487, Block 119, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

**DATE:** The subject was deemed submitted on July 15, 1985.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to inform the public, pursuant to section 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 17, 1985.

John L. Rankin,  
Regional Director, Gulf of Mexico OCS  
Region.

[FR Doc. 85-17725 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

**Outer Continental Shelf; Development Operations Coordination Document; Corpus Christi Oil and Gas 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 Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5299, Block 163, West

Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on July 15, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management section. Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

**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 section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

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 § 250.34 of Title 30 of the CFR.

Dated: July 16, 1985.

John L. Rankin,  
Regional Director, Gulf of Mexico OCS  
Region.

[FR Doc. 85-17726 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

**Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas 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 ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

**DATE:** The subject DOCD was deemed submitted on July 16, 1985.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 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 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS  
Region.

[FR Doc. 85-17737 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

### Outer Continental Shelf; Development Operations Coordination Document; Pennzoil 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  
Pennzoil Company has submitted a  
DOCD describing the activities it  
proposes to conduct on Lease OCS-G  
2115, Block 330, Eugene Island Area,  
offshore Louisiana. Proposed plans for  
the above area for the development and  
production of hydrocarbons with  
support activities to be conducted from  
an onshore base located at Intracoastal  
City, Louisiana.

**DATE:** The subject DOCD was deemed  
submitted on July 15, 1985. Comments  
must be received within 15 days of the  
date of this year of this notice or 15 days  
after the Coastal Management Section  
receives a copy of the DOCD from the  
Minerals Management Service.

**ADDRESSES:** A copy of the subject  
DOCD is available for public review at  
the Office of the Regional Director, Gulf  
of Mexico, OCS Region, Minerals  
Management Service, 3301 North  
Causeway Blvd., Room 147, Metairie,  
Louisiana (Office Hours: 9 a.m. to 3:30  
p.m., Monday through Friday). A copy of  
the DOCD and the accompanying  
Consistency Certification are also  
available for public review at the  
Coastal Management Section Office  
located on the 10th floor of the State  
Lands and Natural Resources Building,  
625 North 4th Street, Baton Rouge,  
Louisiana (Office Hours: 8 a.m. to 4:30  
p.m., Monday through Friday). The  
public may submit comments to the  
Coastal Management Section, *Attention*  
*OCS Plans*, Post Office Box 44356, Baton  
Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:**  
Angie D. Gobert; Minerals Management  
Service; Gulf of Mexico OCS Region;  
Rules and Production; Plans, Platform  
and Pipeline Section; Exploration/  
Development Plans Unit; Phone (504)  
838-0876.

**SUPPLEMENTARY INFORMATION:** The  
purpose of this notice is to inform the  
public, pursuant to section 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 review. Additionally,  
this notice is to inform the public,  
pursuant to § 930.61 of Title 15 of the  
CFR, that the Coastal Management  
Section/Louisiana Department of  
Natural Resources is reviewing the  
DOCD for consistency with the  
Louisiana Coastal Resources Program.

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 CFR 53685). Those practices  
and procedures are set out in revised  
§ 250.34 of Title 30 of the CFR.

Dated: July 17, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS  
Region.

[FR Doc. 85-17723 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

### Scientific Committee of the Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This Notice is issued in accordance  
with the provisions of the Federal  
Advisory Committee Act, Pub. L. 92-463,  
5 U.S.C. Appendix I, and the Office of  
Management and Budget's Circular A-63  
Revised.

The Scientific Committee of the OCS  
Advisory Board will meet on August 13  
and 14, 1985, in the Conference Room  
(Room 602), Alaska Region, 949 East  
36th Avenue, Anchorage, Alaska 99508.

The Scientific Committee will meet  
during the period 8:30 a.m. to 5 p.m. on  
both days.

Agenda for the meeting will include  
the following subjects:

- Environmental Studies Issues  
Related to Exploration, Development,  
and Production Activities;
- The Alaska Region Socioeconomic  
Studies Program; and
- Scientific Data and Information  
Exchange Between Industry and Federal  
Agencies.

The meeting of this committee is open  
to the public. Approximately 20 visitors

can be accommodated on a first-come/  
first-served basis. All inquires  
concerning this meeting should be  
addressed to: Dr. Don Aurand, Chief,  
Branch of Environmental Studies (644),  
Minerals Management Service, Room  
2528, U.S. Department of the Interior,  
18th & C Streets, NW., Washington, DC  
20240; telephone: (202) 343-7744.

Dated: July 19, 1985.

Richard B. Krahl,

Acting Associate Director for Offshore  
Minerals Management.

[FR Doc. 85-17740 Filed 7-25-85; 8:45 am]

BILLING CODE 4310-MR-M

### Bureau of Reclamation

#### Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Notice of Proposed Contractual Actions Pending Through September 1985

Pursuant to section 226 of the  
Reclamation Reform Act of 1982 (96  
Stat. 1273), and to § 426.20 of the rules  
and regulations published in the *Federal  
Register* December 6, 1983, Vol. 48, page  
54785, the Bureau of Reclamation will  
publish notice of proposed or  
amendatory repayment contract actions  
or any contract for the delivery of  
irrigation water in newspapers of  
general circulation in the affected area  
at least 60 days prior to contract  
execution. The Bureau of Reclamation  
announcements of irrigation contract  
actions will be published in newspapers  
of general circulation in the areas  
determined by the Bureau of  
Reclamation to be affected by the  
proposed action. Announcements may  
be in the form of news releases, legal  
notices, official letters, memorandums,  
or other forms of written material.  
Meetings, workshops, and/or hearings  
may also be used, as appropriate, to  
provide local publicity. The public  
participation requirements do not apply  
to proposed contracts for the sale of  
surplus or interim irrigation water for a  
term of 1 year or less. The Secretary or  
the district may invite the public to  
observe any contract proceedings. All  
public participation procedures will be  
coordinated with those involved in  
complying with the National  
Environmental Policy Act if the Bureau  
determines that the contract action may  
or will have "significant" environmental  
effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the seven Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1985. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notice of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

#### Acronym Definitions Used Herein:

(FR) Federal Register  
 (ID) Irrigation District  
 (IDD) Irrigation and Drainage District  
 (M&I) Municipal and Industrial  
 (D&MC) Drainage and Minor Construction  
 (R&B) Rehabilitation and Betterment  
 (O&M) Operation and Maintenance  
 (CAP) Central Arizona Project  
 (CVP) Central Valley Project  
 (P-SMBP) Pick-Sloan Missouri Basin Program  
 (CRSP) Colorado River Storage Project  
 (SRPA) Small Reclamation Projects Act  
**Pacific Northwest Region:** Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334-9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.
2. Five IDs, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.
3. Brewster Flat ID, Chief Joseph Dam Project, Washington; Amendatory

repayment contract; Land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by \$169,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; \$5 per acre-foot or \$20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; \$1.25 per acre-foot or \$20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Fifty-three Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming; Contract amendments to extend term for which contract water may be subleased to other parties.

8. Cascade Reservoir water users, Boise Project, Idaho; Irrigation repayment contracts; 57,251 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 5,000 acre-feet annually from stored water in Lucky Peak Reservoir.

10. Thirty-two Jackson Lake Dam Spaceholders, Minidoka Project, Idaho-Wyoming; Repayment of costs associated with Safety-of-Dams modifications to Jackson Lake Dam.

11. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

12. Greater Wenatchee ID, Chief Joseph Dam Project, Washington; SRPA loan repayment contract; \$6,576,000 proposed obligation.

**Mid-Pacific Region:** Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484-4680.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California; Water service contract; 500 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Pacheco Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. El Dorado ID, Sly Park Unit, CVP, California; D&MC contract to allow the District to accomplish the construction work with the remaining funds from the distribution system contract, and amend the Unit 4 portion of its existing repayment contract to pay interest on actual M&I use.

7. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

8. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

9. Mid-Valley Water Authority, CVP, California; Temporary water supplies up to 100,000 acre-feet.

10. Solano ID, Solano Project, California; Amendatory loan repayment contract providing for reconveyance and M&I water supply delivery.

11. City of Avenal, CVP, California; Amendment of existing water service contract to provide for furnishing project power to city canalside relief facilities and change the point of diversion.

12. Yuba County Water Agency, South County Irrigation Project, SRPA, California; Loan repayment contract, \$18,500,000 proposed obligation.

13. ID's and similar water user entities; Amendatory repayment and water service contracts, including the amending of approximately 24 SRPA contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

14. United Water Conservation District, SRPA, California; Loan

repayment contract, \$18,730,000 proposed obligation.

15. State of Hawaii, Molokai Project, SRPA; Contract amendment to provide for use of facilities for M&I purposes.

16. Shasta Dam Area Public Utility District, CVP, California; Amendatory water service contract providing for increased M&I use to the district.

17. State of California, CVP, California; contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

18. Pixley ID, SRPA, California; Loan repayment contract, \$12,300,000 proposed obligation.

19. Century Ranch Water Company, Inc., CVP, California; Orland exchange, M&I, and water right settlement contract.

20. Kaiser Development Company, CVP, California; Sacramento River water right contract; Suspension of agricultural contract and execution of M&I contract.

21. Madera ID, Madera Canal, CVP, California; Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

22. Hills Valley ID, CVP, California; Amendatory water service contract, additional 400 acre-feet.

23. Tri-Valley Water District, CVP, California; Amendatory water service contract, additional 160 acre-feet.

24. County of Tulare, CVP, California; Amendatory water service contract, additional 1,908 acre-feet.

**Upper Colorado Region:** Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524-5435.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. M&I water users, Navajo Unit, CRSP, New Mexico; Negotiate or amend long term contracts for M&I water with current long term and short term contractors or new contractors pursuant to Section II of P.L. 87-483 and Hydrologic Determination dated January 29, 1985.

3. Animas-La Plata Conservancy District, Animas-La Plata Project,

Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico; Water service contract; 16,000 acre-feet per year for irrigation.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I water service contract; 19,700 acre-feet per year.

6. City of Aztec, Animas-La Plata, Project, New Mexico; M&I water service contract; 5,800 acre-feet per year

7. City of Bloomfield, Animas-La Plata Project, New Mexico; M&I water service contract; 5,300 acre-feet per year.

8. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 94,100 acre-feet per year; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199. Final proposed draft contract available.

9. Central Utah Project, Bonneville Unit, Utah; \$34,000,000 D&MC Contract—Duchesne River Area Canals rehabilitation to meet 1987 construction commitment. Repayment covered under executed repayment contract and by CRSP power revenues.

10. Dorchester Coal Company, Blue Mesa Reservoir, Colorado, Colorado River Storage Project; M&I water service contract, 400 acre-feet per year, for 40 years.

11. South Weber Water Improvement District, Weber Basin Project, Utah; Amendatory SRPA contract to extend payout period from 21 years to 40 years.

12. State of Wyoming, Seedskaelee Project, Wyoming; Contract for repayment of reimbursable cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (Pub. L. 98-404).

13. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado, M&I uses, 20-acre feet and less for 20-40 years.

14. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

15. M&I water users, Navajo Unit, Colorado River Storage Project, New Mexico; Negotiable repayment of reimbursable costs associated with the modification of Navajo Dam pursuant to the Reclamation Safety of Dam Act Amendment of 1984 (Pub. L. 98-404).

16. Bonneville Unit, Central Utah Project, Utah; Two repayment contracts for repayment of Jordan Aqueduct with Salt Lake County Water Conservancy District and the Metropolitan Water

District. Final proposed contract drafts available.

17. Upper Yampa Water Conservancy District, Colorado; Repayment contract to repay a loan of \$4,478,000 for the construction of Stagecoach Dam and Reservoir pursuant to the SRPA of 1956, Pub. L. 48-984, as amended.

18. Weber Basin Water Conservancy District, Weber Basin Project, Utah; Emergency Loan, Repair of A.V. Watkins Dam Embankment, \$2,800,000.

**Lower Colorado Region:** Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293-8536.

1. Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona; Amendatory D&MC contract for improvement of the Gila River within the district's boundaries; \$6,000,000 of Federal funds to be utilized on a nonreimbursable basis pursuant to Pub. L. 98-396, August 21, 1984.

2. Agricultural and M&I water users, CAP, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Elsinore Valley Municipal Water District, Elsinore, California; Contract for the repayment of a \$7,158,000 SRPA loan.

4. Agricultural and M&I water users, CAP, Arizona; Contracts for repayment of Federal expenditures for construction of distribution systems.

5. Contracts with 5 agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project; Water service contracts for up to 1,920 acre-feet per year total.

6. Gila River Indian Community, CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

7. Yuma-Mesa ID, North Gila Valley ID, and Yuma ID, Gila Project, Arizona; Amendatory and supplemental contracts to conform to the provisions of Pub. L. 98-530.

8. Hillander "C" ID, Colorado River Basin Salinity Control Project, Yuma, Arizona; 5-year contract for 4,000 acre-feet per year from the Protective and Regulatory Pumping Unit.

9. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

11. Rancho California Water District, Temecula, California; Contract for the repayment of a \$20,940,000 SRPA loan.

12. Ak-Chin Indian Community, Maricopa, Arizona; Supplemental contract in accordance with the provisions of Pub. L. 98-530.

13. City of Needles, Needles, California; Contract for up to 10,000 acre-feet per year of surplus water from the Colorado River, permanent contract to be activated only during periods when surplus flows are available.

14. Gila River Indian Community, Arizona; Contract for the repayment of a \$6,574,000 SRPA loan.

15. Lakeview City, Incorporated; Water delivery contract for up to 400 acre-feet per year from the Colorado River for M&I use; Contains provisions for increasing delivery up to 1,309 acre-feet to serve future development upon recommendation of the State of Arizona.

16. Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River Water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

17. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

**Southwest Region:** Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378-5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding \$2 million, pursuant to Pub. L. 96-550.

4. Lavaca-Navidad River Authority, Palmetto Bend Project, Texas; Amendatory repayment contract to provide for increased payment for recreation.

5. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately \$13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

6. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97-293).

**Upper Missouri Region:** Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657-6413.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to \$1.5 million.

4. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Oahe Unit, P-SMBP, South Dakota, Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97-273 with South Dakota Board of Water and Natural Resources Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming; Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

**Lower Missouri Region:** Bureau of Reclamation, P.O. Box 25247 (Building 20, Denver Federal Center), Denver, Colorado 80225, telephone (303) 234-3327.

1. Almena ID No. 5, Almena Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

2. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

3. Corn Creek ID, New Grattan Ditch Company, Earl Michael, Glendo Unit, P-SMBP, Wyoming, and Nebraska; Irrigation water service contracts.

4. Webster ID NO. 4, Webster Unit, P-SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, \$970,816 outstanding.

5. Green Mountain Reservoir, Colorado-Big Thompson Project; Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

6. Individual irrigators, M&I, and miscellaneous water users, Lower Missouri Region, Southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

7. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

8. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

9. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P-SMBP, Narrows Unit, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

10. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

11. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas; Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, \$866,231 outstanding.

12. Cedar Bluff ID No. 6, Cedar Bluff Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

13. Webster ID No. 4, Webster Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

14. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for long term storage contracts.

15. Twin Loups Reclamation District, P-SMBP, D&MC contract and a sole source contract for correction of initial construction deficiencies and monitoring during initial filling, priming and puddling activities of the project. Proposed contracts are to be \$500,000 and \$1,439,000, respectively.

16. Farwell Irrigation District, Nebraska; Request for D&MC contract for the correction of drainage and seep area on the project.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a termination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: July 22, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85-17730 Filed 7-25-85; 8:45am]

BILLING CODE 4310-09-M

## INTERSTATE COMMERCE COMMISSION

### Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, Ohio 43695-0799.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

- i. LOF Glass Division, Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, Ohio 43695-0799; State of incorporation—Ohio
- ii. Aeroquip Corporation, 300 South East Avenue, Jackson, Michigan 49203; State of incorporation—Michigan
- iii. LOF Plastics Inc., 1150 Stephenson Highway, P.O. Box 3230, Troy, Michigan 48007-3230; State of incorporation—New Jersey
- iv. Modern Tools Division, Libbey-Owens-Ford Company, 911 Matzinger Road, Toledo, Ohio 43695-0799; State of incorporation—Ohio
- v. Vickers, Incorporated, 1401 Crooks Road, Troy, Michigan 48084; State of incorporation—Delaware

(1) Parent corporation and address of principal office: The Signal Companies, Inc., 11255 North Torrey Pines Road, La Jolla, CA 92037.

(2) Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

Subsidiaries	State of Incorporation
Ampex Corporation	Alabama
The Garrett Corporation	Delaware
UOP Inc.	Do.
Kellogg Rust Inc.	Do.
Wheelabrator-Frye Inc.	Do.
MPB Corporation	Do.
CPS Engineering Corporation	Massachusetts
Johnson Screens, Inc.	Delaware
Sinclair & Valentine Company, Inc.	Do.
Frye Copysystems, Inc.	Do.
Neptune Measurement Company	Do.
Neptune Microfilm, Inc.	Oregon
Wolverine, Inc.	Delaware

1. Parent Corporation and address of principal office: Wickes Companies, Inc., 3340 Ocean Park Boulevard, Santa Monica, CA 90405.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

- (i) Wickes International Corporation, a Delaware Corporation
- (ii) Howard Bros. Discount Stores, Inc. a Louisiana Corporation
- (iii) Red Owl Stores, Inc., a Delaware Corporation
- (iv) Snyder's Drug Stores, Inc., a Minnesota Corporation
- (v) Southland Wholesale Distributors, Inc., A Louisiana Corporation
- (vi) Wickes Europe, Inc., a Delaware Corporation
- (vii) The Woman's Shop, Inc., a Texas Corporation
- (viii) Woman's World Shops, Inc., a Delaware Corporation, and
- (ix) Yorktowne, Inc., a Delaware Corporation.

James H. Bayne,

Secretary.

FR Doc. 85-17759 Filed 7-25-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30681]

### Railroad Exemption; Consolidated Rail Corp.; Trackage Rights; Missouri Pacific Railroad Co.

Missouri Pacific Railroad Company (MP) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between St. Elmo, and east St. Elmo, IL, over a segment of MP's line described as follows:

Beginning at the MP-Conrail property line, point X, near Conrail's Milepost 154, 1, E. St. Elmo, IL, to the MP-Conrail property line, point Y, near Conrail's Milepost 157, 5, St. Elmo, IL, a distance of approximately 3.4 miles.

The trackage rights will be effective July 14, 1985, or on such later date as MP and Conrail agree to, as evidenced by an exchange of letters.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: July 16, 1985.

By the Commission, Heber F. Hardy,  
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-17758 Filed 7-25-85; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## Manufacturer of Controlled Substances; McNeilab Inc.; Registration

By Notice dated May 16, 1985, and published in the *Federal Register* on May 23, 1985; (50 FR 21373), McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

## Drug and Schedule

Codeine (9050)—II  
Oxycodone (9143)—II  
Morphine (9300)—II  
Thebaine (9333)—II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated July 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-17765 Filed 7-25-85; 8:45 am]

BILLING CODE 4410-09-M

## Medicine Shoppe; Revocation of Registration

On April 3, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Medicine Shoppe of 206 Donelson Pike, Donelson, Tennessee 37214 (Respondent) proposing to revoke its DEA Certificate of Registration AM5562524. The proposed action was predicated on the conviction of Daniel C. Dickson, R.Ph., the owner and managing pharmacist of Respondent pharmacy, of four counts of felonies relating to controlled substances. A further basis for the proposed action was the material falsification of the renewal applications for registration of the Medicine Shoppe submitted in December 1981, 1982, 1983 and 1984, in which Mr. Dickson indicated that neither the applicant nor any officer, shareholder, partner or proprietor of the pharmacy had been convicted of a

felony offense relating to controlled substances.

In a letter dated April 9, 1985, Mr. Dickson specifically waived Respondent's opportunity for a hearing and instead filed a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Acting Administrator has considered the entire investigation file in this matter, including Respondent's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Acting Administrator finds that during 1980 and 1981, the Tennessee Bureau of Investigation Narcotics Division made numerous undercover purchases of controlled substances from Daniel Dickson, the owner and managing pharmacist of Respondent pharmacy. The controlled substances purchased included phentermine, propoxyphene and diazepam, all Schedule IV controlled substances, and a codeine combination product, which was a Schedule III controlled substance. Mr. Dickson dispensed these drugs without the authorization of a physician. On one occasion, Mr. Dickson stated that he had contacted the prescribing physician for authorization to refill a certain prescription. However, it was ascertained that no telephone calls had been received at the physician's office from Mr. Dickson.

On July 22, 1981, the Davidson County Grand Jury returned a 92 count indictment against Daniel Dickson charging him with dispensing controlled substances without authorization of a practitioner. On September 10, 1981, Dickson pled guilty to four counts of the 92 count indictment. These are felony offenses relating to controlled substances. DEA has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. *Leonard S. Cohen, t/a Senate Drug Store*, Docket No. 72-5, 38 FR 9522 (1973); *Big-T Pharmacy, Inc.*, Docket No. 80-34, 47 FR 51830 (1982); *K & B Successors, Inc.*, Docket No. 82-15, 49 FR 34588 (1984). Therefore, there is a lawful basis for the revocation of Respondent's registration. 21 U.S.C. 824(a)(2).

The Acting Administrator finds an additional ground for revoking Respondent's DEA registration under 21 U.S.C. 824(a)(1) in that Daniel Dickson materially falsified the renewal

applications for registration of Respondent pharmacy submitted in December 1981, 1982, 1983 and 1984. On each application, Mr. Dickson indicated a negative response to the question, "Has the applicant been convicted of a felony in connection with controlled substances under the state or federal law?"

In his letter dated April 19, 1985, responding to the Order to Show Cause, Mr. Dickson attempted to explain the material falsification of the applications by stating that his failures to indicate he was convicted of a controlled substance-related felony were "stupid errors." The Acting Administrator finds it difficult to believe that Mr. Dickson could have carelessly forgotten his felony convictions for four consecutive years.

The Administrator of DEA is charged with protecting the public from the illicit diversion of controlled substances. The Acting Administrator is not convinced Mr. Dickson will not continue his illegal practices. His failure to disclose his prior conviction indicates that he is not to be trusted.

Accordingly, having concluded that there is a lawful basis for the revocation of Respondent's registration, and having further concluded that under the facts and circumstances of this case the registration should be revoked, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM5562524, previously issued to Medicine Shoppe, be, and it hereby is revoked August 20, 1985.

Dated: July 22, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-17766 Filed 7-25-85; 8:45 am]

BILLING CODE 4410-09-M

## Office of Juvenile Justice and Delinquency Prevention

## National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth

## Correction

In FR Doc. 85-17654, beginning on page 30312 in the issue of Thursday, July 25, 1985, make the following correction:

On page 30314, in the third column, the following text should appear between the paragraph designated "6." and the line "a. Runaways.":

Claims of extreme variation in law enforcement agencies' reactions to reports of missing children have been made with little documentation of actual practices. To date, no such national survey has been conducted of law enforcement's role in the identification, location and recovery of missing children. The first phase of the study should inform us about the extent to which varying definitions, case classification, record keeping procedures, etc., affect our ability to use official police reports as indicators of the national incidence of children reported missing and, to what extent various practices may impede or facilitate the process of recovery of missing children under varying circumstances.

The results of this survey and other information will be used to formulate the sampling strategy for the second phase of the study.

*B. Phase II: Onsite Interviews with Personnel from up to 100 Law Enforcement Agencies.*

1. To verify responses from the mailed questionnaire obtained in Phase I;

2. To collect more detailed information from selected jurisdictions on actual investigative practices utilized by law enforcement agencies in responding to reports of missing children, with particular attention to the following types of reported cases:

BILLING CODE 1505-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

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

##### Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

##### List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of

any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N 1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### New

Bureau of Labor Statistics  
CES Response Analysis Survey (RAS)  
One-time survey  
Nonagricultural establishments  
655 responses; 175 hours; 1 form

The CES survey is one of the primary sources of employment, payroll, and hours information for the economy, with over 200,000 establishments providing payroll information each month. The RAS continues the Bureau's efforts to periodically review the payroll records of respondents to better match available records with CES definitions to improve data quality.

Mine Safety and Health Administration  
A Demographic Survey of the Mining Industry Population  
Nonrecurring  
Businesses or other for-profit; small businesses or organizations

3,500 responses, 1,167 hours, 1 form

The survey will collect data from the mining industry and produce information on the population characteristics (e.g., job experience, job training, education) of the Nation's mine workers. This information will be used to improve accident data analysis, to improve and expand mine health and safety research, and to customize training and safety programs for specifically identified demographic sectors of the mining industry population.

Departmental Management, Women's Bureau

Women's Bureau Region III Women Veterans' Job Information Packet Evaluation Form

On occasion

Individuals or Households

2,174 responses; 435 hours; 1 form

The information will be used to make decisions about the content of the Women's Bureau Region III Women Veterans' Job Information Packet, the cost-effectiveness of a national distribution of the packet and the most effective dissemination strategy for the information. Affected public: recently discharged women veterans.

#### Revision

Employment Standards Administration  
Homeworker Handbooks

1215-0013; WH-75, WH-75a

On occasion

Individuals or households; Businesses or other for-profit;

Non-profit institutions; Small businesses or organizations

11,250 responses; 22,500 hours; 2 handbooks

Homeworker handbooks provide information on hours worked and wages paid to homeworkers covered by the Fair Labor Standards Act. The handbooks are used to help insure that such workers receive the minimum and overtime wages to which they are entitled. The new WH-75a covers homeworkers in the knitted outerwear industry only.

#### Extension

Employment and Training Administration

Notice of Intended Deregistration 1205-0175; ETA RC 42

On occasion

Individuals or households

1,458 respondents; 18,225 hours; no forms

The Notice of Intended Deregistration is needed for consistency with due process as expressed by U.S. Supreme Court in *Goldberg vs. Kelly*. The Law

requires that when a certified WIN registrant refuses to participate in WIN, either (1) notify the welfare agency to remove AFDC benefits or (2) allow the registrant to request a hearing.

Signed at Washington, D.C., this 23rd day of July, 1985.

Paul E. Larson.

Departmental Clearance Officer.

[FR Doc. 85-17833 Filed 7-25-85; 8:45 am]

BILLING CODE 4510-27/4510-43

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Anaconda Minerals Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and

are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than (August 5, 1985).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 22nd day of July 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

#### APPENDIX

Petitioner: Union/workers or former workers of	Location	Date received	Date of petition	Petition No.	Articles produced
Anaconda Minerals Co., Nevada Moly Operations (workers)	Tonopah, NV	7/15/85	7/2/85	TA-W-16,156	Molybdenum sulfide.
Apparel 42, Inc. (workers)	Rickmann, TN	7/15/85	7/1/85	TA-W-16,157	Ladies' blouses.
Armco, Inc., Specialty Steel Div. (USWA)	Baltimore, MD	7/8/85	6/25/85	TA-W-16,158	Stainless steel ingots, billets, bar and wire products.
Carle, Inc. (workers)	Connellsville, PA	7/11/85	7/1/85	TA-W-16,159	Mens and ladies sportswear.
Charles Weinstein Coat Co. (ACTWU)	Sacausus, NJ	7/10/85	7/5/85	TA-W-16,160	Ladies' coats.
Connellsville Sportswear Co., Inc. (ACTWU)	Connellsville, PA	7/2/85	6/25/85	TA-W-16,161	Men's and ladies' dress slacks.
Consolidation Coal Co. Dilworth Mine (UMWA)	Rices Landing, PA	7/9/85	7/1/85	TA-W-16,162	Metallurgical coal.
Eaton Corp. (workers)	Lincoln, IL	7/9/85	7/3/85	TA-W-16,163	Circuit breakers.
Mineral Fertilizer Co. (company)	North Salt Lake, UT	7/5/85	7/1/85	TA-W-16,164	Single superphosphate.
New Coat Factory, Inc. (ILGWU)	Highland Park, NJ	7/9/85	6/26/85	TA-W-16,165	Ladies' and children's coats.
Peerless Audio Manufacturing Corp. (workers)	Leominster, MA	7/15/85	7/10/85	TA-W-16,166	Loudspeaker drivers.
Rawlings Sporting Goods (workers)	St. Louis, MO	7/12/85	7/5/85	TA-W-16,167	Distribution of team sporting equipment.
Amex Nickel, Inc. (USWA)	Braithwaite, LA	7/2/85	6/27/85	TA-W-16,168	Nickel, cobalt, copper and ammonia sulfates.
Brett Harris Corp. (ACTWU)	Hazleton, PA	6/26/84	6/26/85	TA-W-16,169	Men's shirts.
Oranston Print Works Co. (company)	Fletcher, NC	7/9/85	6/11/85	TA-W-16,170	Prints and finishes cotton and cotton polyester blended fabrics.
Crucible Specialty Steel Div. of Colt Industries (USWA)	Syracuse, NY	7/2/85	6/26/85	TA-W-16,171	Tool steel, valve steel, stainless steel.
EG & G Rolton (company)	Orangeburg, SC	7/16/85	7/2/85	TA-W-16,172	Tubaxial fans.
EG & G Rolton (company)	Woodstock, NY	7/16/85	7/2/85	TA-W-16,173	Tubaxial fans.
General Refractories Corp. (USWA)	Claysburg, PA	7/2/85	6/27/85	TA-W-16,174	Silica refractory products.
ITT Grinnell Corp. Pipe Hanger Div. (United Assoc. of Journeyman Plumbers)	Warren, OH	7/15/85	7/1/85	TA-W-16,175	Industrial pipe hangers.
Martin Shirt Co., Inc. (ACTWU)	Shenandoah, PA	6/28/85	6/26/85	TA-W-16,176	Ladies' blouses.
Sperry New Holland (workers)	Lexington, NE	7/15/85	7/11/85	TA-W-16,177	Combines, farm equipment.
Timberland Cedar Products (workers)	South Bend, WA	7/2/85	6/4/85	TA-W-16,178	Shakes and shingles.

[FR Doc. 85-17832 Filed 7-25-85; 8:45 am]

BILLING CODE 4510-30-M

## Office of Pension and Welfare Benefit Programs

[Application No. D-4124 et al.]

### Proposed Exemptions; Crawford Fitting Co. et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the

Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register

Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public

Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

#### Crawford Fitting Company Profit Sharing Trust and the Associated Profit Sharing Trusts of Several Related Corporations (the Crawford Plans) Located in Cleveland, Ohio

[Application No. D-4124]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply: (1) To those leases of certain manufacturing equipment (the Equipment) between the Crawford Plans and the Crawford Fitting Company and

several related employers (the Crawford Companies) that were entered into prior to June 1, 1980, and to the renewals of such leases (including renewals of leases previously covered by section 414(c) of the Act that were extended beyond June 30, 1984), to the extent that any such lease, when entered into, did not cause the affected plan to have more than 25 percent of its assets committed to such transactions; (2) effective April 9, 1975, to the purchase from and subsequent leaseback to the Toner Company (Toner) of certain real estate (the Property) by the Crawford Fitting Company Profit Sharing Trust (the CFC Trust); and (3) prospectively, to the cash sale of the Equipment and the Property by the respective Crawford Plans (which term includes the CFC Trust) to selected members of the Crawford Companies within 90 days of the grant of this proposed exemption, provided that, at all times, the amounts received by the Crawford Plans in the above described transactions represent(ed) no less than the fair market value at the time of such transactions.

**Effective Dates:** If the proposed exemption is granted, it will be effective January 1, 1975 with respect to the lease of the Equipment; April 9, 1975 with respect to the purchase and leaseback of the Property; and from the date of the grant of the exemption for the cash sale of the Equipment and the Property.

#### Summary of Facts and Representations

1. The application was submitted on behalf of the Crawford Companies which constitute a group of twenty corporations acting in concert with one another.<sup>1</sup> The Crawford Companies are the net result of a business enterprise which was initiated in 1947 by Fred A. Lennon (Lennon). Presently at least 50 percent of the stock of all but four of the Crawford Companies is owned singularly by Lennon or in combination by Lennon and various members of his family.<sup>2</sup> The Crawford Companies

<sup>1</sup> The entities which comprise the Crawford Companies include: Alfred Machine Co., Atlantic Co., Cajon Co., Central Swagelok Co., Colony Tool Co., Crawford Fitting Co., Eastern Swagelok Co., Falon Co., Impaction Co., Kenmore Research Co., Nupro Co., Pritchard Products Co., Snow Metal Products Co., Southern Swagelok Co., Swagelok Co., Toner Co., Western Swagelok Co., Whitney Co., Whitney Research Tool Co., Zalo Manufacturing Co.

<sup>2</sup> The applicant represents that four of the Crawford Companies are not parties in interest with respect to the employee benefit plans sponsored by the other member employers of the group. These companies are Alfred Machine Co., Atlantic Co., Snow Metal Products Co. and Whitney Research Tool Co. The applicant has reviewed the party in interest provisions and represents that no prohibited transaction exists with respect to any lease of the Equipment involving these companies except in the one situation where Atlantic Co.

include five separately incorporated domestic manufacturing companies and two foreign affiliates. To supply these companies with various back-up services including the manufacturing of specialized parts, a number of additional entities were either developed or acquired. Both the manufacturing companies and their supplier affiliates utilize the Equipment in developing their respective products. The Equipment consists of screw machines which are used to shape metal bars or tubing and are employed in a wide variety of manufacturing procedures. Products manufactured by the above referenced entities are then sold to separately incorporated regional warehouses which, in turn, sell the products to independent local distributors.

2. Each of the respective corporate entities which make up the Crawford Companies has adopted a profit sharing plan qualified under section 401(a) of the Code. The Crawford Plans range in size from 8 to 348 participants. The assets of each of the Crawford Plans are currently managed by the Midwest Bank and Trust Company (Midwest) as trustee; however, the assets are not commingled for investment purposes. Midwest is a local financial institution having full investment discretion over the assets of the Crawford Plans. Neither Lennon nor any member of his family is an officer or director of Midwest. Lennon and an officer of one of the affiliated companies, F.J. Callahan (Callahan), had a combined minority stock interest in Midwest of approximately 8.75 percent on January 1, 1975. This combined minority stock interest increased to approximately 14 percent by 1982 although neither party owned 10 percent. The applicants represent that this stock ownership interest by Lennon and Callahan had a "de minimus" effect on operating policies of Midwest, and that they had no ability to influence the decision of Midwest in its capacity as fiduciary for the Crawford Plans. The inability of Lennon and Callahan to influence decisions of Midwest was evidenced by a decision of the Midwest Board of Directors in 1982 to approve the sale of Midwest's stock to another financial institution in the face of opposition by Lennon and Callahan which at one point was elevated to a threat of litigation to

leased a piece of Equipment from the profit sharing plan which it sponsors. Accordingly, for purposes of the relief provided by this exemption the term "Crawford Companies" should not be read as including the above named companies with the limited exception of the one lease involving the Atlantic Co.

block the sale. The controlling stock interest resided with Raymond Rossman (Rossman), Chairman of the Board of Directors and Chief Executive Officer of Midwest and the Catholic Diocese of Cleveland, whose combined holdings exceeded 60 percent of the voting stock during the period of the subject transactions. Between 1970 and 1982, Callahan was a member of the Board of Directors of Midwest although he was not involved, on behalf of Midwest, in any of the transactions which are the subject of the exemption request. Additionally, the nine other members of Midwest's Board of Directors were unrelated either directly or indirectly to Lennon or Callahan. Over the years the Crawford Companies have used Midwest, as well as other local financial institutions, to satisfy occasional short-term financing needs. These loans have always been repaid in strict accordance with their terms. At no time did the total percentage of outstanding loans to the Crawford Companies represent more than one percent of the outstanding commercial loans made by Midwest.

The documents implementing each of the Crawford Plans provided for the appointment of an advisory committee (the Committee (s)) comprised of senior officials of the respective Crawford Companies. The Committees are provided with the authority to construe the provisions of the applicable plan and trust documents and provide basic administrative functions. In addition, by the terms of the respective plans' trust agreements, the Committees have the power to require Midwest to seek prior approval of any specified type of investment which Midwest would otherwise choose to acquire for any of the Crawford Plans. The applicant states that the Committees have never taken any action to initiate the requirement that Midwest seek prior review in connection with the investment decision making process. Midwest represents that it has never considered the existence of this provision as compromising its unfettered flexibility to make investment decisions. Accordingly, Midwest has served, since the inception of the trust arrangement, with no active restriction on its investment discretion.

3. Midwest assumed its duties as trustee for the Crawford Plans in 1970. At that time, discussions between Midwest, principals of the Crawford Companies and members of the Committees for the respective profit sharing plans, resulted in an understanding that Midwest would consider investing assets of the Crawford Plans in the Equipment. After

purchase by one of the Crawford Plans, the Equipment would then be leased to a particular employer of the Crawford Companies.<sup>3</sup>

This type of Equipment (screw machines) has a long useful life and it is not uncommon for a forty (40) year old machine to still be in service. As a result of these meetings, Rossman initiated his own study to determine the feasibility of effectuating such an investment program. Rossman personally interviewed representatives of National Acme (Acme), an unrelated manufacturing company for similar types of equipment, to obtain an understanding of the normal characteristics of equipment leases and obtained copies of the standardized lease forms utilized in the operation of their leasing program. Midwest then drafted its own lease document which implemented the terms and conditions utilized by Acme. Once Midwest had determined that such an investment program was in the interests of the participants in the Crawford Plans and that one of the Crawford Plans contained adequate liquidity that it did not wish to invest in Treasury Bills or other securities, Midwest contacted representatives of the Crawford Companies. Such inquiry was to ascertain whether any of the Crawford Companies were desirous of acquiring an additional piece of the Equipment. Midwest would then be sent information regarding the acquisition intentions of the Crawford Companies, including a list of the Equipment which such companies anticipated purchasing in the near future. Upon review, Midwest would approach the appropriate company and offer to have one of the Crawford Plans acquire the desired piece of equipment with the understanding that it would be immediately leased to such company. Midwest evaluated the terms of its standard lease document and made modifications, if necessary, to assure that each equipment lease satisfied the established standards for commercial reasonableness.

The leases were almost exclusively (90 percent) 5 years in term and provided for an annual rental payment equal to 24 percent of the purchase price of the particular piece of equipment purchased. At the expiration of the 5 year period such leases would be renewed at the option of the lessee on a year-to-year basis. The annual rent during the renewal period would be

<sup>3</sup> The purchase and leasing of the Equipment was represented as a good investment medium because of the longevity and rental income expectations normally associated with such equipment.

equal to 6 percent of the original purchase price. The leases involving the Equipment contained the following conditions considered to be safeguards for the Crawford Plans as lessors: (1) The Equipment shall remain the sole and exclusive property of the lessor plan and may not be transferred, delivered or sublet to any other person or corporation without the concurrence of the lessor plan; (2) the lessee shall be responsible at all times and at its own expense to maintain the Equipment in good and efficient working order and surrender the Equipment on expiration of the lease in such good order; (3) the lessee shall maintain, at its own expense, insurance for the actual value of the Equipment and pay all taxes and assessments which may be assessed against the Equipment; and (4) the lessee shall be prohibited from attaching the Equipment to any personal or real property without the prior approval of Midwest. Based on his positions on the Board of Directors of three machine tool manufacturers (unrelated to the Crawford Companies), Rossman had personal knowledge of the rate structure generally employed for similar equipment leases and utilized this expertise in determining that the rates which the Crawford Plans received equalled or exceeded normal commercial leasing rates.

4. Beginning in April of 1970 and continuing through August of 1981 the Crawford Plans acquired and leased a total of 209 machines to the Crawford Companies.<sup>4</sup> Of that number 138 were acquired and leased after January 1, 1975, the effective date of the fiduciary responsibility provisions of the Act. As a result of Midwest's intention to provide each of the Crawford Plans with a reasonably equivalent overall portfolio rate of return, several of the smaller plans developed substantial asset concentrations in equipment leases during some of the years involved. Rossman felt that such concentration did not violate the requirement for diversification because of his personal knowledge of the strong economic condition of the Crawford Companies and his experience in evaluating

<sup>4</sup> The Department notes that a number of pieces of the Equipment were the subject of leases executed prior to July 1, 1974. The Department is not expressing an opinion whether such leases were covered under the transitional provisions of section 414(c) of the Act. Those leases satisfying the conditions contained therein require no relief until July 1, 1984; this notice, however, has the effect of proposing adding relief for those transactions that extended beyond July 1, 1984 until the Equipment is sold.

equipment leasing transactions.<sup>5</sup> The Crawford Plans were in no way utilized as a device for effectuating the acquisition of properties which the Crawford Companies could not otherwise afford. During the period in question the aggregate investment of the Crawford Plans in the Equipment represented less than 8.2 percent of the total value of equipment, machinery and other capital assets acquired by the Crawford Companies.

From the inception of the leasing arrangements involving the Equipment in 1970 to the present time, the Crawford Companies have abided by all of the terms of such leases, the Equipment has been kept in good working order and all monies due the Crawford Plans have been timely paid. There has been no instance when a Crawford Company has failed to renew a year-to-year lease on the Equipment which has been held for more than 5 years. Thus, none of the Crawford Plans has ever been in a position of having to dispose of a piece of the Equipment at the termination of a lease.

5. In early 1975, Rossman determined that the largest of the Crawford Plans, the CFC Trust, should diversify into the real estate market. Rossman identified the Property, a 3.95 acre parcel in Solon, Ohio, as suitable for purchase by the CFC Trust. While no appraisal of the Property was made, Rossman determined that a price of \$500,000, an amount which was less than the purchase price paid by the then current owner of the Property, was fair market value based on his personal knowledge of real estate values for properties of comparable size and use within the same geographic area during this time period. Midwest had previously been a party to several real estate transactions in the subject area by virtue of having loaned mortgage money based on appraisals of certain real estate to be used as collateral for the mortgage loans. Rossman suggested that a more favorable price for the Property might be obtained if someone other than Midwest, as trustee for an unnamed client, approached the seller. Accordingly, it was decided that the principals of the Crawford Companies would negotiate the purchase of the Property. On April 9, 1975 Toner, one of

the Crawford Companies, purchased the Property for \$500,000 and immediately resold it to the CFC Trust for the same price. No commission was paid by the Plan in connection with the acquisition of the Property. The Property had been improved with an industrial building and an office wing which together contained approximately 27,000 square feet of leasable space. On April 9, 1975, the office space (approximately 4,000 square feet) was leased to Falls Advertising Company (Falls), an unrelated party, on a 5 year net lease with an option for 5 additional years. The main shop area of the Property was leased on the same date to Toner under identical lease terms except Toner also agreed to pay all real estate taxes. In April of 1980 when the original 5 year leases expired, the CFC Trust continued to rent space in the Property to both Falls and Toner on a month-to-month basis.

Midwest was able to secure a rate of return on the Property equal to 14 percent of its acquisition cost at a time when a 12 percent return was considered market for similar types of property. Since its acquisition, the CFC Trust has had the Property reappraised several times and the rental terms have been modified so that the lease rate has at all times reflected a return of 14 percent of current appraised value.

6. The Committees, in overseeing the operation of the Crawford Plans, had always looked to Midwest and in-house counsel for confirmation that such plans were operated in conformance with applicable federal statutes. In May of 1980 a Federal banking audit identified a perceived prohibited transaction problem. However, transactions involving the leasing of the Equipment continued because of applicant decided to rely on the fact that representatives of the Department and the Internal Revenue Service (the IRS) were aware of the transactions based on audits conducted between 1978 and 1980 and had not objected to or suggested that the transactions represented violations of the prohibited transactions rules of the Act. The Crawford Companies, the Committees and Midwest claim no actual knowledge of the prohibited nature of the leasing transactions until May 27, 1981. On that date the Department formally notified the Committee of the CFC Trust of its position that the leasing transactions involving the Equipment and the Property constituted prohibited transactions. Upon being advised of these prohibited transactions, Midwest ceased engaging in additional leasing arrangements. However, since all of the

lessees had a proven record of fulfilling their obligations and Midwest was concerned about the potential loss of a favorable income stream for the Plans, Midwest determined that it would not be in the best interests of the Crawford Plans to discontinue the existing leasing arrangements between the Crawford Plans and the Crawford Companies.

7. After reviewing the situation with Department representatives, the Committees, Midwest and the Crawford Companies developed a program that would serve as a basis for disentangling the Crawford Plans from the Crawford Companies through sales of the Equipment and the Property to such companies, and filed an application for exemption on January 18, 1983. The program calls for the obtaining of qualified independent appraisals for both the Property and the Equipment. All costs for such appraisals including commissions or other expenses incidental to the sale of the Equipment or the Property will be paid by parties other than the Crawford Plans.

It is the intention of the parties that once the fair market value of the Equipment is established, the Crawford Companies will purchase such for an amount which would equal the greater of (a) the current appraised value of the asset or (b) the book value for the asset as reflected on the financial records of the applicable profit-sharing plan. The applicant is aware that the IRS may characterize any payment which exceeds the appraised value of an asset as a form of indirect employer contribution. The applicant has reviewed the instances where such a differential may arise and compared the size of such differential to the covered payroll attributable to the profit-sharing plan in question. In each case, the recharacterization of the payment as a form of indirect contribution, coupled with the actual employer contributions for forfeitures for the plan year would fall well within the limitations of section 415 of the Code. Mr. John Jelenic, President of Jelenic Machinery Company, was retained to appraise the Equipment. Mr. Jelenic has dealt in new and used automatic screw machines and the servicing of such equipment for 15 years. His appraisal, dated January 31, 1984, noted the current resale prices of each piece of Equipment owned by the Crawford Plans and its current book value as reflected on the financial records of the applicable profit-sharing plan. The appraisal for each piece of Equipment will be reviewed and updated prior to actual sale pursuant to this exemption, if granted. Mr. Jelenic is represented as being independent of and

<sup>5</sup> The Department's authority to grant administrative relief under section 406(a) of the Act does not extend to the general standards of fiduciary conduct found in section 404(a)(1) of the Act. In particular, by this notice the Department makes no determination with respect to the requirement of section 404(a)(1)(C) that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

unrelated to any of the Crawford Companies, their principals or Midwest.

The Property which is currently owned by the CFC Trust and leased to Toner has also been appraised and will be sold for cash to one of the Crawford Companies. Mr. Stuart J. Satullo (Satullo), a senior member of the American Society of Appraisers, was retained to appraise the Property. Mr. Satullo determined that the market value of the Property as of January 23, 1984 was \$735,000. The appraisal of the Property will be reviewed and updated prior to actual sale pursuant to this exemption, if granted. Mr. Satullo is represented as being independent of and unrelated to any of the Crawford Companies, their principals or Midwest.

These transactions would be effectuated within 90 days of the grant of this exemption request. Midwest, as the discretionary trustee for the Crawford Plans, has reviewed the terms of the proposed sales of the Equipment and the Property and has stated in writing that such transactions are appropriate and in the best interests of the participants and beneficiaries of the Crawford Plans (which term includes the CFC Trust).

8. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows:

(a) With respect to the retroactive leasing arrangements involving the Equipment—

(1) A bank trustee exercising its discretionary authority as a fiduciary, evaluated the investment program before the leasing arrangements commenced and determined it appropriate for the Crawford Plans. Such fiduciary also had decision making authority with respect to the Equipment to be purchased;

(2) The transactions between the Crawford Plans and the Crawford Companies commenced several years prior to the passage of the Act and constituted an established practice. These transactions were engaged in subsequent to January 1, 1975 with no actual knowledge of the prohibited nature of the leasing arrangements by either the Committees or Midwest;

(3) Midwest exercised its discretion over the leasing activities involving the Equipment in such a way as to ensure that the rates were competitive with leases of similar equipment by unrelated parties and that the terms of such leasing arrangements were protective of the lessors' interest in the Equipment; and

(4) Based on its contacts with the equipment manufacturing industry, Midwest believed that the investment

program involving the leasing of the Equipment was protective and in the best interests of the participants and beneficiaries of the Crawford Plans.

(b) With respect to the retroactive purchase and leaseback of the Property—

(1) Based on its knowledge and experience in the real estate marketplace, Midwest determined that investment and leasing of improved real estate was appropriate for the CFC Trust;

(2) The price for the Property and the terms of the lease were approved by Rossman who determined the acquisition cost and lease terms to be fair market value and protective of the interests of the CFC Trust; and

(3) The Property was periodically appraised and the lease terms adjusted accordingly.

(c) With respect to the prospective program of disentanglement—

(1) It will be a one-time cash transaction which will provide the Crawford Plans with substantial liquidity for future investment;

(2) The sales of the Equipment and the Property will be for a price not less than fair market value as determined by qualified independent appraisers;

(3) All costs of appraisals, commissions, or other expenses incidental to the sales of the Equipment and the Property will be paid by parties other than the Crawford Plans; and

(4) Midwest has made a determination that such transaction would be in the interests of the Crawford Plans and their participants and beneficiaries.

#### *Scope of Proposed Exemption*

The applicants are seeking retroactive relief for all leasing transactions involving the Equipment and the Property. The applicants are also seeking prospective relief to permit the sale of the Equipment and the Property to the Crawford Companies. The Department has determined that, although significant safeguards appear to have existed, the proposal of retroactive relief is justified for only certain of the subject transactions. The Department offers the following as an explanation of the scope of proposed relief.

1. In reviewing the chronology of events for the subject leasing transactions, and upon considering the factors enunciated in ERISA Technical News Release No. 85-1 (issue January 22, 1985), it appears that as of May 1980, the applicants were put on notice as a result of a federal banking authority audit concerning the likelihood that the leasing transactions involving the Equipment represented violations of the

Act. While this contact did not come from either the Department or the IRS, the agencies charged with primary enforcement responsibility of the Act, the advice should have caused the fiduciaries of the Crawford Plans to exercise due diligence in identifying the prohibited transactions and to take appropriate steps to seek an exemption or correct the transactions. Instead, the record suggests that such fiduciaries placed undue reliance on the failure of the Department or the IRS to object to the transactions as a basis for continuing the investment program of purchasing and leasing the Equipment. Accordingly, the Department is only proposing retroactive relief for transactions entered into between the effective date of the prohibited transaction provisions of the Act and May 31, 1980. The Department's proposal for retroactive relief would permit the continuation, including renewals, of leasing arrangements in effect on May 31, 1980. However, relief would not extend to any new leasing arrangements entered into after May 31, 1980 even though the Crawford Plans may have previously obligated themselves to purchase a piece of Equipment and tentatively agreed to a lease with one of the Crawford Companies. With respect to new leasing transactions involving the Equipment which occurred after May 31, 1980, the applicant represents that all applicable excise taxes will be paid within 90 days of the grant of this exemption.

2. The representations of the applicant indicate several of the Crawford Plans had substantial concentrations of assets committed to Equipment which was leased to the Crawford Companies. While it is apparent that Rossman wished to fairly allocate the income producing potential of the leases among all the Crawford Plans, and that the leasing program incorporated safeguards for the benefit of the lessor plans, the percentage of assets committed to these employer-related transactions by some of the Crawford Plans exceeded the tolerance level for diversification that has generally been applied by the Department in its consideration of individual exemption applications. Accordingly, the Department is only proposing relief to the extent that, when entered into, any lease involving the Equipment by any of the Crawford Plans did not cause the plan to have more than a total of 25 percent of its assets committed to such transactions. For purposes of applying this percentage ceiling, those leases that may have qualified for section 414(c) relief are to be aggregated with those

leasing arrangements involving the Equipment covered under the scope of this proposed exemption.

For Further Information contact: Paul R. Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

**Baker, Lieberman & Filios, D.D.S., P.C. Employees' Profit Sharing and Retirement Located in Rochester, New York**

[Application No. D-5943]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of two partnership interests (the Interests) in Red River Associates (the Partnership) by the Plan to Drs. Kenneth I. Lieberman and Achilles M. Filios, parties in interest with respect to the Plan, provided that the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 26 participants. The Plan had total assets of \$746,092 as of December 31, 1983. The trustees of the Plan are Drs. Kenneth I. Lieberman and Achilles M. Filios (the Trustees). The Trustees are shareholders of Baker, Lieberman & Filios, D.D.S., P.C. (the Employer). The Employer is a professional service corporation engaged in the practice of general dentistry.

2. On December 14, 1983, the Trustees purchased the Interests at a price of \$50,000 per unit from an unrelated party.<sup>6</sup> The Interests represent approximately 5 percent of the total interests outstanding in the Partnership. The Partnership was formed for the purpose of operating an AM/FM radio station in Grand Forks, North Dakota.

3. The applicant requests an exemption to allow the sale of the

Interests by the Plan to the Trustees. The Trustees have determined that the Interests are not performing the goals of producing current income, plus capital appreciation, that had been anticipated. In fact, the Interests have shown a loss since their purchase. The December 31, 1984 financial statement for the Partnership shows the Plan's net loss for 1984 was \$41,645. The Trustees have also determined that the Plan's continued holding of the Interests would produce lower returns than could be expected in comparison to other investments that could be made with the proceeds from the sale of the Interests. The sale will be for cash and the purchase price will be \$50,000 per unit of the Interests. No commission or fees will be charged in connection with their proposed sale.

4. Mr. John B. Babcock of Ithaca, New York, is the largest investor in the Partnership and a consultant to the communications industry. Mr. Babcock, by letter of December 19, 1984, represents that the fair market value of the Interests is not greater than \$50,000 per unit as of that date.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for section 408 of the Act because:

(1) The Plan will be able to divest itself of assets that are not meeting the investment objectives which were sought at the time of their purchase;

(2) The Plan will receive at least fair market value for the Interests;

(3) No commissions or fees will be charged to the Plan in connection with the proposed transaction; and

(4) The Trustees have determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Northwest Pump and Equipment Company Profit Sharing Plan and Employees' Trust (the Plan) Located in Portland, Oregon**

[Application No. D-5953]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the

Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a lease, effective July 1, 1984, of certain improved real property by the Plan to the Northwest Pump and Equipment Company (the Employer), the sponsor of the Plan, provided that such lease is on terms and conditions at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective date: This exemption, if granted, will be effective July 1, 1984.

#### *Summary of Facts and Representations*

1. The Plan is a defined contribution pension plan with 44 participants and total assets of \$1,741,371 as of December 31, 1984. The Employer is a Washington corporation engaged in sales and service of petroleum production equipment. The trustees of the Plan are two officers of the Employer (the Trustees).

2. Among the Plan's assets is certain improved real property (the Property) consisting of 30,500 square feet of commercially-zoned land improved with a warehouse and an office building located at 2003 and 2045 SE Ankeny Street and 2044 Burnside Street in Portland, Oregon. The Plan leases 19.1 percent of the office space in the Property to parties unrelated to the Plan. The remaining office space and all of the warehouse space in the Property (the Leased Space) is utilized by the Employer as its principal place of business. The Leased Space has been leased by the Employer from the Plan continuously since September 1, 1972 under a lease (the Original Lease) which was renewed and extended by its own terms on August 29, 1982 to expire June 30, 1984. The Employer represents that the Original Lease constituted a lease as defined under section 414(c)(2) of the Act and was therefore exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act.<sup>7</sup> As of December 13, 1983 the Property had a fair market value of \$540,000, according to Harold R. Wacker, MAI (Wacker), an independent professional real estate appraiser whose office is located in Portland, Oregon. The fair market value of the Leased Space, based on Wacker's appraisal, constitutes twenty-five percent of the assets of the Plan as value on December 31, 1984. The Employer is requesting an exemption for the continued leasing of the Leased Space by the Plan to the Employer after June 30, 1984 under a modification of the

<sup>6</sup> The Department notes that when the Interests were purchased in December 1983, Dr. Robert Baker was a partner of the Partnership. Dr. Baker is an owner of the Employer. The Department expresses no opinion as to the possible prohibited transaction involved in the Plan's purchase of the Interests and provides no exemptive relief for this transaction.

<sup>7</sup> In this proposed exemption, the Department expresses no opinion as to whether the Original Lease met the requirements of section 414(c)(2) of the Act.

Original Lease (the New Lease), effective July 1, 1984, under the terms and conditions described herein.

3. The interests of the Plan for all purposes under the New Lease are represented by the Trust Department of the Pacific Western Bank (the Bank) of Portland, Oregon, to whom the Trustees have delegated total authority with respect to the Plan's interests in the Leased Space. The Bank represents that it has no business relationship with the Employer. The New Lease is a triple net lease for an initial term of ten years commencing July 1, 1984, with a provision for up to two five-year extensions with approval of the Bank. Under the New Lease the Employer assumes responsibility for all taxes, all costs of maintenance and repair and full fire and extended coverage insurance on the Lease Space. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands and liabilities resulting from the Employer's of the Leased Space. Rentals under the New Lease, payable monthly, were established as of July 1, 1984 for the first five years of the initial term, and were determined by the Bank, based upon Wacker's appraisal and the Bank's independent investigation of the fair market rental value of the Lease Space. The Bank represents that the initial rentals as so determined provided the Plan a return of no less than the fair market rental value of the Leased Space. The new Lease provides that on July 1, 1989 the fair market rental value of the Leased Space will be determined by a professional MAI appraiser selected by the Bank, and the rental commencing on such date for the remainder of the initial term shall be the fair market rental value as so determined. Rental during any renewal terms shall be determined in the same manner at the commencement of each renewal term.

4. The subject transaction, as described herein, has been reviewed and evaluated on behalf of the Plan by the Bank. The bank has determined that the Plan's continued holding of the Property and the lease of the Leased Space to the Employer are in the best interests and protective of the Plan. The Bank notes that the New Lease is of short duration, requiring mid-term rental review, reserving for the Bank adequate oversight of the rate of return provided by the Leased Space and allowing the Bank to refuse a renewal of the New Lease in the event of market changes necessitating alterations in the Plan's use of the Property. The Bank represents that all terms and conditions of the subject transaction are at least

equivalent to those of an arm's-length transaction between unrelated parties and that some features of the transaction, such as triple net return and five-year rental review, surpass those to be expected in standard commercial leases between unrelated parties. The Bank will act on behalf of the Plan for all purposes related to the Leased Space, including the collection of rentals from the Employer and the pursuit of appropriate remedies, if necessary, on behalf of the Plan in the event of the Employer's default or other deficiency of performance.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the subject transaction because: (1) The interests of the Plan with respect to the Leased Space are represented by an independent fiduciary, the Bank, which has determined that the continued holding of the Property and the Employer's lease of the Leased Space under the New Lease are in the best interests and protective of the participants and beneficiaries of the Plan; (2) The New Lease provides the Plan a net return, insurance protection on its investment in the Lease Space, and no less than the fair market rental value of the Leased Space as periodically determined; (3) The New Lease is of short duration and reserves to the Bank the oversight of the Plan's rate of return on the Leased Space and the right to refuse a renewal of the New Lease in the event of market changes; and (4) The Bank has determined that the terms and conditions of the subject transaction are equivalent to and better than those which the Plan could obtain in dealing at arm's length in a standard commercial transaction with an unrelated party.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Robert J. Bray, D.D.S., M.S., P.A. Profit Sharing Plan (the Plan) Located in Rochester, New York**

[Application No. D-5984]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)

through (E) of the Code shall not apply to the sale of a partnership interest (the Interest) in Red River Associates (the Partnership) by the Plan to Dr. Robert Bray, a party in interest with respect to the Plan provided that the terms of the sale are at least as favorable to the Plan as those obtainable in a similar transaction with an unrelated party on the date of its consummation.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 11 participants. The Plan had total assets of \$130,623 as of December 31, 1983. The trustee of the Plan is Dr. Robert Bray (the Trustee). The Trustee is the sole shareholder of Robert J. Bray, P.A. (the Employer). The Employer is a professional service corporation engaged in the practice of general dentistry.

2. On December 14, 1983, the Trustee purchased the Interest at a price of \$50,000 from an unrelated party. The Interest represents approximately 2.3 percent of the total interests outstanding in the Partnership and 38 percent of the total assets of the Plan. The Partnership was formed for the purpose of operating an AM/FM radio station in Grand Forks, North Dakota.

3. The application requests an exemption to allow the sale of the interest by the Plan to the Trustee. The Trustee has determined that the Interest is not performing the goals of producing current income, plus capital appreciation, that had been anticipated. In fact, the Interest has shown a loss since its purchase. The December 31, 1984 financial statement for the Partnership shows the Plan's net loss for 1984 was \$20,823. The Trustee has also determined that the Plan's continued holding of the Interest would produce lower returns than could be expected in comparison to other investments that could be made with the proceeds from the sale of the Interest. The sale will be for cash and the purchase price will be \$50,000. No commission or fees will be charged in connection with the proposed sale.

4. Mr. John B. Badcock of Ithaca, New York, is the largest investor in the Partnership and a consultant to the communications industry. Mr. Babcock, by letter dated December 19, represents that the fair market value of the Interest is not greater than \$50,000 as of that date.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408 of the Act because:

(1) The Plan will be able to divest itself of an asset that is not meeting the

investment objectives which were sought at the time of its purchase;

(2) The Plan will receive at least fair market value for the Interest;

(3) No commissions or fees will be charged to the Plan in connection with the proposed transaction;

(4) The Plan will liquidate an asset which constitutes 38 percent of its total assets, thus permitting the Plan to diversify; and

(5) The Trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Cone, Wagner, Nugent, Johnson, Hazouri & Roth, P.A. Profit Sharing Plan and Trust (the Plan) Located in Palm Beach, Florida**

[Application No. D-6038]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of a certain condominium unit (the Property) by the individually directed account (the Account) in the Plan of David Roth (Mr. Roth) to Mr. Roth, for the greater of the Property's fair market value or the Account's costs in acquiring and holding the Property.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 74 participants and assets of \$4,364,457 as of November 30, 1984. The trustees of the Plan (the Trustees) are Albertus J. Cone, A. Ward Wagner and Charles Nugent, all of whom are stockholders and officers in Cone, Wagner, Nugent, Hazouri & Roth, P.A. (the Plan Sponsor). The Plan permits participants to direct the investment of their individual account balances in any manner that would not constitute a prohibited transaction or cause the Plan to lose its tax exempt status. As of November 30, 1984, the Account balance was \$220,857 including the Property.

2. Mr. Roth is a stockholder and officer in the Plan Sponsor and a member of the investment management

and finance committee which administers the Plan.

3. The Property is a rental condominium unit, number 910, 100 Ocean Trail Way in Jupiter, Florida. The Plan purchased the Property on behalf of the Account in November of 1981 for \$136,346.78 from the builder, Compeau Corporation, which is unrelated to Mr. Roth or the Plan Sponsor. The applicant represents that the Property has been rented on a continual basis to unrelated parties, and all income and expenses attributable to the Property are applied to the Account. Since the purchase of the Property to November of 1984, the Account has spent \$5,945 for improvements and shown a net profit of \$8,456.64 on rentals.

4. The Trustees desire to remove the Property from the Plan for several reasons. The major reasons are to relieve the Trustees of the administrative burdens currently associated with the Property and to eliminate the risk of becoming tied up in a law suit in the event of personal injuries occurring on the Property. In addition, the applicant represents that the cost of adequate liability insurance reduces the financial attractiveness of the Property. The applicant represents that virtually all the other assets of the Plan and another retirement Plan sponsored by the Plan Sponsor are managed by professional investment managers. The only assets not managed by these professionals are a small checking account maintained in each Plan for current operating needs and the earmarked investments. The trustee committee has neither the ability nor the desire to manage the Plan assets. The only asset which requires active management at the present time is the Property. The Trustees could hire professional management for the Property, as they have with the other assets, but the Property is neither large enough nor profitable enough to justify the expense of professional management. The applicant also represents that there is currently a "glut" of ocean front condominiums in the Palm Beach area and that the value of the Property will not appreciate significantly in the near future. The proceeds of the sale will be invested in a more profitable manner.

5. Mr. Roth desires to retain the Property and wishes to purchase it from the Plan. He will pay cash at the greater of the Plan's costs in acquiring and holding the Property for its appraised fair market value. Mr. Roth will pay all expenses and fees associated with the transaction.

6. The Property was appraised on April 15, 1985 by Nathaniel J. Orr,

M.A.I., unrelated to Mr. Roth or the Plan Sponsor, as having a fair market value of \$140,000. This represents approximately 3.3% of the Plan's assets and 63% of the Account's assets.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria set forth in section 408(a) of the Act because: (a) The sale will be a one time transaction for cash; (b) the Plan will receive the greater of the appraised fair market value of the Property or the total costs incurred by the Plan in acquiring and holding it; (c) Mr. Roth will bear all the costs of the transaction; (d) the Trustees have determined that it is in the best interests and protective of the Plan and its participants and beneficiaries to sell the Property; and (e) Mr. Roth is the only person affected by the transaction and he desires that it be consummated.

Notice to Interested Person: Because Mr. Roth is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible.

in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of July, 1985.

**Elliot I. Daniel,**

*Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.*

[FR. Doc. 85-17816, Filed 7-25-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-127; Exemption Application No. D-4482 et al.]

**Grant of Individual Exemptions; Local Union 731, International Brotherhood of Teamsters, et al.**

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the

notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Local Union No. 731, International Brotherhood of Teamsters et al. (the Union) Located in Chicago, Illinois**

[Prohibited Transaction Exemption 85-127; Exemption Application No. D-4482]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of an interest in a computer system by the Union to a group of related pension and welfare trust funds for \$12,000, provided that this amount does not exceed the fair market value of the interest in the computer system on the date the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 21, 1985 at 50 FR 20960.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**Peter W. Burk Employee Pension Benefit Plan for Sole Proprietorship Located in Waterloo, Iowa**

[Prohibited Transaction Exemption 85-128; Exemption Application No. D-5229]

**Exemption**

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (e) of the Code, shall not apply to the loan by the Plan to Peter W. Burk of \$22,000, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I of the Act for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1985 at 50 FR 24065.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**LTV Corporation and Affiliates Consolidated Retirement Trust (the Trust) Located in Dallas, Texas**

[Prohibited Transaction Exemption 85-129; Application No. D-5332]

**Exemption**

(a) *General Exemption.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any party in interest transaction involving the purchase, ownership, sale, management, leasing and development of real property by the portion of the Trust maintained and managed by Thomas L. Karsten Associates (Karsten) and the LTV Corporation (LTV), the sponsor of the Trust, provided that the following conditions are met:

- (1) The party in interest is not:
- (i) Karsten, any person directly or indirectly controlling, controlled by or under common control with Karsten

(Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of Karsten or any Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Karsten, any Controlled Person, or any officer, director or highly compensated employee (as defined above) of Karsten or any Controlled Person owns a 5% or more interest; or any corporation, partnership, trust, or unincorporated enterprise which owns a 5% or more interest in Karsten or any Controlled Person; or

(ii) LTV, any person directly or indirectly controlling, controlled by or under common control with LTV (LTV Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of LTV or any LTV Controlled Person; any cooperation, partnership, trust or unincorporated enterprise in which LTV, any LTV Controlled Person, or any officer, director or highly compensated employee (as defined above, of LTV or any LTV Controlled Person) owns a 5% or more interest; or any corporation, partnership, trust, or unincorporated enterprise which owns a 5% or more interest in LTV or any LTV Controlled Person; or

(iii) Any person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(iv) The term "interest", as applied in subsections (1) (i) and (ii) above, means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(v) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(2) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Karsten and/or LTV, the terms of the transaction are not less favorable to the Trust than the

terms generally available in arm's-length transactions between unrelated parties.

(3)(i) Karsten shall maintain for a period of six years from the date of each transaction mentioned above, records necessary to determine whether the conditions of this exemption have been met. The records above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights of the participants of the Trust during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) Any fiduciary of a plan participating in the Trust who has the authority to acquire or dispose of the interests of the plan in the investment fund subject to the management of Karsten, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any plan which is funded by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivision (i)(C) of this subparagraph (3) shall be authorized to examine LTV's or Karsten's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption for Transactions Involving Places of Public Accommodation.* The restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraph (a)(3) of this exemption are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 26, 1985 at 50 FR 7855.

**Hearing Request:** The Department received one request for a public hearing from a participant in the Trust. The participant's request did not raise any objections to the transactions for which an exemption is requested. Attempts to contact the commentator by telephone and mail have been unsuccessful.

Accordingly, the Department has determined not to hold a hearing. After consideration of the entire record, the Department has determined to grant the exemption as proposed.

**Effective Date:** This exemption is effective January 8, 1983.

**For Further Information Contact:** Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Retirement Plan for Employees of Holsum Bakery, Inc. (the Plan) Located in Phoenix, Arizona**

[Prohibited Transaction Exemption 85-130; Exemption Application No. D-5773]

#### *Exemption*

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by Holsum Bakery, Inc. (the Employer) to the Plan, and the leaseback of the real property by the Plan to the Employer provided the terms of the proposed transactions are as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 21, 1985 at 50 FR 20961.

**For Further Information Contact:** Linda H. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of July, 1985.

Elliot I. Daniel,

*Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.*

[FR Doc. 85-17815 Filed 7-25-85; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Professional Companies Section) to the National Council on the Arts will be held on August 13, 1985, from 9:00 a.m.-7:00 p.m., August 14-15, 1985, from 9:00 a.m.-6:00 p.m., and on August 16, 1985, from 9:00 a.m.-5:30 p.m. in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on August 13, 1985, from 9:00-9:30 a.m. for introductions, announcements, and updates.

The remaining sessions of this meeting on August 13, 1985, from 9:30 a.m.-7:00 p.m., August 14-15, 1985, from 9:00 a.m.-6:00 p.m., and on August 16, 1985, from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of

the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: July 19, 1985.

John H. Clark,

*Office of Council and Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 85-17739 Filed 7-25-85; 8:45 am]

BILLING CODE 7537-01-M

### Humanities Panel Meetings; Change in Meeting Dates

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of Changes in meeting dates.

**SUMMARY:** This is to announce that the dates for some of the Humanities Panel meetings to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506 as announced in the **Federal Register** on July 16, 1985 at pages 28855-28856 have been changed as follows:

Meeting #6 to review Fellowships for College Teachers in Religious Studies has been changed from August 4, 1985 to August 5, 1985.

Meeting #7 to review Fellowships for College Teachers in Art and Music has been changed from August 5, 1985 to August 6, 1985.

Meeting #11 to review Fellowships for College Teachers in Foreign Languages and Literature has been changed from August 11, 1985 to August 12, 1985.

Meeting #13 to review Fellowships for College Teachers in American History has been changed from August 13, 1985 to August 14, 1985.

Meeting #15 to review Fellowships for College Teachers in Political Science has been changed from August 15, 1985 to August 16, 1985.

Meeting #19 to review Fellowships for College Teachers in World History has been changed from August 18, 1985 to August 19, 1985.

Meeting #21 to review Fellowships for College Teachers in Philosophy has been changed from August 20, 1985 to August 21, 1985.

Meeting #26 to review Fellowships for College Teachers in American Literature and Studies, Film, TV, and Theatre has been changed from August 25, 1985 to August 26, 1985.

Meeting #27 to review Fellowships for College Teachers in British Literature, Literary Criticism, Composition and Rhetoric has been changed from August 26, 1985 to August 27, 1985.

Meeting #29 to review Fellowships for College Teachers in Anthropology, Sociology, Education, and Psychology has been changed from August 28, 1985 to August 29, 1985.

The time and room numbers will remain the same.

Stephen J. McGleary,

*Advisory Committee Management Officer.*

[FR Doc. 85-17771 Filed 7-25-85; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

### Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

The Baltimore Gas and Electric Company (BG&E) is the holder of Facility Operating License Nos. DPR-53 and DPR-69 which authorize the operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, at steady-state power levels not in excess of 2700 megawatts thermal. The facility consists of two pressurized water reactors located in Calvert County, Maryland.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI

Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 20 CFR 50.54(f), no later than April 15, 1983:

- (1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and
- (2) A description of plans for phased implementation and integration of emergency response activities including training.

### III

BG&E responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated July 22, 1983 and November 18, 1983, BG&E modified several dates as a result of negotiations with the NRC staff. In these submittals, BG&E made commitments to complete the basic requirements. BG&E's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee

would provide timely upgrading of the licensee's emergency response capability. On June 14, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed BG&E's commitments.

### IV

The June 14, 1984 Order stated that, for those requirements for which BG&E committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. The June 14, 1984 Order, as supplemented by BG&E's letters dated December 1, 1984 and June 19, 1985, provided completion schedules for the following requirements:

1. Regulatory Guide 1.97—Application to Emergency Response Facilities
- 1b. Implement (installation or upgrade) requirements.
2. Upgrade Emergency Operating Procedures (EOPs)
- 2b. Implement the upgraded EOPs

The attached Table summarizing BG&E's schedular commitments for the above items was developed by the NRC staff from the information provided by BG&E. The staff reviewed BG&E's December 1, 1984 and June 19, 1985 letters and discussed the dates with the licensee.

The NRC staff finds these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of BG&E's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

Accordingly, pursuant to sections 103, 161i, 161o, and 162 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that licenses DPR-53 and DPR-69 are modified to provide that licensee shall:

Implement the specific items described in the Attachment to this Order in the manner described in BG&E's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

### VI

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the *Federal Register*. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section V of this Order.

This Order is effective upon issuance. For the Nuclear Regulatory Commission, Dated in Bethesda, Maryland, this 16th day of July 1985.

Hugh L. Thompson, Jr.,  
Director, Division of Licensing, Office of Nuclear Regulation.

#### CLVERT CLIFFS UNITS 1 AND 2 LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule
Regulatory Guide 1.97—Application to Emergency Response Facilities.	1b. Implement (installation or upgrade) requirements.	Unit 1—Prior to startup following the Cycle 10 refueling outage (estimated to be Spring 1988). Unit 2—Prior to startup following the Cycle 9 refueling outage (estimated to be Fall 1988).
2. Upgrade Emergency Operating Procedures (EOPs)	2b. Implement the upgraded EOPs.	December 1985.

[FR Doc. 85-17823 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-394]

#### California Polytechnic State University; Order Terminating Facility License

By application dated April 30, 1981, as supplemented by letter dated September 8, 1981, California Polytechnic State

University (the licensee) requested authorization to dismantle the AGN-201 Training Reactor (the facility), a research reactor located on the campus in San Luis Obispo, California, and to dispose of the component parts in accordance with the plan submitted as part of the application, and to terminate

Facility Operating License No. R-121. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Components Parts, and Termination of Facility License" was published in the *Federal Register* on June 26, 1981 (46 FR 33148). No request for hearing or petition for leave to

intervene was filed following notice of the proposed action. By Order dated October 6, 1981 the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

By letter dated January 30, 1985, the licensee indicated compliance with the dismantling and disposal plan and requested termination of the Facility Operating License No. R-121. The facility area has been inspected by a Nuclear Regulatory Commission Region V inspector. The inspection and radiation surveys confirm disposal of component parts in accordance with licensee's dismantling plan, that radiation levels meet the values defined in the dismantling plan, and that the area is, therefore, available for unrestricted access.

Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated October 6, 1981. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Finding of No Significant Environmental Impact was published in the **Federal Register** on July 17, 1985 (50 29005).

For further details with respect to this action, see (1) the application for authorization to dismantle the facility and dispose of component parts and for termination of facility operating license dated April 30, 1981, as supplemented September 8, 1981 and January 30, 1985, (2) the Commission's Order Authorizing Dismantling of Facility and Disposition of Component Parts, dated October 6, 1981, and (3) the Commission's related Safety Evaluation, dated July 19, 1985. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This termination Order is effective as of its date of issuance.

Dated at Bethesda, Maryland, this 19th of July 1985.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr., Director,**

*Division of Licensing.*

[FR Doc. 85-17820 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-2]

**Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R 28; University of Michigan**

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-28 for the University of Michigan training and research reactor located on the campus in Ann Arbor, Michigan.

The amendment will renew the Operating License for twenty years from its date of issuance, in accordance with the licensee's application dated November 30, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on January 15, 1985 at 50 FR 2115. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents release from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

**Finding of No Significant Impact**

The Commission has prepared an Environmental Assessment of this action, dated May 15, 1985, and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

**Summary of Environmental Impacts as Described in the Environmental Assessment**

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1957. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the reactor for an additional 20 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) At a thermal power level of 2 Mw, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of rapid total loss of coolant, and

(c) The hypothetical loss of integrity of the cladding of the maximum irradiated encapsulated fueled experiment will not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

For further details with respect to this proposed action, see the application for license renewal dated November 30, 1984, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG-1138).

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of NUREG-1138 may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7982.

Dated at Bethesda, Maryland, this 22nd day of July 1985.

For the Nuclear Regulatory Commission.  
**Dennis M. Crutchfield,**  
*Assistant Director, for Safety Assessment,*  
*Division of Licensing.*  
 [FR Doc. 85-17821 filed 7-25-85; 8:45 am]  
 BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

**Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPE-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would change Technical Specifications for McGuire Units 1 and 2 to allow operation at up to 100% rated power without the Upper Head Injection (UHI) Systems. The Specification for the gas pressure to be maintained within the ECCs cold leg injection accumulators would also be increased 155 psi.

By letter dated May 9, 1985, the licensee requested NRC approved of proposed changes associated with UHI systems deletion by cutting and capping of the penetrations at the upper head of the reactor vessel. The letter proposed amendments to delete Technical Specifications requiring UHI system maintenance, surveillance, and leakage verification and to modify Technical Specifications to reflect deletion of UHI related containment penetrations and associated conductor overcurrent protective devices, containment isolation valves, and system piping snubbers. The proposed Technical Specifications would also increase the operable range of the nitrogen gas cover-pressure of the ECCS cold leg injection accumulators from 430 and 484 psig to 585 and 639 psig. The proposed Technical Specifications would be changed in a manner which would allow existing specification requirements to remain in effect until implementation of plant modifications during refueling outages, (currently scheduled during the first half of 1986) whereupon the revisions would become effective.

The UHI system performs no function during normal operation but serves to mitigate accidents after they occur. In support of the proposed amendments, the licensee will provide appropriate reanalyses of accidents presented in FSAR Chapters 6 and 15, including large

and small break LOCAs, steamline breaks, and associated containment analyses. The reanalyses are intended to demonstrate that the change would not result in exceeding operating limits established by 10 CFR 50.46, or other Commission regulations.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, (the Act) and the Commission's regulations.

By August 26, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who had been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be

based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 9, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 22nd day of July 1985.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Acting Chief, Licensing Branch No. 4 Division of Licensing.*

[FR Doc. 85-17825 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

**Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Order Modifying License Confirming Additional Licensee Commitment on Emergency Response Capability**

I

Omaha Public Power District (the licensee or OPPD) is the holder of Facility Operating License No. DPR-40 which authorizes the operation of Fort Calhoun Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 1500 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Washington County, Nebraska.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of

emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

- (1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and
- (2) A description of plans for phased implementation and integration of emergency response activities including training.

III

OPPD responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, OPPD made commitments to complete the basic requirements. OPPD's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On February 22, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed OPPD's commitments.

IV

The February 22, 1984, Order stated that for those requirements for which OPPD committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the February 22, 1984 Order, OPPD's letter dated April 1, 1985, provided a completion schedule for the following requirement:

3. Regulatory Guide 1.97—Application to Emergency Response Facilities
- 3b. Implement (installation or upgrade) requirements.

The attached Table summarizing OPPD's scheduler commitment for the above item was developed by the NRC

staff from the information provided by OPPD. The staff reviewed OPPD's April 1, 1985 letter and discussed the date with the licensee.

The NRC staff finds that this date is reasonable and achievable for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of OPPD's commitment is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that license DPR-40 is modified to provide that the licensee shall:

Implement the specific item described in the Attachment to this Order in the manner described in the OPPD submittal noted in section IV herein no later than the date in the Attachment.

Extension of time for completing this item may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the *Federal Register*. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland, this 19th day of July 1985.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Director, Division of Licensing, Office of Nuclear Reactor Regulation.*

## FORT CALHOUN STATION, UNIT NO. 1 LICENSEE'S ADDITIONAL COMMITMENT ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
3/ Regulatory Guide 1.97—Application to Emergency Response facilities.	3b. Implement (installation or upgrade) requirements.	1987 Refueling Outage estimated to end May 31, 1987.

[FR Doc. 85-17822 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

**Virginia Electric and Power Co., and the Old Dominion Electric Cooperative, North Anna Power Station, Units No. 1 and No. 2; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-4 and No. NPF-7, issued to Virginia Electric and Power Company, et al. (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia.

The amendments would revise the NA-1&2 Technical Specifications (TS) to increase the presently rated core power level of 2775 Megawatts thermal (MWt) to 2893 MWt in accordance with the licensee's application for amendments dated May 2, 1985. The proposed changes would allow NA-1&2 to operate at a Nuclear Steam Supply System (NSSS) power of 2905 MWt. The proposed changes would represent approximately a 4½ percent increase over the presently licensed core power rating of 2775 MWt. The proposed changes would increase the electrical power output for each unit by 32 Megawatts electrical (MWe). It is noted that the NA Updated Final Safety Analysis Report (UFSAR) analyses and accident evaluations were evaluated at the presently Engineered Safeguards Design Stretch Core Power Rating of 2900 MWt and a NSSS power rating of 2910 MWt. In order to maintain a consistent basis between information reported in the instant proposed amendment request and that reported by reference in the UFSAR, the licensee's evaluation of NSSS capability has also been performed at 2910 MWt. However, because of turbine generator limitations, the licensee's proposed request would allow operation at a NSSS rating of only 2905 MWt and core rating of 2893 MWt.

The scope of the licensee's review to support the proposed core uprate encompassed all aspects of the NA-1&2

NSSS design and operation affected by the increase. NSSS designs were reviewed to verify compliance at the increased power rating with licensing criteria and standards currently specified in the NA-1&2 operating licenses. In addition, a review was conducted by the licensee to identify any potential unreviewed safety question that might occur as a result of the increased power rating in accordance with 10 CFR 50.59. The structural design of NSSS equipment was reviewed to assure that compliance had been maintained at the increased power rating with industry codes and standards that applied when equipment was originally built. In addition, the review encompassed the verification that NSSS components and systems will continue to meet functional requirements specified in the FSAR at the increase power rating. Currently approved NRC analytical techniques were used for analyses performed at the increased power rating. Also, the definition of NSSS/Balance of Plant (BOP) safety related interfaces were reviewed for any impact at the increase in power rating. Based on the scope of review as outlined above, the licensee states that NA-1&2 are capable, in their present design configuration, of operating at the proposed core power rating of 2893 MWt and a NSSS power rating of 2905 MWt without violating any of the design criteria or safety limits specified in the NA-1&2 FSAR and currently required in Facility Operating Licenses NPF-4 and NPF-7 for NA-1&2, respectively.

Based on the above, the licensee states that the review for the proposed power increase has verified that the probability of a malfunction of NSSS equipment important to safety previously evaluated in the FSAR will not be increased at the proposed power rating. Also, the consequences of a malfunction of NSSS equipment important to safety previously evaluated in the FSAR will not be increased at the proposed power rating. And, finally, the possibility of a malfunction of NSSS equipment important to safety different from any already evaluated in the FSAR is not created by operation at the proposed power rating.

A slight change in environmental impact can be expected at the proposed increase in power. However, the

Environmental Report for NA-1&2 and the NRC's Final Environmental Impact Statements (FEIS) as amended have already addressed operation up to the stretch core power rating of 2900 MWt and a NSSS power rating of 2910 MWt. Thus, the licensee's proposed core power uprate to 2893 MWt and a NSSS power rating of 2905 MWt is enveloped by the already reviewed and approved NRC's FEIS.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 26, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri 800 342-6700). The Western Union operator should be given Datagram Identification number 3737 and the following message addressed to Edward J. Butcher: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 2, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 18th day of July 1985.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-17824 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

#### Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations; Correction

In FR Doc. 85-16988 beginning on page 29006 in the issue of Wednesday, July 17, 1985, make the following correction on page 29010:

In the second column, DELETE "Florida Power Corporation, et al.," and all text following the heading to near the bottom of the third column ending with "Local Public Document Room location: Crystal River Public Library, 66 NW First Avenue, Crystal River, Florida", inclusive.

This document was erroneously published in the Notice of Consideration of Issuance of Amendment To Facility License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing section of the report and should have been included in the Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination And Opportunity for Hearing section of the report. It will be re-published in the report scheduled for publication on July 31, 1985.

Dated at Bethesda, Maryland, this 24th day of July 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-17919 Filed 7-25-85; 8:45 am]

BILLING CODE 7590-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22259; File No. SR-NASD-85-4]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Extending Comment Period

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 4, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to modify the definition of "representative" in Schedule C of the NASD's By-Laws. The proposal would amend the definition to include persons who are employed by certain non-broker-dealer organizations and who perform activities on behalf of members similar to those performed by registered representatives.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22034 (May 13, 1985), 50 FR 20641 (May 17, 1985). In that release, the Commission requested public comment on the proposal within twenty-one days from the date of publication in the Federal Register.

Since the publication of this release, the Commission has received a number of requests to extend the deadline of this proposed rule's comment period to afford an additional opportunity for public comment. The Commission believes that such an extension is warranted because the proposal raises important issues affecting broker-dealers, banks, and other financial institutions. Moreover, the Commission believes additional opportunity for public comment is appropriate in light of the Commission's recent approval of Commission Rule 3b-9.<sup>1</sup>

Interested persons are invited to submit written data, views and arguments concerning the foregoing

<sup>1</sup> Securities Exchange Act Release No. 22205 (July 1, 1985), 40 FR 28385 (July 12, 1985). In general, Commission Rule 3b-9 requires a bank to conduct certain securities activities through a broker-dealer registered with the Commission.

proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. 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 September 24, 1985.

For the Commission, by the Division of Market Regulation, pursuant to designated authority, 17 CFR 200.30.3(a)(12).

John Wheeler,  
Secretary.

July 19, 1985.

[FR Doc. 85-17814 Filed 7-25-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22260; File No. SR-CBOE-85-28]

**Self-Regulatory Organizations;  
Proposed Rule Change by Chicago  
Board Options Exchange, Inc.;  
Relating to a Pilot Program for a  
Performance Appointment System**

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 July 1, 1985 the Chicago Board Options Exchange, Incorporated 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. Text of the Proposed Rule Change**

The Exchange files as a rule change the following pilot for a Performance Appointment Market Maker (PAMM) system. The pilot program would be for a period of six months at about six stations. A station is a location at a post on the trading floor, at which location one or more option classes are traded. The stations in the pilot will be selected

by the Market Performance Committee. The Committee will attempt to select stations with different levels of trading volume.

To be eligible for a Performance Appointment market makers will have to meet certain criteria as determined by the Market Performance Committee. PAMMs will have special obligations and will receive special benefits as incentives. A Performance Appointment shall extend to all option classes at a station. The measurement period for selecting PAMMs will be the most recent two expiration cycles, in other words a six-month period.

The selection criteria of the Market Performance Committee will focus on in-person trading patterns. A PAMM is expected to be present at the post on a daily basis. A high percentage of a PAMM's in-person trades must be in his Performance Appointment option classes. A PAMM's pattern of trading must have a high degree of correlation with the overall patterns of trading for each series in the option classes involved. The Committee will also consider a PAMM's total contract volume, capitalization, ability to make markets in size, and disciplinary record.

A PAMM is expected to put up firm quotes and to make two-sided markets in all series of option classes in his Performance Appointment. A PAMM also is expected to trade far-term as well as near-term series, in-the-money series as well as out-of-the money series, puts as well as calls and to effect buy transactions as well as sell transactions. PAMMs will receive certain benefits as incentives.

To keep published quotes accurate, especially in inactive series, a PAMM may employ (without incurring a badge fee) a special clerk to update quotes. PAMMs collectively will be accountable for one contract on a disseminated market quote. Upon implementation of an automated updating system, PAMMs will be accountable for five contracts on a disseminated quote.

Because PAMMs must maintain current markets, even in illiquid options, PAMMs may match equally with the book at a bid or an offer. The combined total number of contracts done by a PAMM or PAMMs under this circumstance only can equal the total number of contracts done by the book.

PAMMs may be disadvantaged respecting trading in active option series when they are updating markets or trading in less active series; however, it is anticipated that PAMMs will be able to participate equally with other market makers and floor brokers in trades in their Performance Appointment option classes.

PAMMs shall have access to special telephones at their stations for the purpose of keeping in direct contact with member-firm trading departments to assist in facilitating the execution of orders at their stations. While a PAMM may not use the telephone to accept orders, he may use it to negotiate transactions. To assist in such negotiations (and to enable all market makers to make better markets) member requests for information regarding book depth will be channeled through the PAMM to the OBO.

**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 and is set forth in sections (A), (B), and (C) below.

**(A) Procedures of the Self-Regulatory  
Organization**

The purpose of the Performance Appointment Market Maker System pilot is to enable the Exchange to experiment with and to refine a system that provides incentives to market makers who meet increased obligations. The pilot is expected to demonstrate that Performance Appointment Market Makers (PAMMs) will enhance the Exchange's ability to service its customers in the following ways: Increase the depth and liquidity of markets, create long-term commitments to options classes, generate greater flexibility in responding to varying market conditions, provide current quotes in all series and encourage a continuous commitment to trade all options series.

The Exchange expects increased competition in the options business, including competition involving specialist-based operations. To meet increased competition while continuing the market-maker system, which separate the roles of principal and agent, market makers must be enabled to take on additional obligations.

The Exchange believes that the proposed pilot will enhance its overall market-making capabilities and will serve to improve the mechanism of a free and open market, to maintain a fair and orderly market and to protect investors. For these reasons, the statutory basis for the proposed rule

changes is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act).

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule-change creates any burden on competition not necessary or appropriate under the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Formal comments on the rule-change filing 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**John Wheeler,**

Secretary.

July 19, 1985.

[FR Doc. 85-17624 Filed 7-25-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22258; File No. SR-PHLX-85-18]

**Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Margin Requirements**

Comments requested within 21 days after the date of this publication.

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 28, 1985, the Philadelphia Stock Exchange, Inc. ("Phlx") 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 Philadelphia Stock Exchange, Inc. is proposing changes to Rule 722. The change provide for the ability of its organizations to accept from customers, escrow receipts or option guarantee letters in lieu of margin required on short call or put option contracts on an index stock group. The portion of the rule change permitting escrow receipts for short call index option positions is only being proposed for a one year pilot period.

**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 and is set forth in sections (A), (B) and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The Exchange's margin currently do not provide for a customer to carry, on a covered basis, short call or short put option contracts overlying an index stock group. Other exchanges' rules have permitted such, although pursuant to an escrow receipt or option guarantee letter whereby the bank or trust company issuing the escrow receipt for short call index option positions certifies that it (1) holds at least ten (10) qualified equity securities of a fixed aggregate dollar value at trade date and (2) that it agrees to meet the customer's settlement obligation upon assignment.

Although appropriate in theory, this approach has proven impractical in certain respects. Current recordkeeping and segregation system employed by issuing banks and trust companies are not adaptable to the "basket of securities" approach presently required. Further, resolution of assignments is complicated and delayed as no cash is readily available to the bank or trust company to meet cash settlement.

This rule change proposal significantly reduces these operational difficulties and provides for greater flexibility by reducing the number of equity securities required to cover each short call option contract to one or more stocks and also through permitting the use of cash and cash equivalents. The amendment to its margin rule to reflect the ability of its member organizations to accept from customers escrow receipts or option guarantee letters in lieu of margin required on short call option contracts on an index stock group is being proposed for a one year pilot period.

The rule change also would permit margin for short put option contracts, including a put on an index option and foreign currency option, to be met by escrow receipts collateralized by cash or cash equivalents valued at not less than 100% of the aggregate current exercise price of the put on the day the option is written. Other option exchanges currently permit the use of cash and cash equivalents to cover short put equity options and index options. In addition, to these changes, the Exchange is proposing certain amendments to its Rule 722 on margin accounts that would, in effect, merge all its option margin rules, including those on index options, into one rule for the convenience of its members.

The statutory basis for the proposed rule change is section 6(b)(5) under the

Securities Exchange Act of 1934, in that the proposal will facilitate the use of index options.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member, 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 19, 1985.  
 John Wheeler,  
 Secretary.  
 [FR Doc. 85-17625 Filed 7-25-85; 8:45 am]  
 BILLING CODE 8010-01-M

**SMALL BUSINESS ADMINISTRATION**

**Reporting and Recordkeeping Requirement Under OMB Review**

**ACTION:** Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review..

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the *Federal Register* that the agency has made such a submission.

**DATE:** Comments must be received on or before August 17, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

**Copies:** Copies of forms, request for clearance (S.F. 83), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC. 20416, Telephone: (202) 653-8538  
 OMB Reviewer: David Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231.

Information collections submitted for review:

Title: Disaster Home Loan Application Form Nos. SBA 5C, 739  
 Frequency: On occasion  
 Description of Respondents: These forms are used to determine eligibility and credit worthiness of individual victims who seek federal assistance in a declared disaster  
 Annual Responses: 52000  
 Annual Burden Hours: 34684  
 Type of Request: Extension  
 Title: Application for Section 502/503 Loan

Form Nos. SBA 1244 A&B  
 Frequency: On occasion  
 Description of Respondents: Small businesses or organizations applying for a Section 502 or 503 loan  
 Annual Responses: 1,300  
 Annual Burden Hours: 4,225  
 Type of Request: Extension.

William Cline,  
 Acting Chief, Information Resources Management Branch.  
 [FR Doc. 85-17776 Filed 7-25-85; 8:45 am]  
 BILLING CODE 8025-01-M

**Action Subject to Intergovernmental Review**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Correction to notice of action subject to intergovernmental review under Executive Order 12372.

**SUMMARY:** This corrects a notice published in the *Federal Register* on June 10, 1985 (50 FR 24335).

This correction changes the closing date for comments from September 30, 1985, to September 15, 1985. This will allow SBA to respond to comments before the September 30, 1985, date when the SBDC's are scheduled to be funded.

**DATE:** Effective July 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Ms. Johnnie L. Albertson, (202) 653-6768, Deputy Associate Administrator, SBDC Programs, U.S. Small Business Administration, Washington, D.C. 20416.

In FR Doc. 85-13834 appearing at page 24335 in the issue of Monday, June 10, 1985, in the first column, subheading titled DATE, change the date September 30, 1985, to read September 15, 1985.

Dated: July 18, 1985.  
 James C. Sanders,  
 Administrator.  
 [FR Doc. 85-17775 Filed 7-25-85; 8:45 am]  
 BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2195]**

**California; Declaration of Economic Injury Disaster Loan Area**

As a result of the President's major disaster declaration on July 18, 1985, I find that the City of Los Angeles and the Counties of Monterey, San Diego, San Luis Obispo, Santa Clara, Santa Cruz and Ventura constitute a disaster loan area because of damage from grass, wildlands and forest fires beginning on or about June 26, 1985. Eligible persons, firms and organizations may file applications for loans for physical

damage until the close of business on September 16, 1985, and for economic injury until April 18, 1986, at: Disaster Area 4 Office, Small Business Administration 77, Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses without credit available elsewhere.....	4.000
Businesses (EIDL) without credit available elsewhere.....	4.000
Other (non-profit organizations including charitable and religious organizations).....	11.125

The number assigned to this disaster is 219505 for physical damage and for economic injury the number is 631700.

\*\*This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 22, 1985.

Bernard Kulik,

Deputy Associate Administrator.

[FR Doc. 85-17774 Filed 7-25-85; 8:45 am]

BILLING CODE 8025-01-M

**Declaration of Disaster Loan Area No. 2194]**

**Pennsylvania; Declaration of Disaster Loan Area**

Westmoreland County and the adjacent Counties of Butler, Fayette, and the Townships of Fawn and Harrison in Allegheny County in the State of Pennsylvania constitute a disaster area because of high winds and flooding which occurred on July 8-9, 1985. Applications for loans for physical damage may be filed until the close of business on September 19, 1985, and for economic injury until the close of business on April 19, 1986, at the address listed below. Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street SW., Suite 822, Atlanta, GA 30303 or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses without credit available elsewhere.....	4.000
Businesses (EIDL) without credit available elsewhere.....	4.000
Other (non-profit organizations including charitable and religious organizations).....	11.125

The number assigned to this disaster is 219406 for physical damage and for economic injury the number is 631600.

(Catalog of Federal Domestic Assistance-Program Nos. 59002 and 59008)

Dated: July 19, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-17773 Filed 7-25-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0336]

**Chestnut Capital International II Limited Partnership; Issuance of a Small Business Investment Company License**

On January 17, 1985, a notice was published in the **Federal Register** (50 FR 2644) stating that an application has been filed by Chestnut Capital International II Limited Partnership, 45 Milk Street, Boston Massachusetts 02109 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1984)) for a license as a small business investment company.

Interested parties were given until close of business February 18, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0336 on July 10, 1985, to Chestnut Capital International II Limited Partnership to operate as a small business investment company.

Dated: July 16, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-17780 Filed 7-25-85; 8:45 am]

BILLING CODE 8025-01-M

[Application License No. 03/03-0179]

**Enterprise Venture Capital Corp.; Application for a License To Operate as a Small Business Investment Company**

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing small business investment companies [13 CFR 107.102 (1985)] under the name of Enterprise Venture Capital Corporation (the Applicant), 227 Franklin Street, Suite 200, Johnstown, PA 15901 for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as Regulations promulgated thereunder.

The proposed officers, directors and 10 percent or more stockholders of the applicant are as follows:

Name	Title	Stock ownership (percent)
Gerald Mock, U.S. National Bank, Main & Franklin Sts., Johnstown, PA 15901.	President, Director.	
Gerald Swatsworth, Johnstown Bank & Trust, 534 Main Street, Johnstown, PA 15901.	Vice President, Director.	
Richard Edwards, Johnstown Saving Bank, Market at Main, Johnstown, PA 15909.	Secretary, Director.	
Thomas Zunila, Glosser Bros., Inc., Franklin & Locust Sts., Johnstown, PA 15901.	Treasurer, Director.	
Ronald Corf, Citizen Bank, 1204 Graham Ave., Windber, PA 15963.	Director.....	
Richard Milan Uzelac, 134 Main Street, Conemaugh, PA 15909.	Director, Manager.....	
Stephen Gregory Zarnias, 904 Sunnehanna Drive, Johnstown, PA 15905.	Director.....	
United States National Bank, Main and Franklin Sts., Johnstown, PA 15901.	Stockholder.....	22
Johnstown Bank & Trust Company, 532-534 Main Street, Johnstown, PA 15901.	Stockholder.....	15
Johnstown Saving Bank, Market at Main St. Johnstown, PA 15901.	Stockholder.....	10

The remaining 53 percent is owned by individuals banks and insurance companies none of whom own more than 10 percent.

The Applicant will begin operations with a capitalization of \$1,000,000 and will be a source of both equity and debt

financing qualified small business concerns.

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 operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA in writing relevant comments on the proposed licensing of this company. Any such communications should be addressed 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 the Johnstown, PA area.

Dated: June 28, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 85-17778 Filed 7-25-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0486]

**First New York Small Business Investment Co.; Application for a License To Operate as Small Business Investment Company**

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)), by First New York Small Business Investment Company (the Applicant), Suite 480, 20 Squadron Boulevard, New City, New York 10956, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder. The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the SBA Regulations.

The general/limited partners and 10 percent of more limited partners of the Applicant are as follows:

Names and addresses	Relationship of applicant	Percent of ownership
Israel Mindick, 10 Hedessah Lane, Spring Valley, NY 10977.	General/Limited Partner.	10
Abraham Klein, 202 Avenue I, Brooklyn, NY 11230.	do	20
Louis Darshin, 701 Harman Avenue, Franklin Square, Long Island, NY 11010.	Limited partner	10

There are eight additional limited partners each owning a less than 10 percent interest in the Applicant.

The Applicant will begin operations with a capitalization of \$1,000,000 and will be a source of long term loan funds and equity capital for eligible small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the two general/limited partners 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 further given that any person may, not later than 30 days from the date 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 will be published in a newspaper of general circulation in the New City, New York area.

Dated: July 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 85-17777 Filed 7-25-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5302]

**Magna Pacific Investment Inc.; Application for License To Operate as a Small Business Investment Company**

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et*

*seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Magna Pacific Investment Inc.

Address: 977 North Broadway, Suite 301, Los Angeles, California

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percent of class A stock
David Wong, 977 North Broadway, Suite 301, Los Angeles, California 90012.	Director/President.	12.5
Howard Y. Wong, 977 North Broadway, Suite 301, Los Angeles, California 90012.	Director/Vice President.	12.5
Stewart C. Kwoh, 977 North Broadway, Suite 301, Los Angeles, California 90012.	Director/Secretary.	12.5
Edward Yu, 977 North Broadway, Suite 301, Los Angeles, California 90012.	Director/Chief Financial Officer.	12.5
Jim Hung, 977 North Broadway, Suite 301, Los Angeles, California 90012.	Director	12.5
Joe Mah, 977 North Broadway, Suite 301, Los Angeles, California 90012.	do	12.5
Warren G. Wong, 977 North Broadway, Suite 301, Los Angeles, California 90012.	do	12.5
Melvin W. Wong, 977 North Broadway, Suite 301, Los Angeles, California 90012.	do	12.5
Vernon L. Smythe, MD 1608 Niodrara Glenade, California.	*	10

\* Class B.

The Applicant will begin operations with \$1,000,000 in private capital.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small 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 operations of the applicant under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment 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 the Notice will be published  
in a newspaper of general circulation in  
the Los Angeles, California area.

Dated: July 16, 1985.  
(Catalog of Federal Domestic Assistance  
Program No. 59.011, Small Business  
Investment Companies)

Robert G. Lineberry,  
Deputy Associate Administrator for  
Investment.

[FR Doc. 85-17779 Filed 7-25-85; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 1985.

The Department of the 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.

OMB Number: New  
Form Number: None  
Type of Review: New  
Title: Supplemental Financial  
Statements

Clearance Officer: Eric Thompson (202)  
447-1177, Comptroller of the Currency,  
6th Floor, L'Enfant Plaza, Washington,  
D.C. 20219

OMB Reviewer: Robert Neal, (202) 395-  
6880, Office of Management and  
Budget, Room 3208, New Executive  
Office Building, Washington, D.C.  
20503

OMB Number: 1545-0155  
Form Number: IRS Form 3468  
Type of Review: Revision  
Title: Computation of Investment Credit

OMB Number: 1545-0219  
Form Number: IRS Form 5884  
Type of Review: Revision  
Title: Jobs Credit

OMB Number: 1545-0231  
Form Number: IRS Form 6478  
Type of Review: Revision  
Title: Credit for Alcohol Used As Fuel

OMB Number: New  
Form Number: IRS Form 1120-FSC and  
Schedule P

### Type of Review: New

Title: U.S. Income Tax Return of a  
Foreign Sales Corporation and  
Related Schedules. Schedule P-  
Computation of Transfer Price or  
Commission

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

### Public Debt

OMB Number: 1535-0018  
Form Number: PD Form 4882  
Type of Review: Extension

Title: Application for United States  
Savings Bonds—Series EE

Clearance Officer: Peter Laugesen, (202)  
376-4902, Bureau of the Public Debt,  
Room 445, 999 E. Street NW.,  
Washington, D.C. 20226

OMB Reviewer: Milo Sunderhauf, (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. 85-17788 Filed 7-25-85; 8:45 am]  
BILLING CODE 4810-25-M

### Comptroller of the Currency

[Docket No. 85-9]

#### Privacy Act of 1974; Proposed Changes To A System of Records

AGENCY: Office of the Comptroller of the  
Currency, Treasury

ACTION: Notice of Proposed Change to  
System of Records entitled Enforcement  
and Compliance Information System.

SUMMARY: Pursuant to the requirements  
of the Privacy Act of 1974, the Office of  
the Comptroller of the Currency (Office)  
gives notice of a change to the system of  
records entitled the Enforcement and  
Compliance Information System  
(System).

DATE: Comments must be received no  
later than August 26, 1985. If no  
comments are received, the changes to  
the system of records will become  
effective September 24, 1985.

ADDRESS: Comments should be sent to  
Docket No. 85-9, Communications  
Division, Office of the Comptroller of the  
Currency, Washington, D.C. 20219, Attn:  
Lynnette Carter, (202) 447-1800.

FOR FURTHER INFORMATION CONTACT:  
Jane Rasmussen, Attorney, Enforcement

and Compliance Division, (202) 447-  
1818, Office of the Comptroller of the  
Currency, 490 L'Enfant Plaza East, S.W.,  
Washington, D.C. 20219.

### SUPPLEMENTARY INFORMATION:

#### Changes to the System

The names of bank directors, officers  
and shareholders named in  
administrative enforcement actions will  
be added to the System. Names of  
persons who have been the subject of  
criminal referrals by other federal  
financial institution regulatory agencies  
will also be added. Additional  
information will also be maintained in  
the System regarding criminal referrals.  
Where applicable, the law enforcement  
agency to which referred, indication of  
whether a grand jury subpoena has been  
issued, indication of other action taken,  
and the name of the OCC attorney  
handling the case will also be added to  
the System.

#### Purpose of System

The purpose of the system is to  
maintain a system of records containing  
names of persons who are suspected of  
crimes or who have been the subject of  
administrative enforcement actions.  
This information will be used to  
enhance the Office's ability to track  
criminal referrals, to analyze  
applications for bank charters and  
changes in bank control, and to evaluate  
proposed bank directors or officers. The  
System provides a method of tracking  
persons involved in actual or suspected  
fraudulent activities related to banks. In  
considering applications for charters for  
national banks, the Office must consider  
the general character of proposed  
management. Under the Change in Bank  
Control Act (12 U.S.C. 1818(j)(7)) the  
Comptroller may disapprove a proposed  
acquisition of a bank if the competence,  
experience, or integrity of any acquiring  
person or of any of the proposed  
management personnel indicates that it  
would not be in the interest of the  
depositors of the bank, or in the interest  
of the public to permit such person to  
control the bank. The System facilitates  
that consideration. Also, the Office may  
also use the system to evaluate  
proposed officers in problem banks.

#### Description of the System

The changed system will contain the  
names of persons who have been the  
subject of civil enforcement actions  
made by the Office, the Federal Reserve  
Board, the Federal Deposit Insurance  
Corporation, the Federal Home Loan  
Bank Board, and the National Credit  
Union Administration. It will also  
contain the names of persons who have

been the subject of criminal referrals made by these financial institution regulatory agencies.

Date: July 18, 1985.

John F.W. Rogers,

Assistant Secretary of the Treasury  
(Management).

Treasury/Comptroller 00.013

**SYSTEM NAME:**

Enforcement and Compliance Information System.

**SYSTEM LOCATION:**

Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza, S.W. Washington, D.C. 20219.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals and entities involved in actual or suspected fraudulent activities, and bank directors, officers and shareholders named in administrative enforcement actions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain information identifying the individual, describing the known or suspected criminal activity or enforcement action in which the individual is involved or named, giving the bank name and location, and where applicable, the law enforcement agency to which referred and date referred, indicating if a grand jury subpoena has been issued, indicating other actions, and identifying the OCC attorney. The name of the individual is the only identifier used.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

12 U.S.C. 481, 1818, and 1820.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information in these records may be used:

a. To provide the Department of Justice with periodic reports which indicate the number, place and individual identity of outstanding potential criminal violations of the law which have been referred to the Department.

b. To provide the Office of the Comptroller of the Currency with statistical information to respond to general information requests from the Congress.

c. To disclose information to foreign governments in accordance with formal or informal international agreements.

d. To disclose information to the news media in accordance with guidelines contained in 28 CFR 50.2 which covers

release of information relating to civil and criminal proceedings.

e. To disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records will be maintained in general correspondence files, enforcement action files, in card files and on computer discs.

**RETRIEVABILITY:**

All records will be indexed by bank name and location. In addition, records on computer discs will be indexed by name of individual, and code provision known or suspected to be violated.

**SAFEGUARDS:**

Correspondence files are stored in the Office's central file room and may only be retrieved by authorized personnel. Enforcement files are accessible only to authorized personnel. Card files will be stored in lockable file cabinets. Computer discs will be accessible only to authorized personnel.

**RETENTION AND DISPOSAL:**

Records are periodically updated to reflect changes and maintained as long as needed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Enforcement and Compliance Division, Law Department, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

**NOTIFICATION PROCEDURE:**

This system is exempt from notification requirements under 5 U.S.C. 552a(k)(2) of the Act as relating to investigatory material compiled for law enforcement purposes.

**RECORD ACCESS PROCEDURE:**

Same as Notification above.

**CONTESTING RECORD PROCEDURES:**

Same as Notification above.

**RECORD SOURCE CATEGORIES:**

Examination of national banks by national bank examiners; investigations performed by agency attorneys and notifications from the Department of Justice, other Federal and State law enforcement agencies, and other Federal and State bank regulatory agencies.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Components of this system have been designated as exempt from 5 U.S.C. 552a(j)(2). To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply, the exemption under 5 U.S.C. 552a(k)(2) applies.

[FR Doc. 85-17769 Filed 7-25-85; 8:45 am]

BILLING CODE 4810-33-M

**Customs Service**

[T.D. 85-124]

**U.S. Valuation of Imported Carrier Media Bearing Data or Instructions for Use in Data Processing Equipment**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of decision on valuation.

**SUMMARY:** This document advises that Customs has been, and will continue to value imported carrier media bearing data or instructions for use in data processing equipment exclusive of a value element for the data, instructions, or information component contained on such software. A recent decision by the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) sanctioned the practice of valuing software either inclusive or exclusive of a value element for data, instructions, or information components. Customs has routinely been valuing software only on the value of the carrier medium, and will continue to use this practice.

**FOR FURTHER INFORMATION CONTACT:** Bruce N. Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

**SUPPLEMENTARY INFORMATION**

**Background**

On September 24, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the customs valuation of carrier media bearing data or instructions for use in data processing equipment (reprinted as Annex A). The decision indicates that the merchandise which is the subject of the decision may be valued either inclusive or exclusive of a value element for the data or instructions. Prior to the adoption of the above decision, Customs had routinely valued the merchandise referred to in the GATT decision only on the value of the carrier medium plus other incidental costs (e.g., recording charges), and exclusive of a valuation

element for the data or instructions or for an information component. Because the GATT decision affirms the validity of the U.S. approach to the valuation of carrier media bearing data or instructions for use in data processing equipment, on February 28, 1985, Customs reaffirmed its prior position as set forth below:

On September 24, 1984, the GATT Valuation Committee adopted the attached decision. Customs has previously taken the position that the valuation of software (*i.e.*, data or instructions) recorded on carrier media be based only on a value for the carrier media itself and is not to include a value for an information component. Because the TSUS item under which such importations are most frequently classified (item 724.40, TSUS) carries a specific rate of duty, the valuation of software has been of little concern to Customs field personnel. However, in a small number of cases the valuation of software may become important, either because the TSUS item number under which it is classified carries an ad valorem rate of duty, or because it is not clear whether the merchandise involved is a form of software. Accordingly, we wish to reemphasize our previous position that software be valued only on the basis of the value of the carrier medium. In this regard, for valuation purposes carrier media bearing data or instructions (*i.e.*, software) does not include data or instructions recorded or encoded by means of integrated circuits, semiconductors and similar devices, or articles incorporating such circuits or devices. Likewise, the expression "data or instructions" is not to be interpreted as including sound, cinematic, or video recordings. In view of the above GATT decision, appropriate steps should be taken to ensure that Customs personnel continue their current practice of valuing computer software only on the basis of the value of the carrier media.

Accordingly, Customs will continue to value the merchandise which is the subject of the GATT decision exclusive of an element for the value of the data or instructions.

**Annex A—General Agreement on Tariffs and Trade, Committee on Customs Valuation; Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, Adopted by the Committee on 24 September 1984**

The Committee on Customs Valuation Decides as Follows:

1. It is reaffirmed that transaction value is the primary basis of valuation under the Agreement on Implementation

of Article VII of the General Agreement on Tariffs and Trade (the Agreement) and that its application with regard to data or instructions (software) recorded on carrier media for data processing equipment is fully consistent with the Agreement.

2. Given the unique situation with regard to data or instructions (software) recorded on carrier media for data processing equipment, and that some Parties have sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to adopt the following practice:

In determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

For the purpose of this Decision, the expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression "data or instructions" shall not be taken to include sound, cinematic or video recordings.

3. Those Parties adopting the practice referred to in paragraph 2 of this Decision shall notify the Committee of the date of its application.

4. Those Parties adopting the practice in paragraph 2 of this Decision will do so on a most-favoured-nation (m.f.n.) basis, without prejudice to the continued use by any Party of the transaction value practice.

Robert P. Schaffer,

*Acting Commissioner of Customs.*

Approved: July 8, 1985.

John M. Walker, Jr.,

*Assistant Secretary of the Treasury.*

[FR Doc. 85-17760 Filed 7-25-85; 8:45 am]

BILLING CODE 4820-02-M

**UNITED STATES INFORMATION AGENCY**

**Reporting and Information Collection Requirement Under OMB Review**

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirement submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval of a form that will be used to collect data on prospective grantees who will implement USIA youth exchange programs.

**DATE:** Comments must be received by August 30, 1985.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 435-8678. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-4814.

**SUPPLEMENTARY INFORMATION:** Title: "International Youth Exchange Organization Index". This form will be provided to prospective grantees applying for USIA international youth exchange grants to facilitate the selection process. Data provided by youth exchange organizations will be retained by USIA for review upon receipt of subsequent grant applications, thus facilitating the process of evaluating candidates' qualifications for conducting youth exchange programs. Having data available to USIA grant application reviewers will eliminate the need for candidates to resubmit the same information with each new grant application.

Dated: July 22, 1985.

Charles N. Canestro,  
*Management Analyst, Federal Register Liaison.*

[FR Doc. 85-17772 Filed 7-25-85; 8:45 am]

BILLING CODE 8330-01-M

# Sunshine Act Meetings

Federal Register

Vol. 50, No. 144

Friday, July 26, 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

##### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:31 p.m. on Friday, July 19, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Gilpin County Bank, Black Hawk, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, July 19, 1985; (2) accept the bid for the transaction submitted by First Interstate Bank of Golden, National Association, Golden, Colorado; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Linn County State Bank, Linneus, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Friday, July 19, 1985; (2) accept the bid for the transaction submitted by United Missouri Bank of Linn County, Linneus, Missouri, a newly-chartered State nonmember bank; (3) approve the applications of United Missouri Bank of Linn County, Linneus, Missouri, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Linn County State Bank, Linneus, Missouri, and for consent to establish the sole branch of Linn County State Bank as a branch of United Missouri Bank of Linn County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c) (6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 22, 1985.  
Federal Deposit Insurance Corporation.  
**Hoyle L. Robinson,**  
*Executive Secretary.*  
[FR Doc. 85-17866 Filed 7-24-85; 12:15 pm]  
BILLING CODE 6714-01-M

### 2

#### 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 22, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven day's notice to the public, of the following matters:

Application of The Fifth Third Bank, Cincinnati, Ohio, a State member bank, for consent to purchase certain assets of an assume the liability to pay deposits made in the Delhi, Ohio, branch of Hunter Savings Association, Cincinnati, Ohio, a non-FDIC-insured institution.

Memorandum re: Awarding of a contract to ATTIS for telecommunications system.

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 23, 1985.  
Federal Deposit Insurance Corporation.  
**Hoyle L. Robinson,**  
*Executive Secretary.*  
[FR Doc. 85-17867 Filed 7-24-85; 12:16 pm]  
BILLING CODE 6714-01-M

### 3

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, July 22, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that they could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: July 23, 1985.  
Federal Deposit Insurance Corporation.  
**Hoyle L. Robinson,**  
*Executive Secretary.*  
[FR Doc. 85-17868 Filed 7-24-85; 12:16 pm]  
BILLING CODE 6714-01-M

### 4

#### INTERSTATE COMMERCE COMMISSION

**TIME AND DATE:** Postponed from 9:30 a.m., Wednesday, July 31, 1985 until 10:00 a.m., Wednesday, September 11, 1985.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423.

**STATUS:** Open Special Conference.

**MATTER TO BE DISCUSSED:** Ex Parte 445 (Sub-No. 1)—Intramodal Rail Competition.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,  
Secretary.

[FR Doc. 85-17894 Filed 7-24-85; 2:35 pm]

BILLING CODE 7035-01-M

5

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**

(Northwest Power Planning Council)

**ACTION:** Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

**STATUS:** Open.

**TIME AND DATE:** 9:00 a.m., August 7-8, 1985.

**PLACE:** Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

**MATTERS TO BE CONSIDERED:**

- Staff Presentation of Draft 1985 Power Plan and Council Consideration of Entering Rulemaking on the Draft.

- Staff Presentation of Issue Paper on Salmon and Steelhead Productivity Analysis.\*

- Staff Presentation of Issue Paper on Strategies for Investments in Salmon and Steelhead Production.\*\*

- Staff Presentation of Issue Paper on Resident Fish Substitutions for Salmon and Steelhead Losses.

- Council Business.

Public comment will follow each item.

\*Fish and Wildlife items on the agenda will be taken up no sooner than 11:00 a.m., August 7.

Deliberations on the draft 1985 plan could require that fish and wildlife items be taken up on August 8.

\*\*Formerly titled "Issue Paper on Stock Selections".

**FOR FURTHER INFORMATION CONTACT:**

Ms. Bess Wong, (503) 222-5161, or toll-free 1-800-222-3355 (Montana, Idaho or Washington) or 1-800-452-2324.

Edward Sheets,

Executive Director.

[FR Doc. 85-17845 Filed 7-24-85; 10:42 am]

BILLING CODE 000-00-M

6

**POSTAL RATE COMMISSION**

**TIME AND DATE:** 9:00 a.m., August 14, 1985.

**PLACE:** 1333 H Street, NW., Suite 300 (Conference Room)—Washington, D.C. 20268-0001.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Postal Rate Commission, Fiscal Year 1986 Budget.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,  
Secretary.

[FR Doc. 85-17871 Filed 7-24-85; 12:21 pm]

BILLING CODE 7715-01-M

7

**POSTAL SERVICE**

**Notice of a Meeting**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 9:30 a.m. on Monday, August 5, 1985, in Anchorage, Alaska, and at 8:00 a.m. on Tuesday, August 6, 1985, in the Federal Building, 701 C Street, Anchorage, Alaska. As indicated in the following paragraph, the August 5 meeting is closed to public observation. The August 6 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on July 8, 1985, and by telephone on July 19, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for August 5. (See 50 FR 29042, July 17, 1985.)

**Agenda**

*Monday Session—August 5, 1985, 9:30 a.m. (Closed)*

1. Discussion of personnel matters.
2. Consideration of court ruling in *Griffin v. Carlin*.
3. Consideration of possible sale of the E-COM system.
4. Consideration of proposed procurement for mail sorting equipment.

*Tuesday Session—August 6, 1985, 8:00 a.m. (Open)*

1. Minutes of the Previous Meeting, July 8 and 10, 1985.
2. Remarks of the Postmaster General.
3. Quarterly Report on Financial Performance.  
(Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will

present the quarterly summary of financial performance.)

4. Quarterly Report on Service Performance.  
(Mrs. Strange, Deputy Postmaster General, will present the quarterly summary on service performance.)
5. Review of Legislative Matters and Government Relations.  
(Mr. Johnstone, Assistant Postmaster General, Government Relations, will report on current legislative matters.)
6. Briefing on Alaska Mailhandling Operations.
7. Capital Investments:
  - a. Redding, California, General Mail Facility.
  - b. Denver CO, General Mail Facility.  
(Mr. Caraveo, Regional Postmaster General, Western Region, will present the two proposed investments.)
8. Consideration of Tentative Agenda for September 5-6, 1985, in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 85-17848 Filed 7-24-85; 12:24 pm]

BILLING CODE 7710-12-M

8

**POSTAL SERVICE**

**Vote to Close Meeting**

By telephone vote on July 19, 1985 a majority of the members contacted and voting, the Board voted to add to the agenda for the closed session on Monday, August 5, 1985 (See 50 FR 29042, July 17, 1985), the following items:

- (1) Consideration of a court ruling in *Griffin v. Carlin*.
- (2) Consideration of possible sale of the E-COM system.
- (3) Consideration of proposed procurement for mail sorting equipment.

As to the first item, the Board determined that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39 Code of Federal Regulations, consideration of the matter is exempt from the open meeting requirement of the Government in the Sunshine Act because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding. As to the second and third items, the Board determined that pursuant to section 552b(c)(9)(B) of title 5 United States Code, and § 7.3(i) of title 39 Code of Federal Regulations, the consideration of the matters are exempt from the open meeting requirements because the premature disclosure of information to be discussed would be likely to frustrate actions the Postal Service may wish to take regarding the sale of E-COM and the procurement of equipment.

In accordance with section 552b(f)(i) of title 5, United States Code, and § 7.6(a) of title 39 Code of Federal

Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to sections 522b(c)(9)(B) and (10) of title 5 United States Code and § 7.3 (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

*Secretary.*

[FR Doc. 85-17849 Filed 7-24-85; 12:24 pm]

BILLING CODE 7710-11-M

# **federal register**

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Friday  
July 26, 1985

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## **Part II**

### **Environmental Protection Agency**

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**Draft General NPDES Permit for Oil and  
Gas Operations in Portions of the Gulf  
of Mexico; Fact Sheet; Notice**

**ENVIRONMENTAL PROTECTION  
AGENCY**
**[FRL-2867-9]**
**Draft General NPDES Permit for Oil  
and Gas Operations in Portions of the  
Gulf of Mexico; Fact Sheet**
**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice of Draft General NPDES  
Permit.

**SUMMARY:** The Regional Administrators of Regions IV and VI are proposing to issue a general NPDES permit, for certain discharges in the Offshore Subcategory of the Oil & Gas Extraction Point Source Category, which implements a best professional judgment (BPJ) determination of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) effluent limitations for these discharges. This general NPDES permit will establish effluent limitations, prohibitions and other conditions on discharges from oil and gas facilities. The facilities covered by this draft permit are located in Federal waters in the Gulf of Mexico seaward of the outer boundary of the territorial seas as defined in the Clean Water Act, off the states bordering the Gulf of Mexico. This fact sheet sets forth the principal facts and the significant factual, legal, and policy questions considered in developing this draft permit. A copy of the draft permit is also being published today immediately after this fact sheet.

**DATE:** Comments must be received by  
October 7, 1985.

**ADDRESS:** Comments should be sent to:  
Regional Administrator, Region VI, U.S.  
Environmental Protection Agency,  
1201 Elm Street, InterFirst Two  
Building, Dallas, Texas 75270.  
Regional Administrator, Region IV, U.S.  
Environmental Protection Agency, 345  
Courtland Street, N.E., Atlanta,  
Georgia 30365

**FOR FURTHER INFORMATION CONTACT:**  
Region VI, Ms. Ellen Caldwell, Permits  
Branch (6W-PS) U.S. Environmental  
Protection Agency, 1201 Elm Street,  
InterFirst Two Building, Dallas, Texas  
75270. Telephone (214) 767-2765  
Region IV, Mr. Lloyd Wise, Facilities,  
Performance Branch (4W), U.S.  
Environmental Protection Agency, 345  
Courtland Street, N.E., Atlanta,  
Georgia 30365, Telephone (404) 881-  
4980

**Hearings:**

Four hearings regarding this draft  
permit and fact sheet have been  
scheduled by the Regions as follows:

- (1) Time: 7:00 p.m. Date: August 27, 1985.  
Council Chambers, City Hall, 1300  
Perdido, Room 1E04, New Orleans,  
Louisiana
- (2) Time: 7:00 p.m. Date: August 29, 1985.  
Houston Lighting and Power Building,  
Lower Level, 611 Walker Street,  
Houston, Texas
- (3) Time: 7:00 p.m. Date: September 4,  
1985. Curtis Hixon Convention Center,  
600 Ashley Drive, Tampa, Florida
- (4) Time: 7:00 p.m. Date: September 6,  
1985. Mobile Municipal Auditorium,  
401 Auditorium Drive, Mobile,  
Alabama

The purpose of these public hearings  
is to receive written and oral comments  
from interested persons and the public  
on the draft permit proposed by EPA.  
The following is a summary of the  
procedures which will be followed at  
the hearings:

1. The Presiding Officer shall have the  
authority to open and conclude the  
hearing and to maintain order.
2. Any person appearing at the  
hearing may submit oral or written  
statements and data concerning the  
draft permit.

3. The Presiding Officer may set  
reasonable limits on the time allowed  
for oral statements.

Any written comments, requests for  
information, or requests for copies of the  
draft permit should be sent to the  
contact persons named above. The  
administrative record containing all  
documents relating to the permit is  
located at the above Regional addresses  
and is available for public inspection  
between 8:00 a.m. and 4:30 p.m. Monday  
through Friday, except holidays.

EPA's comments and public hearing  
procedures may be found at 40 CFR  
124.10 and 124.12 (as amended at 49 FR  
38051, September 26, 1984).

EPA will notify each person who has  
submitted written comments or  
requested notice of the final permit  
decision, of the decision on the final  
permit. A final permit decision means a  
final decision to issue, deny, modify,  
revoke or reissue, or terminate a permit.

**FACT SHEET AND SUPPLEMENTARY  
INFORMATION**
**I. Background**
**A. General NPDES Permits**

Section 301(a) of the Clean Water Act  
(the Act) provides that the discharge of  
pollutants is unlawful except in  
accordance with a National Pollutant  
Discharge Elimination System (NPDES)  
permit. Although such permits generally  
have been issued to individual  
dischargers, EPA's regulations authorize  
the issuance of general permits to  
categories of dischargers (40 CFR

122.28). EPA may issue a single, general  
permit to a category of point sources  
located within the same geographic area  
whose discharges warrant similar  
pollution control measures. The Director  
of an NPDES permit program (in this  
case the Regional Administrator) is  
authorized to issue a general permit if  
there are a number of point sources  
operating in a geographic area that:

1. Involve the same or substantially  
similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent  
limitations or operating conditions;
4. Require the same or similar  
monitoring requirements; and
5. In the opinion of the Director, are  
more appropriately controlled under a  
general permit than under individual  
permits.

In addition, under EPA regulations (40  
CFR 122.28(c)(1), the Regional  
Administrator is required to issue  
general permits covering discharges  
from offshore oil and gas facilities  
within the Region's jurisdiction. Where  
the offshore area includes areas, such as  
areas of environmental concern, for  
which separate permit conditions may  
be required, a separate individual or  
general permit may be required by the  
Regional Administrator.

As in the case of individual permits,  
violation of any condition of a general  
permit constitutes a violation of the Act  
and subjects the discharger to the  
penalties specified in section 309 of the  
Act. Any owner or operator authorized  
by this general permit may be excluded  
from coverage by applying for an  
individual permit. This request may be  
made by submitting an NPDES permit  
application, together with reasons  
supporting the request, no later than 90  
days after publication. Authorization to  
discharge under the applicable general  
permit will automatically expire upon  
issuance of an individual permit.

The Regional Administrator may  
require any person authorized by the  
final general permit to apply for and  
obtain an individual permit. In addition,  
any interested person may petition the  
Regional Administrator to take this  
action. However, an individual permit  
will not be issued for an oil or gas  
facility covered by the general permit  
unless it can be clearly demonstrated  
that inclusion under the general permit  
is inappropriate. The Regional  
Administrator may consider the  
issuance of individual permits according  
to the criteria in 40 CFR 122.28(b)(2).  
These criteria include:

1. The discharge(s) is a significant  
contributor of pollution;

2. The discharger is not in compliance with the terms and conditions of the general permit.

3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

4. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

5. A Water Quality Management Plan containing the requirements applicable to such point sources is approved; or

6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

#### *B. Oil and Gas Operations in the Gulf of Mexico*

General permits were issued on April 3, 1981 under the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, (40 CFR Part 435) implementing best practicable control technology currently available (BPT) to cover the then existing facilities in Region VI operating in the Gulf of Mexico including:

1. Federal waters, (west of 87° 40' west longitude)

2. Territorial seas of the State of Texas, and

3. Territorial seas of the State of Louisiana.

These Permits were re-issued by Region VI through public notice in the *Federal Register* on September 15, 1983, and continued past their expiration date of June 30, 1984, by the Administrative Procedure Act for current lease operators that notified of their intent to be covered prior to June 30, 1984.

Certain areas of biological concern were excluded from those general permits.

The Regions are now proposing to issue one general permit that will also cover the areas excluded from the BPT general permit and expand the area of coverage for Federal waters to include all Federal waters (as defined in the Clean Water Act) in the Gulf of Mexico. This general permit for Federal waters has been written jointly by EPA Regions IV and VI because the permit area is within the jurisdiction of both Regions. Lease operators making notifications and reporting under the permit will send correspondence to either Region IV or Region VI, based on the location of the Federal or State lease. A demarcation line between Regions IV and VI has been established at the western boundary of Outer Continental Shelf lease areas identified as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, NC16-2 and NG16-5.

Based on notifications made by existing lease operators under the

current general permits there are 1460 lease blocks with facilities discharging in Federal waters. Region VI has issued 11 individual permits for discharges adjacent to areas of biological concern in the Gulf and Region IV has issued 22 individual permits for Gulf oil and gas discharges. All 1493 lease blocks will be covered by this general permit along with any new lease blocks purchased after July 1, 1984 until the expiration date of this permit.

This draft permit applies to "new dischargers" and "existing sources" for all facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category located within and discharging into Federal waters in the Gulf of Mexico. It does not apply to facilities located in the territorial seas located within 3 miles of the territorial seas baseline along the coast of any State. Separate permits for operations in the state waters of Texas and Louisiana will be issued by EPA shortly.

Operations within the Alabama and Mississippi State waters will be permitted by these states. The Regional Administrators have determined that the permit conditions and effluent limitations in the draft permit contain sufficient pollution controls to allow one general permit to cover all Federal waters of the Gulf of Mexico.

The states of Texas and Florida own mineral rights to a distance of three marine leagues (approximately 10 statute miles) seaward of the baseline from which the territorial seas are measured. The Clean Water Act, however, authorized states to issue NPDES permits only within the three mile wide territorial seas, therefore this permit's boundary off Texas and Florida is the outer boundary of the territorial seas, not the boundary for federal oil and gas leases as defined by the Minerals Management Service.

This draft permit does not apply to "new sources" because under the NPDES regulations new sources are defined by the publication of new source performance standards (NSPS) under section 306 of the Clean Water Act and 40 CFR 122.2 and 122.29 (as amended September 26, 1984, 49 FR 37998). The Agency has not yet established NSPS for the oil and gas industry. When NSPS are established, either a separate general permit will be issued implementing those NSPS standards or this permit will be modified to incorporate the NSPS for "new sources". However, permittees are required under this proposed general permit to submit information with their notice of intent so that EPA may determine what facilities are new sources when necessary.

#### **II. Nature of Discharges From Oil and Gas Facilities Point Source Categories**

The Oil and Gas Extraction Point Source Category includes facilities engaged in field exploration, development, and production. Exploration includes drilling multiple wells to define a hydrocarbon reserve. Development is the process of drilling production wells and treating those wells to stimulate production. Production includes extraction of the hydrocarbon along with further stimulation or enhanced recovery. Depending on the subcategory involved, discharges can be divided into district types such as: Drilling fluids, drill cuttings, produced water, produced sands, deck drainage, sanitary wastes, domestic wastes, cooling water, discharges from desalinization units, blowout preventer fluid, fire control system test water, and uncontaminated ballast and bilge water. The proposed permit will authorize discharge from exploration, development, and production facilities.

##### *A. Drilling Fluids*

Drilling fluid is defined as any fluid sent down the hole, including drilling muds, gelling compounds, weighting agents, and any specialty products, from the time a well is begun until final cessation of drilling in that hole. Generally, two basic types of muds (water-based or oil-based) are used in drilling. Water-based muds usually are mixtures of fresh water or sea water with clays. Oil-based muds (invert emulsion muds or oil emulsion muds) are mixtures of diesel or mineral oil and clays with water or brine emulsified in the oil. Drilling fluids are used in both exploration and development drilling to maintain hydrostatic pressure control in the well, lubricate the drilling bit, and remove drill cuttings from the well. Oil-based muds are used for special drilling requirements such as tightly consolidated subsurface formations, water sensitive clays, and shales. Specific needs of a drilling program may also require additives to the drilling fluids.

##### *B. Drill Cuttings*

Drill cuttings are mineral particles generated by drilling into subsurface geologic formations. Drill cuttings are carried to the surface of the well with the circulation of the drilling fluids and separated from the fluids by solids separation equipment (screens and shakers) on the platform.

### C. Produced Water ("Formation Water" or "Brine")

Produced water includes water and suspended particular matter brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations. Produced waters are generated primarily during the production phase of oil and gas operations with the amount generated dependent upon the method of recovery and the nature of the formation. Geologic formations contain different oil-water or gas-water mixtures which are produced at different times:

1. In some formations, water is produced with the oil and gas in the early stages of production;
  2. In others, water is not produced until the formation has been significantly depleted; and
  3. In still others, water is never produced.
- Generally, older wells produce a higher percentage of water than new wells.

### D. Produced Sands

Produced sands include sands and other solids removed from the produced waters.

### E. Deck Drainage

Deck drainage includes all waste resulting from platform washings, deck washings, tank cleaning operations, and runoff from curbs, gutters, and drains including drip pans and work area drains.

### F. Sanitary Wastes

Sanitary wastes include human body waste discharges from toilets and urinals.

### G. Domestic Wastes

Domestic wastes include materials discharged from sinks, showers, laundries, and galleys. The galley discharge is waste food which is discharged after maceration.

### H. Cooling Water

Cooling water means once-through, noncontact cooling water.

### I. Desalinization Unit Discharge

Desalinization unit discharge means any wastewater associated with the process of creating fresh water from sea water.

### J. Blowout Preventer Fluid

Blowout preventer fluid is used to actuate the hydraulic equipment installed at or near the mud line as required by the Minerals Management Service. The fluid is a mixture of 1 to 2% biodegradable oil in potable water, and

usually includes ethylene glycol. During periodic testing of the blowout preventer, this fluid is released without treatment.

### K. Fire Control System Test Water

This discharge is sea water released during the training and testing of personnel in fire protection. This water is discharged overboard without treatment.

### L. Uncontaminated Ballast Water

Seawater is introduced into or removed from ballast water to maintain the proper ballast floater level and ship draft during drilling operations. No chemicals are introduced and uncontaminated ballast water is discharged without treatment.

### M. Uncontaminated Bilge Water

Seawater that seeps into the bilge of a vessel is discharged if it is uncontaminated.

## III. Statutory Basis for Permit Conditions

Sections 301(b), 304, 308, 401, 402, and 403 of the Clean Water Act provide the basis for the permit conditions contained in the draft permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Part IV.

### A. Technology-Based Effluent Limitations

#### 1. BPT Effluent Limitations

The Clean Water Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines required "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation required that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitations guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/1 as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by

nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline required no discharge of floating solids. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/1 and a monthly average of 48 mg/1. BPT effluent limitations were incorporated into previous general permits issued for oil and gas facilities for the Gulf of Mexico (48 FR 41494, September 5, 1983).

#### 2. BAT and BCT Effluent Limitations

All permits issued after July 1, 1984, are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) through the use of Best Available technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT. Permits in effect after July 1, 1987, must impose effluent limitations which control nonconventional pollutants by means of BAT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) are currently under development and will be proposed in the near future for the Offshore Subcategory. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This proposed permit incorporates BAT and BCT effluent limitations based on the Agency's Best Professional Judgment.

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered: The age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The type of equipment and processes employed in production and drilling operations are well known to the Agency. Region 6 has issued general and individual permits for such operations. The records for this permit and those earlier permits discuss the types of equipment, facilities and processes

employed in drilling and production operations. Concerning the factor of engineering aspects of the application of various types of control techniques, the only permit limitation based on installation of control equipment is the limitation on the oil content of produced water. All other new proposed permit limitations can be achieved through product substitution, the technology basis for the limitations in this permit. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated and a discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, the Agency considered the same factors in determining BPT/BCT permit conditions, but with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test", BCT effluent limitations are set equal to BPT.

The Agency's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Agency's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular waste stream. With respect to the BCT "cost test," all BCT limitations are equal to the BPT effluent limitations guidelines or to the Regions' best professional judgment determinations of BPT. Therefore, no incremental cost would be incurred.

#### B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a

prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The determination of unreasonable degradation must be based on the following factors: Quantities, composition, and potential for bioaccumulation or persistence of the pollutants discharged; potential transport of such pollutants; the composition and vulnerability of biological communities exposed to such pollutants; the importance of the receiving water area to the surrounding biological community; the existence of special aquatic sites; potential impacts on human health; impacts on recreational and commercial fishing; applicable requirements of approved Coastal Zone Management Plans; marine water quality criteria developed pursuant to section 304(a)(1) of the Act; and other relevant factors. A final Ocean Discharge Criteria Evaluation (ODCE) has been completed for those discharges in the area covered by this permit. The following is a summary of the ODCE.

The effects of drilling muds, cuttings, and produced waters when discharged in compliance with the proposed limitations are measured in terms of meters to hundreds of meters for chemical effects on benthic sediments or biological effects on benthic communities; and in terms of hundreds to a few thousands of meters for effects of suspended solid loads. The effect on biological populations in the water column is virtually negligible. All of these effects, singly, are local and ephemeral.

The major long-term effects are expressed as effects of the industry's

coastal socioeconomic development, land use changes to accommodate the industry, and space/use conflicts. These effects are not a result of discharges and are not addressed in this document. They are presented and assessed in the NEPA process requiring Environmental Impact Statements on major federal actions, in this case the lease sales that are managed by the Department of Interior. The NEPA regulations, §§ 1502.20 and 1508.28, encourage "tiering" of environmental documents if there is to be subsequent environmental analysis at future stages of the project when potential impacts can be assessed with more certainty. This is generally the case with OCS oil and gas activities, which are subject to post-lease NEPA reviews at times when site-specific impacts can be identified. The Department of Interior, Minerals Management Service has an ongoing environmental studies program that funds pertinent studies where information is needed to better assess potential impacts. DOI and EPA are currently working under a Memorandum of Understanding (MOU) which formalizes procedures for coordination in determining these data requirements and the type of information needed to address future Clean Water Act 403(c) Ocean Discharge Criteria assessments.

The Regional Administrators have concluded that, oil and gas facilities operating under the effluent limitations and conditions in this general permit will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines.

#### C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i) the Administrator must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has proposed several monitoring requirements for the effluent limitations proposed in this permit, as listed in the table below.

#### IV. Specific Permit Conditions

##### A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria assuming conditions in parts (1) and (2) were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in Parts B. through D., respectively. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit condition	Statutory basis
Drilling muds:	
Authorized muds only	BAT.
No oil-based muds	BAT & BCT
No diesel	BAT.
Discharge rate limitations	Section 403(c)
No free oil	BAT & BCT
Toxicity limitation	BAT.
Monitor volume discharged	Section 308
Inventory of added substances	Section 308
Drill cuttings:	
No free oil	BAT & BCT
No discharge if oil based muds used	BAT & BCT
Monitor volume discharged	Section 308
Deck drainage:	
No free oil	BAT & BCT
Monitor discharge rate	Section 308
Produced water:	
Oil & grease limits: 48 mg/l monthly avg., 72 mg/l daily max.	BCT.
Monitor volume discharged	Section 308
Sanitary wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/l (facilities with more than 10 people)	BCT.
Monitor discharge rate	Section 308
Domestic wastes:	
No floating solids	BCT.
Monitor discharge rate	Section 308
Miscellaneous discharges:	
No free oil	BAT & BCT
Monitor discharge rate	Section 308
Inventory of added substances	Section 308
Well treatment and test fluids:	
Oil & grease limits: 48 mg/l monthly avg., 72 mg/l daily max.	BCT.
Monitor volume discharged	Section 308
All discharges:	
No halogenated phenols	BAT.
No floating solids	BCT.

## B. BCT Requirements

### 1. Oil and Grease in Produced Water

Under BPT, oil and grease in discharges of produced water were limited to a 48 mg/l monthly average and a 72 mg/l daily maximum based on oil/water separation technologies. This limitation is equal to BCT because the Regions do not have technology performance data available at this time on which to base a more stringent limitation. As this limitation is equal to the BPT level of control, there is no incremental cost involved. The discharge of oil is also controlled under BAT limits as discussed below.

### 2. Free Oil

No discharge of free oil is permitted from discharges authorized by this permit. The Regions have determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment

fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, desalination unit wastes, non-contact cooling water, blowout preventer fluid, and fire control system test water. Thus, the no free oil limitation is the Regions' best professional judgment determination of BPT controls for these discharges. No technology performance data available to the Regions indicate that a more stringent standard is appropriate at this time. For this permit, therefore, the Regions have proposed BCT effluent limitations equal to the BPT level of control and, as such, these proposed limitations impose no incremental costs.

The BCT effluent limitation on free oil for drilling muds is equal to the BPT limitation. The discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is therefore prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil. Likewise, the prohibition on discharge of drill cuttings associated with oil-based drilling mud is based on the data which demonstrates that approximately nine percent by weight, oil is retained on cuttings after washing. The Regions have determined that this concentration of oil on cuttings will result in a violation of the BCT effluent limitations of no discharge of free oil. The monitoring requirement for determining compliance with the effluent limitation on free oil is a visual observation of the receiving water. Regions IV and VI are proposing the use of the visible sheen test in the draft permit. However, the Regions do recognize that EPA Region X has proposed and is using the static (laboratory) sheen test for certain discharges. EPA Headquarters is also studying the reproducibility of modifications to the static sheen test with the possibility of modifying the test as it has been used in the past by reducing the volume of mud required to be tested. When this study is completed and the results are evaluated, the static sheen test may be required for facilities covered by this permit. Regions IV and VI request comment on which test is appropriate for discharges of drilling muds and cuttings, the possible cost consequences of using the static sheen test, and any other pertinent comments or relevant information.

### 3. Floating Solids

The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations for other waste streams, the Regions have determined that the BPT effluent limitations guideline of no

discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is the Regions' best professional judgment determination of BPT limitations for these discharges. No technology performance data available to Regions IV and VI indicate that a more stringent standard is appropriate at this time. Therefore, the Regions have determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

### 4. Chlorine

The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/l in sanitary waste discharges for facilities manned by 10 or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

## C. BAT Requirements

### 1. Diesel Oil

The discharge of muds which have been contaminated by diesel oil (i.e., those drilling muds which have contained diesel) or drill cuttings associated with these muds is prohibited. Diesel, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel, the Agency's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the toxic pollutants listed below present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

The Agency selected "diesel" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light aromatic hydrocarbons, such as

benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

The Regions have determined that eliminating the discharge of drilling fluids contaminated with diesel oil will reduce the levels of toxic pollutants present in discharged fluids. Studies show that when the amount of diesel is reduced in drilling muds, the concentrations of toxic pollutants and overall toxicity of the fluid generally is reduced. Available data clearly establish that diesel oils as a class contain significantly higher levels of toxic pollutants than do mineral oils as a class. It is reasonable and appropriate to conclude that BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant. Regions IV and VI believe that the limitations achieved by product substitution represent the technically feasible and economically achievable BAT level of control for the various toxic pollutants to be controlled. Establishing limitations of these pollutant parameters as indicator pollutants avoids the costly and technically complex requirement of complying with specific limitations on each of the toxic pollutants. Monitoring and analyzing all waste streams to confirm compliance with specific effluent limitations for each of the toxic pollutants is not considered by the Regions to be economically justified at this time. Low toxicity mineral oils are available as product substitutes for diesel oil and do not impose unreasonable additional costs on industry.

In this permit proposal the Agency relied primarily on the lower effective cost of mineral oil over diesel oil as a basis for this determination. The Draft Diesel Pill Monitoring Program prepared by EPA and the American Petroleum Institute gives data for comparative costs of using a diesel Pill and a mineral oil pill for Gulf of Mexico operators (page 5 Draft Diesel Pill Monitoring Program). For example, a mineral oil pill

costs Gulf operators \$19,200 for components, storage, and disposal, whereas a diesel pill would cost \$26,500 if the operator takes part in the diesel pill monitoring program, and \$116,300 if the operator does not take part in the program. Therefore, operators would actually have a savings of several thousand dollars by using mineral oil in the Gulf rather than diesel oil for pill formulations for stuck drilling pipe.

## 2. Free Oil and Oil-Based Muds and Associated Cuttings

The free oil limitation is a BPT effluent limitations guideline for the major waste streams, and, as discussed above, the Regions have made a BPJ determination that it is an appropriate BPT effluent limitation for other minor waste streams. Therefore, no incremental costs are incurred by establishing the no free oil limitation as a BAT effluent limitation in this permit.

In addition, no oil-based muds may be discharged. The prohibition on the discharge of free oil for BPT effectively prohibited the discharge of oil-based drilling fluids. The limitation is also included under BAT to explicitly control the discharge of toxic and nonconventional pollutant components of the oils in oil-based muds and oil-contaminated cuttings.

## 3. Toxicity Effluent Limitation

Treatment to remove toxic pollutants from drilling fluids is not feasible because the only demonstrated treatment is designed to control the solids in drilling fluids by removing drill cuttings and other solids from the drilling fluid. In order to control toxic pollutants and nonconventional pollutants it is the best professional judgment that the type and concentration of these pollutants can most efficiently be controlled by establishing a toxicity limitation on the discharge of drilling fluids. The proposed permit will control the toxicity of discharged drilling fluids through two provisions. First, only drilling muds listed in Table 1 of the draft permit can be discharged (i.e., the discharge is restricted to an approved drilling fluids list (generic drilling fluids) which specifies concentration limits for the major components). This list includes the major water based drilling fluids for which EPA has extensive toxicity data.

Second, to control the toxicity of additives used in generic muds, the permit limits the total LC50 toxicity of any mud plus all the additives to that mud. A toxicity effluent limitation is proposed which establishes a maximum 96 hr LC50 value of 7,400 ppm (for *Mysidopsis bahia*) on the suspended

particulate phase, which discharged drilling fluids cannot exceed.

In the Gulf of Mexico, individual permits have allowed the addition of drilling additives provided the permittee demonstrates that the additive does not increase the toxicity of the most toxic of the approved drilling fluid. This procedure requires the review of toxicity data by the permit writer and is unmanageable for the number of facilities covered by this permit.

The limitation is a 96 hr LC50 value of 7,400 ppm (for *Mysidopsis bahia*) on the suspended particulate phase of drilling fluid. This toxicity effluent limitation is based on the results of toxicity data for drilling fluids as determined by EPA. These data reveal that five percent mineral oil added to generic drilling fluid number eight yields a 96 hour LC50 value of 7,400 ppm (lower 95 percent confidence limit) suspended particulate phase using *Mysidopsis bahia* as the test organism.

Generic drilling fluid number eight is a common drilling fluid for the Gulf of Mexico and based on current data the five percent mineral oil is considered an adequate concentration to satisfy lubrication needs. Also, the toxicity test data indicate that the other generic drilling fluids will meet the proposed toxicity effluent limitation. This limit can be achieved through product substitution.

The toxicity effluent limitation will allow operators to discharge drilling fluid additives, which have been added to the generic drilling fluids, but the limitation will assure the selection of less toxic additives or minimal concentrations of the more toxic additives.

Consideration was given to requiring two toxicity effluent limitations; a lower LC50 for drilling fluids containing lubricants and a higher LC50 for drilling fluids with no lubricants. The Agency rejected this approach because it would in effect be giving an incentive, in the form of a more lenient toxicity limitation, for the discharge of lubricants. With only one toxicity limitation, which will allow lubricants to be discharged, there is no permit imposed incentive to use and discharge lubricants. The other single toxicity effluent limitation which the Regions considered is a 96 hour LC50 value of 30,000 ppm for the suspended particulate phase for *Mysidopsis bahia*. This LC50 represents the most toxic of the generic drilling fluids (Mud No. 1) without additives. This would be a reasonable toxicity effluent limitation if an additives approval process were proposed in the permit. Since this draft

permit does not establish an additives approval process, the Regions needed to establish a toxicity limitation that would allow the use of mineral oil lubricant. Therefore, the Regions selected the 7,400 ppm 96 hr LC50 suspended particulate phase with *Mysidopsis bahia*, as a limitation that would allow selective use of mineral oil, but also control the overall toxicity of the drilling fluid. Comments are solicited on the appropriate toxicity effluent limit to control the discharge.

#### 4. Diesel Pill Monitoring Program

While the permit prohibits the discharge of drilling muds and cuttings contaminated with diesel oil, the permit also includes one exception to that prohibition. That exception provides that water-based drilling muds and associated cuttings may be discharged despite the presence of some residual diesel oil if the diesel oil was used as part of a diesel "pill" or "spotting fluid" to free stuck pipe and the operator participates and complies with EPA/API Diesel Pill Monitoring Program. A copy of the draft Program (dated January 1985) has been made a part of the Administrative Record for the draft permit.

The Diesel Pill Monitoring Program ("DPMP") has been developed by EPA's Industrial Technology Division cooperatively with the American Petroleum Institute to assist in evaluating the effectiveness of recovery of diesel oil from drilling muds when a diesel pill is used. Industry has requested that the discharge of diesel oil should be allowed when the diesel oil is the residual oil left in the mud following use of a diesel pill and stringent pill recovery techniques. The Agency currently has minimal information on the effectiveness of pill recovery. This fact coupled with the increasing availability of mineral oil pills has resulted in a prohibition of the discharge of any muds contaminated with diesel oil, including residual diesel oil from a pill. However, the Agency has determined that an opportunity should be made available to demonstrate whether a diesel pill can be effectively removed from a mud system after use. The Gulf of Mexico was selected for this study because of the large number and diversity of drilling operations. The Agency expects that a large number of operations will choose to use a substitute to a diesel oil pill and therefore not participate in the DPMP. For those operators that choose to use a diesel oil pill, the DPMP establishes stringent conditions for pill recovery, bioassay testing and monitoring to

generate data on the effectiveness of pill recovery.

The DPMP requires that an operator who uses a diesel pill and intends to discharge the drilling muds, recover the diesel pill plus at least 50 barrels of drill muds from either side of the pill. These drillings muds and recovered pills may not be discharged; they must be transported to shore for disposal or reuse. The DPMP also requires the operator to purchase a special sampling kit and take samples of his drilling mud system prior to use and after recovery of the diesel pill, as well as samples of the pill formulation and diesel oil used in the pill. These samples must be sent to the laboratory specified in the DPMP for analysis including bioassay testing of the mud samples.

The DPMP will last one year from the issuance of this permit. EPA will evaluate the data from the DPMP to determine the effectiveness of pill recovery. Based on the conclusions of the DPMP, a permit modification will be proposed following the procedures of 40 CFR 124.5 to include a final provision regarding whether discharge of drill muds and cuttings following use of a diesel pill will be allowed, and if so under what conditions.

Any operator participating in the DPMP will be required to meet all permit limitations with the exception of the diesel oil prohibition (a mud system with residual diesel oil from the pill may be discharged) and the time of compliance with the toxicity limitation. Compliance with the toxicity limitation will be demonstrated by the sample taken of the mud system prior to use of the diesel pill rather than the end-of-well sample. When the prior-to-pill mud sample is used for toxicity compliance, the operator still must take and submit an end-of-well sample but it will not be used to determine compliance with the toxicity limitation. After conclusion of the DPMP and prior to permit modification, any operator using a diesel pill must continue to follow the DPMP requirements for pill removal and continue to comply with the toxicity limitations prior to use of the pill. They also will be required to continue to submit an end-of-well sample but it will not be used to determine compliance.

#### 5. Other Toxic Compounds

Under the draft permit discharge of the following pollutant would be prohibited: Halogenated phenol compounds. The class of halogenated phenol compounds includes toxic pollutants. The discharge of this compound was previously prohibited in the BPT general permits for the Western Gulf of Mexico (48 FR 41494, September

15, 1983). This class of compounds is subject to BAT limitations. Because operators complied with this provision in the BPT permit, there is no additional cost to the industry.

#### D. Requirements Based on the Ocean Discharge Criteria Evaluation

##### 1. No Discharge in Areas of Biological Concern

The draft permit prohibits discharge in areas of biological concern, which are defined as locations identified by MMS as "no activity" or "live bottom". General permits previously issued for oil and gas facilities located in the Gulf of Mexico (48 FR 41494, September 15, 1983) designated specific lease blocks which were excluded from coverage by the general permits. These excluded lease blocks were based on the MMS designated "no activity" areas, however, these areas were not the same because the "no activity" locations are defined by isobaths encompassing topographic highs (banks) and lease blocks are surveyed plots defined by coordinates. Additional lease blocks were also excluded from coverage by the previous general permits which were not related to MMS "no activity" areas. These lease blocks were excluded from coverage based on a request from the National Marine Fisheries Services. This permit provides NPDES permit coverage for the formerly excluded areas because it controls the discharge to toxic pollutants to these potentially sensitive areas.

The no discharge requirement for areas of biological concern is necessary to ensure no unreasonable degradation of the environment.

##### 2. Drilling Fluids Discharge Rate Limitation

A controlled discharge rate for drilling fluids is required within 2000 meters of areas of biological concern to ensure no unreasonable degradation of the environment. The discharge rate is based on establishing a toxicity criterion at a specific boundary, assuming a discharge at the permitted toxicity limit of 7,400 ppm 96 hr. LC50 suspended particulate phase with *Mysidopsis bahia*. A safety factor of 0.01 was used in consideration of chronic versus acute effects, test species sensitivity versus sensitivity of species *in situ*, and synergistic interactions. A factor of 35 was used to represent whole drilling fluid toxicity since the 7,400 limit is based on the suspended particulate phase. These two factors function to derive the safety factor as:

$$0.01 \times \frac{7400}{35} \text{ ppm} = 2.1 \text{ ppm}$$

Dispersion ratios that were derived as a function of discharge rate and transport time were developed to calculate the discharge rate limitation as:

$$\text{Discharge rate (bb/hr)} = 10^{(3 \log(DM) / 10) - 3.24}$$

This limitation assures that the toxicity criterion is met at the boundary of the areas of biological concern.

A maximum drilling fluids discharge rate of 1,000 barrels per hour is required because reliable dispersion data are available only up to this discharge rate.

### 3. Minimized Discharge of Cleaning Compounds

Surfactants, dispersants and detergents are used to clean up spills on drilling facilities to maintain safe working conditions. The permit requirement to minimize the discharge of these compounds is necessary to determine no reasonable degradation.

The Regional Administrators have determined that all discharges authorized by this permit will not cause unreasonable degradation of the marine environment.

## V. Other Legal Requirements

### A. State Certification

Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Under section 401(a)(1) of the Act EPA may not issue a NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. State waters are not included within the area of coverage by the draft permit, therefore State certification is not required.

### B. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. In the 1978 amendments to section 311, Congress clarified the relationship between this section and discharges permitted under section 402 of the Act. It was the intent of Congress that routine discharges permitted under section 402 be excluded from section 311. Discharges permitted under section 402 are not subject to section 311 if they are:

1. In compliance with a permit under section 402 of the Act;

2. Resulting from circumstances identified, reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit; or

3. Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act which are caused by events occurring within the scope of the relevant operating or treatment system.

To help clarify the relationship between discharges permitted under section 402 and section 311 discharges EPA has compiled the following list of discharges which it considers to be regulated under section 311 rather than under a section 402 permit. The list is not to be considered all-inclusive.

1. Discharges from a platform or structure on which oil or water treatment equipment is not mounted.
2. Discharges from burst or ruptured pipelines, manifolds, pressure vessels or atmospheric tanks.
3. Discharges from uncontrolled wells.
4. Discharges from pumps or engines.
5. Discharges from oil gauging or measuring equipment.
6. Discharges from pipeline scraper, launching, and receiving equipment.
7. Spills of diesel fuel during transfer operations.
8. Discharges from faulty drip pans.
9. Discharges from well heads and associated valves.
10. Discharges from gas-liquid separators, and
11. Discharges from flare lines.

### C. The Endangered Species Act

The Endangered Species Act (ESA) and its implementing regulations (50 CFR Part 402) require that each Federal Agency shall ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modifications of their habitats.

The Minerals Management Service (MMS) has undertaken endangered species reviews including full consultation with the Department of Commerce, the National Marine Fisheries Service (NMFS) and the Department of the Interior, Fish and Wildlife Service (FWS), with respect to all oil and gas leasing in the general permit area for this permit. Based on information in the Ocean Discharge Criteria Evaluation, which summarizes the consultation, and in the Environmental Impact Statements prepared by MMS for the Gulf of Mexico, EPA has concluded that the

discharges authorized by this general permit will neither jeopardize the continued existence of any endangered or threatened species nor adversely affect their critical habitat. EPA is requesting comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and will consider their comments in making the final permit decision. EPA will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

### D. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP (section 307(c)(3)(A) Subpart D). For facilities operating in Federal waters, a decision to require a consistency determination might arguably require a demonstration that the permitted discharge will affect the territorial seas or coastal waters of the approved State (44 FR 37142, June 25, 1979; 15 CFR 930.50). Since there are no applicants identified in the general permit process, EPA in effect becomes the applicant certifying consistency and submitting a general permit for consistency review to the appropriate State agency. EPA is submitting a copy of the draft permit along with the consistency certification to each State with a CZMP. (Louisiana, Mississippi, Alabama and Florida).

Formal State review of EPA's consistency certification begins at the time the State agency receives a copy of the certification along with the information required in 15 CFR 930.58.

### E. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program implemented by the National Oceanic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or esthetic values.

Section 302(f) of MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and/or can be carried out within its promulgated regulations. There are presently no existing marine sanctuaries in the Gulf of Mexico.

#### F. Economic Impact (Executive Order 12291)

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

#### G. The Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

#### H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: July 16, 1985.

**Frances Phillips,**

*Deputy Regional Administrator, Acting Regional Administrator, EPA Region VI.*

Dated: July 16, 1985.

**Jack E. Ravan,**

*Regional Administrator, EPA Region IV.*

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**DRAFT PERMIT****Authorization to Discharge Under the National Pollutant Discharge Elimination System**

[ERL-2868-1 Permit No. GMG280000]

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, [33 U.S.C. 1251 et. seq; the "Act"], Operators of lease blocks in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in lease areas seaward of the outer boundary of the territorial seas off the States bordering the Gulf of Mexico, are authorized to discharge to receiving waters named the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks within the general permit area who: (1) Fail to notify the Regional Administrator of their intent to be covered by this general permit, or (2) who have not received written notification from the Regional Administrator of their coverage by the general permit, are not authorized under this general permit to discharge from

those facilities to the receiving waters named.

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.2.

This permit shall become effective on the date of final publication.

This permit and the authorization to discharge shall expire at midnight, 5 years from effective date.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1985

Myron O. Knudson, P.E.,

Director, Water Management Division (6W), Region VI.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1985

Bruce R. Barrett,

Director, Water Management Division (4), Region IV.

**Part I.—Requirements For NPDES Permits****Section A. Effluent Limitations and Monitoring Requirements**

1. During the period beginning the effective date and lasting through the date of expiration the permittee is authorized to discharge Drilling Fluids.

Such discharges shall be limited and monitored by the permittee as specified below:

pill removal, and additional data are provided to EPA in accordance with the requirements of the Diesel Pill Monitoring Program.

Item 3, above will be effective for one year from the permit effective date.

Thereafter, items 1, and 2, apply until this permit is modified following the procedures of 40 CFR 124.5.

If residual diesel oil is discharged in compliance with items 1, 2 and 3 above, the end of well toxicity testing will be required for reporting purposes only as part of the Diesel Pill Monitoring Program.

In all cases where a diesel spot is used the drilling fluid toxicity shall be monitored prior to spotting by following the procedures of this section A.1. The amount, brand name, and chemical description of any drilling fluid/lubricant shall be reported for each well where spotting is required.

(e) *Drilling Fluids Additives Approval.* When a drilling fluids additives approval program is developed, the permittee shall discharge only drilling fluids and additives which are approved or alternatively shall continue to meet the toxicity effluent limitation if additives are discharged which have not been approved. Under no circumstances shall a disapproved additive, or an approved additive at greater than approved concentration, be authorized for discharge by this permit. Toxicity compliance monitoring shall be used for reporting purposes only if approved additives, at approved concentrations, are discharged.

(f) *Drilling Fluids Inventory.* The permittee shall maintain a precise chemical inventory of all constituents and their volume added downhole for each well. For each constituent the inventory shall specify the estimated maximum concentration in the discharged drilling fluid and the total volume or mass added downhole. Toxicity compliance monitoring shall be used for reporting purposes only if approved additives at approved concentrations are discharged.

(g) *Applicability.* All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section A.1., except the discharge rate limitations do not apply during initial drilling i.e., before installation of the marine riser.

Effluent characteristic	Discharge limitations	Monitoring requirements		Reported value(s)
		Measurement frequency	Sample type	
Free oil	No. free oil	Once/day <sup>1</sup>	Observation of sheen or film <sup>2</sup>	Number of days sheen or film observed.
Volume (barrels)		Once/month	Estimate	Monthly total
Toxicity <sup>3</sup> 96-hour LC50	Not less than 7,400 ppm.	Once/well	Grab	96-hour LC50.
Discharge rate	1,000 barrels/hour	Once/hour <sup>1</sup>	Estimate	Maximum hourly rate.
Discharge rate <sup>4</sup> , see figure 1 (areas of biological concern):		Once/hour <sup>1</sup>	Estimate	Maximum hourly rate.

<sup>1</sup> When discharging.

<sup>2</sup> Monitoring shall be accomplished by visual observation of the surface of the receiving water in the vicinity of the discharge.

<sup>3</sup> Suspended particulate phase with *Mycolopsis bahia* following approved test method. The sample shall be taken from beneath the shale shaker when maximum depth is reached. See Part III.

<sup>4</sup> Discharge locations equal to or less than 2000 meters from areas of biological concern and from the territorial seas of Mississippi and Alabama.

(a) *Generic Drilling Fluids.* Only authorized drilling fluids, as identified in Table 1 shall be discharged; however, additives are allowed subject to other limitations.

(b) *Oil Based Drilling Fluids Discharge Prohibition.* The discharge of oil-based drilling fluids, and inverse emulsion drilling fluids are prohibited.

(c) *Oil Contaminated Drilling Fluids Discharge Prohibition.* The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil, or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

(d) *Diesel Oil Discharge Prohibition.*

If diesel oil is added to the drilling fluid, the drilling fluid may not be discharged unless:

1. The diesel oil is added in an attempt to free stuck pipe only and,
2. The diesel pill and at least 50 barrels of drilling fluid on either side is removed from the active drilling fluid system and not discharged to waters of the United States, and
3. Samples of the drilling fluid, after

Figure 1.—Drilling Fluids Discharge Rate Graph

Drilling fluid discharges equal to or less than 2000 meters from specified areas shall comply with the discharge rate obtained from the graph below.

$$[3 \log (d(m)/15) - 3.36]$$

$$\text{Discharge Rate (bbl/hr)} = 10$$

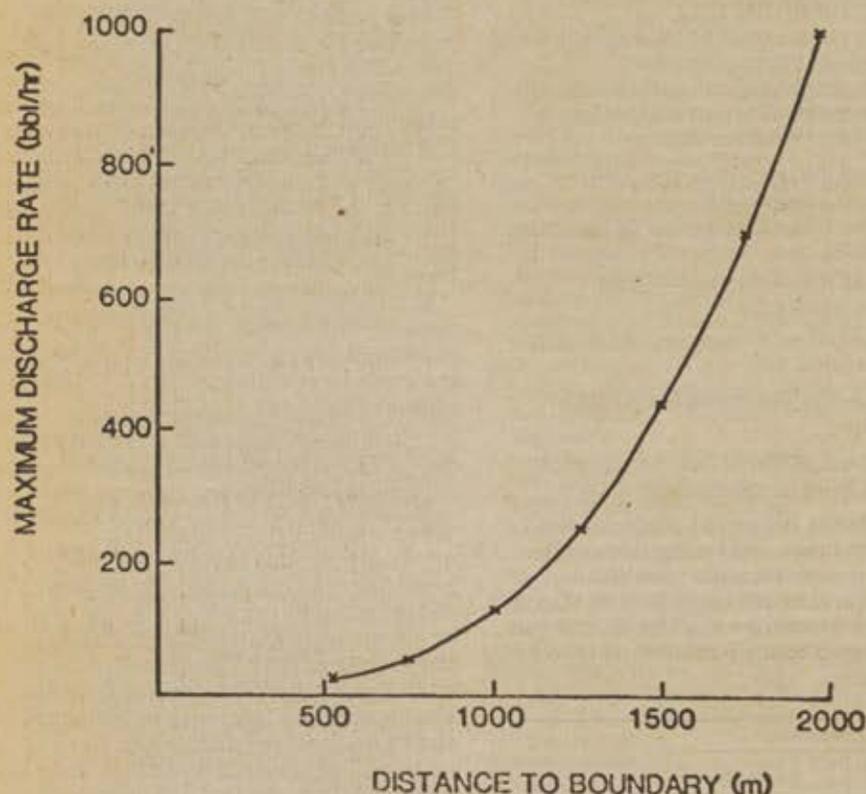


TABLE 1.—AUTHORIZED DRILLING FLUIDS—Continued

Components	Maximum allowable concentration (pounds per barrel)
Freshwater	( <sup>1</sup> )
5. Spud (Slugged intermittently with seawater):	
Attapulgite or Bentonite	50
Caustic	3
Cellulose Polymer	2
Drilled Solids	100
Barite	50
Soda Ash/Sodium Bicarbonate	2
Lime	2
Seawater	( <sup>1</sup> )
6. Seawater Gel:	
Attapulgite or Bentonite Clay	50
Caustic	3
Cellulose Polymer	2
Drilling Solids	100
Barite	50
Soda Ash/Sodium Bicarbonate	2
Lime	2
Seawater	( <sup>1</sup> )
7. Lightly Treated Lignosulfonate Freshwater/Seawater:	
Bentonite	50
Barite	180
Caustic	3
Lignosulfonate	6
Lignite	4
Cellulose Polymer	2
Drilling Solids	100
Soda Ash/Sodium Bicarbonate	2
Lime	2
Seawater to Freshwater Ratio	<sup>2</sup> 1:1
8. Lignosulfonate Freshwater:	
Bentonite	50
Barite	450
Caustic	5
Lignosulfonate	15
Lignite	10
Drilled Solids	100
Cellulose Polymer	2
Soda Ash/Sodium Bicarbonate	2
Lime	2
Freshwater	( <sup>1</sup> )

<sup>1</sup> As needed.  
<sup>2</sup> Approximately.

TABLE 1.—AUTHORIZED DRILLING FLUIDS

Components	Maximum allowable concentration (pounds per barrel)
1. Seawater/Potassium/Polymer Mud:	
KCl	50
Starch	12
Cellulose Polymer	5
Xanthum Gum Polymer	2
Drilled Solids	100
Caustic	3
Barite	450
Seawater	( <sup>1</sup> )
2. Seawater/Lignosulfonate:	
Attapulgite or Bentonite	50
Lignosulfonate	15
Lignite	10
Caustic	5
Barite	450
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulose Polymer	5
Seawater	( <sup>1</sup> )
3. Lime:	
Lime	20
Bentonite	50
Lignosulfonate	15
Lignite	10
Barite	180
Caustic	5
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Freshwater	( <sup>1</sup> )
4. Nondispersed:	
Bentonite	15
Acrylic Polymer	2
Barite	180

TABLE 1.—AUTHORIZED DRILLING FLUIDS—Continued

Components	Maximum allowable concentration (pounds per barrel)
Drilled Solids	70

Effluent characteristic	Discharge limitation	Monitoring requirements		Reported value(s)
		Measurement frequency	Sample type	
Free oil	No free oil	Once/day <sup>1</sup>	Observation of sheen or film. <sup>2</sup>	Number of days sheen or film observed. Monthly total.
Volume (barrels)		Once/month	Estimate	

<sup>1</sup> When discharging.

<sup>2</sup> Monitoring shall be accomplished by visual observation of receiving water surface in the vicinity of the discharge.

(a) *Cuttings From Oil Based Drilling Fluids Discharge Prohibition.* The discharge of cuttings, produced when using oil based or inverse emulsion drilling fluids, is prohibited.

3. During the period beginning the effective date and lasting through the

2. During the period beginning the effective date and lasting through the date of expiration the permittee is authorized to discharge Drill Cuttings. Such discharges shall be limited and monitored by the permittee as specified below:

date of expiration the permittee is authorized to discharge the effluents listed in the following table. Such discharges shall be limited and monitored by the permittee as specified below:

Discharge and effluent characteristics	Discharge limitation	Monitoring requirements		Report value(s)
		Measurement frequency	Sample type	
Deck drainage: Volume (barrels) Free Oil	No free oil	Once/month Once/day <sup>1</sup>	Estimate Observation of sheen or film	Monthly total Number of days sheen or film observed.
Produced water: Flow (MGD) Oil and grease	72 mg/l daily max. (46 mg/l monthly, ave.) When sampled weekly.	Once/month Once/month	Estimate Grab <sup>2,3</sup>	Monthly average Daily maximum
Produced sand: Weight (lbs) Free Oil	No free oil	Once/month Once/day	Estimate Observation of sheen or film	Monthly total Number of days sheen or film observed.
Well treatment fluids <sup>4</sup> Volume: Sanitary waste <sup>5</sup> (continuously manned by 10 or more persons): Flow (MGD) Residual chlorine	No floating solids	Once/month Once/month Once/month	Estimate Estimate Grab	Monthly total Monthly average Concentration
Sanitary waste (continuously manned by 9 or fewer persons or intermittently by any number): Solids Domestic Waste: Solids	No floating solids	Once/day Once/day	Observation <sup>6</sup> Observation <sup>6</sup>	Number of days solids observed: Number of days solids observed.
Cooling water, desalination unit discharge, blowout preventer fluid, fire-control system test water, uncontaminated ballast water, uncontaminated bilge water	No free oil	Once/day	Observation of sheen or film	Number of days sheen or film observed.

<sup>1</sup>When discharging and facility is manned. Monitoring shall be accomplished during daylight by visual observation of the receiving water surface in the vicinity of the discharge.

<sup>2</sup>May be based on the arithmetic average of four grab results samples in the twenty-four hour period.

<sup>3</sup>No discharge except as part of produced water.

<sup>4</sup>Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

<sup>5</sup>Each method CN-65-DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.

<sup>6</sup>Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or mid-day meals and at a time during daylight and maximum estimate discharge.

## Section B. Other Discharge Limitations

### 1. Floating Solids or Visible Foam.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

### 2. Halogenated Phenol Compounds.

There shall be no discharge of halogenated phenol compounds.

**3. Surfactants, Dispersants, and Detergents.** The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Minerals Management Service.

**4. Rubbish, Trash and Other Refuse.** The discharge of any solid material not in compliance with other parts of this permit is prohibited. Incineration residue from paper and plastic only is exempt from this prohibition.

**5. Areas of Biological Concern.** There shall be no discharge in areas of biological concern

## Part II.—Standard Conditions for NPDES Permits

### Section A. General Conditions

**1. Duty to Comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; or for requiring a permittee to apply for and obtain an individual NPDES permit.

**2. Penalties for Violations of Permit Conditions.** The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

**3. Permit Actions.** This permit may be modified, revoked and reissued, or

terminated for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

c. A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or

d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

In accordance with regulations promulgated under section 403 (40 CFR 125.123(d)(4)) of the Clean Water Act, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment.

This permit shall be modified, or a alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under section 301(b)(2)(C), and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

b. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

**4. Toxic Pollutants.** Notwithstanding Section A, paragraph 3 above, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions

established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. *Civil and Criminal Liability.* Except as provided in permit conditions on "Bypassing" section B, paragraph 4.b. and "Upsets" section B, paragraph 5.b., nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

6. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 331 of the Clean Water Act.

7. *State Laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

8. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

9. *Severability.* The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. *Definitions.* The following definitions shall apply unless otherwise specified in this permit:

a. "Daily Discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge"

determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that sampling day.

b. "Monthly Average" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

c. "Daily Maximum" discharge limitation means the highest allowable "daily discharge" during the calendar month.

#### *Section B. Operation and Maintenance of Pollution Controls*

##### *1. Proper Operation and Maintenance.*

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. *Need to Halt or Reduce not a Defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

##### *4. Bypass of Treatment Facilities. a. Definitions:*

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it

also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of section B, paragraphs 4.c. and 4.d. of this section.

##### *c. Notice:*

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in section D, paragraph 6 (24-hour notice).

##### *d. Prohibition of bypass.*

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in section B, paragraph 4.d.(1).

5. *Upset Conditions. a. Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of section B, paragraph 5.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance,

is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed,

contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated; and

(3) The permittee submitted notice of the upset as required in section D, paragraph 6.

(4) The permittee complied with any remedial measures required under section B, paragraph 3.

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. *Removed Substances.* Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

### Section C. Monitoring and Records

1. *Representative Sampling.* Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

2. *Monitoring Procedures.* Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

3. *Penalties for Tampering.* The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

4. *Reporting of Monitoring Results.* The operator of each lease block shall be responsible for submitting monitoring results for each facility within each lease block.

If there is more than one facility (platform, drilling ship, semisubmersible), the discharge shall be designated in the following manner:

101 for the first facility; 201 for the second facility; 301 for the third facility; etc.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring

Report (DMR) Form (EPA No. 3320-1). In addition, the annual average for each facility shall be reported and shall be the arithmetic average of all samples taken during the reporting year. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (discharge) is not applicable due to the type of operation (e.g. drilling, production) no reporting is required for that particular outfall. Only DMR's representative of the activities occurring need to be submitted. A notification indicating the type of operation should be provided with the DMR's.

The first report is due on the 28th day of the 13th month from the day this permit first becomes applicable to a permittee. Signed and certified copies of these and other reports required herein, shall be submitted to the Regional Administrator at the following address:

(a) For all lease blocks west of the western boundary of Outer Continental Shelf lease areas identified as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, NG16-2 and NG16-5. Director, Water Management Division (6W), Region VI, U.S. Environmental Protection Agency, P.O. Box 50708, Dallas, Texas 75250

(b) For all lease blocks east of the line identified in (a) above.

Director, Water Management Division (4W), Region IV, U.S. Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365

5. *Additional Monitoring by the Permittee.* If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

6. *Averaging of Measurements.* Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. *Retention of Records.* The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report,

or application. This period may be extended by request of the Regional Administrator at any time.

8. *Record Contents.* Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

9. *Inspection and Entry.* The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

### Section D. Reporting Requirements

1. *Planned Changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) (48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984); or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR Part 122.42(a)(1) (48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984).

2. *Anticipated Noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

4. *Monitoring Reports.* Monitoring results shall be reported at the intervals and in the form specified in Section C, paragraph 5 (Monitoring).

5. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

6. *Twenty-Four Hour Reporting.* The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in Part III of the permit to be reported within 24 hours.

For locations identified in Part II.C.4 reporting to Region VI, the reports should be made to telephone number (214) 767-2214. Locations reporting to Region IV should use telephone number (404) 881-4062. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

7. *Other Noncompliance.* The permittee shall report all instances of noncompliance not reported under section D, paragraphs 4, 5, and 6, at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 6.

8. *Changes in Discharges of Toxic Substances.* The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1) (48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984).

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2) (48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984).

9. *Duty to Provide Information.* The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

10. *Signatory Requirements.* All applications, reports, or information submitted to the Regional Administrator shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs

similar policy or decision making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person.

A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Regional Administrator.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

12. *Availability of Reports.* Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Regional Administrator. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

13. *Penalties for Falsification of Reports.* The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance of noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by both.

#### Section E. Notification Requirements

1. *Commencement of Operations.* Written notification of commencement of operations, including the legal name and address of the operator, the lease block number assigned by the Department of Interior or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease block, shall be submitted:

(a) Within 45 days of the effective date of this permit, by operators of lease blocks whose facilities are discharging into the general permit area on the effective date of the permit.

(b) Fourteen days prior to the commencement of discharge by operators facilities commencing discharge subsequent to the effective date of this permit.

In addition to the information required above, lease operators with leases located within 2000 meters of areas of biological concern shall identify those leases within the notification.

2. *Termination of Operations.* Lease block operators shall notify the Regional Administrator upon the permanent termination of discharges from their facilities within the lease block.

#### Section F. Additional General Permit Conditions

1. *When the Regional Administrator May Require Application for an Individual NPDES Permit*

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

or  
(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring;  
and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit may be Requested.

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than (90 days after the publication).

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

#### Part III

##### Section A. General Permit Area

The area covered by this general permit includes the Gulf of Mexico

located in lease areas seaward of the outer boundary of the territorial seas.

##### Section B. Other Conditions

1. *Samples of Wastes.* If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. *Toxicity Test.* The approved test method for permit compliance is identified as:

U.S. Environmental Protection Agency Industrial Technology Division, May 1985, Appendix 3-Drilling Fluids Toxicity Test Proposed Regulation for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category.

##### Section C. Definitions

1. "Annual average" means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and measured, divided by the number of discharges sampled and/or measured during such year.

2. "Cooling water" means once through non-contact cooling water.

3. "Deck drainage" means all waste resulting from platform washings, deck washings, and run-off from curbs, gutters, and drains including drip pans and wash areas.

4. "Desalination unit discharge" means wastewater associated with the process of creating fresh water from seawater.

5. "Domestic waste" means discharges from galleys, sinks, showers, and laundries only.

6. "Drilling cuttings" means particles generated by drilling into subsurface geological formations.

7. "Drilling fluids" means any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

8. "Produced waters" means waters and particulate matter associated with oil and gas producing formations. Sometimes the terms "formation water" or "brine water" are used to describe produced water.

9. "Produced sands" means sands and other solids removed from the produced waters.

10. "Sanitary waste" means human body waste discharged from toilets and urinals.

11. The term "Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

12. "Well completion and treatment fluids" means any fluids sent down the drill hole to improve the flow of hydrocarbons into or out of geological formations which have been drilled.

13. "Uncontaminated Ballast/Bilge Water" means seawater added or removed to maintain proper draft.

14. "Blow out preventer control fluid" means fluid used to actuate hydraulic equipment.

15. "Fire control system test water" means the water released during the training and testing of personnel in fire protection.

16. "Live bottom areas" means seagrass communities or those areas

which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or whose lithotope favors the accumulation of turtles, fishes, and other fauna.

17. "No activity zones" means those areas identified by the Minerals Management Service where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified as lease stipulations in: U.S. Department of Interior, Minerals Management

Service, January, 1983. Final regional environmental impact statement, Gulf of Mexico. Additional no activity areas may be identified by MMS during the life of this permit.

18. "Inverse emulsion drilling fluids" means an oil-base drilling fluid which also contains a large amount of water.

19. "Areas of biological concern" means locations identified by MMS as "no activity zones" or "live bottom areas".

20. "Spotting" means the process of adding a lubricant (spot) down hole to free stuck pipe.

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# **federal register**

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Friday  
July 26, 1985

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**Part III**

## **Department of Labor**

**Employment Standards Administration,  
Wage and Hour Division**

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**Minimum Wages for Federal and  
Federally Assisted Construction; General  
Wage Determination Decisions; Notice**

## DEPARTMENT OF LABOR

Employment Standards  
Administration, Wage and Hour  
DivisionMinimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination  
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas  
Decisions to General Wage  
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage  
Determinations

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:	
AL85-1004	May 31, 1985.
AL85-1005	Do.
Connecticut: CT85-3023	June 7, 1985.
District of Columbia: DC84-3009	Apr. 6, 1984.
Indiana: IN83-2072	Sept. 2, 1983.
Montana: MT83-5101	Feb. 18, 1983.
Ohio:	
OH83-5123	Dec. 2, 1983.
OH83-5124	Do.
OH83-5125	Dec. 23, 1983.
OH85-5026	May 24, 1985.
OH85-5028	June 21, 1985.
Oklahoma: OK85-4011	May 10, 1985.
Pennsylvania: PA84-3000	Jan. 13, 1984.
Rhode Island: RI84-3043	Nov. 30, 1984.
Virginia: VA82-3034	Dec. 3, 1982.

Supersedeas Decisions to General Wage  
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	AL85-1003	Feb. 22, 1985.
	(AL85-1006).	
Maryland:	MD83-3010	June 3, 1983.
	(MD85-3041).	
Missouri:	MO84-4054	Sept. 14, 1984.
	(MO85-4022).	
New York:		
	NY83-3043 (NY85-3039)	Aug. 19, 1983.
	NY84-3005 (NY85-3040)	Mar. 2, 1984.

Signed at Washington, D.C. this 19th day of July 1985.

James L. Valin,  
Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 2

DECISION NO. AL65-1004  
Mod # 1  
(50 FR 23248 - May 31,  
1985)  
Lawrence, Limestone &  
Morgan Counties, Alabama

CHANGE:  
ELECTRICIANS

DECISION NO. AL65-1005  
Mod # 2  
(50 FR 23247 - May 31,  
1985)  
Madison County, Alabama

CHANGE:  
ELECTRICIANS  
LABORERS, GENERAL

DECISION NO. DC84-3009-  
Mod # 13  
(49 FR 19800-April 6, 1984)  
DISTRICT OF COLUMBIA, MARY-  
LAND-MONTGOMERY & PRINCE  
GEORGES COUNTIES, THE D.C.  
TRAINING SCHOOL, VIRGINIA-  
INDEPENDENT CITY OF  
ALEXANDRIA & ARLINGTON &  
FAIRFAX COUNTIES

CHANGE:  
SHEET METAL WORKERS  
ELEVATOR CONSTRUCTORS:  
Mechanics  
Helper

DECISION NO. MT83-3101 - Mod. #8  
(48 FR 7370 - February 13, 1983)  
Statewide, Montana

CHANGE:  
CARPENTERS:  
Area 2:  
Carpenter  
Pile-drivers  
Millwrights

DECISION NO. OR55-4011  
Mod # 3 (50 FR 19863-May 10  
1985)

Alfalga, Beckham, Blaine,  
Caddo, Canadian, Carter,  
Cleveland, Comanche, Cotton,  
Custer, Dewey, Ellis,  
Garfield, Garvin, Grady,  
Grant, Greer, Harmon, Harper,  
Jackson, Jefferson, John-  
ston, Kay, Kingfisher, Kiowa,  
Lincoln, Logan, Love,  
McCain, Major, Marshall,  
Murray, Nowle, Oklahoma,  
Payne, Pontotoc, Roger Mills,  
Pottawatomie, Seminole,  
Steeles, Tillam, Washita,  
Woods, & Woodward Counties  
Oklahoma.

CHANGE:  
CARPENTERS (Area IV)  
Carpenters  
Millwrights  
Pipefitters

DECISION NO. CT85-3023 -  
Mod. No. 3  
(50 FR 44109 - June 7, 1985)  
Statewide, Connecticut

CHANGE:  
CARPENTERS; MILLWRIGHTS;  
PILEDRIVERS; LABRERS;  
RESILIENT FLOOR LAYERS;  
BUILDING CONSTRUCTION:

Area 1:  
Carpenters, Pile-  
drivers, Labrers  
and Resilient Floor  
Layers:  
Millwrights:

Area 2:  
Carpenters, Pile-  
drivers, Labrers,  
Resilient Floor  
Layers:  
Millwrights:

Area 3:  
Area 4:  
Area 5:  
Area 6:  
Carpenters, Pile-  
drivers, Labrers,  
Resilient Floor  
Layers:  
Millwrights:  
RESIDENTIAL:  
Area 1:  
HEAVY & HIGHWAY  
CONSTRUCTION:

Area 1 & 2  
Area 3:  
Area 4:  
Area 5:  
Area 6:  
ELECTRICIANS:  
Area 4  
IRONWORKERS  
PAINTERS  
Area 7:  
Brush

Basic Hourly Rate	Fringe Benefits
16.95	3.01
17.45	3.01
19.61	3.01
17.81	3.01
21.44	3.01
15.45	3.01
15.95	3.01
16.70	3.01
15.95	3.01
12.53	3.47
12.61	3.47
12.68	3.47
12.73	3.47
12.78	3.47
12.83	3.47

Basic Hourly Rate	Fringe Benefits
\$15.75	\$2.25
16.50	2.30
15.47	2.25
16.50	2.30
15.70	3.05
15.70	3.15
15.15	3.80
16.85	2.43
16.85	2.43
14.75	3.05
15.58	2.55
15.70	3.05
14.80	3.80
14.80	3.80
14.80	3.80
15.70	2.43
17.25	4.32+
18.50	6.88+1
16.85	3.01

(4)

(3)

DECISION NO. IN83-2072 - Mod. #3  
 (48 FR 40079 - September 2, 1983)  
 Lake, LePorte, Porter and St.  
 Joseph Counties, Indiana

Change:	Basic Hourly Rate	Fringe Benefits
<b>CARPENTERS:</b> Heavy & Highway Construction: Area 2	\$15.16	\$2.65
<b>CEMENT MASONS:</b> Building Construction: Area 2	17.20	3.13
Area 4	17.50	2.81
Heavy and Highway Construction: Area 3	15.06	3.54
<b>ELECTRICIANS:</b> Area 1	17.30	2.99
Area 2	18.19	1.48
Area 3	17.90	16.54
<b>ELEVATOR CONSTRUCTORS:</b> MECHANICS: Area 2	16.33	3.00+8
Area 2	70LR	3.00+8
<b>FRAMING HELPER:</b> Area 2	50LR	
<b>IRONWORKERS:</b> Area 1	17.60	4.57
Area 2	14.25	5.71
Area 4:	12.66	2.18
<b>PLASTERERS:</b> Area 1	15.26	3.13
Area 3	17.50	2.81
<b>PLUMBERS: PIPEFITTERS:</b> Area 2	16.80	3.86
Area 3	16.08	3.00
<b>ROOFERS:</b> Area 1	17.11	3.60
Area 2:	15.10	3.25
Composition Slate & Tile	15.60	3.25
<b>SHEET METAL WORKERS:</b> Area 2	16.16	2.46

DECISION NO. B184-3043 -  
 MOD. #6  
 (49 FR 47171 November 30,  
 1984)  
 Statewide Rhode Island

**CHANGE:**  
**CARPENTERS:**  
 Carpenters, Soft Floor,  
 Pile/Drivers:  
 Building Construction  
 Residential Construction  
 Heavy & Highway  
**MILLWRIGHTS:**  
 TRUCK DRIVERS:  
 Building Construction:  
 Dump truck and two-axle  
 equipment drivers  
 Trailer and three-axle  
 equipment drivers  
 Low bed trailer 24 ton  
 rated capacity and over  
 1 Beam trailers: Special-  
 ized earth moving equip-  
 ment- Euclid type  
 Euclid type equipment  
 over 35 ton capacity

Change:	Basic Hourly Rate	Fringe Benefits
<b>DECISION NO. V282-3034- MOD. #11 (47 FR 54746-December 3, 1982) The Cities of CHESAPEAKE, PORTSMOUTH, &amp; VIRGINIA BEACH</b>	13.75	2.85
<b>CHANGE: Ironworkers</b>		

(15)

DECISION NUMBER OH83-5123 - MOD. #6  
 (48 FR 54419 - December 2,  
 1983)  
 Mahoning & Trumbull  
 Counties, Ohio

Change:	Basic Hourly Rate	Fringe Benefits
<b>Elevator Constructors: Mechanics</b>	\$17.66	3.29+ b+c
<b>Helpers</b>	70LR	3.29+ b+c
<b>Helpers (Prob.)</b>	50LR	
<b>Painters:</b> Brush: Hydro Jet Cleaning: Paperhangers (W/O Tools); Miller: Steamcleaning; Wall Washing; & Waterproofing	16.29	3.56
<b>Epoxy-mastic (Brush &amp; Roller)</b>	16.79	3.56
<b>Drywall Taping</b>	17.19	3.56
<b>Open Structural Steel Paperhanging (W/Tools)</b>	16.44	3.56
<b>Dipping</b>	15.54	3.56
	16.59	3.56

**DECISION NUMBER OH83-5124  
- MOD. #7  
(48 FR 54422 - December  
2, 1983)  
Lucas County, Ohio**

Change:	Basic Hourly Rate	Fringe Benefits
<b>Boilermakers: Electricians: Residential Up to &amp; in- cluding 1 story apart- ments</b>	20.225	3.93
<b>All Other Work: Electricians</b>	12.00	2.24+ 3.34
<b>Cable Splicers</b>	20.00	2.24+ 3.34
<b>Plasterers</b>	23.00	2.24+ 3.34
	17.52	2.46

(16)

DECISION NUMBER OH83-5124 (Cont'd)

Omit:	Basic Hourly Rate	Fringe Benefits
<b>Laborers: Common Plasterers' Tenders &amp; Mixers</b>	\$14.08	\$3.01
<b>Add: Laborers: Common: Buildings 25,000 sq. ft. or less Buildings over 25,000 sq. ft. Plasterers' Tenders &amp; Mixers</b>	14.30	2.71
	11.12	3.01
	13.92	3.01
	14.30	2.71

**DECISION NUMBER OH83-5125  
- MOD. #7  
(48 FR 56895 - December  
23, 1983)  
Ashabula, Cuyaboga,  
Lake, Lorain, Portage,  
Stark, & Summit Counties,  
Ohio**

Change:	Basic Hourly Rate	Fringe Benefits
<b>Carpenters: Millerwrights, Pile/Drivers: &amp; Soft Floor Layers: Area 3: Commercial Building: Carpenters Line Construction: Area 3: Cable Splicers: Equip- ment Operators: &amp; Linemen</b>	17.85	3.79
<b>Truck Drivers (Misc) Groundmen</b>	22.28	1.00+ 3.54
	14.48	1.00+ 3.54

(16)

MODIFICATIONS P. 5

DECISION NUMBER 0881-5125 (Cont'd)

Change:	Basic Hourly Rate	Fringe Benefits
Painters:		
Area 3:	16.54	3.56
Brush, Roller, Water-proofing; Paperhanging (w/o Tools); Mill-washing; Hydro Jet Cleaning; Steam Cleaning	16.79	3.56
Epoxy-mastic (Brush or Roller)	17.19	3.56
Drywall Taping	16.44	3.56
Sheet Metal Workers:		
Area 3:	18.51	3.55
Commercial Building Residential	10.85	3.55
DECISION NUMBER 0885-5026		
MOD. #1		
(50 FR 21550 - May 24, 1985)		
Statewide, Ohio		
Change:		
Bricklayers & Stonemasons:	16.17	3.26
Area 5:		
Carpenters & Pile-driver-men:		
Area 2:	15.15	3.14
Carpenters	15.82	3.14
Pile-driverman:		
Area 5:	15.15	3.14
Carpenters	15.82	3.14
Pile-driverman		
Area 15:	17.85	3.79
Carpenters		

DECISION NUMBER 0885-5026 (Cont'd)

Change:	Basic Hourly Rate	Fringe Benefits
Electricians:		
Area 18:	\$20.00	3.34+
Electricians		2.24
Cable Splicers	23.00	3.34+
Painters:		3.24
Area 12:		
Brush, Roller, Tanks; Bridges; Hydro Jet Cleaning; & Steam-Cleaning	16.49	3.56
Pot Tenders; Sandblasting; & Spray	17.19	3.56
TV, Radio, & Electrical Towers; Smoke Stacks	17.37	3.56
Epoxy-mastic (Brush or Roller)	17.39	3.56
Epoxy-mastic (Spray)	17.69	3.56
Pipefitters; Plumbers; & Steamfitters:		
Area 2	19.60	3.10
Area 3	18.86	3.32
Area 14	19.60	4.12
Line Construction:		
Area 11:		
Cable Splicers; Equipment Operators; Linemen	22.29	3.4+
Groundmen; Truck Drivers (Misc)	14.48	3.4+
Traffic Signal Work; Linemen; Operators	19.35	3.4+
Groundmen	16.23	3.4+
Omit:		1.00
Painters:		
Area 18:		
Wage Rates & Area Description		
Footnote:		
9. 2 Paid Holidays: C and D		

DECISION NUMBER 0885-5028

Change:	Basic Hourly Rate	Fringe Benefits
Boilermakers:		
Area 2	\$20.20	\$3.93
Bricklayers; Caulkers; Cleaners; Painters; & Stonemasons:		
Area 4	16.17	3.26
Carpenters:		
Area 11	17.85	3.79
Electricians:		
Area 13:	20.00	3.34+
Electricians	23.00	3.34+
Cable Splicers	2.24	
Elevator Constructors:		
Area 3:	17.49	3.29+
Mechanics	704JR	3.29+
Helpers	504JR	3.29+
Helpers (Prob.)		
Area 5:	17.66	3.29+
Mechanics	704JR	3.29+
Helpers	504JR	3.29+
Helpers (Prob.)		
Area 6:	21.42	3.29+
Mechanics	704JR	3.29+
Helpers	504JR	3.29+
Helpers (Prob.)		
Area 5	15.60	3.21-4
Classifiers	12.00	3.46
Area 6		
Painters:		
Area 10:		
Brush; Hydro-Jet Cleaning; Paperhanging w/o Tools; Roller; Steam Cleaning; Wallwashing & Waterproofing	16.29	3.56
Drywall Taping	16.44	3.56
Open Structural Steel Paperhanging (w/tools)	16.54	3.56
Spray	16.79	3.56

DECISION NUMBER 0885-5028 (Cont'd)

Change:	Basic Hourly Rate	Fringe Benefits
Pipefitters; Plumbers:		
Steamfitters:		
Area 2	19.60	3.10
Area 3	18.86	3.12
Area 11	19.60	4.12
Plasterers:		
Area 8:	17.52	2.46
Plasterers		
Drywall Tapers & Finishers	15.76	2.46
Sheet Metal Workers:		
Area 3	18.51	3.55
Laborers:		
Area 4:	14.37	2.70
Group 1	14.67	2.70
Group 2	15.02	2.70
Area 16:	12.77	3.00
Group 1	12.87	3.00
Group 2	13.12	3.00
Line Construction:		
Area 17:		
Cable Splicers; Linemen; & Equipment Operators	22.28	3.4+
Truck Driver (Misc)	14.48	3.4+
Groundmen		1.00
Omit:		
Laborers:		
Area 20:		
Buildings 25,000 sq. ft. or less	11.12	3.01
Buildings over 25,000 sq. ft. Group 2	13.90	3.01
Group 1	14.30	2.71
Group 2		

DECISION NUMBER 0885-5028 (Cont'd)

Change:	Basic Hourly Rate	Fringe Benefits
Painters:		
Area 10:		
Brush; Hydro-Jet Cleaning; Paperhanging w/o Tools; Roller; Steam Cleaning; Wallwashing & Waterproofing	16.29	3.56
Drywall Taping	16.44	3.56
Open Structural Steel Paperhanging (w/tools)	16.54	3.56
Spray	16.79	3.56

MODIFICATIONS P. 5

DECISION NUMBER 0885-5028 (Cont'd)

Change:	Basic Hourly Rate	Fringe Benefits
Painters:		
Area 10:		
Brush; Hydro-Jet Cleaning; Paperhanging w/o Tools; Roller; Steam Cleaning; Wallwashing & Waterproofing	16.29	3.56
Drywall Taping	16.44	3.56
Open Structural Steel Paperhanging (w/tools)	16.54	3.56
Spray	16.79	3.56

MODIFICATIONS P. 7

SUPERSEDES DECISION

DECISION #2484-3000 ~ Rev. 1-20  
 (49 FR 1851 - January 11, 1984)  
 ALABAMA, ARKANSAS, FLORIDA (West of the Aucilla River), GEORGIA  
 (West of the Aucilla and Ocmulgee Rivers within the boundaries  
 of the Mobile District of the Corps of Engineers), KENTUCKY,  
 LOUISIANA, MISSISSIPPI, TENNESSEE, and TEXAS.  
 DATE: DATE OF PUBLICATION  
 SUPERSEDES DECISION NUMBER AL85-1006  
 SUPERSEDES DECISION NUMBER AL85-1003 dated February 22, 1985 in 50 FR 7540  
 DESCRIPTION OF WORK: DREDGING PROJECTS (EXCLUDING SELF-FEEDING BOYS  
 FEEDERS) along the Gulf of Mexico Coast Area including the Mississippi  
 River and its tributaries to the Ohio River.

STATES: ALABAMA, ARKANSAS, FLORIDA (West of the Aucilla River), GEORGIA  
 (West of the Aucilla and Ocmulgee Rivers within the boundaries  
 of the Mobile District of the Corps of Engineers), KENTUCKY,  
 LOUISIANA, MISSISSIPPI, TENNESSEE, and TEXAS.  
 DATE: DATE OF PUBLICATION  
 SUPERSEDES DECISION NUMBER AL85-1006  
 SUPERSEDES DECISION NUMBER AL85-1003 dated February 22, 1985 in 50 FR 7540  
 DESCRIPTION OF WORK: DREDGING PROJECTS (EXCLUDING SELF-FEEDING BOYS  
 FEEDERS) along the Gulf of Mexico Coast Area including the Mississippi  
 River and its tributaries to the Ohio River.

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
\$ 9.00 <sup>b</sup>	19%	\$ 6.10	
11.00 <sup>b</sup>	19%	5.14	
12.00 <sup>b</sup>	19%	6.06	
13.48 <sup>b</sup>	19%	5.50	

TRUCK DRIVERS (Cont'd.):  
 Parteen will be paid on basis of vehicle utilized.  
 Dual Purpose Truck (when load has been loaded or unloaded with truck which loading, hauling & unloading) will be paid according to rate of truck.  
 FOOTNOTE 'B':  
 travel, with vehicle, to and from project site and company's office or yard will be at the federally established minimum wage rate of \$ 3.35 per hour when a full eight hour (first trip in and last trip out daily, up a maximum of one hour each trip per day). Fringe benefit payments for this work will be based upon project site rate for similar vehicle.

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
4.25		3.90	
3.50		3.65	
3.35		3.35	
3.50		3.85	
3.80		4.33	
		5.39	
		5.53	
		6.70	
		6.33	

DREDGES 16' & OVER:  
 Leveeman  
 Dredge Tender Operator  
 First Assistant Engineer  
 Second Assistant Engineer  
 Third Assistant Engineer  
 Deckhand  
 Stowman  
 Fireman  
 Oiler  
 Truck Driver  
 Welder  
 DREDGES UNDER 16':  
 Leveeman  
 Dredge Tender Operator  
 Deckhand  
 Oiler  
 Welder

HYDRAULIC DREDGING:  
 First Cook  
 Second Cook  
 Cook's Helper - Mess Person  
 Janitor - Cabin Person  
 Handyman  
 DESIGNER OPERATOR  
 POWER OPERATOR  
 WAPSH BOGGY DEBARKING:  
 Operator  
 Oiler  
 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (8) (i) (ii)).

(9)

(10)

ADD:

TRUCK DRIVERS (Heavy & Highway Construction):  
 Zone 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Crawford, Erie, Fayette, Greene, Harrison, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington & Westmoreland Counties

Fish-up  
 Farm tractor (when pulling or hauling),  
 helpers, maintenance

Single axle  
 Fork lift

Tri-axle  
 Tandem axle & tractor  
 pulled trailers

Specialty Vehicles  
 Heavy off-the-road  
 equipment (used 45  
 tons and over), low-  
 boys

STATE: MARYLAND

COUNTIES: ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND, AND FOR HEAVY CONSTRUCTION FOR ALL OF THE ABOVE AND INCLUDING HANFORD & HOWARD COUNTIES, MARYLAND

DATE: DATE OF PUBLICATION

DECISION NO.: MD 85-1041

Supersedes Decision No. W083-1010 dated June 3, 1983 in 48 FR 25100.

DESCRIPTION OF WORK: Building Construction (does not include single family houses and apartments up to and including 4-stories) and Heavy Construction Projects (does not include sewer and water lines)

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
16.63	4.39	Zone 2 - Anne Arundel (remainder of county), Baltimore, Baltimore City, Hanford and Howard Counties;	
19.25	3.65	Carpenters, soft floor layers, resilient floor layers, & diver's tenders	13.45 2.56
12.96	2.75	Asbestos workers	13.30 2.71
		Soilemayers	27.50 2.11
		Bricklayers	13.70 2.91
		Carpenters, soft floor layers, millwrights	14.49 2.32
		Carpenters, millwrights, divers and diver's tenders	17.60 3.58*
		Zone 1 - Anne Arundel County (the City of Annapolis and that portion of the county south and east of the following line: beginning at Ste. 3 and the Patuxent River, north of Ste. 3 to the junction of Benfield Rd., then right on Benfield Rd. to the junction of Jumpers Hole Rd., left on Jumpers Hole Rd. to the junction of Ritchie Hwy., left on Ritchie Hwy. to the junction of Rte. 100, right on Rte. 100 to Ste. 177 and continuing in an easterly direction on Ste. 177 to Gibson Island);	15.47 3.29+ 4* 3.29+ 8* 8* 4.14
		Carpenters and soft floor layers	14.74 5.11
		Millwrights	14.39 5.11
		Filedrivers	15.49 5.11
		Divers	
		Diver's Tenders	

(11)

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
12.58	1.72	LABORERS, BUILDING & HEAVY (EXCLUDING TUNNEL CONSTRUCTION)	
10.65	1.225	General Laborers-Flaggers	
10.90	1.225	Material handlers(except tenders), clean-up, Janitors, tack checkers,	
9.62	1.225	Construction Laborers - All laborers not otherwise classified	
10.51	1.225	Semi-Skilled Laborers - Potmen, power tool operators, pipe layers, drillers, concrete laborers, signalmen, small machine operators, laser beam operators	
10.93	1.225	Skilled Laborers - Burners, welders, nozzlemen, wagon drillers, powder men	
11.19	1.225	LEAD WORKERS	
17.35	1.30	LINE CONSTRUCTION: Linemen	
		Zone 1 - From Baltimore City Hall to 45 miles (air line): Linemen, cable splicers, digging and equipment operators	
17.50	38+	Track Drivers	
10.55	38+	Track Drivers	
10.15	38+	Groundmen	
		Linemen	
		Zone 2 - Over 45 miles from Baltimore City Hall: Linemen, cable splicers, digging and equipment operators	
17.75	38+	Track Drivers	
10.80	38+	Track Drivers	
10.40	38+	Groundmen	
		Wagonmen	
15.44	1.69	Composition Roofers	
14.72	1.68	Material Handlers	
9.92	1.68	Remainder of Jurisdiction	
11.85	2.85	Roofers	
14.83	2.77	SHEET METAL WORKERS	

(12)

DECISION NO. MD 85-3041

(PAVING, SITE CLEARANCE UTILITIES) POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group I - Backfiller, backhoe, batching plants, cableway, case type hoe (with a front end bucket over 1-1/4 yds.), concrete mixing plants, concrete paver, derrick, derrick boat, double concrete pump, dragline, elevating grader, excavating scoop (25 yds. and over), front end loader (1 - 3/4 yds. and over), grader, gradall, hoist (2 active drums or more), pile driving machine, power crane, power shovel, repair mechanic, standards gauge locomotive, trenching machine, tunnel mucking machine, twin engine scoop, welder, whirley rig, D-9 dozer

Group II - Asphalt spreader, bull float, Case type hoe (with a front end bucket 1 - 1/4 yds. and under), concrete mixer (with a slip), concrete pump, concrete spreader, ditch-witch type trencher, excavating scoop (under 25 yds.) finishing machine, front end loader (under 1 - 3/4 yds.), grout pump, hi-lift, longitudinal rail float, narrow gauge locomotive, one drum hoist, power collar, bulldozer, screeding machine, stone crusher, stone spreader, tractor with attachments (2 or more provided both attachments are being used), subgrader, well-drill

Group III - Compressors, conveyors, firemen, fuel truck, grease truck, light plants, mighty midjet with compressor, space heaters, welding machines, wellpoint system

Group IV - Oilers (all types)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(iii)).

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Basic Hourly Rate	Basic Hourly Rate	Basic Hourly Rate	Basic Hourly Rate
9.18	44+4	TECK DRIVERS: HEAVY	11.12
17.40	3.23	Euclid wagons & dumpsters	2.90+
15.76	4.85	Droprams, gooseneck & trailers	a+h
16.78	4.85	Dump: sweeper, boring machine & miscellaneous equipment; water trucks.	2.90+
13.86	2.07	Fuel & lube trucks	a+h
11.10	1.00	Pick-up	2.90+
12.17	2.90+	POWER EQUIPMENT OPERATORS:	a+h
12.02	a+h	Group I	3.10
11.75	2.90+	Group II	3.10
11.43	a+h	Group III	3.10
		Group IV	3.10
		Group V	3.10
		Dropframe gooseneck and trailers	
		Dump	
		Pick-up	

BUILDING POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group I - Operators handling or setting steel, stone prestressed concrete or machinery, Tower cranes.

Group II - Backfiller, backhoe, batching plants, boat captain, cableway, case type hoe (with a front end bucket over 1-1/4 yds.), concrete mixing plants, concrete paver, crane, derrick boat, double concrete pump, dragline, Kinco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradall, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power shovel, repair mechanic, shield, standard gauge locomotive, trenching machine, tunnel mucking machine, twin engine scraper, welder, whirley rig, D-9 Dozer.

Group III - Asphalt spreader, bull float, case type backhoe (with a front end bucket 1-1/4 yds. and under), concrete mixer (with slip), concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), hi-lift fork lift, longitudinal rail float, narrow gauge locomotive, one drum hoist, power roller, bulldozer, screeding machine, stone crusher, stone spreader, sub-grader, tractor with attachments (2 or more provided both attachments are being used).

Group IV - Caterpillar type tractor, compressor, elevator operator, fireman, fuel truck, grease truck, grout pump, light plant, mighty midjet with compressor, single conveyor, space heaters, welding machines, well-drill, wellpoint system.

Group V - Deck hands, oilers (all types)

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STATE: Missouri  
 COUNTY: Pulaski  
 DECISION NO.: M85-3041  
 DATE: Date of Publication  
 SUPERSEDES DECISION NO. M84-8054 dated September 14, 1984 in 49 FR 36233.  
 DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories)

Welders - receive rates prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Christmas Eve; H-Good Friday.

FOOTNOTES:

- a. Holidays: A through F.
- b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of the basic hourly rate for 5 months to 5 years of service as vacation pay credit.
- c. Employee working Christmas Eve shall work 4 hours and receive 8 hours pay.
- d. Holidays: A through F, H, Friday after Thanksgiving, and employee's birthday, vacation: One week per year after 1 year of service, 2 weeks after 3 years of service and 3 weeks after 10 years of service.
- e. Holidays: A through F.
- f. Employee with 1 year of service - 1 week's paid vacation; 2 - 3 weeks paid vacation; provided the employee has worked during the holiday week).
- g. Holidays: A through H plus the employee's birthday; provided the employee has worked one day and has been available for work during the holiday week).
- h. Holidays: Employees with 1 year of service - 1 week paid vacation; 2 - 2 weeks paid vacation; 10 years - 3 weeks paid vacation.

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
16.94	2.40	15.04	2.40
17.495	3.25	15.44	2.20
14.50	1.00	12.75	2.20
14.26	3.82	13.50	2.20
14.76	3.82	13.00	2.60
15.28	1.95	13.50	2.60
15.04	2.40	14.25	2.60
15.44	2.20	19.85	5.08
12.50	2.20	18.44	38-1.10
12.75	2.20	12.35	2.00
13.50	2.20	12.75	2.00
13.00	2.60	12.52	2.00
13.50	2.60	14.87	2.00
14.25	2.60	13.02	2.00
19.85	5.08	13.85	2.00
18.44	38-1.10	12.00	.65
12.35	2.00	17.195	3.03
12.75	2.00		
12.52	2.00		
14.87	2.00		
13.02	2.00		
13.85	2.00		
12.00	.65		
17.195	3.03		

TRUCK DRIVER:

Ft. Leonard Wood Only:

GROUP 1

GROUP 2

GROUP 3

GROUP 4

GROUP 5

GROUP 6

POWER EQUIPMENT

OPERATORS:

GROUP I

GROUP II

GROUP III

SN + GROUP III (A)

GROUP IV

GROUP IV (A)

GROUP V:

(a)

(b)

(c)

(d)

Unlisted classifications

needed for work not

included within the

scope of the classifi-

cations listed may be

added after award only

as provided in the

labor standards con-

tract clauses (19 CFR,

5.5(a)(1)(1)(1).

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## Power Equipment Operators

**Group I** - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or crawler mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall; crawler or tire mounted; locomotive, gas, steam & other power; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other power); switch boat; whirley

**Group II** - air tapper/air compressor; anchor-placing barges; asphalt spreader; atkey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (job-site); boiler, high pressure breaking in section; boom track, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixer-vehicle); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-tough terrain, self-propelled; crane hydraulic-truck or crawler mounted; drill, 16 tons; drilling machine, self-powered, used for each or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jackhammers and baroc equipment - no engine required); elevating grader; engine-man, dredge; excavator or crawler machine; finishing machine, self-propelled; oscillating screed; forklift; grader, road with power blade; highlift hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist, stack; hydro-hammer; lad-vator, hoisting brick or concrete; loading machine (such as barbet-grate); mechanical, on job site; mixer, paving; mixer-vehicle; sucking machine; pipe cleaning machine; pipe wrapping machine; plant asphalt; plant, concrete producing or ready-mix job site; plant heating job site; plant mixing job site; plant power, generating job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4" quad-track; roller, asphalt, top or sub-grader; scoop, tractor drawn; spreader box sub-grader; tile tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

**Group III** - Conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer, two or more mixers of one bag capacity or less, air tapper w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-mer; compressor air mounted on truck; concrete saw, self-propelled; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 10 kw or any number developing over 30 kw; graser; hoist, one drum regardless of size (except brick or concrete); lad-vator; other hoisting; asphalt mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

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**Group III** - (Cont'd):

used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader, regardless of size, not paved; oiler on dredge; oiler on truck, crane pug mill operator; pump, sump-self-covered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

**Group IIIA** - Truck crane and dredge

**Group IV** - Boat operator-outboard motor (job site); conveyor (such as conveyer lift) regardless of how used; oiler; sweeper, float

**Group IVA** - Crawler type

**Group V** - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriver and extracting crane using foot socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as ladder; derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop, tandem; tractor, tandem crawler crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of \$2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

## TRUCK DRIVER CLASSIFICATION DEFINITIONS

**Group 1** - Flat bed drivers; pick-ups and station wagons; tireman & station attendant; dump, single axle

**Group 2** - Flat bed, tandem axle; dump, tandem; tank trucks, single axle

**Group 3** - Agitator & transit-mix

**Group 4** - Winch trucks; steel haulers, derrick & A-trucks; distributors drivers & operators; tank truck; tandem & semi-tractors; wheel tractors; oilers, greasers & mechanic helpers; heavy excavating & hauling euclids, dumpsters, etc.

**Group 5** - Fork lifts & high lifts, etc., when unloading or carrying

**Group 6** - Mechanics

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SUPERSEDES DECISION

STATE: NEW YORK  
 COUNTY: BROOME & CHEMUNGO  
 DECISION NO.: NY85-1039  
 DATE: DATE OF PUBLICATION  
 SUPERSEDES DECISION NO. NY83-1043 dated August 19, 1983 in 48 FR 37801.  
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) & Highway Construction Projects.

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
18.70	3.41	16.27	3.26+
18.93	2.25+	17.77	3.26+
	10%		3%
		15.85	2.49+
		18.00	2.49+
			3%
		14.48	2.590+
		10.14	2.590+
		7.24	C+d
		10.92	1.68
15.35	3.29		
15.01	3.20		
14.61	3.20		
13.71	3.10+a		
14.41	2.27	14.03	3.62
14.66	2.27	14.28	3.62
15.12	2.025+	14.155	3.62
	b		
14.20	4.65		

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Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
19.525	4.35+f	10.97	3.12e
46.25h		11.17	3.12e
		11.37	3.12e
		11.57	3.12e
15.975	4.35+f	12.08	2.05e
46.25h		12.18	2.05e
		12.48	2.05e
		12.64	2.05e
15.088	4.35+f		
46.25h			
13.464	4.35+f		
46.25h			
10.098	4.35+f		
46.25h			
16.83	4.35+f		
46.25h			
15.147	4.35+f		
46.25h			
14.306	4.35+f		
46.25h			
13.464	4.35+f		
46.25h			
10.098	4.35+f		
46.25h			
17.75	4.35+		
46.25h			
10.098	4.35+f		
46.25h			

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DECISION NO. NY85-3039

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	Basic Hourly Rate	Fringe Benefits
<b>PAINTERS:</b>		
Brush Taper	11.25	1.85
Scaffold work over 39 ft.		
Tootpick staging over 25 ft.; Epoxy-brush & roll	11.50	1.85
Paperhanger or vinyl hanger; roller over 10 in. (except on floors); Sandblasting, steam-cleaning (acid or high pressure water); Power grinder with respirator	11.75	1.85
Structural steel (built-in); Spray; Steeple Jack (over 100 ft.); Epoxy - spray	12.20	1.85
Bridges	12.50	1.85
<b>FLOWERS &amp; STEAMFITTERS</b>	12.72	1.85
<b>POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):</b>	14.78	2.13
Class I	9.75	1.50+g
Class II	9.50	1.50+g
Class III	9.25	1.50+g
Class IV	9.00	1.50+g
Class V	8.70	1.50+g
Class VI	7.33	1.50+g

	Basic Hourly Rate	Fringe Benefits
<b>POWER EQUIPMENT OPERATORS (HEAVY &amp; HIGHWAY CONSTRUCTION):</b>		
Group I	16.52	4.60+g
Group II	15.95	4.60+g
Group III	14.32	4.60+g
Group IV	12.94	4.60+g
<b>ROOFERS</b>	14.35	2.19
<b>SHEET METAL WORKERS:</b>		
BROOME	14.95	2.19+
		38
<b>CHEMANGO</b>	17.12	4.95+
		38
<b>SPRINKLER FITTERS</b>	16.92	3.23
<b>TRUCK DRIVERS (HEAVY &amp; HIGHWAY):</b>		
Class 1	13.49	2.45+g
Class 2	13.54	2.45+g
Class 3	13.59	2.45+g
Class 4	13.74	2.45+g
Class 5	13.69	2.45+g

## FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

a. Paid Holidays: B, C & D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

b. Paid Holidays: C & D, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll in the payroll week in which the holiday falls.

c. Paid Holidays: A through F, plus the day after Thanksgiving.

d. Employer contributes 8% of basic hourly rate for 5 years or more of service and 6% of basic hourly rate for 6 months to 5 years as vacation pay credit.

e. Paid Holidays: A through F, provided the employee has worked the day before and the day after the holiday.

f. Paid Holidays: A through F, plus Washington's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

g. Paid Holidays: A through F, provided the employee works the day before and the day after the holiday.

## CLASSIFICATION DESCRIPTIONS

## LABORERS (BUILDING CONSTRUCTION):

CHEMANGO (Twnps. of Columbia, New Berlin, South New Berlin and Shetburne):

Group 1: Laborers, mortar mixer, plaster mixer, power buggy, asphalt worker, chipping hammer 12 lbs. and over, mechanical tamp operators, vibrator and chain saw operator, powder man, pipe layer, form and joint setter, concrete boot, gunite and sandblasting, epoxy handlers, wagon drill operator, air track drill, jackhammer operator.

Group 2: Blaster.

Group 3: Asbestos and toxic chemical removal.

WELDERS - Base for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract classes (29 CFR 5.5(a)(1)(ii)).

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## LABORERS (HEAVY &amp; HIGHWAY CONSTRUCTION):

CLASS A: Laborers, drill helpers, outboard and hand boats.

CLASS B: Ball float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small operators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, fall or screw operator on asphalt paver, water pump operator (1 1/2" and single dispersal), nozzle (asphalt gunnite, seeding and sand-blasting), laborers on chain link fence erection, seeding and sand-and power unit, pumper type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C: All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt taker, powderman.

CLASS D: Blasters, form setter, stone or granite curb setters.

## POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

CLASS I: Cranes with boom and jib, 175 feet and over

CLASS II: Cranes with boom and jib, 130 feet and over

CLASS III: Cranes with boom and jib, 100 feet and over

CLASS IV: Automatic fine grader, backhoe, cableway, caisson auger, cherry picker (straddle - mobile type), cherry picker (hydraulic crane) over 5 ton, not more than 4), crane, derrick, diesel power unit, dragline, excavators (gradall type, hydraulically operated), front end loader (4 cubic yards and over), high speed conveyors (in one line), piledriver, shovel, two and three drum hoist, vibro or sonic hammer controls (when not mounted by rig operator), tower crane

CLASS V: "A" frame truck (when used in setting of installation of material), bulldozer, carry-all scraper, cherry picker (5 ton or under), compressor (200 cubic feet and over), concrete paver and mixer, (165 and over), concrete pump, core boring machine, machine, crop dryer (when used as heater), diskay locomotive, elevator cage hoist, fork lift, full time welder on maintenance, front end loader (under 4 cubic yard), grease truck, high pressure boiler, one drum hoist, maintenance engineer, post hole digger, power grader, pumps (4 inch and over), roller, side boom, test boring machine, tractor mounted backhoe, trenching machine, two cage elevator hoist, tuggler hoist, vibro tamp, well drill, well point system

CLASS VI: Concrete mixer (under 165), conveyor (over 12 foot), fireman, hydraulic pumps, oiler, mechanical heaters (more than two (2) mechanical heaters), power driven welding machine (300 amp. and over, other than all electric - one welding machine under 300 amp. will not require an engineer unless in a battery), pump (under 4 inch), tractor (farm type), steam jenny

## POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY CONSTRUCTION):

Group I: Automatic concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker, (over 5 tons capacity) concrete pump (8" or over) crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader (4 c.y. and over), machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver (if second man is needed, he shall be an oiler), tractor draw belt-type loader, truck crane, tunnel shovel.

Group II: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (track or tractor mounted), boring machine, cage-boiler, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity) concrete paver (over 165), concrete pump (under 8"), crusher, diesel power unit, drill rigs (track- or mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Koisam plant loader and similar type loaders (if another man is required to clean screen or to maintain the equipment, he shall be an oiler), locomotive, maintenance engineer/greasean/welder, mixer (for stabilized base self-propelled), moonrail machine, plant engineer, pumpcrete, ready mix concreteplant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tuggler-boiler, winch, winch cat.

Group III: A-frame truck, compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2400 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), granite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grader and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

Group IV: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 12 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (165 and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants (welding machine, oiler, parge-concrete or pavement grinder, power broom (towed), power hesterman, revolvers welder, shell welder, steam cleaner, tractor.

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SUPPESIDES DECISION

STATE: NEW YORK

DECISION NO. NY85-3039

DECISION NO. NY85-3040

Supersedes Decision No. NY84-3005 dated March 2, 1984 in 49 FR 7911.

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), Heavy Construction (except water well drilling), and Highway Construction Projects.

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

- CLASS 1: Warehouseman, yardmen, truck helpers, pickups, panel trucks, flat-boy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, grapples, truck tire-men, mechanic helpers and parts chaser.
- CLASS 2: Tandems, batch trucks, mechanics and dispatcher.
- CLASS 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.
- CLASS 4: Specialized earth moving equipment - ecclid type or similar off-highway equipment, where not self loaded, and straddle (cross) carrier.
- CLASS 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

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Basic Hourly Rate	Fringe Benefits	Hourly Rate	Fringe Benefits
16.40	2.36	17.76	3.97+
18.93	3.381	22.31	3.97+
14.90	4.01	18.91	3.97+
11.10	4.01	15.11	3.97+
12.70	3.05	15.75	3.97+
13.76	3.18	16.94	3.97+
14.73	3.05	17.78	3.97+
12.70	3.05	15.75	3.97+
13.76	3.18	16.94	3.97+
15.77	2.52	18.29	3.97+
16.27	2.52	18.79	3.97+
11.83	2.52	14.35	3.97+

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COUNTIES: ALBANY, COLUMBIA, GREENE, FULTON, MONTGOMERY, RENSSELAER, SARATOGA, SCHEMUNGTADY, SCHENECTADY, AND WASHINGTON

DATE: Date of Publication

DATE: 7/26/85

DATE: 7/26/85

Area 1: Bricklayers, Stone Masons, Marble Masons, Cement Masons, Plasterers, Painters, Caulkers and Cleaners

Area 2: Carpenters, Dockbuilders, Millwrights & Piledrivers

Area 3: Carpenters & Soft Floor Layers

Area 4: Millwrights & Piledrivers

Area 5: Heavy & Highway Carpenters

Area 6: Millwrights

Area 7: Piledrivers

Area 8: Heavy & Highway Carpenters

Area 9: Millwrights

Area 10: Piledrivers

Area 11: Heavy & Highway Carpenters

Area 12: Millwrights

Area 13: Piledrivers

Area 14: Heavy & Highway Carpenters

Area 15: Millwrights

Area 16: Piledrivers

Area 17: Heavy & Highway Carpenters

Area 18: Millwrights

Area 19: Piledrivers

Area 20: Heavy & Highway Carpenters

Area 21: Millwrights

Area 22: Piledrivers

Area 23: Heavy & Highway Carpenters

Area 24: Millwrights

Area 25: Piledrivers

Area 26: Heavy & Highway Carpenters

Area 27: Millwrights

Area 28: Piledrivers

Area 29: Heavy & Highway Carpenters

Area 30: Millwrights

Area 31: Piledrivers

Area 32: Heavy & Highway Carpenters

Area 33: Millwrights

Area 34: Piledrivers

Area 35: Heavy & Highway Carpenters

Area 36: Millwrights

Area 37: Piledrivers

Area 38: Heavy & Highway Carpenters

Area 39: Millwrights

Area 40: Piledrivers

Area 41: Heavy & Highway Carpenters

Area 42: Millwrights

Area 43: Piledrivers

Area 44: Heavy & Highway Carpenters

Area 45: Millwrights

Area 46: Piledrivers

Area 47: Heavy & Highway Carpenters

Area 48: Millwrights

Area 49: Piledrivers

Area 50: Heavy & Highway Carpenters

Area 51: Millwrights

Area 52: Piledrivers

Area 53: Heavy & Highway Carpenters

Area 54: Millwrights

Area 55: Piledrivers

Area 56: Heavy & Highway Carpenters

Area 57: Millwrights

Area 58: Piledrivers

Area 59: Heavy & Highway Carpenters

Area 60: Millwrights

Area 61: Piledrivers

Area 62: Heavy & Highway Carpenters

Area 63: Millwrights

Area 64: Piledrivers

Area 65: Heavy & Highway Carpenters

Area 66: Millwrights

Area 67: Piledrivers

Area 68: Heavy & Highway Carpenters

Area 69: Millwrights

Area 70: Piledrivers

Area 71: Heavy & Highway Carpenters

Area 72: Millwrights

Area 73: Piledrivers

Area 74: Heavy & Highway Carpenters

Area 75: Millwrights

Area 76: Piledrivers

Area 77: Heavy & Highway Carpenters

Area 78: Millwrights

Area 79: Piledrivers

Area 80: Heavy & Highway Carpenters

Area 81: Millwrights

Area 82: Piledrivers

Area 83: Heavy & Highway Carpenters

Area 84: Millwrights

Area 85: Piledrivers

Area 86: Heavy & Highway Carpenters

Area 87: Millwrights

Area 88: Piledrivers

Area 89: Heavy & Highway Carpenters

Area 90: Millwrights

Area 91: Piledrivers

Area 92: Heavy & Highway Carpenters

Area 93: Millwrights

Area 94: Piledrivers

Area 95: Heavy & Highway Carpenters

Area 96: Millwrights

Area 97: Piledrivers

Area 98: Heavy & Highway Carpenters

Area 99: Millwrights

Area 100: Piledrivers



DECISION NO. NY85-3040

POWER EQUIPMENT OPERATORS  
BUILDING CONSTRUCTION  
(CONT'D)

Basic Industry Rate	Fringe Benefits
12.23	4.75+1
12.38	4.75+1
17.12	4.00+1
18.33	4.00+1
18.94	4.00+1
13.52	4.00+1
14.50	3.58
15.00	3.58
14.35	2.48
16.87	3.24
10.97	.30+M
10.48	.30+M
16.92	3.23
13.13	2.75+M
13.40	2.75+M
13.39	2.75+1
13.24	2.75+1
13.28	2.75+1
13.44	2.75+1
13.39	2.75+1

Group 3  
Group 4  
HEAVY & HIGHWAY  
CONSTRUCTION:  
Group 1  
Group 2  
Group 3  
Group 4  
ROOFERS:  
Area 1:  
Roofers  
Pitch & Asbestos  
Area 2  
SHEET METAL WORKERS  
Light commercial (40 tons  
or less of air condition-  
ing and/or bearing)  
shopping centers - 20  
tons or less of air  
conditioning per store;  
ventilation for kitchen  
hoods)  
Multiple family housing  
units where each indivi-  
dual family apartment is  
individually conditioned  
by a separate and inde-  
pendent unit or system  
SPRINKLER FITTERS  
TRUCK DRIVERS:  
BUILDING CONSTRUCTION:  
Group 1  
Group 2  
HEAVY & HIGHWAY  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

WELDERS - Rate prescribed for craft to  
which the welding is incidental..  
Unlisted classifications needed for  
work not included within the scope of  
the classification listed may be added  
after award only as provided in the  
labor standards contract clauses  
(29 CFR 5.5 (a) (1) (ii)).

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LINE CONSTRUCTION:  
Substations and switching  
structures; Pipe type  
cable installation and  
maintenance jobs or pro-  
jects; Railroad csteary  
installation and mainte-  
nance; Bonding of rails:  
Linsman; Technician

Basic Industry Rate	Fringe Benefits
17.75	4.35+1
19.525	4.35+1
15.975	4.35+1
15.088	4.35+1
13.464	4.35+1
10.098	4.35+1
16.83	4.35+1
15.147	4.35+1
14.305	4.35+1
13.464	4.35+1
10.098	4.35+1
19.61	4.35+1
17.648	4.35+1
16.669	4.35+1
15.688	4.35+1
10.098	4.35+1

Cable splicer  
Groundman digging machine  
operator; dynamite man  
Groundman truck driver  
(tractor trailer unit)  
Mobile equipment operator;  
groundman truck driver;  
mechanic  
Groundman  
Overhead transmission line  
work (where no other work  
is or has been involved);  
Overhead & underground  
distribution work;  
Linsman; Technician  
Groundman digging machine  
operator; groundman dyna-  
mite man  
Groundman truck driver  
(tractor trailer unit)  
Groundman mobile equip-  
ment operator; groundman  
truck driver; mechanic  
Groundman  
Overhead transmission line  
work (where other work is  
or has been involved);  
Linsman; Technician  
Groundman digging machine  
operator; dynamite man  
Groundman truck driver  
(tractor trailer unit)  
Mobile equipment opera-  
tor; Groundman truck  
driver; mechanic  
Groundman

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- a. Paid Holidays: Fourth of July and Labor Day, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll in the week in which the holiday falls.
- b. Paid Holidays: Labor Day and Memorial Day, provided the employee is on the payroll the week before or the week after the holiday and works the day after the holiday.
- c. Paid Holidays: Labor Day, provided the employee has been on the payroll the calendar week or any day of the holiday week preceding the holiday and works the day after the holiday.
- d. Paid Holidays: Thanksgiving Day, provided the employee reports to work the day after the holiday.
- e. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and the day after Thanksgiving Day.
- f. Employer contributes 8% of basic hourly rate for 5 years or more of service or 8% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.
- g. Paid Holidays: Labor Day and Memorial Day, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll in the payroll week in which the holiday falls.
- h. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- i. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, provided the employee works the day before and the day after the holiday.
- j. Election Time Off: Two hours off with pay on the first Tuesday after the first Monday in November, provided the employees are working on a job beyond 50 miles from the shop.
- k. One week vacation after 1 year; 2 weeks vacation after 5 years.
- l. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.
- m. Blue Cross of Blue Shield, Plan B, or equal

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- n. Paid Holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Election Day, Christmas Day, provided employee is on the rolls prior to the holiday and works the first day following holiday.
- o. New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, provided employee works on one day within the calendar week in which holiday falls.

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## AREA DESCRIPTIONS (CONTINUED)

AREA 6: COLUMBIA (Greensport, Claverack, Hillsdale, Livingston, Germantown, Taghkanic, Copake, Clermont, Gallatin, Ancram).

## PAINTERS:

AREA 1: ALBANY; COLUMBIA (Stockport, Ghent, Austerlitz, Canaan, New Lebanon, Chatham, Kinderhook, Stuyvesant, Greenport); GREENE (Greenville, Coxsackie, Catskill, New Baltimore); FULTON (except Twp. of Northampton, Mayfield and Broadalbin); MONTGOMERY; RENSSELAER; SARATOGA (Clifton Park, Half Moon, Waterford), Galway, Milton, Charlton); SCHENECTADY; SCHOHARIE (except the Twp. of Sharon, Seward, Richmondville, Summit, Jefferson, Blenheim, Gilboa and the western half of Fulton).

AREA 2: FULTON (Northampton, Mayfield, Broadalbin); SARATOGA (Day, Hadley, Corinth, Stillwater, Saratoga, Northumberland, Moreau, Wilton, Saratoga Springs City, Greenfield, Edinburg, Providence, Ballston); WASHINGTON (Fort Edward, Argyle, Hebron, Granville, Hartford, Kingsbury, Fort Ann, Whitehall, Hampton, Dresden, Putnam).

AREA 3: COLUMBIA (Remainder of County); GREENE (Remainder of County).

## PLUMBERS:

AREA 1: ALBANY; COLUMBIA; GREENE; RENSSELAER; SARATOGA (Half Moon, Stillwater, Waterford).

AREA 2: MONTGOMERY (Minden, Canajoharie).

AREA 3: FULTON; MONTGOMERY (Remainder of County); SARATOGA (Clifton Park, Charlton, Galway, Milton); SCHENECTADY; SCHOHARIE.

AREA 4: SARATOGA (Remainder of County); WASHINGTON.

## ROOFERS:

AREA 1: ALBANY; COLUMBIA; FULTON; GREENE; MONTGOMERY; RENSSELAER; SARATOGA; SCHENECTADY.

AREA 2: SCHOHARIE.

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## AREA DESCRIPTIONS (CONTINUED)

AREA 2: ALBANY (The west side of the Hudson River, extending westerly along the north side of First St., Watervliet, to one half mile of Rt. 9 to Shaker Rd., to Rt. 9, northerly to the north line of Albany County); RENSSELAER (Berlin, Sand Lake, Poestenkill, Schoodack, Pittstown, Hoosick, Brunswick, Grafton, Petersburg); SARATOGA (East side of Rt. 9, northerly along Rt. 9 to Malta, including all of the Twp. of Stillwater, continuing along the east shore of Saratoga Lake to the Saratoga city line, easterly, taking in all of Schuylerville); WASHINGTON.

AREA 3: FULTON (Bleeker, Mayfield, Northampton, Johnstown, Broadalbin, Perth); MONTGOMERY (Mohawk, Glen, Charleston, Amsterdam, Florida); SARATOGA (except the Twp. of Saratoga, Stillwater, Half Moon and Waterford); SCHENECTADY; SCHOHARIE.

AREA 4: FULTON: Stratford, Caroga, Oppenheim, Eghrata); MONTGOMERY: (Minden, Palatine, Root, Canajoharie).

AREA 5: GREENE (Catskill).

AREA 6: COLUMBIA (Greensport, Claverack, Hillsdale, Livingston, Germantown, Taghkanic, Copake, Clermont, Gallatin, Ancram).

## LABORERS (HEAVY &amp; HIGHWAY CONSTRUCTION):

AREA 1: ALBANY (except Cities of Watervliet and Cohoes); COLUMBIA (Stuyvesant, Stockport, Kinderhook, New Lebanon, Canaan, Ghent, Austerlitz); GREENE (except Twp. of Catskill); RENSSELAER (North Greenbush, East Greenbush, Schoodack, Nassau, Stephentown).

AREA 2: ALBANY (Cities of Watervliet and Cohoes); RENSSELAER (Berlin, Sand Lake, Poestenkill, Schaghticoke, Pittstown, Hoosick, Brunswick, Grafton, Petersburg); SARATOGA (Stillwater, Half Moon); WASHINGTON.

AREA 3: FULTON (Bleeker, Mayfield, Northampton, Johnstown, Broadalbin, Perth); MONTGOMERY (Mohawk, Glen, Charleston, Amsterdam, Florida); SARATOGA (except the Twp. of Saratoga, Stillwater, Half Moon and Waterford); SCHENECTADY; SCHOHARIE.

AREA 4: FULTON (Stratford, Oppenheim, Caroga, Eghrata); MONTGOMERY (St. Johnsville, Minden, Canajoharie, Palatine Root).

AREA 5: GREENE (Catskill).

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## CLASSIFICATION DESCRIPTIONS

## LABORERS (BUILDING CONSTRUCTION):

## AREAS 1, 2, &amp; 3:

- GROUP 1: Common laborers.
- GROUP 2: Pipelayers, mortar mixers (hand or machine), jackhammer operator, wellpointing, concrete vibrators, power driven buggies.
- GROUP 3: Form setters (curb).
- GROUP 4: Wagon drill operator.
- GROUP 5: Acetylene burners.
- GROUP 6: Demolition.
- GROUP 7: Blasters.

## AREA 4:

- GROUP 1: Common laborers.
- GROUP 2: Pipelayers, mortar mixers, motor buggy (walk behind), walk-behind power high lift.
- GROUP 3: Wagon drill operator.
- GROUP 4: Blasters, form setters, mortar buggy (rider type).

## AREA 5:

- GROUP 1: Common laborers, mason tenders, mortar mixers, hod carriers, scaffold builders, concrete men, signalman, vibrator operator, poured gypsum roof work, wrecking, walking power buggy, landscaper, chipping hammer (air or electric), or under), operation and tending of all power driven hand fed mortar or concrete mixers, pumpcrete machines, plastering, fireproofing and acoustic pumps and mixers.
- GROUP 2: Asphaltmen, pipelayers, air or electric jackhammer, air track, wagon, joy and jib drills, powdermen, gunnite, concrete saw, sandblasting, pressure blasting, barman, chain saw operator, riding power buggy, vibro, barco, joy tamper or similar type tamper (air or gas), walk behind roller, granite curbing, all fork lifts and laser operations.

- GROUP 3: Blasters, form setters, burner acetylene torch, Ingersoll Rand, heavy duty crawler-master type HCM2, drill machine or equivalent, all wrecking work 50' or more above the ground.

## AREA 6:

- GROUP 1: General laborers, mason tenders, carpenter tenders, laborer stripping and cleaning forms, laborer grading and digging ditches, sweepers, cleaners.

## CLASSIFICATION DESCRIPTIONS (CONTINUED)

- GROUP 2: Hod carriers, plasterers' tenders, scaffold builders (padlock and self-supporting scaffold 14 ft. or under all runways), mortar mixers (machine and hand), concrete mixers (by machine under 21E), vibrators, form setters, asphalt rakers, handling reinforcement rods, drillers, jackhammer operator, signalman, gunniting, motorbogs, water pump 2' or under, barco machine, wreckers, paving breakers, power saw operators, other machine operators.

- GROUP 3: Blasters, laser beam operator.

## LABORERS (HEAVY &amp; HIGHWAY):

## AREAS 1, 2, 3, &amp; 4:

- GROUP 1: Laborers, drill tenders, outboard and hand boats.
- GROUP 2: Bull float, chain saw, concrete aggregate bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operators 1 1/2 and single diaphragm, nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

- GROUP 3: All rock or drilling machine operators (except quarry master and similar type), acetylene torch operators, asphalt raker, powderman.

- GROUP 4: Blasters, form setters, stone or granite curb setters.

## AREA 5:

- GROUP 1: Laborer, pitman, chuck tender, dump men, handling and distributing of drinking water, placing and maintenance of all flares, lights, barricades and all reflective type materials for traffic control.

- GROUP 2: Concrete men, vibrator men, asphalt men, joint setter, signal men, mason tenders, mortar men, pipelayers, rip rap and dry stone layers, steel rod carriers, jackhammer, pavement breaker, wagon drill, air track, jub rig and joy drill operators, power buggy operators, gunnite and sandblasting, coal passers and other machine operators, sprayer and nozzle men on mulching and seeding machines, guard rail and fences, waterproofing, spraying and brushing of concrete for preservative purposes, all seeding and sod laying, all landscape work, grade checkers,

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## CLASSIFICATION DESCRIPTIONS (CONTINUED)

GROUP III - Crane, hydraulic cranes, tower crane, locomotive crane, piledriver, cableway, derricks, winches, dragline shovel, backhoe, gradalls, power road grader, all CMI equipment, front-end rubber tire loader, tractor-mounted drill (quarry master), mucking machine, concrete central mix plant, concrete pump, belcrete system, automated asphalt concrete plant and tractor road paver.

GROUP IV - Maintenance Engineer.

## POWER EQUIPMENT OPERATORS (HEAVY &amp; HIGHWAY CONSTRUCTION):

GROUP I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), black top plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader (4 C.Y. and over), head tower (saucerman or equal), hoist (2 or 3 drum), Holland loader, mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quad 9, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self-feeder), tug operator (except manned rated equipment), tunnel shovel.

GROUP II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 C.Y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Korman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer, greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pumpcrete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), sea mule, tractor with dozer and/or pusher, trencher, tuggger-hoist, winch, winch cat.

GROUP III - A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generators, pumps, welding machines, light plants (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill core, electric pump used in conjunction

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## CLASSIFICATION DESCRIPTIONS (CONTINUED)

all bridge work, walk behind self-propelled power saw, walk behind rollers and tamers of all types, wrecking laborers (including barman and burnermen), all sheeting and shoring, bit grinder, operator of form pin pullers and drivers, joint and jet sealers and filling and wiring of baskets for gabion walls, permanent sign man, sta-wall or similar type product, chain saw operator.

GROUP 3: Concrete finisher on highways, form setter, granite stone layer, Ingersoll Sand heavy duty crawler-master type ECM3 or equivalent or any drill using a 4" or larger bit.

AREA 5:

GROUP 1: General laborers.

GROUP 2: Concrete men, signal man, mason tender, pipelayer, riprap and dry stone layer, asphalt worker, screed bar operator, jackhammerman, wagon driver, air-track operator, nippers, powderman, high scalars, power buggy operator, steel rod carrier, vibrator operator, compactor, wrecking laborers, gunnite and sandblasting, water pumps 2" or under.

GROUP 3: Blaster, form setter, laser beam operator.

## POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

GROUP I - Oiler, fireman and heavy-duty greaser, boilers, and steam generators, pump, vibrator, mortar mixer, air compressor, dust collector, welding machine, well point, mechanical heater, generators, temporary light plants, concrete pumps, electric submersible pump 4" and over, Murphy type diesel generator, conveyor, elevators, concrete mixer and belcrete power pack (belcrete system).

GROUP II - Bulldozer, push cat, tractor, trackavator scraper, Lefornau grader, form fine grader, road roller, blacktop roller, blacktop spreader, power brooms, sweepers, trenching machine, Barber Green loader, side booms, hydro hammer, concrete spreader, concrete finishing machine, high lift, fork lift, one drum hoist, power hoisting (single drum), hoist - two drum or more, three drum engine, power hoisting (two drum and over), two drum and swinging engine, three drum swing engine, hod hoist, A-L fram winches, core and well drillers (one drum), post hole digger, model CHB Vibro-Tamp or similar machine, batch bin and plant operator, dinky locomotive, seeding and mulching machines.

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## CLASSIFICATION DESCRIPTIONS (CONTINUED)

with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), Grout pump gunnite machine, hammers (hydraulic-self-propelled), hydro-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on sparsaw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories, vibrator compactor, vibro tamp, well point.

GROUP IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (165 and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet-concrete or pavement grinder, Power broom (towed), power beaterman, Revinolus widener, shell winder, steam cleaner, tractor.

## TRUCK DRIVERS (BUILDING CONSTRUCTION):

GROUP 1: Straight, winch, transit mix on job site, road oilers, dump, panel, pick-up, water and fuel trucks on site (including nozzle).

GROUP 2: Euclid or similar equipment, lowboy or lowboy trailers.

## TRUCK DRIVERS (HEAVY &amp; HIGHWAY CONSTRUCTION):

GROUP 1: Pick-ups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters and receivers, greasers, truck tireman.

GROUP 2: Tandems, batch truck, mechanics.

GROUP 3: Semi-trailers, low-boy trucks, asphalt distributor trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic and fuel truck.

GROUP 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loaded, straddle (ross) carrier, and self-contained concrete unit.

GROUP 5: Off-highway tandem back dump, twin engine equipment and double hitched equipment where not self-loaded.

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# federal register

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Friday  
July 26, 1985

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Part IV

## Nuclear Regulatory Commission

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10 CFR Parts 30, 31, 32, 35 and 40  
Medical Use of Byproduct Material;  
Proposed Rule

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 35, and 40

### Medical Use of Byproduct Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to revise its regulations to modify the process for licensing and regulating the medical use of radioactive byproduct material. The proposed revision would primarily affect hospitals, clinics, and individual physicians.

By clarifying and consolidating all the essential radiation safety requirements that are now contained in the regulations, license conditions, regulatory guides, and staff positions, the proposed regulation provides a single source of requirements related specifically to medical use of byproduct materials. The proposed regulation also provides flexibility for licensees to update their day-to-day radiation safety procedures. The revision of the regulations would provide a more efficient method for regulating the medical uses of byproduct material.

**DATE:** Comment period expires November 18, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

**ADDRESSES:** Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of the preliminary regulatory analysis and the comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of the preliminary regulatory analysis and environmental impact assessment are available from Norman L. McElroy, Office of Nuclear Material Safety and Safeguard, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4108.

**FOR FURTHER INFORMATION CONTACT:** Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4108.

### SUPPLEMENTARY INFORMATION:

#### ByProduct Material in Medicine

##### Use for Patient Care

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat hyperactive thyroid conditions and certain forms of cancer. An estimated 15 to 20 million nuclear medicine procedures are performed in this country annually.

Sealed radioactive sources that produce high radiation fields are used in radiation therapy to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body to be treated. An estimated 2 million teletherapy treatments are performed annually by NRC licensees. Smaller, less radioactive sealed sources are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. NRC licensees perform approximately 10,000 brachytherapy treatments annually.

Sealed radioactive sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

##### State and Federal Regulation

Twenty-seven states, known, as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the medical use of byproduct material. In non-Agreement States, the NRC issues licenses to medical institutions (mostly hospitals and clinics) and to individual

physicians. These licenses authorize certain diagnostic and therapeutic uses of radioactive materials.

### NRC's Regulatory Program

#### Policy Regarding the Medical Use of Byproduct Material

In a policy statement published in 1979 (44 FR 8242), the NRC noted that it regulates the medical use of byproduct material as necessary to provide for the radiation safety of workers and the general public, regulates the radiation safety of patients where justified by the risk to patients, and minimizes its intrusion into medical judgments affecting patients, and into other areas traditionally considered to be the practice of medicine. The NRC does have the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

This revision retains NRC's current balance between adequate controls and avoidance of undue interference in medical judgments. Too much regulation could result in poorer health care delivery to patients. Insufficient regulation could result in the unwarranted or unsafe use of radiation.

#### Current Licensing Practice

The current regulations in 10 CFR Part 35, "Human Uses of Byproduct Material," provide for general and specific licenses for medical use.

The general license in current § 35.31 authorizes physicians to use small quantities of prepackaged, individual dosages of byproduct materials. Physicians simply submit a registration Form NRC-482 to NRC. A validated copy with a registration number is returned to the applicant.

Most medical institutions and physicians who use byproduct material need more byproduct material than can be permitted under the general license program. A specific license, which authorizes a larger inventory of byproduct material and a wider variety of uses, may be issued for one or more of six types of medical use, defined as Groups I-VI in the current § 35.100. Each group is comprised of a number of diagnostic or therapeutic procedures that have been grouped together because they require similar physician training and radiation safety

precautions for safe use. A separate specific license may also be issued for use of a teletherapy unit. Applications for a specific license are much more detailed than a general license application and actually contain the applicant's step-by-step radiation safety procedures, which are reviewed and approved individually by NRC.

The NRC has issued 650 general licenses, and in 1983 received seventeen new applications. NRC currently has about 2500 specific medical licensees (2200 hospitals and 300 physicians in private practice). In 1983, the NRC received 143 new applications for specific licenses, 647 license renewal applications, and 1,772 license amendment requests for a total of 2,562 licensing actions.

To help licensees design their radiation safety programs, the NRC has published many NUREG reports and regulatory guides that contain radiation safety guidance. These publications address three general areas: radiological health and safety, personnel training and experience, and facilities and equipment. Experience has shown that if licensees follow the guidance in the publications, the medical use of byproduct material generally poses no hazard to workers and the public.

#### *Problems with Current Practice*

*The General License.* The general license program is based on the fact that the quantities and forms of material that are authorized by a general license present a very low health risk. The NRC believes it is no longer efficient to issue medical general licenses. The tests authorized under § 35.31 have been superseded by newer procedures with greater diagnostic accuracy. These developments have been reflected by a significant decrease in applications for general licenses. As noted above, although NRC has on file 650 in-vivo general licenses under § 35.31, only seventeen new applications were received by NRC in 1983.

To determine the status of general license use, the staff performed a telephone survey of 10 percent of the current registrants. The survey results indicated that less than 9 percent of all the current registrants still use material under a general license; many are now using byproduct material under a specific license. Because of the low level of use of the general license, the NRC has concluded that it no longer serves a useful role in licensing the medical use of byproduct material.

*The Specific License.* Because of the potential radiation hazard to workers and the public, the specific license program incorporates three regulatory

features: case-by-case review of applications, on-site inspections, and periodic license renewals.

A major problem with the current licensing program is that radiation protection requirements are not located in one document. Requirements are scattered in the regulations, Inspection and Enforcement (IE) orders that modify a license or group of licenses, and in conditions attached to individual licenses. Suggestions for good practice are contained in NRC regulatory guides and technical reports (NUREG's). For example, Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," and NUREG-0287, "Principles and Practices for Keeping Occupational Radiation Exposure at Medical Institutions As Low As Reasonably Achievable," contain many recommendations that the NRC believes are important for the safe use of byproduct material. The revision of Part 35 incorporates those recommendations, and also corrects the piecemeal fashion in which the regulations have been amended over the years to address specific problems.

When preparing a specific license application for review under the current licensing program, the applicant must include sufficient information to assure NRC reviewers that byproduct material will be used safely. Applicants include, as an integral part of the application package, copies of their proposed step-by-step radiation safety procedures. In many cases, the procedures are edited versions of procedures described in Regulatory Guide 10.8.

When NRC receives the application, a licensing reviewer evaluates the applicant's training and experience, facility, equipment, and radiation safety procedures in detail. If the application is found to be incomplete or inadequate, a "deficiency letter" is sent to the applicant explaining what additional information is needed. Review of the application is not resumed until a written response from the applicant has been received. Staff studies indicate that about 40 percent of all applicants receive either a deficiency letter or a phone call for additional information. The need for deficiency letters stems from two sources. Guidance on what is needed to get a license is unclear and scattered in various documents. Application review practice must be conservative because the application and license comprise the basis for regulatory control. Deficiency letters are costly for the NRC and the applicant and greatly increase the time needed to complete licensing actions.

When the application, including any additional submitted information, is

approved, the NRC issues a specific license that grants the authority for medical use of byproduct material in accordance with the program described in the application. Requirements in addition to those contained in the regulations are frequently incorporated in the license as conditions of use. Since the licensee must comply with conditions specified in the license, the license, rather than the regulations, is frequently used to regulate radiation safety in the day-to-day use of byproduct material.

The specific license is valid for five years. The license must be amended before methods of use or procedures may be added or changed, or before permitting additional physicians to use materials. Amendments to a specific license involve an application, review, and approval process similar to that for new licenses. Renewals are treated in the same manner as new license applications.

This regulatory process was appropriate during the evolution of the use of byproduct material in medicine. Radiation safety problems were not well defined, regulatory requirements had not caught up with developing technology, physician training curricula had not been established, and there were no formal training programs for nuclear medicine technologists. Therefore, it was necessary to regulate by reviewing each individual radiation safety program to ensure that the applicant had adequate personnel, facilities, and equipment.

#### **Proposed Revision of the Regulatory Program**

##### *Overview*

NRC intends to modify its regulation of the medical use of byproduct material. The Commission plans to revise the regulations to provide a single source of requirements specifically related to medical use of byproduct materials, and within the boundaries set by the regulations, allow medical licensees to modify their radiation safety procedures, facilities, and equipment so they can make prompt use of new safety methods and also meet new needs caused by changes in demand for various patient care services or in patient load. The proposed revision of 10 CFR Part 35 is consistent with the Commission's general policy on medical use of byproduct material issued February 9, 1979 (44 FR 8242). It states "NRC will continue to regulate the medical uses of radioisotopes, as necessary, to provide for the radiation

safety of workers and the general public."

#### *Codification of Requirements in the Regulations*

NRC proposes to simplify regulation of medical licensees by incorporating all medical use requirements in 10 CFR Part 35. These regulations would become the primary means of regulating the medical use of byproduct material. General safety requirements for worker instruction, worker safety, noncompliance reports, and materials licensing that are in Parts 19, 20, 21, and 30 will also continue to apply to Part 35 licensees. The current license application process will be unchanged. The applicant prepares a complete Form NRC-313. That form asks for the following information: the name and mailing address of the applicant; the location of use; a person who can be contacted about the application; what materials are requested; the purpose (in this case, "medical use"); the training and experience of the authorized users and Radiation Safety Officer; the worker radiation safety training program; facilities and equipment; the radiation safety program; and waste management. Licensees would not face significant new regulatory burdens because, in most cases, these requirements are currently imposed as license conditions. Under the proposed revision, the license would authorize medical use of byproduct materials for specified types of use. A licensee's day-to-day uses would be controlled by the regulations. This would simplify inspections for NRC because inspectors would only need to be familiar with one set of regulations rather than a different set of license conditions and radiation safety procedures at each facility.

#### *License Application, Issuance, and Authority and Responsibility*

New revisions of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," and Draft Regulatory Guide TM 608-4, "Guide for the Preparation of Licenses in Medical Teletherapy Programs," will contain instructions on the type and extent of information that must be submitted based on what byproduct materials the applicant has requested. They will also contain model procedures that the applicant can use to develop site-specific procedures. (Consistent with current practice, applicants will alternatively be allowed to simply certify that they will follow the model procedure developed by NRC staff with public comment and published in a regulatory guide to meet a certain requirement. This method significantly

reduces the amount of time NRC must spend reviewing procedures.) The applicant mails the completed application, with application fee, to the NRC office identified on the form.

The NRC staff will continue to review the application to determine whether the applicant's radiation safety program is sufficient to meet the requirements of the regulations. After completing the review, if the applicant's program appears incomplete or inadequate, NRC will issue a deficiency letter that describes the apparent shortcomings in the applicant's program and requests clarification or correction. If the applicant's response to the deficiency letter is satisfactory (or if no deficiency letter was needed), the license will be issued.

Licensees will be free to modify their procedures after conducting a required internal review and approval process. At medical institutions, the Radiation Safety Committee would review and approve a modified procedure before it could be implemented. At non-institution facilities, the Radiation Safety Officer (RSO) and management would review and approve changes. This will allow each licensee to make prompt use of new safety methods and to adjust radiation safety procedures to meet new needs caused by changes in demand for patient care services or patient load. A list of radiation safety topics that should be considered when reviewing proposed changes will be published as an appendix in Regulatory Guide 10.8. The right to modify procedures does not relieve the licensee from the requirement to comply with the regulations. This regulatory scheme would *not* incorporate the current requirement that licensees use byproduct material in accordance with the statements made in the application.

This proposed regulatory program, which gives more discretionary authority, and concomitant responsibility, to the licensee, represents a change in the policy that has guided NRC's regulation of medical licensees for several years. The NRC particularly invites comment on whether this change is appropriate at this time, and whether or not it will benefit licensees, workers, and the public.

The proposed regulations require specific training and experience for the use of material in each use group. Proposed authorized user physicians and qualified teletherapy calibration experts (identified in current Part 35 as qualified experts) will have to submit summaries of their training and experience. This is currently required for authorized users and Radiation Safety

Officers, but would be a new requirement for qualified teletherapy calibration experts, whose credentials are currently reviewed by the licensee. The staff will review those individuals' training and experience against the standards in the regulation before authorizing them to work under the license. (Also consistent with current practice, any individual who does not meet the standards may ask for an exemption from the training and experience requirements. The NRC staff will review the individual's training and experience with the assistance of its Advisory Committee on the Medical Use of Isotopes, and may issue the exemption as a license condition.)

#### *Enforcement*

Under this regulatory scheme, a licensee will be cited for failure to meet the requirements of the regulations or license conditions (which would list, for example, authorized users, locations of use, authorized methods of use, authorized byproduct material and inventory limits, and other site-specific limitations), failure to have on hand the written procedures required by the regulations, failure to follow the procedures on hand, failure to have the records required by the regulations, or failure to follow technically valid procedures (examples: Using an instrument that doesn't work, not determining instrument detection efficiency, not allowing an instrument enough time to respond, or making unsubstantiated assumptions in calculations). Use of material can be authorized either by license or by virtue of working under supervision; use without authorization would be a violation of the regulations and the Act, which would subject the user to an enforcement action.

#### *Amendments*

As mentioned above, under the current regulatory scheme, the licensee is required to handle material exactly according to the radiation safety procedures submitted with the application. The NRC frequently receives requests for permission to modify day-to-day radiation safety procedures. Because the regulations will now contain sufficient prescriptive and performance criteria on which to base enforcement actions, the NRC would allow a licensee to change its radiation safety procedures without preparing a formal amendment request, paying an amendment fee, and awaiting NRC approval. This would *not* relieve the licensee from the regulatory requirement

to comply with the regulations in Part 35 or in other parts of 10 CFR Chapter I.

Four types of program changes will still require formal license amendments:

(1) *New users.* The NRC will review the training and experience of each proposed authorized user, Radiation Safety Officer, and qualified teletherapy calibration expert as described above before listing the individual on a license.

(2) *New type of use.* A licensee's request to add a type of use (for example, adding radiopharmaceutical therapy to a license that authorizes radiopharmaceuticals for imaging) to an existing license will be handled as a new application. The authorized user's training and experience will be reviewed for adequacy with respect to the new type of use, and procedures that must be submitted in support of the request will be reviewed for completeness and adequacy with respect to the new type of use before the amendment is issued.

(3) *New method of use.* Two developments may occur but only one type of license amendment will be needed:

(a) If a new radioactive material becomes available, and the radiation safety procedures needed for its safe use are identical to the procedures already established for an already established and authorized use (for example, a new imaging agent administered by intravenous injection), no license amendment will be required. Instead, the new material will be added by rulemaking to the list of materials in the appropriate use group specified in the regulations. The NRC will mail to licensees a notice that says those who are authorized to use material in that group may begin using the new material on the effective date of the final rule that adds the new material to the regulations.

(b) If a new radioactive material becomes available but its safe use depends on following a new procedure that current licensees have not submitted and NRC has not reviewed, two actions will be taken.

(i) The new material will be added by rulemaking to the appropriate use group in the regulations but authorization to use it will be limited to persons who were licensed after it was added to the use group and who have submitted the new procedure for review in their application packages.

(ii) NRC will mail to current licensees a notice that says they may apply for authorization to use the new material. With that notice, NRC will also supply a model procedure, which would become a new appendix in Regulatory Guide 10.8, for the new material. Those

licensees who want to use the new material will have to submit a request for amendment which includes a proposed procedure that will be reviewed by NRC for completeness and adequacy.

(4) *New location of use.* Two types of amendment may be needed:

(a) A request to leave one location of use and begin working in a new location, for example when moving a private practice to a new office or when moving into a new hospital building, will have to be supported by a complete new application package.

(b) Some licensees receive packages, prepare radiopharmaceuticals, and package waste at a central facility, but actually use the byproduct material at satellite locations. This might be a mobile nuclear medicine service that provides diagnostic services at clients' facilities such as clinics, small hospitals, or nursing homes, or it may be a licensee that has a principal facility and outlying clinics. If the licensee has been approved to offer service at satellite locations, a request to add another satellite location will only have to identify the new location. (Due to the training, space, and equipment commitments needed for safety during therapy procedures, the NRC will generally not authorize licensees to perform therapies at satellite locations. This type of request will be handled on a case-by-case basis.)

#### Renewals

The NRC license is valid for five years. If a person wants to continue using byproduct material the license must be renewed. The renewal application must completely describe the entire radiation safety program just as a new application does. If a previously submitted radiation safety procedure, facility description, or equipment list still accurately reflects that part of the licensee's program, the renewal applicant may simply make a clear reference to the previous submission. If the licensee has changed a procedure, is using different areas of use, or is using different equipment, a complete new description of the particular procedure, area of use, or equipment must be submitted. The licensee may also take this opportunity to identify new authorized users or request authorization for new types or methods of use.

#### Summary of Changes Proposed in the Regulatory Program

In summary, the regulation will be amended to require that licensees meet standards that are currently imposed by license conditions. The NRC will

continue to review user training and experience. The NRC will review site-specific radiation safety procedures for completeness and adequacy and issue deficiency letters if necessary, but will allow licensees to change procedures that were submitted in support of the application after conducting an internal radiation safety review of each change. However, the right to change procedures does not relieve the licensee from the requirement to comply with the regulations. Amendment requests will generally be reviewed just as new applications are reviewed, but they may incorporate by reference the original application and any previous amendments.

#### Notes

##### Word Usage

In preparing the proposed revision of Part 35, one goal was to remove language that might be misinterpreted. The following words used in the revision may require clarification.

1. *Licensee.* The person (individual, partnership, corporation, or agency) listed on the license as the "licensee" is responsible for compliance with regulations and license conditions. The licensee may effect compliance through full-time or part-time employees, contracts with consultants or service organizations, or other business arrangements. The word "licensee" is used throughout the regulation to stress the fact that, no matter which method is used, the licensee is legally responsible in case of non-compliance.

2. *Type of use and group.* In the current Part 35 there are six "groups" of use described in § 35.100. Each group is comprised of a set of medical procedures that require similar training and equipment for radiation safety purposes. The word "group" has not been used in the proposed revision in order to avoid confusion between the old and new Part 35. The revision uses the phrase "type of use" for this concept. Some types of use are amalgamations of old groups, and some types are new. The six types of use are: (1) Uptake, dilution, and excretion—Subpart D; (2) imaging and localization—Subpart E; (3) radiopharmaceutical therapy—Subpart F; (4) brachytherapy—Subpart G; (5) sealed sources for diagnosis—Subpart H; and (6) teletherapy—Subpart I.

3. *Method of use and procedure.* The word "procedure" is frequently used in supporting documentation for byproduct materials programs. Sometimes it refers to a specific set of steps that must be taken to effect an end, for example a procedure for ordering and

receiving packages. Sometimes it is used to indicate a type of medical examination or treatment, for example a thyroid uptake study or a cesium implant therapy, without indicating the amount of byproduct material used or the specific steps taken in handling it. The word may also be used to indicate the number of patients cared for over a period of time, for example an average workload of fifteen procedures each day. In order to avoid confusion, the phrase "method of use" appears in the proposed revision. Each type of use is comprised of several methods of use. Each method of use should identify, explicitly or by context, the radionuclide, its chemical and physical form, method of administration, and purpose (diagnosis or therapy).

4. *Dose and dosage.* In pharmacy, the word "dose" is used to indicate the amount of chemical administered; in radiation biology it is used to indicate the amount of ionizing energy absorbed per unit mass; and in radiation safety it is used as a shorthand term to indicate a worker's exposure to radiation. In order to avoid confusion, the word "dosage" is used in the proposed revision to indicate quantities of radioactivity that are measured with the base unit Curie. The word dose is used to indicate quantities of radiation absorbed dose or dose equivalent that are measured with the base unit rad or rem.

5. *Record and report.* A record is a user-retrievable notation or complete document. It may consist of something as small as a check-mark on a form or something as extensive as a survey of a newly installed teletherapy unit with appended calculations to demonstrate compliance with the limits on exposure in uncontrolled areas. A report is a transfer of information which might be made face to face, by telephone, telegram, computer link, or hard copy transmittal.

6. *Test and check.* For many pieces of equipment, drafting committees comprised of industry experts have prepared standards of performance and complete calibration protocols. If a piece of equipment is subjected to the protocol in the calibration laboratory and meets all the standards, then the ability of the equipment to perform as expected in normal field use is assured. In the proposed revision this concept of complete examination is referred to as a "test." During field use it is common practice to subject a piece of equipment to a quick examination to determine whether it is working. This procedure does not examine all parameters of equipment performance. In the proposed

revision this concept of perfunctory examination is referred to as a "check."

7. *Location of use, facility, and area of use.* The phrase "location of use" is used to describe the building or buildings (typically identified by a single street address) where byproduct material is used. The word "facility" connotes a room or contiguous rooms where byproduct material is used, such as a nuclear medicine clinic comprised of an office, an imaging room, and a dosage preparation and waste storage room. The phrase "area of use" connotes the space used by worker when performing a specific task connected with receiving, handling, or storing byproduct material.

8. *Chemical form.* The current regulation requires that if a radiopharmaceutical is used for indications other than those described in the package insert, the user must nevertheless follow instructions on chemical and physical form, dosage, and route of administration. The proposed revision has deleted the word chemical in its restatement of this requirement because to change the chemical form would be to create a radiopharmaceutical other than the one received from the authorized distributor. Deletion of this word in the proposed revision does not authorize Part 35 licensees to manufacture radiopharmaceuticals.

9. *Available for use.* In many cases the regulation states an equipment possession requirement because the piece of equipment is considered by experts to be an integral part of the radiation safety program. In a few cases the need for a piece of equipment is sporadic and normally scheduled weeks in advance. For example, a licensee who has a diagnostic sealed source in a device (see § 35.500) usually only needs a survey instrument when receiving or returning a radioactive source; there is no need to have the instrument on hand every day. The phrase "available for use" is intended to connote that the licensee either may possess equipment or contract for measurement services, but is not required to have regular day-to-day possession of the described equipment.

10. *Dedicated check source.* A long-lived radioactive source can be used to check the day-to-day constancy of an instrument. The same source (a "dedicated" source) must be used every day so that the user knows what reading to expect from the instrument. The source may also be used for other purposes.

11. *Operable.* The word "operable" is not used in the proposed regulation because every piece of equipment must

be operable. If a piece of equipment is not operable or reliable, whether due to old or absent batteries, incomplete or improper maintenance, damage, inappropriate use, or improper use, it cannot be used to meet a regulatory requirement because there is no assurance that it accomplished the task for which it was used.

12. *Implement.* This verb is used with its ordinary definition, which is "to carry out, accomplish, or ensure fulfillment of."

13. *Promptly.* This word is used with its ordinary definition, which is "performed readily or immediately."

#### Record Retention

The Commission requires that licensees make and retain records as evidence of compliance with regulations and license conditions. A review of records during inspections is the least burdensome way that the Commission may be assured that the licensee has developed and implemented a radiation safety program. However, permanent retention of all required records, or retention between inspections, would be unreasonable and would run counter to recent guidance to regulatory agencies that was issued by the Office of Management and Budget. Therefore the Commission has, in the proposed revision, generally adhered to the following policy.

1. For recurring records that are created on a daily basis, for example end-of-day surveys, and for most non-recurring, sporadic, or periodic records, such as individual patient dosage measurements or survey instrument calibrations, the Commission has made a judgment that records retention for two years provides adequate evidence of compliance with requirements.

2. In a few cases a record is only created once or the Commission considers the record to be essential evidence of compliance with regulations that, if not followed, might cause an immediate discernible impact on a worker or member of the public (for example, requirements for the geometry test for a dose calibrator and the teletherapy dosimetry equipment calibration, respectively). In those cases the Commission has made a judgment that retention for the duration of use of the equipment or of the license is necessary.

#### Effect on Broad Licensees

In addition to the more common "group" licenses which the NRC issues that authorize by product material for uses described in the groups, the NRC has also issued about 100 broad licenses

under Part 33 that include medical use. They are issued to large medical/academic institutions that have had several years experience using radioactive materials.

About 50 of the medical use broad licenses that have been issued vest in each institution's Radiation Safety Committee the authority to permit medical practitioners to use byproduct material for both patient care and medical research, to permit individuals to use byproduct material for research in test tubes and animals, and to review the facilities and radiation safety procedures that these individuals will use. Before NRC issues a broad license it reviews the applicant's administrative and safety procedures, the training and experience of the Radiation Safety Officer and of each individual member of the Committee, and the standards and management procedures it will use when reviewing permit requests. This type of license is needed to allow for the orderly evolution of the medical sciences. The NRC will continue to review Committee member qualifications on a case-by-case basis because the size and individuality of each broad license program precludes the preparation of generic prescriptive qualifications. These licensees would be required to comply with the proposed prescriptive and performance criteria of Part 35, but would be exempted from the training and experience requirements of Subpart J and the authorized materials and authorized use restrictions in proposed §§ 35.49, 35.100, 35.200, 35.300, 35.400, and 35.500.

The other 50 medical broad licenses that have been issued are similar to the license described above, except that the Committee only has the authority to permit individuals to use material in test tube and animal research, and only authorizes medical use in accordance with the groups in current § 35.100. The NRC would continue to review the training and experience of medical practitioners before allowing them to use material for medical use. Because control of medical use in these cases is the same as that exercised over the more common group licensees, the basis for a determination of compliance will be the same as that described below for group licensees.

Because, whether at a group or broad license facility, teletherapy is separately licensed "for treatment of humans" and because the NRC reviews qualifications of proposed users and safety procedures, no significant inconsistencies with current teletherapy programs or new teletherapy programs are expected.

#### *Transition Policy for General Licensees*

The general license in current § 35.31 has been eliminated from the proposed regulations. In the future, all medical use will be specifically licensed. Current general licensees, all of whom are physicians, will receive a specific license that will be incorporated into NRC's filing system for keeping track of specific licensees. However, they will be limited to the methods of use described in the current § 35.31, and relieved, by license condition on a pre-printed license, from the requirements that are more burdensome than the current general licensee requirements. The only action general licensees will need to take is to respond affirmatively to an NRC notice that asks if they want to continue to have an NRC license that is limited to the methods of use authorized by the current general license.

The Commission proposes, under § 170.11(b), to continue to exempt these licensees from application and renewal fees as long as their programs are limited to the material uses described in current § 35.31. Under the new specific licensing system, former general licensees that want to make any changes in their programs, amend their licenses, or transfer them to other physicians, will have to apply under the new licensing scheme and will be subject to all the fees that apply to other specific licensees.

The Commission proposes to waive fees to former general licensees for the following reasons. General licensees do not now pay fees. About 90% of the 600 or so general licensees are inactive. Each year NRC receives only a very few requests for general licenses under § 35.31. There would be no NRC review time needed and only a minor NRC administrative cost to process these licenses. It would be unfair to charge these licensees the fees listed in 10 CFR Part 170, and it would be more costly for NRC to alter that fee structure than to grant the exemption.

The current Part 35 also grants a general license for in vitro work described in § 31.11 to group licensees without requiring that they submit an in vitro registration form. Under the proposed regulation, applicants would have to specifically request this authorization as a line item on their applications. Part 31 will be amended to continue the in vitro authorization for current medical licensees until their licenses are renewed. In either case, the use of § 31.11 materials within the inventory limits of that section will only be subject to the requirements of § 31.11.

#### *Transition Policy for Specific Licensees*

Under the current regulatory program, the license document with the appended application is used to regulate each individual licensee. Because the requirements in the proposed revision were taken from commonly used topical license conditions and regulatory guidance that most licensees have incorporated into their applications, the Commission does not expect any significant inconsistencies between current licensee radiation safety programs and radiation safety programs of applicants that apply after the effective date of the proposed regulations. Therefore, current licensees will normally be cited if they do not comply with the new regulations. However, because each current licensee's radiation safety program was reviewed individually and license conditions were tailored to meet the licensee's individual needs, there may be an occasional inconsistency between a license condition and the regulation (for example, a license may require survey instrument calibration biennially, but the proposed regulation would require calibration annually). There is no health and safety reason to undo these licenses to effect compliance with the regulation. To impose the regulation in addition to or in lieu of the license conditions would not provide for significant additional health and safety. The Commission therefore proposes to resolve possible temporary inconsistencies between license conditions and the regulation by providing in the regulation a transition period between the effective date of the final rule and the expiration date of each license. During this transition period, if there is an inconsistency between a provision in a license (issued prior to the regulation) and the regulation, the proposed regulation states that the license condition would take precedence over the regulation. Because the license conditions were reviewed from the perspective of overall safety and approved by the NRC, the inconsistency would not result in an increased risk to workers or the public.

In addition to the topical license conditions mentioned above (for example, sealed source leak test requirements, special bioassay requirements, radioactive patient surveys and release limits, or waste disposal restrictions), each specific license has an encompassing license condition that requires each licensee to possess and use licensed material in accordance with the statements, representations, and procedures contained in the license application and

in letters of clarification. Despite this encompassing condition, licensees would be allowed to make changes in their radiation safety programs; permissible changes would be restricted to those identified in § 35.36, and the licensee would have to conduct the internal review required by that section.

In the case of record retention, the regulation will generally take precedence because, in the past, the Commission has not offered much guidance on this topic. Many applicants have either not specified a period of retention or have incorporated a single, all encompassing record retention phrase "until the Commission authorizes their disposal," rather than shouldering the burden of justifying to NRC a shorter period. If a record is substantively the same as a record described in the proposed regulation and the licensee has not stated a retention period for that specific record, licensees could adopt the retention period stated in the final rulemaking. However, licensees would still have to comply with any record retention period required by a topical license condition or another Part (for example Part 20) of the regulations. (For example, surveys that provide the basis for occupational dose records or measurements of effluent release are governed by Part 20.)

NRC does not currently review qualified teletherapy calibration expert credentials, and does not identify the Radiation Safety Officer on the license. Under this proposal, NRC would begin to review their credentials and identify both of them just as it does now for authorized users. To add current licensees to this new scheme, licensees would be required to submit their credentials for review and approval when the next amendment or renewal request is required. These individuals would be identified on the next license amendment.

The NRC particularly requests public comment on this transition policy and would like to know if licensees envision problems of interpretation or compliance that the staff might not foresee.

#### Discussion of Proposed Regulations

The primary purpose in initiating this revision to the regulations is to simplify the regulatory process by providing licensees with a single source of requirements for the medical use of byproduct material. Radiation protection standards now contained in several existing regulations, Inspection and Enforcement orders that modify a single license or group of licenses, technical reports (NUREGs), standard conditions of licenses, and regulatory

guides would be consolidated into a concise set of regulations. The requirements that apply to all licensees appear first, followed by the specific requirements for each of the six basic types of use.

In the proposed regulation, items of general information, general administrative requirements, and general technical requirements are addressed first in Subparts A through C, respectively. Subparts D through I contain the additional technical requirements that apply to licensees for each of the six new types of use. Subpart J lists the training and experience requirements, and Subpart K lists the penalties for violations of the regulations.

In order to maintain consistency among the various parts of NRC's regulations, conforming amendments have been made to the affected sections of Parts 30, 31, 32, and 40. These conforming amendments can be found immediately after the revised Part 35. A section-by-section discussion of the proposed revision of Part 35 follows.

#### Title

The title of Part 35 has been changed from "Human Uses of Byproduct Material" to "Medical Use of Byproduct Material" to better reflect the scope of the part.

#### Authority

This listing provides notice of the statutory basis for the regulations. It also provides notice that the NRC may initiate criminal prosecution of persons who knowingly and willfully do not comply with the prescriptive requirements issued under section 161b or the recordkeeping and reporting requirements issued under section 161o.

#### Subpart A—General Information

##### Section 35.1 Purpose and scope.

The regulations in this part apply to all persons licensed by the Commission to intentionally administer byproduct material or the radiation from byproduct material to humans, and to individuals working under their supervision.

##### Section 35.2 License required.

This section requires that persons have a license issued by the Commission or an Agreement State before they handle byproduct material for medical use. The Commission uses the specific licensing process to limit the use of byproduct material to persons who have the equipment, facilities, training, and experience needed to ensure its safe use. Individuals who are working under the supervision of an authorized user do not need a license

document, but this does not relieve them of the requirement to conduct their work in accordance with requirements of the license and the regulations of this chapter. The licensee remains responsible for the noncompliance of such agents or employees, and may be subject to sanctions for their failure to comply.

##### Section 35.8 Information collection requirements: OMB Approval.

This section provides notice that the Office of Management and Budget has reviewed and approved the information collection requirements contained in this part.

##### Section 35.15 Definitions.

The term "Agreement State" applies to those states that have entered into an agreement with NRC to assume responsibility for regulating the use of byproduct material within their borders.

The word "ALARA" was added to identify the acronym for the phrase "as low as reasonably achievable."

The term "area of use" was added to identify a place in which byproduct materials are received, used, or stored. The term is used in § 35.36 to authorize licensees to use byproduct materials in rooms, suites, or building wings not identified in the application.

The term "authorized user" was added to identify individuals who are identified by name on a license and who are authorized by the Commission or an Agreement State to administer byproduct material, or the radiation therefrom, to humans for medical care, and supervise its use by others.

The term "dentist" was added to identify a group of practitioners licensed by the States who might use byproduct materials in their practice.

The term "medical use" was included to help identify the scope of this part. The word "intentional" was included in the definition to make it clear that occupational and nonoccupational exposures under the regulations of Part 20, accidental exposures, and unwanted exposures from other sources of radiation (e.g., nuclear powered cardiac pacemakers, smoke detectors, and radioactive waste) are not considered medical use. The phrase "in the practice of medicine in accordance with a license" was included to make it clear that NRC recognizes that States may have different definitions of medical practice or different levels of control and that licensees should not interpret that NRC license as a pre-emption of State medical regulations or an attempt to direct the States' regulation of medical practice.

The word "medical institution" was added to identify organizations in which the radiation safety program depends on the cooperation of individuals from several different departments.

The word "management" was added to identify the individual responsible for defining the licensee's policies and allocating personnel, budget, and space resources.

The word "misadministration" was included to define those instances in which a mistake has been made in the medical use of byproduct material. The definitions are the same as those in the current § 35.41.

The term "mobile nuclear medicine service" was added to describe the transport of byproduct material for the purpose of offering diagnostic nuclear medicine services at addresses other than the principal business address of the licensee.

The word "output" was added to describe the amount of radiation in a teletherapy beam.

The word "physician" was included to identify individuals licensed by the States to practice medicine and therefore eligible to use byproduct material in the practice of medicine.

The word "podiatrist" was added to identify a group of practitioners licensed by the States who might use byproduct materials in their practice.

The term "qualified teletherapy calibration expert" was included to replace the term "qualified expert" which is used in the current § 35.24. The new term better reflects the training, experience, and responsibilities of the individual who is responsible for calibrating a licensee's teletherapy unit.

The term "Radiation Safety Officer" was added to identify the individual named on a license and who is responsible for managing the licensee's radiation safety program.

The term "sealed source" was included to identify byproduct material that is specially encapsulated to prevent leakage or escape during use and storage. It is the same definition as use in § 30.4.

The term "visiting authorized user" was added to identify individuals listed as authorized users on one license who, while working for another licensee on a temporary or occasional basis, use byproduct material under the restrictions of the temporary employer's license, which does not identify the visitor as an authorized user. This authorization is based on a frequently used topical license condition.

#### *Section 35.16 Application for license, amendment, or renewal.*

At an institution, only management may apply for a license; individual physicians would be listed on that license as authorized users. An individual physician may not apply for use within a medical institution (an organization that provides various medical services). This requirement reflects the need for coordination with other employees who may not be under the administrative control of the authorized user. For use sited outside a medical institution, such as for private practice or mobile service, any person may apply. An application must be filed on Form NRC-313 because it elicits information in an orderly manner that will allow for uniformity in application review procedures.

Teletherapy applications must be submitted separately because the scope and nature of information needed is much different than that needed for the other types of medical use. This requirement does not imply that the applicant should have two separate safety programs.

This section also reflects the Commission's decision to delegate to Regional Administrators some licensing functions which, until recently, were conducted in the headquarters. This program was described in *Federal Register* notices published May 27, 1982 (47 FR 23138), April 14, 1983 (48 FR 16030), May 9, 1984 (49 FR 19630), and April 15, 1985 (50 FR 14692).

#### *Section 35.17 License amendments.*

The Commission requires that the licensee obtain an amendment for any changes in the byproduct material program that might increase the potential for radiation exposure to workers and the general public, or make it difficult for the Commission to conduct its inspection program. The Commission has determined that certain changes are potentially significant for the following reasons and thus will require an amendment:

(1) The NRC must be assured that the licensee has adequate training and experience and facilities before authorizing a change in the type or method of medical use or amount of byproduct material used. Such a change might also indicate a need for increased inspection frequency.

(2) The use of byproduct material at an address not identified on the license would make it impossible for the Commission to make unannounced inspections. The Commission relies on the unannounced inspection to assure day-to-day compliance. For the purpose

of this part, the phrase "location of use" refers to a building. (Moving from one room to another within a building would not constitute a change in location of use.)

(3) The Commission must be assured that the training and experience of Radiation Safety Officers, authorized users, and qualified teletherapy calibration experts is sufficient to assure that they are able to understand and follow regulations for the safe use of byproduct material.

#### *Section 35.18 Notifications.*

A notification requirement was added to require the licensee to notify the Commission if an authorized user, Radiation Safety Officer or qualified teletherapy calibration expert is no longer affiliated with the licensee's byproduct material program. Without this notice the NRC would not have assurance that the collective training and experience of the licensee's remaining personnel is adequate to ensure the safe use of byproduct material for all the types of use authorized by the license. The Commission has made a judgment that notification within 30 days is sufficient because technicians who have worked under the supervision of the authorized user can adequately ensure the safe receipt and proper storage of byproduct material. However, absence of an individual to oversee a byproduct material program may increase the probability of an accumulation of unused byproduct material or unauthorized use of material. This presents an unacceptable potential hazard.

#### *Section 35.28 License issuance.*

The Commission has selected a license term of five years. A shorter term would not benefit the public health and safety because past experience indicates that medical programs do not generally change significantly over that period of time. A shorter term may unduly interfere in patient care because the licensee would spend an inordinate amount of time requesting renewals. A longer term may occasionally result in unintentional abandonment of the license.

The applicant must use Form NRC-313 to provide for an orderly safety review of the applicant's program. The Commission will apply certain standards when reviewing an application so as to ensure that the safety of workers and the public will not be compromised if the license is granted. The staff must be assured that the applicant's proposed equipment and

facilities are adequate to protect health and minimize danger to life or property (§ 30.33(a)(2)), and that the authorized users are qualified by training and experience to use the material for the purposes listed in the application in such a manner as to protect health and minimize danger to life or property (§ 30.33(a)(3)), and that applicant has established procedures adequate to assure that safe use of byproduct material.

Concerning fees, Congress has directed that agency services, such as licensing and inspection, must be self-sustaining to the extent possible.

#### *Section 35.29 Specific exemptions.*

As part of an application or amendment request, a person may request an exemption from any requirement of this part. The NRC occasionally receives requests for exemptions from procedural, equipment, or training standards. The Commission may allow the exemption if the applicant can show that it will not compromise the health and safety of workers and the public.

#### *Subpart B—General Administrative Requirements*

#### *Section 35.30 ALARA program.*

An ALARA program is a management tool needed to assure that all reasonable efforts are made to assure that safe use of byproduct material. (See 'Management Organization and Administration for ALARA' by Kathren, *Health Physics*, Vol. 42, No. 2, February 1982, p. 119-131, and 'Radiation Safety in a Nuclear Medicine Department,' by Gandsman et al., *Health Physics*, Vol. 38, No. 3, March 1980, p. 399-408.) In an institution many workers from different departments might be occasionally exposed to byproduct material. The Commission has made a judgment that a formal ALARA program is the only management tool that can ensure a cooperative effort to reduce individual and collective dose and ensure regular safety reviews. Specific requirements usually considered part of an ALARA program are required by §§ 35.31 and 35.32.

The annual briefing of management by the Radiation Safety Officer on the byproduct material program is intended to assure that licensee management knows what kinds of byproduct material are used in which departments, which workers are involved, its use, the regulatory requirements that govern its use, and current and potential radiation safety problems. Management needs this information to ensure that its decisions do not inadvertently result in activities contrary to the regulations or license conditions.

In this proposed rulemaking the Commission has not required non-institutional licensees, such as one or a few physicians in private practice, to have a formal ALARA program because, for those licensees, the physician authorized user is usually also the Radiation Safety Officer, management, and the line manager. Hence, any formal ALARA report requirement would consist of the physician reporting to himself. However, the Commission would appreciate comments as to whether *all* medical licensees should have a formal ALARA program. If so, should small licensees conduct an internal annual review or should that review be conducted by someone who is not associated with the licensee's program on a day-to-day basis? Commenters are reminded that the exhortation in 10 CFR 20.1(c) to make every reasonable effort to maintain radiation exposures and releases of radioactive materials ALARA applies to medical licensees.

#### *Section 35.31 Radiation Safety Officer.*

The Radiation Safety Officer is an individual with special expertise who is needed to coordinate the safe use of byproduct material in accordance with the license and the Commission's regulations.

#### *Section 35.32 Radiation Safety Committee.*

The proposed Part 35 requires institutional licensees to establish a Radiation Safety Committee to oversee the use of byproduct material. The committee is required because, in an institution, radiation safety for *all* workers (users and ancillary staff) and the public depends on the cooperation of employees from administratively separate departments. Without the benefit of committee discussion, authorized users may not be aware of radiation safety problems outside their own department that are caused by their patients, packages, or waste. The Committee's deliberations will provide management and authorized users with information that is needed to optimize allocation of resources available for radiation safety. A Committee is not required for licensees that are not medical institutions because such organizations generally do not have the multi-armed, multi-tiered management structure typical of medical institutions. In non-institutions the authorized user is likely to be part of management and a line supervisor for ancillary workers; therefore a formal committee structure would serve no useful purpose. A similar requirement was published as a proposed rule on April 9, 1979 (44 FR

21023), and as a final rule on September 13, 1982 (47 FR 40149).

Committee membership must include a physician identified on the institution's license as an authorized user or byproduct material for each type of use permitted by the license, the institution's Radiation Safety Officer, a representative of the institution's management, and a representative of the nursing service.

Institutions that only request a license for diagnostic sealed sources will be exempted from this requirement by license condition because the radiation safety program would not depend on the cooperation of individuals from several different departments. Packages would arrive infrequently, there would be no chance of contaminating an entire room or suite, no radioactive waste, no radioactive patients, and little chance of loss of material.

To assure the safety of workers and the public in light of site-specific exigencies, the Committee must review on the basis of safety: (1) The qualifications of each individual to be listed as an authorized user, and (2) each proposed method of use. In its reviews, the Committee should consider compliance with NRC regulations, special physical or chemical containment problems, the amount of byproduct material that will be used, and the relative hazard of the material, all in light of the licensee's facility and staff.

The Committee must review occupational exposures quarterly. A more frequent review would inappropriately emphasize normal and expected statistical variations in exposure data. A less frequent review would not provide for timely notice of unnecessary or unnecessarily high doses.

The quarterly review should be guided by two trigger levels for individual doses. The lower level would be a minimum level below which no action need be taken. Above the minimum level, the source of exposure should be determined and consideration given to methods of reducing the exposure rate. The higher level should trigger immediate intervention by the Radiation Safety Officer to reduce the exposure. The committee should review the appropriateness and completeness of the intervention, and should develop a permanent solution to maintain doses at a lower level.

The annual review of the safety program is needed to determine its adequacy in light of the current and projected use of all byproduct material. In the Commission's judgment, a review at least once each year is adequate to

assure that exposures remain ALARA considering the few program adjustments typically made during any single year. More time between reviews might not permit the committee to make timely recommendations for reducing unnecessary worker, public, or patient exposure by, for example, changing space allocation, purchasing new equipment, or changing procedures.

*Section 35.33 Requirement for authority and statement of responsibilities.*

To ensure that material is used safely, the Radiation Safety Officer and Radiation Safety Committee need a clear statement of their duties from management so that questions about authority, responsibility, and jurisdiction do not keep these individuals from acting.

*Section 35.34 Visiting authorized user.*

The uninterrupted provision of medical care occasionally requires a visiting authorized user to work for a host licensee when its permanent staff may be unable to do so. This was allowed in the past by a standard license condition. If the licensee had a copy of another licensee's NRC license that listed the visitor as an authorized user, the visitor could work under the license for sixty days each year without requesting a license amendment. The scope of this concept has been expanded to allow NRC licensees to employ Agreement State authorized users. Because the visiting authorized user's training and experience has been reviewed for health and safety consideration by a regulatory agency, this short-term authorization will not pose an undue risk to public health and safety. The purpose of written permission is to assure that the required records have been reviewed and found complete.

When exercising this privilege, host licensees should identify each individual method of use authorized by their license, each individual method of use authorized by the visitor's license, and each individual method of use that the visitor will be allowed to do at the host facility. Note that in some cases the Agreement States' groups, schedules, or subparts do not correspond to those of the NRC. The visitor can only do those procedures authorized by both licenses.

*Section 35.35 Mobile nuclear medicine service administrative requirements.*

Mobile nuclear medicine service has been limited to diagnostic medical use because the inherent hazard of therapeutic amounts of byproduct material makes it unsuitable for use in

locations where the licensee might not have clear and direct control over personnel, facilities, or equipment. The Commission will continue, on a case-by-case basis, to authorize provision of low level radiopharmaceutical therapy by mobile nuclear medicine services. These licensees are required to have a letter of permission from the management of each client to assure that the client management is aware of and in agreement with the medical use of byproduct material within the facility.

Mobile service may not be provided to licensed clients because, in case of a spill or dose rates above regulatory limits, the responsibility for corrective action may be clouded.

*Section 35.36 Radiation safety program changes.*

This section allows the licensee to make changes in the radiation safety program that was described in the application if the changes are within the requirements of the regulation. The purpose of this authorization is to allow the licensee to respond to changes in staff levels, available equipment, or patient load that may require reallocation of floor space, or to make changes that may be necessary for patient care, administrative, radiation safety, or economy needs. Before implementing any change, the licensee must make a record of safety matters that were considered when planning the change. The record will be used during unannounced inspections to determine whether the licensee has made changes that are contrary to the regulations, license conditions or orders, and during termination surveys to provide an indication of every area where material was used.

The Commission notes that this change in the current licensing process under which *all* radiation safety program changes must be approved by license amendment, recognizes that, in the end, public health and safety is based on three features: (1) NRC regulates who may use byproduct material for medical use by listing authorized users on the license; (2) NRC regulates the degree of hazard, balanced with medical needs, by only allowing certain chemical and physical forms for medical use; and (3) NRC regulates where byproduct material may be used to allow for unannounced inspections of licensee radiation safety programs. This proposal would retain those regulatory features by requiring licensees to receive a license amendment before using material for new clinical methods of use not permitted by the license; before permitting new authorized users to use material; before receiving more

material or different kinds of material than permitted by the license; and before using material at locations not listed on the license. These are major changes in a licensee's radiation safety program for which a license amendment would still be required (see § 35.17). Under this proposal all other changes (such as selecting replacement equipment, re-arranging the nuclear medicine clinic, switching from one service contractor to another, or switching to an alternative equipment quality assurance procedure) would be minor changes.

The Commission would appreciate comments on this major/minor dividing line or threshold. Is this dividing line clear and complete? Are there other features that should be considered as major changes, or are some of these major changes really not important to health and safety? Is there some other dividing line, either fixed or flexible, that would clarify which changes are really not important to health and safety and may therefore be made by the licensee? Alternatively, should the Commission continue to require licensees to submit all radiation safety program changes for agency approval?

*Section 35.37 Records and reports of misadministrations.*

The proposed Part 35 retains the misadministration definitions and reporting and recordkeeping requirements of the current Part 35. A discussion of these requirements appears at 45 FR 31701, published May 14, 1980.

Although the Commission has not revised its misadministration reporting and recordkeeping requirements, it would like to take this opportunity to ask for public comment on these requirements based on the experience gained since the requirements were first published in final form five years ago. For both diagnostic and therapeutic misadministrations, are the current requirements adequate to protect the public health and safety or should they be made more or less stringent? Should the regulations require prompt notification of the patient who received the misadministration? Do the regulations provide the public with a clear notice of the Commission's role when there is misadministration? Should the Commission take enforcement action against licensees who misadminister by product material or radiation to patients? If so, what type of enforcement action should be taken?

### Section 35.38 Supervision.

The authorized user is allowed to use byproduct material in the practice of medicine. Frequently, specific tasks may be delegated (under §§ 35.2(b) and 35.38) to individuals with less training and experience. However, it is necessary that a qualified individual instruct them, oversee their work on a frequent basis, and be available to promptly respond in unusual or emergency situations. The regulation requires that supervised individuals comply with instructions, procedures, and the regulations.

The NRC has not specified which tasks may be delegated to whom because the practice of medicine is regulated differently in each State and because medical services must also be responsive to each community's particular needs. The NRC particularly requests comment on whether special training elements should be clearly identified for certain tasks that are delegated or whether the general guidance is sufficient.

### Section 35.49 Suppliers.

In order to authorize only the use of materials reviewed by the government for safety and effectiveness considerations, authorized users may use only byproduct material that has been manufactured and distributed under procedures that were reviewed for safety by the NRC, the Food and Drug Administration (FDA), or an Agreement State.

The NRC will continue its current practice of allowing, on a case-by-case basis, re-transfer of radiopharmaceuticals between Part 35 licensees if an applicant specifically requests an exemption from this section and shows the exemption is in the public interest.

### Subpart C—General Technical Requirements

#### Section 35.50 Possession, use, calibration, and check of dose calibrators.

A dose calibrator is needed to ensure that the dosage of material given is the dosage that was prescribed. It must be tested for accuracy, the ability to exactly measure a specified quantity, and linearity, the ability to exactly measure a range of quantities. The requirements are generally consistent with the recommendations of the American National Standards Institute. (See ANSI N42.13-1978). Copies may be purchased by contacting Sales Department, American National Standards Institute, 1430 Broadway, New York, NY 10018. In the interest of

economy and efficiency, the NRC uses voluntary national standards in its regulatory program if they provide adequate assurance of safety.) The activity levels of the accuracy check sources were chosen because a lower activity would invalidate the accuracy test due to expected statistical fluctuations, and a higher activity would present an unnecessary source of radiation exposure to workers. The radionuclides required reflect the fact that dose calibrators are not as accurate as might be expected for the photon energies commonly used for imaging (see "Joint NCDRH and State Quality Assurance Surveys in Nuclear Medicine," HHS Publication FDA 83-8209). The linearity test should only be done over the range between highest individual dosage measured and 10 microcuries to ensure that the dosage given is the dosage that was prescribed. It is not necessary to test for linearity for all amounts that might be measured, for example the first elution from a fresh generator or a multidose vial, because this would subject the worker to unnecessary radiation dose. Dosages below 10 microcuries cannot be accurately measured on a conventional dose calibrator because they are so tiny. Also, these dosages present only a trivial risk to the patient and therefore need not be so accurately measured. The geometry test assures that the shape of the syringe or vial containing the byproduct material does not affect the dosage measurement. The daily constancy check assures that the dose calibrator has worked consistently since it was last tested.

Licensees whose level or scope of use does not indicate need for a dose calibrator may request an exemption from this section. The request should be supported by a description of an alternative method that the licensee will use to measure radiopharmaceutical dosages.

#### Section 35.51 Calibration and check of survey instruments.

The 1000 mR/hr limit was chosen because that is the highest radiation exposure rate that is likely to be encountered in the medical environment. The calibration frequency and the other prescriptive and performance requirements in this section are generally consistent with ANSI N323-1978.

#### Section 35.53 Measurement of radiopharmaceutical dosages.

This section requires that the licensee assay the radioactivity of each radiopharmaceutical dosage before it is administered to a patient and keep a

record of the assay results. This is required to ensure that the patient receives the intended dosage. The time at which the measurement must be made has been purposefully omitted to allow for flexibility in licensee's procedures.

A similar requirement was published as a proposed rule on September 1, 1981 (46 FR 43840). The comment period on the proposed rule expired November 30, 1981. The NRC is incorporating the dosage measurement proposal in this revision. The proposed Part 35 dosage measurement requirement differs from the 1981 proposal in its recordkeeping requirement. The Part 35 proposal requires the dosage measurement record to include the patient's name, and identification number if one has been assigned, and prescribed dosage. This information was not required by the 1981 proposal.

#### Section 35.58 Authorization for calibration and reference sources.

These sources are needed to check and test radiation instruments and to mark images. They represent a small radiation hazard in relation to the amount of radioactivity used in patient care. The activity level was chosen to allow licenses to have a range of sources with several energies and half-lives available.

#### Section 35.59 Requirements for possession of sealed sources and brachytherapy sources.

The user must follow the manufacturer's instructions because they have been reviewed for safety considerations by the Commission or an Agreement State.

The six-month test interval has been recommended by the National Council on Radiation Protection and Measurements (NCRP)<sup>1</sup> in Report No. 57, "Instrumentation and Monitoring Methods for Radiation Protection." More frequent testing is inconsistent with ALARA considerations because it would cause worker dose when making the test but provides only a slightly greater probability of finding a leaking source. The test procedures described are intended to maximize the probability of detecting contamination from a leaking source. Report No. 57.

<sup>1</sup>The National Council on Radiation Protection and Measurements (NCRP) is a nonprofit corporation chartered by Congress in 1964 to draft proposed recommendations on protection against radiation and on radiation measurements, quantities, and units, particularly those concerned with radiation protection. Copies of reports may be purchased by contacting NCRP Publications, P.O. Box 30175, Washington, DC 20014.

Section 3.3.5.3 recommends a minimum detectable limit of 0.005 microcuries for equipment used to measure leak test samples. This level is also consistent with the requirements of other parts of the current regulations (see, for example, §§ 31.5 and 34.25), and is only slightly higher than the minimum detectable activity exhibited by instrumentation available to licensees. The Commission has made a judgment that this level provides the most conservative detection level technically achievable at a reasonable cost. It is noted that this requirement would reduce the current permissible amount of detectable contamination from teletherapy sources ten-fold, from 0.05 microcuries to 0.005 microcuries for purpose of consistency.

The Commission has made a judgment that the exempted sources do not present a contamination hazard because of the small amount of radioactivity in the sources, the method in which they are constructed, or the small hazard of the byproduct material. To conduct a physical inventory more frequently than quarterly is inconsistent with ALARA exposure goals. To inventory less frequently may, in case of a misplaced source, allow an unacceptable radiation exposure to go on for too long without detection. The radiation survey assures that sources are safely stored.

#### *Section 35.60 Syringe shields.*

Syringes that contain byproduct material can be an external radiation source and should therefore be shielded at all times. In some cases the use of a shield when making an injection could interfere significantly with the injection. This would jeopardize patient benefit. In such cases the higher radiation exposure to the hands that is received by the technician who does not use a syringe shield is warranted. A shield need not be used when the risk of spoiling the injection is greater than the benefit of reduced worker exposure.

The NRC considered requiring the use of syringe shields when drawing individual dosages from multi-dose vials. That requirement is not included in this proposed revision because it appears that the increased handling required to remove the shield when measuring the dosage may actually increase radiation dose to the hands. However, the NRC is soliciting comments on whether syringe shields should be used when drawing individual dosages.

#### *Section 35.61 Vial shields.*

A vial radiation shield can significantly reduce the radiation exposure to the fingers and hands of an

individual handling a vial of byproduct material.

#### *Section 35.62 Syringe labels, and § 35.63 Vial shield labels.*

Some misadministrations have been caused by accidentally transposing vials or syringes. The proper labelling of containers will help to avoid this type of mistake.

#### *Section 35.70 Surveys for contamination and ambient radiation exposure rate.*

Since radiopharmaceuticals are frequently handled, it is plausible that a syringe or some radioactive waste may be misled. This would result in unnecessary radiation exposure to workers and the public. The exposure rate survey will bring this to the attention of workers. The weekly exposure rate survey of waste storage areas will ensure that exposure rates in that area will be monitored so that special steps can be taken if greater than average use of radiopharmaceuticals results in higher than average exposure rates in the waste storage area.

The Commission knows that a removable contamination wipe test made several days after spillage of a short-lived radiopharmaceutical will probably not detect any contamination. The periodic contamination survey serves as a check of workers' physical control of radiopharmaceuticals. If contamination is found, it indicates that controls or safety measures may be inadequate or are not always being used.

#### *Section 35.75 Release of patients containing radiopharmaceuticals or permanent implants.*

A patient whose body contains byproduct material is a source of external radiation and can be a source of radioactive contamination. The patient should not be released from the clinic or hospital until the residual radioactivity in the patient is at an acceptable level. The Commission proposes to allow patient release limits based on residual activity in the patient or exposure rate at a specified distance from the patient at the licensee's option. The 30 millicuries burden limit is based on a recommendation of the NCRP and current licensing practice. The 6 mR/hr at one meter limit is based on the exposure rate from 30 millicuries of iodine-131, the most commonly used therapeutic radiopharmaceutical; some individuals believe that the exposure rate is more relevant and easier to measure. The Commission believes that either limit provides an adequate

measure of safety for the general public, and that further reductions in public exposure are not reasonably achievable considering the cost and potential for detrimental effect from an unnecessarily long hospital confinement.

#### *Section 35.80 Mobile nuclear medicine service technical requirements.*

The Commission has limited radiopharmaceutical transportation by these licensees to unit dosage and multi-dose vials of prepared radiopharmaceuticals.

The Commission did not authorize transportation of generators because they are needed by persons who do not have daily access to prepared radiopharmaceuticals. That lack of access would be contrary to the geographic proximity required by § 35.38.

The service must remove all radioactive waste generated during the use of byproduct material at a client location of use because the Commission has no assurance that the client is equipped to safely receive and process radioactive waste. Because there is no assurance that the licensee can control access to areas of use while working in a facility that is under another person's administrative control, client facilities should be considered as unrestricted areas, and the licensee must therefore constantly exercise physical control of byproduct material.

Equipment checks are needed to assure the proper function of equipment after transport and before byproduct material is handled. A survey is needed to assure that all byproduct material has been removed from the client location of use. The mobile nuclear medicine service must carry a calibrated survey meter to monitor exposure and contamination in case of any accident that may result in a release of byproduct material.

#### *Section 35.90 Storage of volatiles and gases.*

Some radiopharmaceuticals present an inhalation or immersion source (e.g., volatile iodine-131 and xenon-133 respectively). The chance of exposure can be reduced by storing these materials in a fume hood or multiple barriers (such as a folded plastic bag within a folded plastic bag).

#### *Section 35.92 Decay-in-storage.*

For most hospital radiopharmaceutical waste, decay to background levels is essentially complete over a period of days or months. The waste disposal requirements of § 20.301, directed

primarily at longer half-lived material, are not necessary for short half-lived radiopharmaceutical waste. Therefore, short half-lived waste can be exempted from the requirements of § 20.301. A decay period of ten half-lives was chosen because it represents a thousand-fold reduction in radioactivity. This ensures that, in most cases, byproduct material will have decayed to levels below those in § 30.71, which are quantities that, under certain ordinary conditions, are exempt from a requirement for a specific license. The regulation would only allow decay-in-storage for radioactive material with a half-life of 65 days or less because storage for the required ten half-lives would be in excess of 650 days and more appropriately considered permanent storage. (Consistent with current practice, the Commission will consider, on a case-by-case basis, requests to decay longer-lived material or to decay for fewer half-lives.) Waste must be monitored to assure that long-lived waste was not accidentally mixed with short-lived waste and that no waste has been added to the container since it was sealed. When the waste is monitored, neither the waste nor the survey instrument may have any radiation shielding because it might hide the presence of long-lived byproduct material in the waste. The requirement to remove or obliterate radiation labels is in § 20.203(f)(4) and is included here for completeness. Generator columns must be individually monitored because they contained larger amounts of radioactivity and also may have small amounts of long-lived contaminants.

#### *Subpart D—Uptake, Dilution, and Excretion*

*Section 35.100 Use of radiopharmaceuticals for uptake, dilution and excretion studies, and § 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies (§ 35.200 is also discussed later).*

Drugs approved for human use by the FDA have a label or package insert that specifies the FDA-approved use, physical form, route of administration, and dosage range. NRC relies primarily on FDA's determination of a radioactive drug's safety and effectiveness when it is used according to the package insert. By restricting the physician to the FDA-approved physical form, route of administration, and dosage range, NRC assures the safety of the public while allowing the physician flexibility regarding the choice of the clinical procedure.

The Commission notes that the FDA is considering a change in its regulations for reviewing the safety of investigational new drugs and new uses of approved drugs (see 48 FR 26720, published June 9, 1983). The Commission may revise its regulations regarding investigational new drugs and new uses of approved drugs after reviewing FDA's final rulemaking.

The FDA also authorizes the Radioactive Drug Research Committee (RDRC) at an institution to review and approve the use of radioactive materials for medical use research purposes. The Commission believes that the guidelines used by the FDA when reviewing the credentials of the RDRC members, and the guidelines that the FDA requires the RDRC to use when evaluating research proposals, are adequate to assure the safety of workers and the public without unduly restricting medical research. Therefore, the Commission will continue to allow, on a case-by-case basis, licensees to administer radiopharmaceuticals authorized by an RDRC in accordance with FDA regulations. This authorization was not included in the regulation because only a few licensees request it.

The radiopharmaceuticals listed in § 35.100 were taken from those listed in the current §§ 35.31 and 35.100(a). Those listed in § 35.200 were taken from current §§ 35.100 (b) and (c). Mercury-203 was not included in the proposed revision because the Commission believes that there are other radiopharmaceuticals available that provide equivalent diagnostic information with much less radiation dose to the patient.

Manufacturers are currently distributing generally licensed radiopharmaceuticals under a license issued pursuant to § 32.70. If this revision is adopted by the Commission, these manufacturers would have to apply for a license amendment to distribute radiopharmaceuticals pursuant to § 32.72.

#### *Section 35.120 Possession of survey instrument.*

A low level survey instrument is needed to check areas of use for contamination. Since the total amount of radioactivity used for uptake, dilution, and excretion studies is relatively small, the Commission does not believe the licensee needs an ionization survey instrument to measure dose rates.

#### *Subpart E—Imaging and Localization*

*Section 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.*

Xenon-133 as a gas or as saline solution has been added to this group. Manufacturers are currently distributing the product under a license issued pursuant to Part 30. If this revision is adopted by the Commission, these manufacturers would have to apply for a license amendment to distribute xenon pursuant to § 32.72.

Through continuing medical research, new uses may be found for existing approved radiopharmaceuticals. These new uses, which may require a different dosage, route of administration, or physical form, may not appear on the manufacturer's label or package insert instructions. It was such a situation that resulted in a petition filed by Dr. George V. Taplin (Docket No. PRM-35-1) requesting an exemption for Tc-99m pentetate as an aerosol for lung function studies. A proposed rule was published on April 13, 1982 (47 FR 15798). The comment period on this proposed rule expired June 14, 1982, and 35 comments were received. The NRC adopted the rule in final form without change on February 4, 1983 (48 FR 5217); the preamble of the final rule also described how to apply for future exemption requests. The NRC is incorporating this regulation into this revision of Part 35 without soliciting public comment because of the recentness of the rulemaking and because there are no substantive changes to the rule as adopted.

#### *Section 35.204 Permissible molybdenum-99 concentration.*

Technetium-99m is produced when molybdenum-99 undergoes radioactive decay. When the technetium is separated from the molybdenum, unwanted molybdenum may appear as a contaminant in the technetium solution. The permissible concentration of molybdenum-99 was chosen to be consistent with the permissible concentration listed in the United States Pharmacopeia (USP), the nationwide standard for all pharmaceuticals used in the practice of medicine. It is the judgment of the Commission that the USP standard provides an adequate level of safety and to require a different standard would be confusing and unproductive. Since diagnostic dosages of technetium-99m are generally 30 millicuries or less, the maximum permissible level of molybdenum-99 in such a dosage would result in a patient

receiving an undesired 4.5 microcuries of molybdenum-99. The molybdenum would be taken up primarily by the liver. The dose to the liver would be about 0.2 rads as a result of the molybdenum concentration. The Commission has made a judgment that, by holding the permissible concentration to the required level, the resulting radiation dose is insignificant compared to the radiation dose which would be received by the patient due to the administration of the technetium.

The licensee that elutes the generator must measure and keep a record of the molybdenum concentration. Persons who receive prepared radiopharmaceuticals do not have to make this measurement because the person who prepared it would have made the measurement (see the conforming amendment to § 30.34).

*Section 35.205 Control of aerosols and gases.*

The Commission believes that a system that provides for the collection or controlled dispersal of aerosols and gases is needed to reduce exposure to workers and the public. If control is by dispersal in the atmosphere, licensees should note §§ 20.105 and 20.106, which limit the amount of radioactivity in the effluent stream.

Unlike solid and liquid byproduct materials authorized by this part, gases usually cannot be contained or recovered after a spill. To reduce exposure to workers and the public after a spill, exhaust and dispersal in the atmosphere is commonly used. However, because conventional room ventilation rates are seldom sufficient to clear spilled gas in a timely fashion, the licensee must follow special, room-specific safety measures in case of a gas spill. When making the required exhaust calculation, the licensee must assume that the largest single gas container handled in the area is completely spilled, and may use either ambient or emergency air exhaust rates.

*Section 35.220 Possession of survey instruments.*

The licensee needs a low level survey instrument to check for contamination and an ionization type instrument to measure dose rates in areas where large amounts of radioactive material are stored.

*Subpart F—Radiopharmaceuticals for Therapy*

*Section 35.300 Use of radiopharmaceuticals for therapy.*

The radiopharmaceuticals listed in § 35.300 were taken from those listed in

the current §§ 35.100 (d) and (e). The drugs have been approved for medical use by the FDA.

*Section 35.310 Safety instruction, and § 35.410 Safety instruction.*

In the hospital setting, the use of byproduct material presents special training problems which are not addressed in Part 19 because they are unique to the medical environment. For example, visitor control in a hospital cannot be accomplished by physical barriers which might impede the delivery of emergency medical care to patients. After administration, the byproduct material is contained in an ambulatory human.

Therefore, the Commission has made a judgment that worker instruction in addition to that required by Part 19 is necessary. (This parallels special instruction required, for example, for radiographers and radiographers' assistants pursuant to § 34.31 of the Commission's regulations.)

*Section 35.315 Safety precautions.*

Because of the special contamination hazards of radiopharmaceutical therapy patients, a private room with private sanitary facilities is needed to protect members of the public, who might be visiting nearby patients, from unnecessary exposure to radiation. The RSO must be notified in case of the patient's death or medical emergency in order to determine whether special contamination control procedures must be implemented.

*Section 35.320 Possession of survey instruments.*

The licensee needs a low level survey instrument to check for contamination and an ionization type instrument to measure dose rates in areas where large amounts of radioactive material are stored.

*Subpart G—Sources for Brachytherapy*

*Section 35.400 Use of sources for brachytherapy.*

This section identifies brachytherapy sources that may be used for medical use. The list was taken from the current § 35.100(e), which is a list of sources commonly used for patient care.

*Section 35.404 Release of patients treated with temporary implants.*

A responsibility of the Commission is to restrict the movement of byproduct material when the public exposure would be increased. Brachytherapy sources for temporary implants have high levels of radiation, and remain radioactive for a long period of time. Loss of control of these sources and

their release to unrestricted areas may result in potentially lethal radiation exposure to members of the public. The Commission has made a judgment that temporary confinement of the implant patient is necessary to ensure public safety. Section 35.404 requires that the licensee prevent the patient from leaving the hospital or clinic until all temporary implant sources have been removed. The records required by this section may be amalgamated with the records required by § 35.406; there is no need for duplication.

*Section 35.406 Brachytherapy sources inventory.*

Because of the particular hazard of brachytherapy sources due to their high activity and small size, the Commission believes that an inventory procedure that requires a physical count and a radiation survey log entry each time sources are handled with help to ensure that if a source is misplaced its absence will quickly become apparent to the licensee, which can then promptly begin a search for the source.

*Section 35.415 Safety precautions.*

Because of the high exposure rates around implant patients, a private room is needed to protect members of the public, who might be visiting nearby patients, from unnecessary exposure to radiation. The RSO must be notified in case of the patient's death or medical emergency to ensure that control of implant sources is retained.

*Section 35.420 Possession of survey instrument.*

The licensee needs a high level survey instrument to measure exposure rates in storage areas around a patient's room, and to check to be sure all sources have been removed from the patient before release from confinement.

*Subpart H—Sealed Sources for Diagnosis*

*Section 35.500 Use of sealed sources for diagnosis*

This is a new type of use group established to incorporate the recent development of medical devices that use a sealed source of byproduct material to create a beam of ionizing radiation. These devices are now available to persons licensed to use materials listed in § 35.100(f). Because the devices represent a lower level of hazard than the other sources in that group, the Commission has determined that these devices should comprise a new group.

*Section 35.520 Availability of survey instrument.*

The licensee needs a survey instrument to measure the exposure rates around a packaged sealed source that was just received or that is to be returned to the manufacturer, and to survey for contamination in case of an accident that might have compromised the integrity of the sealed source. However, because a source exchange is an infrequent and scheduled event, and because a hazardous accident would be a very rare occurrence, the Commission believes that it is sufficient, for safety purposes, to require the licensee to make arrangements to borrow or rent an instrument or contract with a measurement service when measurements are necessary.

*Subpart I—Teletherapy*

*Section 35.600 Use of a sealed source in a teletherapy unit.*

This is a new type of use group established to deal with a well-established type of use. Safety measures that now apply to all licensees within this group have been used over the years and are reflected in these proposed regulations.

*Section 35.605 Maintenance and repair restrictions, and § 35.645 Five-year inspection (§ 35.645 is also discussed later).*

These sections provide notice that only specially licensed persons may maintain, adjust, or repair teletherapy units because this type of work requires special training and equipment in order to be done safely. This work is licensed under Part 30 of the Commission's regulations.

*Section 35.606 Amendments.*

Amendments are required for items identified in paragraphs (a) through (e) because any change described in these paragraphs could easily result in an increase in radiation levels in excess of the levels authorized in § 20.105. The service of a qualified teletherapy calibration expert is an essential element in ensuring the safe use of a teletherapy unit. The Commission has made a judgment that only an individual with special training and experience can determine the operating characteristics of the licensee's teletherapy unit and should therefore be identified on the license.

*Section 35.610 Safety instructions.*

Emergency instructions must be posted to remind individuals of the proper steps to be taken in case of an emergency and to identify individuals to

be notified in an emergency. The Commission believes this is also an appropriate place to remind workers that it is important to ensure that only the patient is in the room before turning the unit on. The reminder is necessary because it is possible that when two workers are stationed on one teletherapy unit one worker may inadvertently turn the unit on when the other worker is still in the treatment room, or a worker may turn the unit on to check its operation after a patient or co-worker has entered the treatment room without telling the worker at the control console.

The special instruction for teletherapy workers is needed because this is the one type of medical use of byproduct material in which a worker or member of the public could receive a high, whole body dose in a matter of minutes if the source were not used safely.

*Section 35.615 Doors, interlocks, and warning systems.*

NCRP Report No. 57, "Instrumentation and Monitoring Methods for Radiation Protection," on page 42, states that a survey of a new teletherapy facility must determine that . . . "All entrances into the irradiation room or other high radiation areas are provided with barriers equipped with interlocks that are not dependent on the operation of a single circuit, and that will interrupt radiation production when the barrier is opened." There have been incidents in irradiation facilities in which personnel were unnecessarily exposed to radiation because door interlocks or alarms were intentionally bypassed for convenience. See, for example, cases 19, 21, and 28 in NUREG/BR-0001, "Case Histories of Radiography Events," vol. 1, 1980. If the interlocks and warning systems had not been bypassed, personnel would not have been irradiated. The Commission, however, has made a judgment that the dual warning system of a door interlock and a radiation monitor in the teletherapy room obviates the need for the dual circuit door interlock recommended in the report.

The beam condition indicator light will indicate to workers about to enter the room whether the unit is turned on or off.

*Section 35.620 Possession of survey instrument.*

The licensee needs a survey instrument on hand as a backup room monitoring device in case the radiation monitoring device fails.

*Section 35.621 Radiation monitoring device.*

The radiation monitoring device is needed to indicate radiation levels in the teletherapy room if the interlocks or the warning systems fail. Individuals may be unnecessarily exposed following the failure of the source retraction mechanism coupled with a failure of the primary beam condition indicator system. Therefore, § 35.621 requires licensees to install a permanent radiation monitor in each teletherapy room, to check its operation before using the teletherapy unit, and to use portable survey instrument or personal audible alarm dosimeter if the monitor is inoperable. Similar requirements were published as a proposed rule on April 28, 1982 (47 FR 18131), and were adopted in a final rule published January 18, 1983 (48 FR 2116).

*Section 35.622 Viewing system.*

If a patient moved during a therapy administration, this could result in a radiation dose to healthy tissue and no dose to the treatment area. Therefore, a viewing system is needed to monitor the orientation of the patient and the teletherapy unit to assure the prescribed application of radiation.

*Section 35.630 Dosimetry equipment.*

Dosimetry equipment is needed to measure radiation output. In order to help assure accuracy the equipment must be calibrated. The equipment requirements are the same as the current §§ 35.22 and 35.23. This section also contains the proposed resolution of the petition filed by the American Association of Physicists in Medicine, Petition Docket No. PRM 35-2 [see 47 FR 4311, January 29, 1982]. Currently, regulations require that primary dosimetry equipment be calibrated every two years. The petitioner requested that this two year requirement be relaxed to four years if, two years after calibration, the primary dosimetry system is intercompared with a system that was calibrated within the past two years, and the results of the intercomparison indicate that the calibration factor used to convert an instrument reading to a dose measurement had not changed by more than two percent. (Intercomparison meetings are occasionally scheduled by several qualified teletherapy calibration experts within a geographic area. Each expert takes a dosimetry system of similar metrological quality to the meeting. Each dosimetry system in turn is exposed to the same radiation dose from a teletherapy unit. The response of each dosimetry system can then be

compared to the response of the other systems. If each system measures the same radiation dose in rads, this provides assurance that each system is working properly. Note that when instruments of different metrological quality are exposed to the same radiation dose, it is referred to as a comparison rather than an intercomparison.) This suggestion has been incorporated into these proposed regulations. The petitioner also asked that the licensee be required to make quarterly constancy checks to assure the consistency of operation of the dosimetry system. The Commission did not incorporate this suggestion because it is not aware of any scientific study that shows that such checks, when made with currently available equipment, are capable of detecting small but significant changes in calibration. Therefore, the Commission has no basis to assume that periodic constancy checks would necessarily provide increased assurance of proper operation.

*Section 35.632 Full calibration measurements.*

Full calibrations are needed to ensure that the given dose is the same as the prescribed dose. The required frequency of full calibrations remains unchanged from that of the current Part 35. The test for timer accuracy has been clarified to include on-off error. The accuracy of localization devices that are used to position the teletherapy patient has been added to minimize the risk of unintentional irradiating healthy tissue. The function of mechanical and electrical interlocks that are used to limit the directions in which the beam can be aimed, and thereby reduce the exposure rate in uncontrolled areas, has also been added. The licensee need no longer perform all measurements with a calibrated dosimetry system. Instead, the calibrated dosimetry system need only be used for one representative measurement, and then a relative exposure rate measurement system can be used to complete the calibration. This would allow for use of computer-controlled dosimetry systems that are capable of making precise relative measurements but are not suitable for making absolute output measurements.

The Commission proposes to allow licensees to use either the currently required calibration procedure or a new procedure that was recently published. The new procedure is generally considered more scientifically rigorous, but the Commission believes that either procedure provides an adequate measure of teletherapy dose rate.

The exposure rate from a radioactive source goes down as time progresses

due to source radioactive decay. To ensure accurate dose delivery, the regulation requires that licensees mathematically take this into account in calculating patient doses. The regulation requires that the licensee use time periods of not longer than one month when making decay calculations. This will ensure that the actual dose does not differ from the calculated dose by more than one percent due to this decay error.

*Section 35.633 Periodic spot-checks, and § 35.642 Safety checks for teletherapy facilities.*

A monthly spot-check is required by § 35.22 of the current regulations to ensure that the teletherapy unit is giving the expected radiation dose. The following changes from current requirements have been made. Timer accuracy has been clarified to include on-off error. The accuracy of localization devices has been added. Error in either may result in incorrect administration of radiation. The qualified teletherapy calibration expert must review the results of the spot-check measurements within fifteen days, and must notify the licensee in writing of the results of the monthly check, to assure the licensee and the Commission that the check results were reviewed by a qualified individual. The Commission has made a judgment that a response period of less than fifteen days would be unreasonably expensive.

A requirement to check certain safety systems in the teletherapy facility has been added. These checks are needed to assure that safety systems required by other sections of the regulations are working properly. They need not be performed by the qualified teletherapy calibration expert. Devices that are not working must be promptly repaired in order to assure safety in the teletherapy facility. In case of failure of the viewing system, the regulation would allow the physician to decide whether treatments should be interrupted. This would not relieve the licensee from the requirement to promptly repair the viewing system. The regulation would require that the teletherapy unit not be used in case of door interlock failure because that is the mechanism that protects workers and the public from unintentional irradiation. However, the Commission invites comment as to whether additional administrative procedures or personal supervision would provide an acceptable balance of worker safety and medical use needs.

*Section 35.641 Radiation surveys for teletherapy facilities.*

The Commission has used these maximum and average permissible

source leakage radiation levels for several years as license conditions. They are consistent with guidance from the NCRP in its Report No. 33, "Medical X-ray and Gamma-ray Protection for Energies up to 10 MeV-Equipment Design and Use," Section 4.2.2. The Commission has made a judgment that they are sufficiently restrictive to keep exposures as low as reasonably achievable. The required location of the collimators during the head leakage survey is a new specification. It is based on the fact that, for individuals who receive most of their radiation dose from working around a source in the "off" position, the collimators will normally be at the setting used for the last treatment.

*Section 35.643 Modification of teletherapy unit or room before beginning a treatment program.*

The section is needed to require that licensees take prompt action to reduce exposure rates in uncontrolled areas that may be caused by errors in design or construction of the teletherapy facility.

*Section 35.644 Reports of teletherapy surveys, checks, tests, and measurements.*

Given the potential for high exposure to workers and the public from improperly installed teletherapy units, the radiation survey information required by § 35.644 is needed to assure that teletherapy units have been properly installed and are sufficiently shielded to ensure compliance with the exposure limits of Part 20.

*Section 35.645 Five-year inspection.*

Many licensees replace teletherapy sources at five year intervals. Requiring a mechanical check at five year intervals helps to assure that the source exposure mechanism is in good working order and will not stick in the exposed position. The mechanic who exchanges sources and inspects units can remove the source, inspect the drawer mechanism, and then install the new source. More frequent checks would require greater time near a very radioactive source. Less frequent checks would not be sufficient to assure the continuous proper operation of the exposure mechanism. The identification information in the record is needed to establish which unit was inspected, when, and by whom. The remaining information is needed so the Commission may determine that the inspection was of sufficient depth to assure the health and safety of workers and the public.

### Subpart J—Training and Experience Requirements

A combination of theoretical and practical training and experience is necessary to assure the safe use of byproduct material. The criteria in this subpart were developed by the staff with the advice of the Advisory Committee on the Medical Use of Isotopes (ACMUI). The requirements for the Radiation Safety Officer have not been published before. The requirements for authorized users are similar to those published as an amendment to Appendix A of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," in the Federal Register on December 2, 1982 (47 FR 54378). The requirements for the qualified teletherapy calibration expert are similar to those required of a qualified expert pursuant to the current § 35.24.

Consistent with current practice, if individuals do not meet the training and experience standards, the NRC will review their credentials with regard to the materials requested and these standards and make authorizations on a case-by-case basis.

The Commission has received and is reviewing suggested alternative training standards for some methods of use. The review is being handled as a separate project. If any changes in training standards come out of that project, they will be published for public comment and incorporated into this subpart or elsewhere, as appropriate.

*Sections 35.900(a), 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.941(a), 35.950(a), 35.960(a), and 35.961(a), concerning certification.*

The Commission has made a judgment that in some cases, certification by an appropriate professional board provides proof of adequate training and experience because the criteria which must be met to attain certification are more stringent than the training and experience required by the Commission.

*Section 35.900(c) Authorized user as a Radiation Safety Officer.*

The training and experience required by the Commission includes safety considerations for the byproduct material that the authorized user may use. Therefore, authorized users are qualified to oversee the safe use of byproduct material that they are authorized to use pursuant to the conditions of the license.

*Sections 35.900(b), 35.910(b), 35.920(b), 35.930(b), 35.940(b), 35.941(b), 35.950(b), 35.960(b), and 35.961(b) Training and experience.*

The criteria identified in these sections were developed by the staff with the assistance of the ACMUI over the past several years. The Commission has made a judgment that, for each type of use, the training and experience described is necessary to ensure the safe use of byproduct material. The duration of training and experience is usually specified in classroom (not credit) hours. Training may be received as part of a formal program at an accredited university, at a proprietary school, from an equipment or radiopharmaceutical manufacturer, or elsewhere. NRC will carefully review this information before listing an individual on a license. Supervised work experience must be received at an institution under an authorized user preceptor because usually only such an individual is qualified to teach the clinical use of byproduct material, and, if the experience were not received at an institution, the student would be less likely to receive experience with all the methods of use commonly used or all the management problems associated with the safe handling of byproduct material.

*Sections 35.910(c) and 35.920(c) Integrated programs.*

The Accreditation Council for Graduate Medical Education (ACGME) reviews and approves training programs for physicians. Approval of these training programs is based, in part, on adequate radiation safety content. The Commission has made a judgment that individuals who have successfully completed an approved training program have received sufficient training and experience to use byproduct material safely.

*Sections 35.901 and 35.970 Current Radiation Safety Officers and Authorized users.*

The staff has reviewed and found acceptable the training and experience of each individual who is currently listed as a Radiation Safety Officer or an authorized user. Further review of the credentials of these individuals is unnecessary.

*Section 35.971 Physician training exception.*

In addition to the ACGME, the American Board of Radiology, the American Board of Osteopathic Radiology, and the American Board of Nuclear Medicine review and approve

nuclear medicine training programs for physicians. These three boards independently arrived at the conclusion that, while currently acceptable, a three month training program may not allow sufficient time in the future to provide the training and experience needed to develop a satisfactory level of expertise in nuclear medicine, including radiation safety. All three boards and the ACGME have therefore extended their training programs to six months duration for those who begin their training after June 30, 1984. The Commission has made a judgment that, in the meantime, individuals who have successfully completed an approved three month training program have received sufficient training and experience to use byproduct material safely.

*Section 35.972 Recentness of Training.*

Radiation safety regulations and practices may be expected to change with time. The Commission has made a judgment that training received within the five years preceding submittal of an application is sufficiently up-to-date to assure the safe use of byproduct material. If an individual received training more than five years before the application and has not had continuing involvement in the field, training must be repeated.

*Subpart K—Enforcement*

*Section 35.990 Violations.*

This section gives notice that the Commission will initiate legal proceedings if necessary to enforce requirements.

*Section 35.999 Resolution of conflicting requirements during transition period.*

As discussed before, to allow for an orderly transition from licenses granted under the present regulations to licenses granted under the new regulations, if there is a conflict between the final rule and a licensee's radiation safety program as described in the statements, representations, and procedures submitted in support of the license request, and if the license was issued before the effective date of the final rule and has not been renewed, the requirements and authorizations of the licensee's radiation safety program will take precedence over the final rule. However, if the licensee exercises its right to make a radiation safety program change as authorized under § 35.38, the changed procedure must be in accord with the revised regulation.

## Conforming Amendment

## Section 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

Many medical use licensees now use byproduct material for in vitro work under the provisions of current §§ 31.11 and 35.14(c). The proposed conforming amendment grandfathers them. In the future, new and renewal applicants will have to specifically request permission to use § 31.11 materials as a separate line item on their applications. The use of materials listed in § 31.11 within the inventory limits of that section will only be subject to the requirements of that section; consistent with current regulations, the use of materials listed in § 31.11 will not be subject to the requirements of Parts 19, 20, 21, and 35 except for the Mock Iodine-125 disposal, loss or theft, and notification clause of § 31.11(f).

## Derivation Table

The following derivation table identifies the origin of each section of the proposed regulations. Sources of the proposed regulations include 10 CFR Parts 19, 30, and 35, Federal Register Notices (FR), frequently used license conditions, licensing staff policy, current regulatory guides (RG), Office of Inspection and Enforcement bulletins, the United States Pharmacopeia, and new text prepared by staff.

New Section Number	Origin
<b>Subpart A—General Information</b>	
35.1 Purpose and scope	35.1 revised.
35.2 License required	35.2 revised.
35.8 Reporting recordkeeping, and application requirements; OMB Approval.	New text.
35.15 Definitions:	
Agreement State	20.3.
ALARA	Acronym.
Authorized users	Term used on licenses.
Dentist	New term.
Medical institution	Do.
Management	Do.
Medial use	35.3(a) revised.
Misadministration	35.41.
Mobile nuclear medicine service.	New term.
Output	Do.
Physician	35.3(b) revised.
Podiatrist	New term.
Qualified teletherapy calibration expert.	Do.
Radiation Safety Officer	Term used on licenses.
Sealed source	30.4(r) verbatim.
Visiting authorized user.	New term; similar to "visiting authorized user" license condition.
35.16 Application for license, amendment, or renewal.	35.4 revised.
35.17 License amendments	New text; compare 30.38.
35.18 Notifications	New text.
35.28 License issuance	New text; compare 30.36.
35.29 Specific exemptions.	New text; compare 30.11.

New Section Number	Origin
<b>Subpart B—General Administrative Requirements</b>	
35.30 ALARA program	New text; see RG 10.8 Appendix O revised.
35.31 Radiation Safety Officer	RG 10.8.
35.32 Radiation Safety Committee	35.11(b) revised.
35.33 Requirements for authority and statement of responsibilities.	New text.
35.34 Visiting authorized user	License condition.
35.35 Mobile nuclear medicine service administrative requirements.	Licensing policy.
35.36 Radiation safety program changes.	New text.
35.37 Records and reports of misadministrations.	35.42.
35.38 Supervision	Expanded from RG 10.8 p. 3.
35.49 Suppliers	35.14 revised.
<b>Subpart C—General Technical Requirements</b>	
35.50 Possession, use, calibration, and check of dose calibrators.	RG 10.8 Appendix D2 revised, and new text.
35.51 Calibration and check of survey instruments.	RG 10.8 Appendix D1 revised, and new text.
35.53 Measurement of radio pharmaceutical dosages.	Proposed rulemaking 35.15 (46 FR 43840; September 1, 1981).
35.58 Authorization for calibration and reference sources.	35.14(d) revised.
35.59 Requirements for possession of sealed sources.	35.14(e)(1)(i), 35.14(f) revised.
35.60 Syringe shields	Inspection and Enforcement letter April 16, 1979.
35.61 Vial shields	Inspection and Enforcement letter April 16, 1979.
35.62 Syringe labels	New text.
35.63 Vial shield labels	Do.
35.70 Surveys for contamination and ambient radiation exposure rate.	RG 10.8 Appendix I revised.
35.75 Release of patients containing radiopharmaceuticals or permanent implants.	New text.
35.80 Mobile nuclear medicine service technical requirements.	Licensing policy.
35.90 Storage of volatiles and gases.	RG 10.8 Appendix M revised.
35.92 Decay-in-storage	License condition.
<b>Subpart D—Uptake, Dilution, and Excretion</b>	
35.100 Use of radiopharmaceuticals, for uptake, dilution, and excretion studies.	35.31 and 35.100 (i) revised.
35.120 Possession of survey instrument.	RG 10.8 page 5.
<b>Subpart E—Imaging and Localization</b>	
35.200 Use of radiopharmaceuticals, generators, and reagent kits, for imaging and localization studies.	35.100 (ii) and (iii) revised.
35.204 Permissible molybdenum-99 concentration.	US Pharmacopeia.
35.205 Control of aerosols and gases.	RG 10.8 Appendix M revised.
35.220 Possession of survey instruments.	RG 10.8 page 5.
<b>Subpart F—Radiopharmaceuticals for Therapy</b>	
35.300 Use of radiopharmaceuticals for therapy.	35.100 (iv) and (v) revised.
35.310 Safety instruction	19.12 revised.
35.315 Safety precautions	RG 10.8 Appendix K.
35.320 Possession of survey instruments.	RG 10.8 page 5.
<b>Subpart G—Sources for Brachytherapy</b>	
35.400 Use of sources for brachytherapy.	35.100 (vi) revised.
35.404 Release of patients treated with temporary implants.	35.14(b)(5)(va) revised.
35.408 Brachytherapy sources inventory.	RG 8.18 page 8.

New Section Number	Origin
35.410 Safety instruction	19.12 revised.
35.415 Safety precautions	RG 10.8 Appendix L.
35.420 Possession of survey instruments.	New text.
<b>Subpart H—Sealed Sources for Diagnosis</b>	
35.500 Use of sealed sources for diagnosis.	New text.
35.520 Availability of survey instrument.	New text.
<b>Subpart I—Teletherapy</b>	
35.600 Use of a sealed source in a teletherapy unit.	New text.
35.605 Maintenance and repair restrictions.	License condition.
35.606 Amendments	New text.
35.610 Safety instruction	License condition and new text.
35.615 Doors, interlocks, and warning systems.	License condition.
35.620 Possession of survey instrument.	New text.
35.621 Radiation monitoring device.	35.25 (48 FR 2115; Jan. 18, 1983).
35.622 Viewing system	License condition.
35.630 Dosimetry equipment	35.22, 35.23 revised.
35.632 Full calibration measurements.	35.21 revised.
35.633 Periodic spot-checks	35.22 revised and license condition.
35.641 Radiation surveys for teletherapy facilities.	License condition.
35.642 Safety checks for teletherapy facilities.	License condition.
35.643 Modification of teletherapy unit or room before beginning a treatment program.	New text.
35.644 Reports of teletherapy surveys, checks, tests and measurements.	License condition.
35.645 Five-year inspection	License condition.
<b>Subpart J—Training and Experience Requirements</b>	
35.900 Radiation Safety Officer	New text.
35.901 Training for experienced Radiation Safety Officer.	Do.
35.910 Training for uptake, dilution, and excretion studies.	Do.
35.920 Training for imaging and localization studies.	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
35.930 Training for therapeutic use of radiopharmaceuticals.	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
35.940 Training for therapeutic use of brachytherapy sources.	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
35.941 Training for ophthalmic use of strontium-90.	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
35.950 Training for use of sealed sources for diagnosis.	New text.
35.960 Training for teletherapy	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
35.961 Training for qualified teletherapy calibration expert.	35.24 revised.
35.970 Training for experienced authorized users.	New text.
35.971 Physician training in a three month program.	Do.
35.972 Recentness of training	Revision of Federal Register Notice (47 FR 53476; Dec. 2, 1982).
<b>Subpart K—Enforcement</b>	
35.990 Violations	New text.
35.999 Resolution of conflicting requirements during transition period.	Do.

## Administrative Statements

## Finding of No Significant Environmental Impact: Availability

The Commission is proposing to completely revise the regulations

governing the medical use of byproduct material. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that promulgation of this regulation is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The radiation levels and release of byproduct material authorized by this proposed revision are consistent with the Commission's other regulations and internationally accepted standards. Most radiation experts agree that levels and releases that are within these regulations and standards will not have a significant effect on the quality of the human environment. The assessment analyzes the possible impact of release of radioactive patients, the transportation of byproduct material for medical use, storage, and control of aerosols and gases, waste disposal by decay-in-storage, and dose rates outside teletherapy rooms. The environmental assessment and finding of no significant impact on which this determination is based are available for public inspection at the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. McElroy (See "For further information contact:" heading).

#### *Paperwork Reduction Act Statement*

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

#### *Regulatory Analysis*

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from Mr. McElroy (see "For further information contact:" heading).

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted as indicated in the ADDRESSES heading.

#### *Regulatory Flexibility Certification*

Based on the information available at this stage of the rulemaking proceeding,

in accordance with section 605(b) of the Regulatory Flexibility Act of 1980, the Commission certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The NRC has issued approximately 2500 medical licenses under 10 CFR Part 35. Of these, approximately 2200 are held by institutions, and approximately 300 by individual physicians. Most of the institutional licensees are community hospitals. The Small Business Administration size standards, 13 CFR Part 121, (49 FR 5037; February 9, 1984) classify a hospital or physician's office as a small entity if its average gross annual receipts do not exceed \$3.5 million. Under these size standards, some NRC medical licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act.

The number of medical licensees that would fall into the small entity category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The primary objective of the proposed rule is to simplify the medical licensing process by consolidating requirements without lessening the protection necessary for public health and safety. This will be accomplished through incorporation of frequently used license conditions into the regulations and the elimination or modification of requirements that are not essential to the protection of public health and safety. These steps will make it easier for a licensee to determine what is required to obtain a license and what is required of licensees. Therefore, there should not be a significant economic impact on these small entities.

The Commission has prepared a preliminary regulatory analysis for this proposed regulation which contains information concerning the anticipated economic effect of this regulation on licensees and presents the basis for the Commission's belief that the proposed regulation would not result in significant additional costs to any licensees. It is available for public inspection in the NRC Public Document Room at 1717 H Street NW, Washington, DC. Single copies are available from Mr. McElroy (see "For further information contact:" heading).

Because of the widely differing conditions under which licensees covered by this proposed regulation operate, the Commission specifically seeks public comment from small entities. Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic

impact should notify the Commission of this in a comment that indicates:

- (1) The licensee's size in terms of annual income or revenue, number of employees and, if the licensee is a treatment center, the number of beds and patients treated annually;
- (2) How the proposed regulation would result in a significant economic burden on the licensee as compared to that on a larger licensee;
- (3) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;
- (4) The benefits that would be gained or the detriments that would be avoided to the licensee, if the proposed regulations were modified as suggested by the Commenter; and
- (5) How the regulation, as modified, would still adequately protect public health and safety.

#### **List of Subjects**

##### *10 CFR Part 30*

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation Protection, Reporting and recordkeeping requirements.

##### *10 CFR Part 31*

Byproduct material, Labeling, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

##### *10 CFR Part 32*

Byproduct materials, Labeling, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

##### *10 CFR Part 35*

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

##### *10 CFR Part 40*

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553 the NRC is proposing to adopt the following revision of 10 CFR Part 35 and the following amendments to 10 CFR Parts 30, 31, 32, and 40.

1. 10 CFR Part 35 is revised to read as follows:

## PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

Sec.

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- 35.100 Use of radiopharmaceuticals for uptake, dilution, and excretion studies.
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### Subpart G—Sources for Brachytherapy

- 35.400 Use of sources for brachytherapy.
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- 35.406 Brachytherapy sources inventory.
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- 35.415 Safety precautions.
- 35.420 Possession of survey instrument.

### Subpart H—Sealed Sources for Diagnosis

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- 35.600 Use of a sealed source in a teletherapy unit.
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- 35.643 Modification of teletherapy unit or room before beginning a treatment program.
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### Subpart J—Training and Experience Requirements

- 35.900 Radiation Safety Officer.
- 35.901 Training for experienced Radiation Safety Officer.
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- 35.961 Training for qualified teletherapy calibration expert.
- 35.970 Training for experienced authorized users.
- 35.971 Physician training in a three month program.
- 35.972 Recentness of training.

### Subpart K—Enforcement

- 35.990 Violations.
- 35.999 Resolution of conflicting requirements during transition period.

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.2, 35.17, 35.30 (a) and (b), 35.31 (a) and (b), 35.32, 35.33, 35.34(a), 35.36(a), 35.38, 35.49, 35.50 (a)-(d), 35.51 (a)-(d), 35.53 (a) and (b), 35.59 (a)-(c), (e)(1), (g) and (h), 35.60, 35.61, 35.62, 35.63, 35.70 (a)-(f), 35.75, 35.80 (a)-(e), 35.90, 35.92(a), 35.100(b), 35.120, 35.200 (b) and (c), 35.204 (a) and (b), 35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.621 (a)-(d), 35.621 (f) and (g), 35.622, 35.630 (a) and (b), 35.632 (a)-(f), 35.633 (a)-(i), 35.641 (a) and (b), 35.642 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 35.18, 35.30(c), 35.31(b), 35.32(b), 35.33(b), 35.34 (a) and (c), 35.35(b), 35.36(b), 35.37 (a)-(d), 35.50(e), 35.51(e), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.621(e), 35.630(c), 35.632(g), 35.633(j), 35.641(c), 35.642(c), 35.643(c), 35.644 and 35.645(c) are issued under sec. 161c, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

### Subpart A—General Information

#### § 35.1 Purpose and scope.

This part prescribes requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this part are in addition to, and not in substitution for, others in this chapter. The requirements and provisions of Parts 19, 20, 21, 30, 71, and 170 of this chapter apply to applicants and licensees subject to this part unless specifically exempted.

#### § 35.2 License required.

(a) No person shall manufacture, produce, acquire, receive, possess, use, or transfer byproduct material for medical use except in accordance with a specific license issued by the Commission or an Agreement State and as allowed in paragraph (b) of this section.

(b) An individual may receive, possess, use, or transfer byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in § 35.38, unless prohibited by license condition.

**§ 35.8 Information collection requirements: OMB approval.**

(a) The Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements in this part under control number 3150-

(b) The approved information collection requirements contained in this part appear in §§ 35.16, 35.17, 35.18, 35.30(c), 35.31(b), 35.32(a), 35.33(b), 35.34(c), 35.35(b), 35.36, 35.37(a)-(d), 35.50(e), 35.51(e), 35.53(c), 35.59 (d), (e), (g), and (i), 35.62, 35.63, 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310, 35.315, 35.404(b), 35.406, 35.410(b), 35.606, 35.610, 35.621(e), 35.630(c), 35.632(g), 35.633 (e), and (j), 35.641(c), 35.642(c), 35.643(c), 35.644, and 35.645(c).

**§ 35.15 Definitions.**

"Agreement State" means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended.

"ALARA" means as low as reasonably achievable.

"Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using, or storing byproduct material.

"Authorized user" means a physician, dentist, or podiatrist who is identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material.

"Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry on humans.

"Management" means the chief executive officer.

"Medical Institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Misadministration" means the administration of:

(1) A radiopharmaceutical or radiation from a sealed source other than the one intended;

(2) A radiopharmaceutical or radiation to the wrong patient;

(3) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(4) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 50 percent;

(5) A therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 10 percent; or

(6) A therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10 percent.

"Mobile nuclear medicine service" means the transportation and medical use of byproduct material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

"Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry on humans.

"Qualified teletherapy calibration expert" means the individual identified as the qualified teletherapy calibration expert on a Commission license.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a Commission license.

"Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

"Visiting authorized user" means an authorized user who is not identified on the license of the host.

**§ 35.16 Application for license, amendment, or renewal.**

(a) For use sited in a medical institution, only the institution's management may apply. For use not sited in a medical institution, any person may apply.

(b) An application for a license for medical use of byproduct material as described in §§ 35.100, 35.200, 35.300, 35.400, and 35.500 of this part must be made by filing an original and one copy of Form NRC-313, "Application for Materials License." For guidance in completing the form, refer to the

instructions in Regulatory Guide 10.8 Revision 2, "Guide for the Preparation of Applications for Medical Programs." A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(c) An application for a license for medical use of byproduct material as described in § 35.600 of this part must be made by filing an original and one copy of Form NRC-313. For guidance in completing the form, refer to the instructions contained in Regulatory Guide 10.—, "Guide for the Preparation of Applications for Teletherapy Programs." A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(d) An applicant shall mail the completed request as directed below.

(1) If the applicant is a Federal agency in Region I or is located in Connecticut, the District of Columbia, Delaware, Maine, Massachusetts, New Jersey, Pennsylvania, or Vermont, it shall mail or deliver the completed application form to U.S. Nuclear Regulatory Commission, Region I, Material Licensing, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

(2) If the applicant is a Federal agency in Region II or is located in Virginia, West Virginia, Puerto Rico, or the Virgin Islands, it shall mail or deliver the completed application form to U.S. Nuclear Regulatory Commission, Region II, Material Licensing Section, 101 Marietta Street, Suite 2900, Atlanta, Georgia 30323.

(3) If the applicant is a Federal agency in Region III or is located in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, or Wisconsin, it shall mail or deliver the completed application form to U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

(4) If the applicant is a Federal agency in Region IV or is located in Oklahoma, Montana, South Dakota, or Wyoming, it shall mail or deliver the completed application form to U.S. Nuclear Regulatory Commission, Region IV, Material Licensing Section, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

(5) If the applicant is a Federal agency in Region V or is located in Alaska, Hawaii, or Guam, it shall mail or deliver the completed application form to U.S. Nuclear Regulatory Commission, Region V, Material Licensing Section, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596.

(e) If the applicant is located in a State, territory, or possession that is not mentioned in paragraphs (d) (1) through (5) of this section, it shall:

(1) Mail the completed application form to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or

(2) Deliver the completed application form to the Commission offices at:

(i) 1717 H Street NW., Washington, DC, or

(ii) 7915 Eastern Avenue, Silver Spring, Maryland.

#### § 35.17 License amendments.

A licensee shall apply for and must receive a license amendment:

(a) Before it uses byproduct material for a method or type of medical use not permitted by the license issued under this part;

(b) Before it permits anyone, except a visiting authorized user described in § 35.34, to work as an authorized user under the license;

(c) Before it changes Radiation Safety Officers or Qualified Teletherapy Calibration Experts;

(d) Before it receives byproduct material in excess of the amount authorized on the license; and

(e) Before it adds to or changes the location or locations of use or mailing address identified on the license.

#### § 35.18 Notifications.

A licensee shall notify the Commission by letter within thirty days when an authorized user, Radiation Safety Officer, or Qualified Teletherapy Calibration Expert, permanently discontinues performance of duties under the license. It shall mail the report to the appropriate address identified in § 35.16.

#### § 35.28 License issuance.

The Commission shall issue a license for the medical use of byproduct material for a term of five years if:

(a) The applicant has filed Form NRC-313 "Application for Materials License" in accordance with the instructions in § 35.16;

(b) The applicant has paid any applicable fee as provided in Part 170 of this chapter;

(c) The Commission finds the applicant equipped and committed to observe the safety standards established by the Commission for the protection of the public health and safety; and

(d) The applicant meets the requirements of Part 30 of this chapter.

#### § 35.29 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

#### Subpart B—General Administrative Requirements

#### § 35.30 ALARA program.

(a) Each medical institution licensee shall implement a program to maintain individual and collective dose equivalents as low as reasonably achievable.

(b) To satisfy the requirement of paragraph (a) of this section:

(1) Management, the Radiation Safety Officer, and all authorized users must participate in the establishment, implementation, and operation of the program as required by the regulations or requested by the Radiation Safety Committee.

(2) The program must include an annual review by the Radiation Safety Committee of the types and amounts of byproduct material used, occupational dose reports or summaries, and continuing education and training for all personnel who work with or in the vicinity of byproduct material. The purpose of the review is to ensure that individuals make every reasonable effort to maintain individual and collective occupational dose as low as reasonably achievable, taking into account the state of technology, and the cost of improvements in relation to benefits.

(c) A licensee shall retain a written description of the ALARA program for the duration of the license. The written description must include:

(1) A commitment by management to keep individual and collective occupational dose as low as reasonably achievable;

(2) A requirement that the Radiation Safety Officer brief management once each year on the byproduct material program;

(3) Personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure; and

(4) Personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability or recurrence.

#### § 35.31 Radiation Safety Officer.

(a) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

(b) The Radiation Safety Officer shall:

(1) Investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, and disposals, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(2) Establish and implement written policy and procedures for:

(i) Authorizing the purchase of byproduct material;

(ii) Receiving and opening packages of byproduct material;

(iii) Storing byproduct material;

(iv) Keeping an inventory record of byproduct material;

(v) Using byproduct material safely;

(vi) Taking emergency action if control of byproduct material is lost;

(vii) Performing periodic radiation surveys;

(viii) Performing checks of survey instruments and other safety equipment;

(ix) Disposing of byproduct material;

(x) Training personnel who work in or frequent areas where byproduct material is used or stored;

(xi) Keeping a copy of all records and reports required by the Commission regulations, a copy of these regulations, a copy of each licensing request and license and amendments, and the written policy and procedures required by the regulations.

(3) For medical use not at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management; and

(4) For medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

#### § 35.32 Radiation Safety Committee.

Each medical institution licensee shall establish a Radiation Safety Committee to oversee the use of byproduct material. Management may establish more than one committee to meet these responsibilities.

(a) Each Committee must meet the following administrative requirements:

(1) Membership must consist of at least three individuals and must include an authorized user of each type of use

permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(2) The Committee must meet at least quarterly.

(3) To establish a quorum and to conduct business, one-half of the Committee's membership must be present, including the Radiation Safety Officer and the management's representative.

(4) The minutes of each Radiation Safety Committee meeting must include:

- (i) The date of the meeting;
- (ii) Members present;
- (iii) Members absent;
- (iv) Summary of deliberations and discussions;

(v) Recommended actions and the numerical results of all ballots; and  
(vi) ALARA program reviews described in § 35.30(b)(2).

(5) The Committee must provide each member with a copy of the meeting minutes, and retain one copy for the duration of the license.

(b) To oversee the use of licensed material, the Committee must:

(1) Be responsible for monitoring the institutional program to maintain individual and collective doses as low as reasonably achievable;

(2) Review, on the basis of safety and with regard to the training and experience standards in Subpart J of this part, and approve or disapprove any individual who is to be listed as an authorized user, the Radiation Safety Officer, or Qualified Teletherapy Calibration Expert before submitting a license application or request for amendment or renewal;

(3) Review on the basis of safety and approve or disapprove each proposed method of use of byproduct material;

(4) Review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove procedures and radiation safety program changes;

(5) Review quarterly, with the assistance of the Radiation Safety Officer, occupational radiation exposure records of all personnel working with byproduct material;

(6) Review quarterly, with the assistance of the Radiation Safety Officer, all incidents involving byproduct material with respect to cause and subsequent actions taken;

(7) Review annually, with the assistance of the Radiation Safety Officer, the byproduct material program; and

(8) Establish a table of investigational levels for occupational dose that, when exceeded, will initiate investigations and considerations of action by the Radiation Safety Officer.

#### § 35.33 Requirement for authority and statement of responsibilities.

(a) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority and organizational freedom to:

- (1) Identify radiation safety problems;
- (2) Initiate, recommend, or provide solutions; and
- (3) Verify implementation of solutions.

(b) A licensee shall establish in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee.

#### § 35.34 Visiting authorized user.

(a) A licensee may permit any visiting authorized user to use licensed material for medical use under the terms of the licensee's license for sixty days each year if:

(1) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(2) The licensee has a copy of a Commission or Agreement State license that identifies the visiting authorized user by name as an authorized user for medical use; and

(3) Only those procedures for which the visiting authorized user is specifically authorized by a Commission or Agreement State license are performed by that individual.

(b) A licensee need not apply for a license amendment in order to permit a visiting authorized user to use licensed material as described in paragraph (a) of this section.

(c) A licensee shall retain copies of the records specified in this section for two years after the visiting authorized user's last use of licensed material unless the visiting authorized user has been listed as an authorized user on the licensee's license.

#### § 35.35 Mobile nuclear medicine service administrative requirements.

(a) The Commission will only license mobile nuclear medicine service in accordance with Subparts D, E and H of this part and § 31.11 of this chapter to serve clients who do not have a Commission or Agreement State license for the materials listed in those Subparts.

(b) Mobile nuclear medicine service licensees shall retain for the duration of service a letter signed by the management of each location where services are rendered that authorizes use of byproduct material.

#### § 35.36 Radiation safety program changes.

(a) A licensee may change the radiation safety procedures and equipment that are used to meet regulatory requirements and that were described in the application for license, renewal, or amendment. The licensee may also receive, use, and store licensed material (except teletherapy sources) in areas of use that were not identified in the application for license, renewal, or amendment.

(b) A licensee shall retain for the duration of the license a record of each change. The record must include the effective date of the change, a copy of the old and new radiation safety procedures, equipment descriptions, or area floor plans, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

#### § 35.37 Records and reports of misadministrations.

(a) When a misadministration involves any therapy procedure, the licensee shall notify by telephone the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian), unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this.

(b) Within 15 days after an initial therapy misadministration report to NRC, the licensee shall report, in writing, to the NRC Regional Office initially telephoned and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under paragraph (a) of this section. The written report must include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report must not include the patient's name or other information that could lead to identification of the patient.

(c) When a misadministration involves a diagnostic procedure, the licensee shall notify, in writing, the referring physician and the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. Licensee reports of diagnostic misadministrations are due within 10 days after the end of the calendar quarters (defined by March, June, September and December) in which they occur. These written reports must include the licensee's name; the referring physician's name; a description of the event; the effect on the patient; and the action taken to prevent recurrence. The report should not include the patient's name or other information that could lead to identification of the patient.

(d) Each licensee shall retain for ten years a record of each misadministration. The record must contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number, a brief description of the event, the effect on the patient, and the action taken to prevent recurrence.

(e) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives (or guardians).

#### § 35.38 Supervision.

A licensee who permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user as allowed by § 35.2(b) shall:

(a)(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of byproduct material;

(2) Review the supervised individual's use of byproduct material and the records kept to reflect this use;

(3) Require the authorized user to be immediately available by telephone to the supervised individual; and

(4) Require the authorized user to be able to be physically present and available to the supervised individual on one hour's notice. The supervising authorized user need not be present for each use of byproduct material.

(b) Require the supervised individual receiving, possessing, using or transferring byproduct material under § 35.2(b) to:

(1) Follow the instructions of the supervising authorized user;

(2) Follow the procedures established by the Radiation Safety Officer; and

(3) Comply with the regulations of this part and the license conditions with respect to the use of byproduct material.

#### § 35.49 Suppliers.

A licensee may use for medical use only:

(a) Byproduct material manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the regulations in Part 30 and § 32.72, 32.73, or 32.74 of this chapter or the equivalent regulations of an Agreement State;

(b) Reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval by the Commission pursuant to § 32.73 or an Agreement State under equivalent regulations for the preparation of radiopharmaceuticals for medical use; and

(c) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to Part 30 of this chapter or the equivalent regulations of an Agreement State.

#### Subpart C—General Technical Requirements

##### § 35.50 Possession, use, calibration, and check of dose calibrators.

(a) A medical use licensee authorized to administer radiopharmaceuticals shall have in its possession a dose calibrator and use it to measure the amount of activity administered to each patient.

(b) A licensee shall:

(1) Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this paragraph, the check must be done on a frequently used setting with a sealed source of not less than 10 microcuries of radium-226 or 50 microcuries of any other photon-emitting radionuclide;

(2) Test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, whose activity is at least 10 microcuries for radium-226 and 50 microcuries for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(3) Test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered and 10 microcuries; and

(4) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(c) A licensee shall also perform appropriate checks and tests required by this section following adjustment or repair of the dose calibrator.

(d) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 10 microcuries and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.

(e) A licensee shall retain a record of each check and test required by this section for two years unless directed otherwise. The records required in paragraphs (b)(1) through (b)(4) of this section must include:

(1) For paragraph (b)(1), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(2) For paragraph (b)(2), the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the signature of the Radiation Safety Officer;

(3) For paragraph (b)(3), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the signature of the Radiation Safety Officer; and

(4) For paragraph (b)(4), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for

each volume measured, the date of the test, and the signature of the Radiation Safety Officer.

**§ 35.51 Calibration and check of survey instruments.**

(a) A licensee shall calibrate the survey instruments used to show compliance with this part before first use, annually, and following repair.

(b) To satisfy the requirements of paragraph (a) of this section, the licensee shall:

(1) Calibrate all scale readings up to 1000 milliroentgens per hour with a radiation source;

(2) Calibrate two readings on each scale that must be calibrated; and

(3) Conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(c) To satisfy the requirements of paragraph (b) of this section, the licensee shall:

(1) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 10 percent; and

(2) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent if a correction chart or graph is conspicuously attached to the instrument.

(d) A licensee shall check each survey instrument for proper operation with the dedicated check source before and after each use. The licensee is not required to keep records of these checks.

(e) The licensee shall retain a record of each calibration required in paragraph (a) of this section for two years. To satisfy the requirements of this paragraph, the record must include:

(1) A description of the calibration procedure; and

(2) A description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

**§ 35.53 Measurement of radiopharmaceutical dosages.**

A licensee shall:

(a) Assay before medical use the activity of each radiopharmaceutical dosage that contains more than 10 microcuries of a photon-emitting radionuclide;

(b) Assay before medical use the activity of each radiopharmaceutical dosage with a desired activity of 10 microcuries or less of a photon-emitting

radionuclide to verify that the dosage does not exceed 10 microcuries;

(c) Retain a record of the measurements required by this section for two years. To satisfy this requirement, the record must contain the:

(1) Generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(2) Patient's name and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 10 microcuries;

(4) Date and time of the measurement; and

(5) Initials of the individual who made the measurement.

**§ 35.58 Authorization for calibration and reference sources.**

Any person authorized by § 35.2 for medical use of byproduct material may receive, possess, and use the following byproduct material for check, calibration, and reference use:

(a) Sealed sources manufactured and distributed by a person licensed pursuant to § 32.74 of this chapter or equivalent Agreement State regulations and that do not exceed 6 millicuries each;

(b) Any byproduct material listed in §§ 53.100 or 35.200 with a half-life not longer than 100 days in individual amounts not to exceed 15 millicuries;

(c) Any byproduct material listed in §§ 35.100 or 35.200 with a half-life longer than 100 days in individual amounts not to exceed 200 microcuries each; and

(d) Technetium-99m in individual amounts not to exceed 50 millicuries.

**§ 35.59 Requirements for possession of sealed sources and brachytherapy sources.**

(a) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(b) A licensee in possession of a sealed source shall:

(1) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(2) Test the source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State and described in the label or brochure that accompanies the source.

(c) To satisfy the leak test requirements of this section, the licensee must:

(1) Take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(2) Take the teletherapy source test sample when the source is in the "off" position; and

(3) Measure the sample so that the leakage test can detect the presence of 0.005 microcuries of radioactive material on the sample.

(d) A licensee shall retain leakage test records for two years. The records must contain the model number, and serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(e) If the leakage test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(1) Immediately withdraw the sealed source from use and store it in accordance with the requirements in Parts 20 and 30 of this chapter; and

(2) File a report within five days of the leakage test with the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter, with a copy to Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, describing the equipment involved, the test results, and the action taken.

(f) A licensee need not perform a leakage test on the following sources:

(1) Sources containing only byproduct material with a half-life of less than 30 days;

(2) Sources containing only byproduct materials as a gas;

(3) Sources containing 100 microcuries or less of beta or gamma-emitting material or 10 microcuries or less of alpha-emitting material;

(4) Sources stored and not being used. The licensee shall, however, test each such source for leakage before any use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(5) Seeds of iridium-192 encased in nylon ribbon.

(g) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all such sources in its possession. The licensee shall retain each inventory record for five years. The inventory records must contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its estimated activity, the location of each source, and the signature of the Radiation Safety Officer.

(h) A licensee in possession of a sealed source or brachytherapy source shall survey with a low range survey meter quarterly all areas where such sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(i) A licensee shall retain a record of each survey required in paragraph (h) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured exposure rate at several points in each area expressed in millirem per hour, the model number and serial number of the survey instrument used to make the survey, and the signature of the Radiation Safety Officer.

#### § 35.60 Syringe shields.

(a) A licensee shall keep syringes that contain byproduct material to be administered in a radiation shield.

(b) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield and shall require each individual who administers a radiopharmaceutical by injection to use a syringe radiation shield unless the use of the shield is contraindicated for that injection.

#### § 35.61 Vial shields.

A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

#### § 35.62 Syringe labels.

A licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical, with the radiopharmaceutical's abbreviation or with the type of diagnostic study or therapy procedure to be performed.

#### § 35.63 Vial shield labels.

A licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical with the radiopharmaceutical name or its abbreviation.

#### § 35.70 Surveys for contamination and ambient radiation exposure rate.

(a) A licensee shall survey with a low range survey meter at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(b) A licensee shall survey with a low range survey meter at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(c) A licensee shall conduct the surveys required by paragraphs (a) and (b) of this section so as to be able to measure exposure rates as low as 0.1 milliroentgen per hour.

(d) A licensee shall establish radiation exposure rate action levels for the surveys required by paragraphs (a) and (b) of this section and shall require that the individual performing the survey immediately notify the Radiation Safety Officer if an exposure rate exceeds an action level.

(e) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(f) A licensee shall conduct the surveys required by paragraph (e) of this section so as to be able to detect contamination on each wipe sample of 200 disintegrations per minute.

(g) A licensee shall establish removable contamination action levels for the surveys required by paragraph (e) of this section and shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the action level.

(h) A licensee shall retain a record of each survey for two years. The record must include the date of the survey, a plan of each area surveyed, the action level established for each area, the measured exposure rate at several points in each area expressed in millirem per hour or disintegrations per minute, the model number of the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

#### § 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

(a) A licensee may not authorize release from confinement for medical care any patient administered a radiopharmaceutical until either:

(1) The exposure rate from the patient is less than 6 milliroentgens per hour at a distance of one meter; or

(2) the activity in the patient is less than 30 millicuries.

(b) A licensee may not authorize release from confinement for medical care of any patient administered a permanent implant until the exposure rate from the patient is less than 6 milliroentgens per hour at a distance of one meter.

#### § 35.80 Mobile nuclear medicine service technical requirements.

A licensee providing mobile nuclear medicine service shall:

(a) Transport to each location of use only syringes or vials containing prepared radiopharmaceuticals;

(b) Bring into each location of use all byproduct material to be used and, before leaving, remove all unused byproduct material and all associated waste;

(c) Secure or keep under constant surveillance and immediate control all byproduct material when in transit or at a location of use;

(d) Check survey instruments and dose calibrators as described in §§ 35.50 and 35.51, and check all other transported equipment for proper function before medical use at each location of use;

(e) Carry a calibrated survey meter in each vehicle that is being used to transport byproduct material, and, before leaving a client location of use, survey all radiopharmaceutical areas of use with a low range survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed;

(f) Retain a record of each survey required in paragraph (e) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured exposure rate at several points in each area of use expressed in millirem per hour, the model number of the instrument used to make the survey, and the initials of the individual who performed the survey.

#### § 35.90 Storage of volatiles and gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in a fume hood or in a container with two barriers against release.

#### § 35.92 Decay-in-storage.

(a) A licensee may hold byproduct material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of § 20.301 of this chapter if it:

(1) Holds byproduct material for decay a minimum of ten half-lives;

(2) Monitors byproduct material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a low range survey meter set on its most sensitive scale and with no interposed shielding;

(3) Removes or obliterates all radiation labels; and

(4) Separates and monitors each generator column individually with all radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(b) For paragraph (a) of this section, the licensee shall retain a record of each disposal for two years. The record must include the date of the disposal, the date on which the byproduct material was placed in storage, the model number of the survey instrument used, the background radiation exposure rate, the radiation exposure rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

#### Subpart D—Uptake, Dilution, and Excretion

##### § 35.100 Use of radiopharmaceuticals for uptake, dilution and excretion studies.

(a) A licensee may use the following prepared radiopharmaceuticals for diagnostic studies involving the measurement of uptake, dilution, or excretion:

(1) Iodine-131 as sodium iodide, iodinated human serum albumin (IHSA), labeled rose bengal, or sodium iodohippurate;

(2) Iodine-125 as sodium iodide or iodinated human serum albumin (IHSA);

(3) Cobalt-58 as labeled cyanocobalamin;

(4) Cobalt-60 as labeled cyanocobalamin;

(5) Chromium-51 as sodium chromate or labeled human serum albumin;

(6) Iron-59 as citrate;

(7) Technetium-99m as pertechnetate;

(8) Any byproduct material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

(b) A licensee using a radiopharmaceutical listed in paragraph (a) of this section for a clinical procedure other than one specified in the product label or package insert instructions for use shall comply with the product label or package insert

instructions regarding physical form, route of administration and dosage range.

##### § 35.120 Possession of survey instrument.

A licensee authorized to use byproduct material for uptake, dilution, and excretion studies shall have in its possession a portable low level radiation survey instrument whose most sensitive scale has a full-scale deflection of not more than 1 milliroentgen per hour.

#### Subpart E—Imaging and Localization

##### § 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

(a) A licensee may use the following radiopharmaceuticals, generators, and reagent kits for imaging and localization studies:

(1) Molybdenum-99/technetium-99m generators for the elution or extraction of technetium-99m as pertechnetate;

(2) Technetium-99m as pertechnetate;

(3) Prepared radiopharmaceuticals and reagent kits for the preparation of the following technetium-99m labeled radiopharmaceuticals:

(i) Sulfur colloid;

(ii) Pentetate sodium;

(iii) Human serum albumin microspheres;

(iv) Polyphosphate;

(v) Macroaggregated human serum albumin;

(vi) Etidronate sodium;

(vii) Stannous pyrophosphate;

(viii) Human serum albumin;

(ix) Medronate sodium;

(x) Glucoptate sodium;

(xi) Oxidronate sodium;

(xii) Disofenin; and

(xiii) Succimer.

(4) Iodine-131 as sodium iodide, iodinated human serum albumin, macroaggregated iodinated human serum albumin, colloidal (microaggregated) iodinated human serum albumin, rose bengal, or sodium iodohippurate;

(5) Iodine-125 as sodium iodide or fibrinogen;

(6) Chromium-51 as human serum albumin;

(7) Gold-198 in colloidal form;

(8) Mercury-197 as chlormerodrin;

(9) Selenium-75 as selenomethionine;

(10) Strontium-85 as nitrate;

(11) Ytterbium-169 as pentetate sodium;

(12) Xenon-133 as a gas or saline solution;

(13) Any byproduct material in a diagnostic radiopharmaceutical or any generator or reagent kit for preparation and diagnostic use of a radio-

pharmaceutical containing byproduct material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

(b) A licensee using the radiopharmaceuticals listed in paragraph (a) of this section for clinical procedures other than those specified in the product label or package insert shall comply with the product label or package insert regarding physical form, route of administration, and dosage range.

(c) A licensee shall elute generators and prepare reagent kits in accordance with the manufacturer's instructions.

(d) The following radiopharmaceuticals, when used for the listed clinical procedures, are not subject to the restrictions in paragraph (b) of this section:

(1) Technetium-99m pentetate as an aerosol for lung function studies.

##### § 35.204 Permissible molybdenum-99 concentration.

(a) A licensee may not administer to humans a radiopharmaceutical containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m.

(b) A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract.

(c) A licensee who must measure molybdenum concentration shall retain a record of each measurement for two years. The record must include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries, the measured activity of the molybdenum expressed in microcuries, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium, the date of the test, and the initials of the individual who performed the test.

##### § 35.205 Control of aerosols and gases.

(a) A licensee who administers radioactive aerosols or gases shall do so with a system that will keep airborne concentrations within the limits prescribed by §§ 20.103 and 20.106 of this chapter.

(b) The system must either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(c) A licensee shall only administer radioactive aerosols and gases in rooms

that are at negative pressure compared to surrounding rooms.

(d) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the area of use to the occupational limit listed in Appendix B to Part 20 of this chapter. The calculation must be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(e) A licensee shall post the calculated time at the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed.

(f) A licensee shall check the operation of collection and ventilation systems each six months.

#### § 35.220 Possession of survey instruments.

A licensee authorized to use byproduct material for imaging and localization studies shall have in its possession a portable low level radiation survey instrument whose most sensitive scale has a full-scale deflection of not more than 1 milliroentgen per hour and a portable ion chamber radiation survey instrument that has a scale with a full-scale deflection of 1 roentgen per hour.

#### Subpart F—Radiopharmaceuticals for Therapy

##### § 35.300 Use of radiopharmaceuticals for therapy.

A licensee may use the following prepared radiopharmaceuticals:

(a) Iodine-131 as iodide for treatment of hyperthyroidism, cardiac dysfunction, and thyroid carcinoma;

(b) Phosphorus-32 as soluble phosphate for treatment of polycythemia vera, leukemia, and bone metastases;

(c) Phosphorus-32 as colloidal chromic phosphate for intracavitary treatment of malignant effusions;

(d) Gold-198 as colloid for intracavitary treatment of malignant effusions;

(e) Any byproduct material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA).

##### § 35.310 Safety instruction.

(a) A licensee shall provide oral and written radiation safety instruction for all personnel caring for the patient undergoing radiopharmaceutical therapy. To satisfy this requirement, the

instruction must describe the licensee's procedures for:

- (1) Patient control;
- (2) Visitor control;
- (3) Contamination control;
- (4) Waste control; and
- (5) Notification of the Radiation Safety Officer in case of the patient's death or medical emergency.

(b) A licensee shall keep for two years a list of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

##### § 35.315 Safety precautions.

(a) A licensee shall provide each individual hospitalized for radiopharmaceutical therapy a private room with a private sanitary facility.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

(c) A licensee shall post the patient's door with a "Radioactive Materials" sign and note in the patient's chart where and how long visitors may stay in the patient's room.

(d) The authorized user and Radiation Safety Officer must specifically authorize visits by individuals under age 18 on a case-by-case basis.

(e) The licensee shall either monitor material and items removed from the patient's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a low range survey meter set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste.

(f) The licensee shall survey the patient's room and private sanitary facility for removable contamination before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters.

(g) Within three days after administering a therapeutic dosage of iodine-131, the licensee shall measure the thyroid burden of each individual who helped prepare or administer the dosage, and retain for the period required by § 20.401(c)(1) a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

##### § 35.320 Possession of survey instruments.

A licensee authorized to use byproduct material for radiopharmaceutical therapy shall have

in its possession a portable low level radiation survey instrument whose most sensitive scale has a full-scale deflection of not more than 1 milliroentgen per hour and a portable ion chamber radiation survey instrument that has a scale with a full scale deflection of 1 Roentgen per hour.

#### Subpart G—Sources for Brachytherapy

##### § 35.400 Use of sources for brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(b) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(c) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(d) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;

(e) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions; and

(f) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer.

##### § 35.404 Release of patients treated with temporary implants.

(a) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient to confirm that all sources have been removed. The licensee may not release from confinement for medical care a patient treated by temporary implant until all sources have been removed.

(b) A licensee shall retain a record of patient surveys for two years. Each record must include the date of the survey, the name of the patient, the exposure rate from the patient expressed as millirem per hour and measured within one meter of the patient, and the initials of the individual who made the survey.

##### § 35.406 Brachytherapy sources inventory.

(a) Each time brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count the number returned to ensure that all sources taken from the storage area have been returned.

(b) A licensee shall make a record of brachytherapy source use which must include:

(1) The names of the individuals permitted to handle the sources.

(2) The number and activity of sources removed from storage, the room number of use or patient's name, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage;

(3) The number and activity of sources returned to storage, the room number of use or patient's name, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(c) Immediately after implanting sources in a patient the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(d) A licensee shall retain the records required in paragraphs (b) and (c) of this section for two years.

#### § 35.410 Safety instruction.

(a) The licensee shall provide oral and written radiation safety instruction to all personnel caring for the patient undergoing implant therapy. To satisfy this requirement, the instruction must describe:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions in case of a dislodged source;

(3) Procedures for patient control;  
(4) Procedures for visitor control; and  
(5) Procedures for notification of the Radiation Safety Officer if the patient dies or has a medical emergency.

(b) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

#### § 35.415 Safety precautions.

(a) The licensee shall provide a private room to each individual hospitalized for implant therapy.

(b) The licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

(c) A licensee shall post the patient's door with a "Radioactive Materials" sign and note in the patient's chart where and how long visitors may stay in the patient's room.

(d) The authorized user and Radiation Safety Officer must specifically

authorize visits by individuals under age 18 on a case-by-case basis.

#### § 35.420 Possession of survey instrument.

A licensee authorized to use byproduct material for implant therapy shall have in its possession a portable ion chamber radiation survey instrument that has a scale with a full scale deflection of 1 Roentgen per hour.

### Subpart H—Sealed Sources for Diagnosis

#### § 35.500 Use of sealed sources for diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Iodine-125 as a sealed source in a device for bone mineral analysis;

(b) Americium-241 as a sealed source in a device for bone mineral analysis; and

(c) Iodine-125 as a sealed source in a portable device for imaging.

#### § 35.520 Availability of survey instrument.

A licensee authorized to use byproduct material as a sealed source for diagnostic purposes shall have available for use a portable low level radiation survey instrument whose most sensitive scale has a full-scale deflection of not more than 1 milliroentgen per hour or a portable ion chamber radiation survey instrument that has a scale with a full scale deflection of 1 Roentgen per hour. The instrument must have been calibrated in accordance with § 35.51 of this part.

### Subpart I—Teletherapy

#### § 35.600 Use of a sealed source in a teletherapy unit.

The regulations and provisions of this subpart govern the use of teletherapy units for medical use that contain the following sources.

(a) Cobalt-60 as a sealed source; and

(b) Cesium-137 as a sealed source.

#### § 35.605 Maintenance and repair restrictions.

Only a person specifically licensed by the Commission or an Agreement State to perform teletherapy unit maintenance and repair shall install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source or maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

#### § 35.606 Amendments.

A licensee shall apply for and must receive a license amendment before:

(a) Making any change in the treatment room shielding;

(b) Making any change in the location of the teletherapy unit within the treatment room;

(c) Using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(d) Relocating the teletherapy unit; or

(e) Allowing and individual not listed on the licensee's license to perform the duties of the qualified teletherapy calibration expert.

#### § 35.610 Safety instruction.

(a) A licensee shall post written instructions at the teletherapy unit console. To satisfy this requirement, these instructions must inform the operator of:

(1) The procedure to be followed to ensure that only the patient is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption;

(2) The procedure to be followed if:

(i) The operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) The names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(b) A licensee shall provide instruction in the topics identified in paragraph (a) of this section to all individuals who operate a teletherapy unit.

(c) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (b) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

#### § 35.615 Doors, interlocks, and warning systems.

(a) A licensee shall control access to the teletherapy room by a door at each entrance.

(b) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(1) Prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(2) Turn the primary beam of radiation off immediately when an entrance door is opened; and

(3) Prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(c) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

#### § 35.620 Possession of survey instrument.

A licensee authorized to use byproduct material in a teletherapy unit shall have in its possession either a portable low level radiation survey instrument whose most sensitive scale has a full-scale deflection of not more than 1 milliroentgen per hour or a portable ion chamber radiation survey instrument that has a scale with a full scale deflection of 1 Roentgen per hour.

#### § 35.621 Radiation monitoring device.

(a) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(b) Each radiation monitor must be capable of providing visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source. The visible indicator of high radiation levels must be observable by an individual entering the teletherapy room.

(c) Each radiation monitor must be equipped with an emergency power supply separate from the power supply to the teletherapy unit. This emergency power supply may be a battery system.

(d) Each radiation monitor must be checked for proper operation each day before the teletherapy unit is used for treatment of patients.

(e) A licensee shall maintain a record of the check required by paragraph (d) of this section for two years. The record must include the date of the check, notation that the monitor indicates when the source is and is not exposed, and the initials of the individual who performed the check.

(f) If a radiation monitor is inoperable for any reason, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter must be checked for proper operation at the beginning of each day of use.

(g) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

#### § 35.622 Viewing system.

A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient from the teletherapy unit console during irradiation.

#### § 35.630 Dosimetry equipment.

(a) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met.

(1) The system must have been calibrated by the National Bureau of Standards or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous two years and after any servicing that may have affected system calibration; or

(2) The system must have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system must have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting must be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting must have indicated that the calibration factor of the licensee's system had not changed by more than 2 percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(b) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with paragraph (a) of this section. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in paragraph (a) of this section.

(c) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record must include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by paragraphs (a) and (b) of this section, the correction factors that were deduced, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

#### § 35.632 Full calibration measurements.

(a) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(1) Before the first medical use of the unit; and

(2) Before medical use under the following conditions:

(i) Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) Following replacement of the source or following reinstallation of the teletherapy unit in a new location;

(iii) Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(3) At intervals not exceeding one year.

(b) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

(1) The output within  $\pm 3$  percent for the range of field sizes and for the distance or range of distances used for medical use;

(2) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(3) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(4) Timer accuracy;

(5) On-off error; and

(6) The accuracy of all distance measuring and localization devices in medical use.

(c) A licensee shall use the dosimetry system described in § 35.630(a) to measure the output for one set of exposure conditions. The remaining radiation measurements required in

paragraph (b)(1) of this section may then be made using dosimetry system that indicates relative dose rates.

(d) A licensee shall make full calibration measurements required by paragraph (a) of this section in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in *Physics in Medicine and Biology* Vol. 16, No. 3, 1971, pp. 379-396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in *Medical Physics* Vol. 10, No. 6, 1983, pp. 741-771. Both of these references have been approved for incorporation by reference by the Director of the Federal Register. Copies of the documents are available for inspection or may be obtained from the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies of the documents are also on file at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC. A notice of any change in the material will be published in the *Federal Register*.

(e) A licensee shall correct mathematically the outputs determined in paragraph (b)(1) of this section for physical decay for intervals not exceeding one month.

(f) Full calibration measurements required by paragraph (a) of this section and physical decay corrections required by paragraph (e) of this section must be performed by a qualified teletherapy calibration expert.

(g) A licensee shall retain a record of each calibration for the duration of the license. The record must include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the qualified teletherapy calibration expert.

#### § 35.633 Periodic spot-checks.

(a) A licensee authorized to use teletherapy units for medical use shall

perform spot-checks on each teletherapy unit once in each calendar month.

(b) To satisfy the requirement of paragraph (a) of this section, measurements must include determination of:

- (1) Timer accuracy;
- (2) On-off error;
- (3) The coincidence of the radiation field and the field indicated by the light beam localizing device;
- (4) The accuracy of all distance measuring and localization devices used for medical use;
- (5) The output for one typical set of operating conditions; and
- (6) The difference between the measurement made in paragraph (b)(5) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(c) A licensee shall use the dosimetry system described in § 35.630(b) to make the measurement required in paragraph (b)(5) of this section.

(d) A licensee shall perform measurements required by paragraph (a) of this section in accordance with procedures established by the qualified teletherapy calibration expert. That individual need not actually perform the spot-check measurements.

(e) A licensee shall have the qualified teletherapy calibration expert review the results of each spot-check within 15 days. The qualified teletherapy calibration expert shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for two years.

(f) A licensee authorized to use a teletherapy unit for medical use shall perform spot-checks of each teletherapy facility once in each calendar month.

(g) To satisfy the requirement of paragraph (f) of this section, checks must assure proper operation of:

- (1) Electrical interlocks at each teletherapy room entrance;
- (2) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);
- (3) Beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;
- (4) Viewing systems;
- (5) Treatment room doors from inside and outside the treatment room; and
- (6) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(h) A licensee shall lock the control console in the off position if any door interlock malfunctions. The licensee may not use the unit until the interlock system is repaired.

(i) A licensee shall promptly repair any system identified in paragraph (g) of this section that is not operating properly.

(j) A licensee shall retain a record of each spot-check required by paragraphs (a) and (f) of this section for two years. The record must include the date of the spot-check, the manufacturer's names, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, the measured timer accuracy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

#### § 35.641 Radiation surveys for teletherapy facilities.

(a) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by § 35.606(a)-(d), the licensee shall perform radiation surveys to verify that:

(1) The maximum and average radiation levels at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 10 milliroentgens per hour and 2 milliroentgens per hour, respectively; and

(2) With the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

(i) Radiation quantities in restricted areas adjacent to the treatment room are not likely to cause personnel exposures in excess of the limits specified in § 20.101 of this chapter; and

(ii) Radiation quantities in unrestricted areas adjacent to the

treatment room do not exceed the limits specified in § 20.105(b) of this chapter.

(b) If the results of the surveys required in paragraph (a) of this section indicate any radiation quantity in excess of the respective limit specified in that paragraph, the licensee shall lock the control in the off position and not use the unit:

(1) Except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or

(2) Until the licensee has received a specific exemption pursuant to § 20.501 of this chapter.

(c) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record must include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

#### § 35.642 Safety checks for teletherapy facilities.

(a) A licensee shall promptly check all systems listed in § 35.633(g) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by § 35.606(a)-(d).

(b) If the results of the checks required in paragraph (a) of this section indicate the malfunction of any system specified in § 35.633(g), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(c) A licensee shall retain for two years a record of the facility checks following installation of a source. The record must include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

#### § 35.643 Modification of teletherapy unit or room before beginning a treatment program.

If the survey required by § 35.641 indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by § 20.105(b) of this chapter, before beginning the treatment program the licensee shall:

(a) Either equip the unit with stops or add additional radiation shielding to ensure compliance with § 20.105(b);

(b) Perform the survey required by § 35.641 again; and

(c) Include in the report required by § 35.644 the results of the initial survey, a description of the modification made to comply with paragraph (a) of this section, and the results of the second survey; or

(d) Request and receive a license amendment under § 20.105(a) of this part that authorizes radiation levels in unrestricted areas greater than those permitted by § 20.105(b).

#### § 35.644 Reports of teletherapy surveys, checks, tests, and measurements.

A licensee shall mail an original and a copy of the records required in §§ 35.641, 35.642, 35.643, and the output from the teletherapy source expressed as Roentgens per hour at a distance of one meter from the source and determined during the full calibration required in § 35.632, to the appropriate Commission Regional Office listed in § 35.16 of this part within thirty days following completion of the action that initiated the record requirement.

#### § 35.645 Five-year inspection.

(a) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(b) This inspection and servicing may only be performed by persons specifically licensed to do so by the Commission or an Agreement State.

(c) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record must contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

(d) Amendment to teletherapy licenses that extended the time interval for the inspection and servicing

requirement of paragraph (a) of this section that were in effect on March 4, 1983 remain in effect and are not rescinded by this section.

### Subpart J—Training and Experience Requirements

#### § 35.900 Radiation Safety Officer.

Except as provided in § 35.901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in § 35.32 to:

(a) Be certified by:

(1) American Board of Health Physics in Comprehensive Health Physics;

(2) American Board of Radiology in Radiological Physics, Therapeutic Radiological Physics, or Medical Nuclear Physics; or

(3) American Board of Nuclear Medicine Science in Nuclear Medicine Science; or

(b) Have had 200 hours of classroom and laboratory training and one year of experience as follows:

(1) 100 hours of radiation physics and instrumentation;

(2) 30 hours of radiation protection;

(3) 20 hours of mathematics pertaining to the use and measurement of radioactivity;

(4) 20 hours of radiation biology;

(5) 30 hours of radiopharmaceutical chemistry; and

(6) One year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a Commission or Agreement State license that authorizes the medical use of byproduct material; or

(c) Be an authorized user for those byproduct material uses that come within the Radiation Safety Officer's responsibilities.

#### § 35.901 Training for experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a Commission or Agreement State license on [insert effective date of final rule] who oversees only the use of byproduct material for which the licensee was authorized on that date need not comply with the training requirements of § 35.900.

#### § 35.910 Training for uptake, dilution, and excretion studies.

Except as provided in §§ 35.970 and 35.971, the licensee shall require the authorized user of a radiopharmaceutical listed in § 35.100(a) to be a physician who:

(a) Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology with special competence in nuclear radiology by the American Board of Radiology; or

(3) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

(b) Has completed 80 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and 40 hours of supervised clinical experience.

(1) To satisfy the basic instruction requirement, the classroom and laboratory instruction must include:

(i) 25 hours of radiation physics and instrumentation;

(ii) 25 hours of radiation protection;

(iii) 10 hours of mathematics pertaining to the use and measurement of radioactivity;

(iv) 10 hours of radiation biology; and

(v) 10 hours of radiopharmaceutical chemistry.

(2) To satisfy the requirement for supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and must include:

(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) Administering dosages to patients and using syringe radiation shields;

(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) Patient followup; or

(c) Has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

#### § 35.920 Training for imaging and localization studies.

Except as provided in § 35.970 or 35.971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit listed in § 35.200(a) to be a physician who:

(a) Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology with special competence in nuclear radiology by the American Board of Radiology; or

(3) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

(b) Has completed 200 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, 500 hours of supervised work experience and 500 hours of supervised clinical experience.

(1) To satisfy the basic instruction requirement, the classroom and laboratory training must include:

(i) 100 hours of radiation physics and instrumentation;

(ii) 30 hours of radiation protection;

(iii) 20 hours of mathematics pertaining to the use and measurement of radioactivity;

(iv) 30 hours of radiopharmaceutical chemistry; and

(v) 20 hours of radiation biology.

(2) To satisfy the requirement for supervised work experience, training must be under the supervision of an authorized user at a medical institution and must include:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) Calculating and safely preparing patient dosages;

(iv) Using administrative controls to prevent the misadministration of byproduct material;

(v) Using emergency procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(vi) Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(3) To satisfy the requirement for supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and must include:

(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) Administering dosages to patients and using syringe radiation shields;

(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) Patient followup; or

(c) Has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

#### § 35.930 Training for therapeutic use of radiopharmaceuticals.

Except as provided in § 35.970, the licensee shall require the authorized user of a radiopharmaceutical listed in § 35.300 for therapy to be a physician who:

(a) Is certified in nuclear medicine by the American Board of Nuclear Medicine; or

(b) Has completed 80 hours of instruction in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has had supervised clinical experience.

(1) To satisfy the requirement for instruction, the classroom and laboratory training must include:

(i)

(i) 25 hours of radiation physics and instrumentation;

(ii) 25 hours of radiation protection;

(iii) 10 hours of mathematics pertaining to the use and measurement of radioactivity; and

(iv) 20 hours of radiation biology;

(2) To satisfy the requirement for supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and must include:

(i) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in 10 individuals;

(ii) Use of soluble phosphorus-32 for the treatment of polycythemia vera, leukemia, or bone metastases in 3 individuals;

(iii) Use of iodine-131 for treatment of thyroid carcinoma in 3 individuals; and

(iv) Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in 3 individuals.

#### § 35.940 Training for therapeutic use of brachytherapy sources.

Except as provided in § 35.970, the licensee shall require the authorized user using a brachytherapy source listed in § 35.400 for therapy to be a physician who:

## (a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has completed 200 hours of instruction in basic radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources and 500 hours of supervised work experience and a minimum of three years of supervised clinical experience.

(1) To satisfy the requirement for instruction, the classroom and laboratory training must include:

(i) 110 hours of radiation physics and instrumentation;

(ii) 40 hours of radiation protection;

(iii) 25 hours of mathematics pertaining to the use and measurement of radioactivity; and

(iv) 25 hours of radiation biology.

(2) To satisfy the requirement for supervised work experience, training must be under the supervision of an authorized user at an institution and must include:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Checking survey meters for proper operation;

(iii) Preparing, implanting, and removing sealed sources;

(iv) Using administrative controls to prevent the misadministration of byproduct material; and

(v) Using emergency procedures to control byproduct material.

(3) To satisfy the requirement for a period of supervised clinical experience, training must include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience must include:

(i) Examining individuals and reviewing their case histories to determine their suitability for

brachytherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper brachytherapy sources and dose and method of administration;

(iii) Calculating the dose; and

(iv) Post-administration followup and review of case histories in collaboration with the authorized user.

**§ 35.941 Training for ophthalmic use of strontium-90.**

Except as provided in § 35.970, the licensee shall require the authorized user using only strontium-90 ophthalmic radiotherapy to be a physician who:

(a) Is certified in radiology or therapeutic radiology by the American Board of Radiology; or

(b) Is in the active practice of therapeutic radiology or ophthalmology, and has completed 24 hours of instruction in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy.

(1) To satisfy the requirement for instruction, the classroom and laboratory training must include:

(i) 6 hours of radiation physics and instrumentation;

(ii) 6 hours of radiation protection;

(iii) 4 hours of mathematics pertaining to the use and measurement of radioactivity; and

(iv) 8 hours of radiation biology.

(2) To satisfy the requirement for a period of supervised clinical training in ophthalmic radiotherapy, training must be under the supervision of an authorized user at a medical institution and must include the use of strontium-90 for the ophthalmic treatment of five individuals that includes

(i) Examination of each individual to be treated;

(ii) Calculation of the dose to be administered;

(iii) Administration of the dose; and

(iv) Followup and review of each individual's case history.

**§ 35.950 Training for use of sealed sources for diagnosis.**

Except as provided in § 35.970, the licensee shall require the authorized user using a sealed source in a device listed in § 35.500 to be a physician, dentist, or podiatrist who:

(a) Is certified in

(1) Radiology, diagnostic radiology with special competence in nuclear radiology, or therapeutic radiology by the American Board of Radiology;

(2) Nuclear medicine by the American Board of Nuclear Medicine; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(b) Has completed 8 hours of instruction in basic radioisotope handling techniques specifically applicable to the use of the device. To satisfy the requirement for instruction, the training must include:

(1) 3 hours of radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(2) 3 hours of radiation biology; and

(3) 2 hours of radiation protection and training in the use of the device for the purposes authorized by the license.

**§ 35.960 Training for teletherapy.**

Except as provided in § 35.970, the licensee shall require the authorized user using a sealed source listed in § 35.600 in a teletherapy unit to be a physician who:

(a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.

(1) To satisfy the requirement for instruction, the classroom and laboratory training must include:

(i) 110 hours of radiation physics and instrumentation;

(ii) 40 hours of radiation protection;

(iii) 25 hours of mathematics pertaining to the use and measurement of radioactivity; and

(iv) 25 hours of radiation biology.

(2) To satisfy the requirement for supervised work experience, training must be under the supervision of an authorized user at an institution and must include:

(i) Review of the full calibration measurements and periodic spot checks;

(ii) Preparing treatment plans and calculating treatment times;

(iii) Using administrative controls to prevent misadministrations;

(iv) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) Checking and using survey meters.

(3) To satisfy the requirement for a period of supervised clinical experience, training must include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience must include:

(i) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper dose and how it is to be administered;

(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(iv) Post-administration followup and review of case histories.

**§ 35.961 Training for qualified teletherapy calibration expert.**

The licensee shall require the qualified teletherapy calibration expert to:

(a) Be certified by the American Board of Radiology in:

(1) Therapeutic radiological physics;

(2) Roentgen ray and gamma ray physics;

(3) X-ray and radium physics; or

(4) Radiological physics; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full time training in therapeutic radiological physics and also one year of full time work experience under the supervision of a qualified teletherapy calibration expert at a medical institution. To satisfy this requirements, the neophyte qualified teletherapy calibration expert must have performed the tasks listed in §§ 35.59, 35.632, 35.633, and 35.641 of this part under the supervision of a qualified teletherapy calibration expert during the year of work experience.

**§ 35.970 Training for experienced authorized users.**

Physicians, dentists, or podiatrists identified as authorized users for the human use of byproduct material on a Commission or Agreement State license on [insert effective date of final rule] who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of Subpart J.

**§ 35.971 Physician training in a three month program.**

A physician who, before July 1, 1984, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with requirements of §§ 35.910 or 35.920.

**§ 35.972 Recentness of training.**

The training and experience specified in this subpart must have been obtained within the five years preceding the date of application or the individual must have had continuing experience since the required training and experience was completed.

**Subpart K—Enforcement**

**§ 35.990 Violations.**

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) Any rule, regulation, or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed for violation of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 under section 234 of the Atomic Energy Act of 1954;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule regulation, or order issued under these Acts;

(4) Any term condition, or limitation of any license issued under these Acts; or

(5) Any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any rule, regulation, or order issued under the Act may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both as provided by law. Regulations issued under the Act include regulations issued under section

161, and cited in the authority citation at the beginning of this part for the purposes of section 223.

**§ 35.999 Resolution of conflicting requirements during transition period.**

If the rules in this part conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Commission before [insert effective date of final rule] and has not been renewed, then the requirements in the license will apply.

**PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

2. The authority citation for Part 30 continues to read as follows:

**Authority:** Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

3. Section 30.4 is amended by revising paragraphs (h) and (l) to read as follows and by adding new paragraphs (y) and (z) as follows:

**§ 30.4 Definitions.**

(h) "Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico in the practice of medicine.

(l) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine;

(y) "Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry on humans.

(z) "Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry on humans.

4. Section 30.34 is amended by revising paragraph (g) to read as follows:

**§ 30.34 Terms and conditions of licenses.**

(g) A licensee may prepare technetium-99m radiopharmaceuticals

only with technetium-99m that contains less than 0.15 microcuries of molybdenum-99 per millicurie of technetium-99m. The licensee shall perform tests and maintain the records required by § 35.204.

#### PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

5. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

6. Section 31.11 is amended by revising paragraph (b) to read as follows:

##### § 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

(b) No person shall receive, acquire, possess, use, or transfer byproduct material pursuant to the general license established by paragraph (a) of this section unless that person:

(1) Has filed Form NRC-483, "Registration Certificate—In Vitro Testing with Byproduct Material Under General License," with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and received from the Commission a validated copy of Form NRC-483 with a registration number assigned;

(2) Has a license that authorizes the medical use of byproduct material and that expires before *[insert five years after effective date of final rule]*; or

(3) Has a license that authorizes the medical use of byproduct material and also authorizes the use of byproduct material consistent with the requirements of this section.

#### PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIALS

7. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

##### § 32.70 [Removed]

8. Section 32.70 is removed.

9. In § 32.72 the introductory text of paragraph (a) and paragraph (a)(4)(i) are revised to read as follows:

##### § 32.72 Manufacture and distribution of radiopharmaceuticals containing byproduct material for medical use under group licenses.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing byproduct material for use by persons authorized pursuant to Part 35 of this chapter will be approved if:

(4)(i) The label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity, and date of assay, and the label, or the leaflet or brochure that accompanies each package, contains a statement that the radiopharmaceutical is licensed by the U.S. Nuclear Regulatory Commission for distribution to persons licensed to use byproduct material listed in §§ 35.100, 35.200, or 35.300, as appropriate, or under an equivalent license of an Agreement State.

10. In § 32.73 paragraph (a)(5)(ii) is revised to read as follows:

##### § 32.73 Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing byproduct material.

(a) \* \* \*

(5) \* \* \*

(ii) A statement that this generator or reagent kit (as appropriate) is approved for distribution to persons licensed by the U.S. Nuclear Regulatory Commission to use byproduct material identified in § 35.200 or under an equivalent license of an Agreement State.

11. In § 32.74 the introductory text of paragraph (a) and paragraph (a)(3) are revised to read as follows:

##### § 32.74 Manufacture and distribution of sources or devices containing byproduct material for medical use.

(a) An application for a specific license to manufacture and distribute sources and devices containing byproduct material to persons licensed pursuant to Part 35 of this chapter for use as a calibration or reference source or for the uses listed in §§ 35.400 and 35.500 of this chapter will be approved if:

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the (name of source or device) is licensed by the U.S. Nuclear Regulatory Commission for distribution to persons licensed to use byproduct material identified in §§ 35.58, 35.400, or 35.500, as appropriate, or under an equivalent license of an Agreement State.

#### PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

12. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

13. Section 40.4 is amended by revising paragraph (g) to read as follows:

##### § 40.4 Definitions.

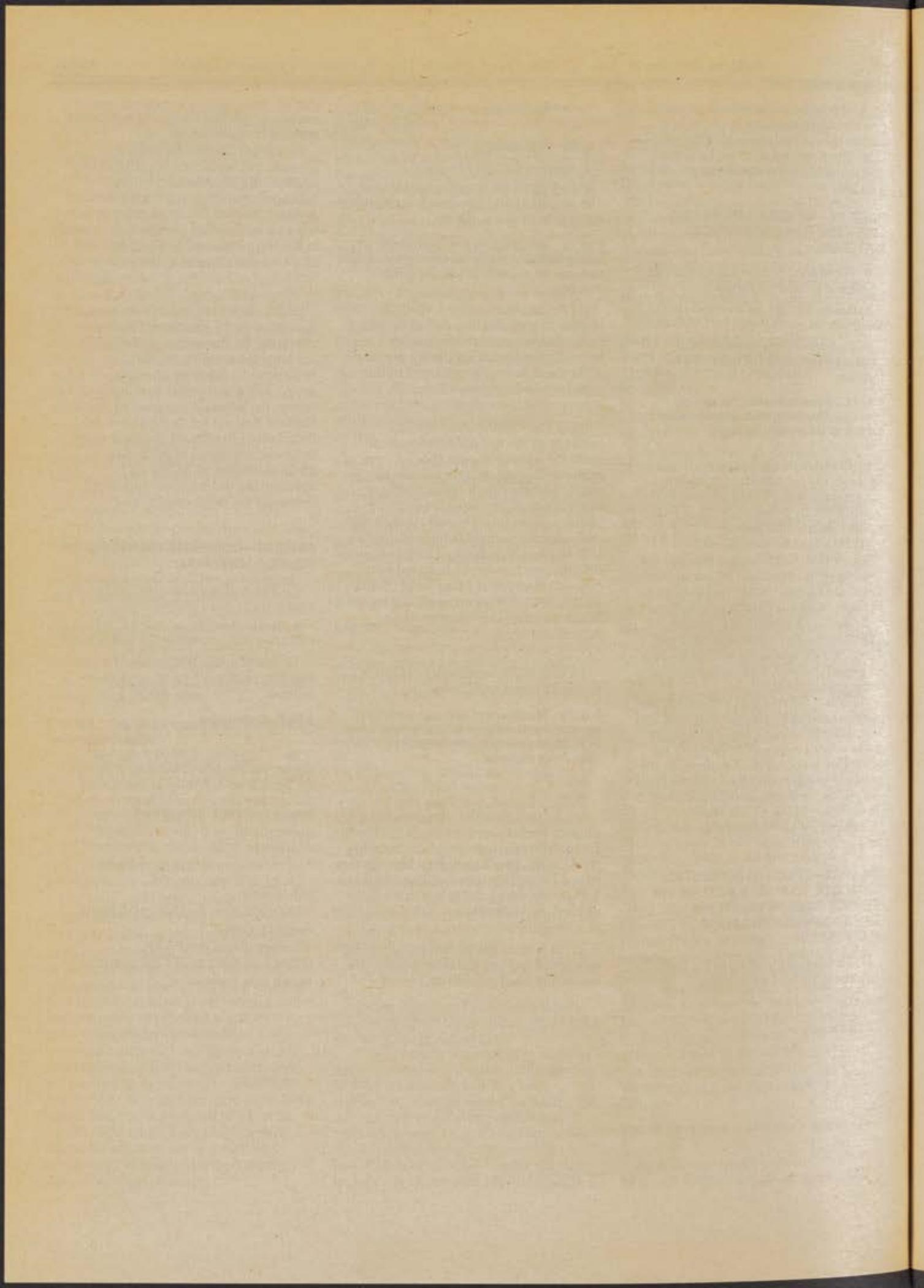
(g) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine:

Dated at Washington, D.C., this 22nd day of July 1985.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,  
Secretary of the Commission.

[FR Doc. 85-17233 Filed 7-25-85; 8:45 am]

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Friday  
July 26, 1985

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## Part V

### **Pacific Northwest Electric Power and Conservation Planning Council**

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Northwest Conservation and Electric  
Power Plan; Proposed Model  
Conservation Standard Amendments,  
Hearings, and Public Comment Period;  
Notice

**PACIFIC NORTHWEST ELECTRIC  
POWER AND CONSERVATION  
PLANNING COUNCIL**

**Northwest Conservation and Electric  
Power Plan; Proposed Model  
Conservation Standard Amendments,  
Hearings, and Public Comment Period**

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council), DOE.

**ACTION:** Notice of proposed amendments, hearings, and opportunity to comment.

**SUMMARY:** On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS) (48 FR 24493, June 1, 1983). The Council now proposes to amend portions of the Plan relating to the MCS. This notice describes the proposed amendments and explains how to participate in the amendment process. Because the matters being considered would affect upcoming implementation schedules, these MCS-related amendments are being considered separately from the current revision of the Plan which will be the subject of a separate hearing and comment process. Following that process, the MCS provisions adopted by the Council may be the subject of further technical and nonsubstantial amendments necessary to ensure that the format, numbering and other editorial aspects of the MCS provisions are then consistent with the revised plan. Nevertheless, those interested in commenting on the MCS should expect to do so only in the hearings on the MCS described in this notice. MCS comments will not be relevant or timely in the Council's process on the revised plan as a whole, as the Council expects to have completed its decisionmaking on the MCS in September, 1985, well in advance of its decision on the revision of the plan which is currently not scheduled until December, 1985.

**DATES AND ADDRESSES:** The public comment period regarding the proposed amendments to the MCS closes at 5 p.m. Pacific time on August 26, 1985. Public hearings on the proposed amendments to the MCS will be held at the following places and times:

- Spokane, Washington, 3:30 p.m. to 5:00 p.m., August 20, 1985, Spokane Convention Center, Meeting Room A, W. 334 Spokane Falls Blvd., Spokane, Washington.
- Seattle, Washington, 9:00 a.m. to 11:00 a.m., August 20, 1985, at the

Federal Building, Room 2866, 915 Second Avenue, Seattle, Washington.

- Burley, Idaho, 1 p.m., August 22, 1985, at the Burley Inn, 800 N. Overland Ave., Burley, Idaho.
- Portland, Oregon, 9 a.m., August 6, 1985, at the Council's Central Office, 850 S.W. Broadway, Suite 1100, Portland Oregon.
- Missoula, Montana, 10 a.m., August 23, 1985, at the Missoula Sheraton, 200 South Pattee Street, Missoula, Montana.

The Council currently expects to take final action on proposed MCS-related amendments at its September 18-19, 1985 meeting in Portland, Oregon. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and in accordance with the Council's practice of providing notice of its meeting agendas.

**Guidelines for Presenting Oral  
Comments at Hearings**

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon) no later than two work days before the hearing.
2. Those who do not reserve time periods will be permitted to present oral comments as time permits.
3. Use the hearing to *summarize* written comments. The comments themselves should not be read.
4. If possible, ten (10) copies of written comments should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members and will be identified at the start of the hearing by the hearing chairman. When preparing these copies, refer to the instructions below for written comments.
5. Comment time may be limited on those occasions when the number of people signed up to testify is sufficiently large that it will be necessary to impose limits in order to allow all commenters a hearing. A 15-minute guideline is suggested.
6. Appearance at more than one hearing is unnecessary. At each hearing, scheduling preference will be given to individuals and groups which have not testified at other hearings.

**Guidelines for Submitting Written  
Comments**

1. All written comments must be received in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon, 97205 by 5 p.m. Pacific

time on Monday, August 26, 1985. Comments should be submitted to the attention of Dulcy Mahar at this address.

2. Comments should be clearly marked "Model Conservation Standard Comments"

3. Written comments should be specific and concise and refer to sections or page numbers in the proposed MCS amendments.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-spaced) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

**FOR FURTHER INFORMATION CONTACT:** Dulcy Mahar, Director of Public Information and Involvement, at the address and telephone numbers listed above.

**SUPPLEMENTARY INFORMATION:** As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, "the Act"), the Council adopted a plan including MCS for new structures and for existing structures which are converted to electric space heating/conditioning. The MCS were designed to produce all electric power savings that are cost effective for the region and economically feasible for consumers. The standards for new residential structures are set forth in section 2 of the Council's current Two Year Action Plan (Chapter 10 of the Plan) and establish annual performance budgets for electric space heating for each of the Pacific Northwest's climate zones.<sup>1</sup> The standard for new commercial construction is described in section 6 of the current Two-Year Action Plan and is a modified version of the most recent model energy code of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), ASHRAE 90-80. The standards for existing residential structures which

<sup>1</sup> In January, 1985, the Council amended the MCS to correct two technical, nonsubstantial errors. These corrections changed the energy performance budgets for single family residences in climate zones 2 and 3. (50 FR 5021, Feb. 5, 1985). In August, 1984, the Council made technical, nonsubstantial amendments to the MCS, pursuant to settlement of a lawsuit filed by representatives of the natural gas industry, to clarify that the MCS applied only to residential structures using electric space heating and to commercial structures using electric space heating or space conditioning (49 FR 34118, August 28, 1984).

convert to electric space heating and for existing commercial structures which convert to electric space heating and/or conditioning are described in section 3 and 7 of the Council's current Two-Year Action Plan, respectively.

The Act also authorized the Council to recommend that the Bonneville Power Administration (BPA) impose a minimum 10 percent rate surcharge upon electric utilities for those portions of their loads within jurisdictions which do not, or upon utilities which do not, implement the MCS or achieve comparable savings. In the Plan, the Council set a January 1, 1986 deadline for adoption of all aspects of the MCS or comparable programs and recommended that BPA impose surcharges after that date. This deadline applied to the MCS for new residential and commercial structures and for existing structures converted to electric heating or space conditioning.

The Plan also called on BPA to implement various educational, technical and financial assistance programs to further adoption of the MCS. One of these programs, the Residential Standards Demonstration Program (RSDP) was designed to provide designers, builders, subcontractors, materials suppliers and building code officials with experience in the construction of residences meeting the MCS. The RSDP involves more than 400 residences across the region built to the energy efficiency requirements of the MCS, as well as a "control group" of homes built to current practice. All RSDP buildings are metered to allow comparison of the amount of electricity each consumes for space heating, water heating and other uses.

As a result of incentive efforts called for in the Plan and implemented by BPA, several jurisdictions in the region (including the City of Tacoma, Washington) have already adopted and begun to enforce the MCS. Also, largely in response to the Council's Plan, the State of Washington recently authorized its Building Code Council to promulgate for adoption a statewide energy code incorporating a number of the efficiency requirements of the MCS.

BPA also initiated a marketing program, Super Good Cents, aimed at achieving a target of 5,000 houses being built to the Council's standard during fiscal year 1986. Houses built and marketed through the Super Good Cents program will be certified as energy efficient by electric utilities. Certification is designed to encourage lenders, sellers and buyers to view the certification as adding value to the house because it is less expensive to

heat. Also, through development of a surcharge policy, BPA is establishing a procedure to test the compliance of utility-designed programs in gaining savings of electricity equivalent to the MCS. Finally, BPA has a continuing program to help train and educate the building industry to construct more efficient buildings.

Based upon its review of preliminary data and builder experience resulting from the RSDP and the early-adopting jurisdictions, the Council now believes that some amendment of the Plan may be necessary to permit additional time for the regional transition from current building practice to the levels of energy efficiency called for in the MCS. At a Council meeting held on March 13, 1985, Council staff presented an issue paper ("Model Conservation Standards Review") which concluded that, while the preliminary cost data from the RSDP support the efficiency levels called for in the MCS, some delay in implementation of the MCS may be necessary to provide additional time to resolve difficulties encountered by some builders in making the transition to the energy-efficient building practices called for by the MCS.

The Council now seeks public comment on the proposed amendments described below. The Council particularly encourages submission of comments addressing the following issues:

- the MCS as "lost opportunity resources" (i.e., the value to the region of acting promptly to acquire cost-effective electric power savings that may not be available as inexpensively later, if at all);
- indoor air quality;
- achievable market share rates for the 1989 MCS for new structures, both before and after the January 1, 1989 deadline; and
- appropriate levels of incentive payments for construction of new structures to the requirements of the 1989 MCS.

#### Proposed Amendments

If adopted by the Council, the proposed amendments would amend Volume I, Chapter 10, Section 2 of the Plan, "Residential Sector-New Building Standard"; Section 3, "Residential Sector-Conversion Standard"; Section 6, "Commercial Sector-New Building Standard"; Section 7, "Commercial Sector-Conversion Standard"; Section 8, "Commercial Sector-Demonstration Program"; Action Item 12.1, dealing with BPA reimbursement to state and local governments for the cost of adopting the MCS; and Section 25, "Method for Calculating Surcharges," by deleting the

existing text and related appendices and replacing them with the following.

#### Model Conservation Standards for New Electrically Heated Residential Structures and New Electrically Space Conditioned Commercial Buildings and Buildings That Are Converted to Electric Space Heating and Conditioning

The model conservation standards described below may be adopted and enforced by a state or local government or by utilities where utilities are legally authorized to do so. For those jurisdictions which choose not to adopt and enforce the applicable standards, affected electric utilities should prepare by the dates provided in Section E of this rule a description of an alternative program for achieving savings of electricity that are comparable to those achievable through the use of the standards. The alternative program may employ marketing and incentive programs, electric service requirements, rate designs, or other techniques for achieving conservation. Some pre-approved alternative plans are included here and in BPA's currently proposed surcharge policy. Failure to implement the standards or achieve comparable savings of electricity will subject utilities to the Council's surcharge provisions (see Method for Calculating Surcharges, Appendix A to this rule).

#### A. Level and Timing of the Model Conservation Standards

The proposed amendments described below do not represent a radical departure from the MCS the Council formulated in its 1983 Plan. No changes are proposed to the level of the commercial standard for new buildings, the conversion standard for existing residential and commercial buildings, or the full residential standard for new buildings required by 1989. The only change in level is the interim standard for new residential buildings required by 1987. The proposed amendments would, if adopted, change the timing of the standards. Rather than requiring that all the standards be adopted by January 1, 1986 in order to avoid the surcharge, the deadline for adoption of the full residential standards for new structures would be January 1, 1989, and an interim residential standard for new structures would be required by January 1, 1987. The deadline for adoption of the standard for new commercial buildings would be January 1, 1987. The deadline for adoption of the conversion standard for existing residential and commercial structures would be January 1, 1989. A summary of the level and timing of the standards which would result from the

proposed amendments appears in Exhibit A.

Exhibit A.—Summary of Model Conservation Standards and Their Effective Dates

Effective date	New residential buildings	New commercial buildings	Residential buildings converted to electric heating	Commercial buildings converted to electric heating or air conditioning
Jan. 1, 1987	Component prescriptive standard for three climate zones. Component trade-offs allowed via a point system similar to the one used by BPA in the Residential Standards Demonstration Program (RSDP) (see Table 1 for details).	Modified ASHRAE 90-80 with lighting budgets from the Seattle Energy Code, except for office and retail buildings which have lighting budgets of 1.5 watts per square foot. An additional allowance for spot and task lighting of 1.5-3.0 watts per square foot is provided for retail buildings less than 20,000 sq. ft.	No requirement.	No requirement.
Jan. 1, 1989	Component prescriptive standard comparable to Council's 1983 standard (see Table 2 for more details).	do	Structures receiving building permits before Jan. 1, 1989 must be weatherized to the regionally cost-effective level defined in the Council's plan. Structures receiving building permits after Jan. 1, 1989 must be weatherized to the level indicated in Table 2.	Buildings receiving building permits before Jan. 1, 1987 must undergo an energy audit and meet certain efficiency standards. Commercial buildings receiving a building permit after Jan. 1, 1987 must be upgraded to the level of the commercial standard effective on Jan. 1, 1987.

### 1. New Residential Buildings (Single and Multifamily) <sup>1</sup>

New buildings present one of the most significant opportunities for achieving cost-effective conservation. The installation of measures is far less expensive at the time of construction, and many conservation measures can be incorporated at the time of construction but cannot be installed later without making structural changes to the building. With residential buildings lasting 50 years or more, it is vital to ensure that any building using electric space heating is built to efficient standards—even during periods of a surplus of electric power. Unless all cost-effective measures are installed at the time of construction, an important energy-saving resource may be lost to the region forever. The Council's model conservation standards are intended to capture these "lost opportunity" resources while they are available.

The Council's model standards for new residential buildings are specified for three climate zones <sup>2</sup> in the form of a generalized prescriptive path. The standard which should be in effect in each climate zone by January 1, 1987 is that level of electric energy efficiency which would be realized through the use of the illustrative prescriptive path shown in Table 1 below. The standard which should be in effect in each climate zone by January 1, 1989 is that level of electric energy efficiency which

would be realized through the use of the illustrative prescriptive path shown in Table 2 below. The Council believes that designers and builders should be permitted to select any means to achieve savings of electricity comparable to those that would be realized through the use of these generalized paths. For example, a dwelling could attain the Council's standard by containing a lower level of insulation, while containing more efficient windows or a heat pump.

The Council, after carefully reviewing all of the data available to it on the MCS, has determined that these standards represent regionally cost-effective investments in electric space heating conservation in new dwellings and at the same time are economically feasible for consumers, taking into account BPA incentives available under Section C of this rule. <sup>3</sup> The Council has not analyzed the economic feasibility or cost-effectiveness of these standards for consumers of other space heating fuels. The Council's standards for new residential construction apply only to locally regulated structures. They do not apply to structures regulated by the U.S. Department of Housing and Urban Development's Federal Manufactured Home Construction and Safety Standards for manufactured housing.

\* To meet the model conservation standard for new residences, a state, local government or utility should:

(a) By January 1, 1987, take actions through codes, alternative programs or combinations thereof which will achieve electric power savings from new residences comparable to those savings

<sup>3</sup>The Council's March 13, 1985 issue paper, "Model Conservation Standards Review," and additional materials analyzing the data are available on request.

which would be achieved if new electrically heated residences included the conservation measures described in Table 1 below. These measures have been demonstrated to be cost effective for the region because they are reliable and available within the time needed and because they reduce the electric power demand of regional consumers at a system cost which is less than the least-cost similarly reliable and available alternative resource. They have been found by the Council to be economically optimal for the average regional residential consumer of electricity, and to require no additional time to improve necessary building practices. Typical new residences could comply with the standard by including the conservation measures shown in Table 1 below.

TABLE 1.—ILLUSTRATIVE PRESCRIPTIVE PATH FOR MCS TO BE IMPLEMENTED BY JANUARY 1, 1987.

Component	Level of Efficiency	
	Climate zone 1	Climate zones 2 and 3
Ceiling:		
Attic	R-36 (U-0.032)	R-38 (U-0.032)
Vaults	R-30 (U-0.035)	R-30 (U-0.035)
Walls	R-19 (U-0.057)	R-19 (U-0.057)
Underfloor crawlspace and unheated basements.	R-19 (U-0.040)	R-30 (U-0.030)
Perimeter (exterior) slab-on-grade and heated basements.	R-10	R-15
or Perimeter (interior) heated basement.	R-19	R-19
Glazing	R-2.5 (U-0.40 tested at 15 mph using procedures consistent with AAMA 1503.1-80.*	
Maximum glazed area (% floor area)	15	15
Doors	No requirement	R-7 (U-0.16)

<sup>1</sup>Single family residences are defined to include duplexes. Multifamily residences include triplexes and larger structures up to and including 4-story low-rise residential structures.

<sup>2</sup>These climate zones, developed to reflect climatic differences within the region, are based on the number of heating degree days in a particular location. Zone 1 experiences less than 6,000 heating degree days, Zone 2 from 6,000 to 8,000 and Zone 3 more than 8,000.

TABLE 1.—ILLUSTRATIVE PRESCRIPTIVE PATH FOR MCS TO BE IMPLEMENTED BY JANUARY 1, 1987.—Continued

Component	Level of Efficiency	
	Climate zone 1	Climate zones 2 and 3
Infiltration Control	Current Practice (Approximately 0.6 air changes per hour)	
Mechanical ventilation with heat recovery	Current Practice	Current Practice

\* American Architectural Manufacturers Association 1503.1-1980 Voluntary Test Method for Thermal Transmittance of Windows, Doors and Glazed Wall Sections.

As an alternative, a state or local government or utility may meet this standard by implementing a program that ensures that a certain percentage of new residences meet the higher level required by the 1989 MCS described immediately below (i.e., achieve a specified minimum share of all electrically heated new residences). Assuming that the remainder of the residences in each state are built to current practice, the necessary shares per state would be as follows:

State	Market share (percent)
Washington	10
Oregon	25
Idaho	42

State	Market share (percent)
Montana	28

\* Assumes adoption of current Building Code Division proposed revisions to Chapter 53 of the Oregon Building Code. If the existing code remains in effect without revisions, the minimum market share required for utilities serving consumers in Oregon would be 50%.

(b) By January 1, 1989, take actions through codes, alternative programs, or a combination thereof which will achieve electric power savings from new residences comparable to those savings that would be achieved if new electrically heated residences included the conservation measures described in Table 2 below. These measures are forecast by the Council to meet the Act's requirements that they be designed to produce all electric power savings that are cost effective for the region and economically feasible for consumers, taking BPA financial assistance into account. Typical new residences could comply with the standard by including the measures shown in Table 2 below.

Other illustrative approaches to building to this standard are described in those portions of the Council's *Model Conservation Standards Equivalent Code* dated February 1985, as may be subsequently amended or revised, which are applicable to low-rise residential buildings.

TABLE 2.—ILLUSTRATIVE PRESCRIPTIVE PATHS FOR MCS TO BE IMPLEMENTED BY JANUARY 1, 1989\*

Component	Climate zone		
	Zone 1	Zone 2	Zone 3
Ceiling:			
Attic	R-38(U-0.032)	R-38(U-0.032)	R-38(U-0.032)
Vaults	R-38(U-0.028)	R-36(U-0.028)	R-38(U-0.028)
Walls	R-19(U-0.057)	R-25(U-0.045)	R-31(U-0.035)
Underfloors, crawlspaces, and Perimeters (exterior) slab-on-grade and heated basements	R-19(U-0.040)	R-30(U-0.030)	R-30(U-0.030)
or Perimeters (interior) heated basement	R-12	R-10	R-15
Glazing	R-19	R-19	R-25
	R-2.5 (U-0.40 tested at 15 mph using procedures consistent with AAMA 1503.1-80)		
Maximum glazed area (percent floor area)	15	15	15
Exterior Doors	R-7(U-0.16)	R-7(U-0.16)	R-7(U-0.16)
Infiltration Control	0.1 ach*	0.1 ach	0.1 ach
Mechanical ventilation w/heat recovery	0.5 ach	0.5 ach	0.5 ach

\* ach—air changes per hour.

\* The electric power savings represented by inclusion of these measures are estimated to be equivalent to those which would be produced by the performance standards as set forth and as amended in the Council's 1983 energy plan.

## 2. New Commercial Buildings

For the same reasons described above regarding new residential construction, it is vital to ensure that commercial (i.e., nonresidential) buildings using electric space conditioning and/or lighting are built to efficient standards—even during periods of surplus. This commercial building standard was developed to ensure that new commercial buildings are built to produce savings of

electricity that are cost effective for the region and economically feasible for the consumer. The level of the standard for new commercial buildings is unchanged from that in the Council's 1983 Plan. However, to allow adequate time for adoption and implementation of this standard, the Council is proposing that the standard apply to those commercial buildings that receive building permits on or after January 1, 1987.

To meet the model conservation standard for new commercial buildings, a state, local government or utility should, by January 1, 1987, take actions through codes, alternative programs, or a combination thereof which will achieve electric energy savings from new commercial buildings comparable to that which would be achieved if new commercial buildings met the energy efficiency requirements described below in the following paragraph. Illustrative approaches for building to meet this standard are described in those portions of the Council's *Model Conservation Standards Equivalent Code* dated February 1985, as may be subsequently amended or revised, which are applicable to all buildings except low-rise residential buildings.

The Council's model conservation standard for new commercial buildings is a modified version of the most recent model energy code of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), ASHRAE 90-80, except for those sections dealing with ventilation and lighting. The ventilation requirements are those set forth in ASHRAE Standard 62-81. The lighting efficiency requirements are comparable to those now required by the City of Seattle's Energy Code, with the exception of office and retail buildings. The lighting standard for all office buildings and for those retail buildings containing over 20,000 square feet is 1.5 watts per square foot. This is equivalent to the office building lighting standard adopted by the California Energy Commission. The lighting efficiency requirements for other retail buildings are as follows:

Size	Lighting Efficiency Requirement (maximum installed wattage, including ballast)
Less than 1,000 <sup>1</sup>	4.5
1,000 to 6,000 <sup>1</sup>	3.5
6,000 to 20,000 <sup>1</sup>	2.5

<sup>1</sup> Square feet.

<sup>2</sup> Watts/square foot.

## 3. Residential and Commercial Conversions

It does little good to require that all new buildings with electric space heating/space conditioning satisfy model conservation standards if existing buildings that are not built with electric space heating/space conditioning can be converted to electricity freely. The region would be inviting consumers to circumvent the new building standards.

On the other hand, it would be unreasonable to require that buildings receiving permits prior to the effective date of the Council's standard meet the new building standard before they can be converted to electric space heating/space conditioning. To reconcile these differences, the Council has developed separate model conservation standards for buildings that are granted building permits before January 1, 1989 for residential buildings and before January 1, 1987 for commercial buildings and that are later converted to electric space heating or conditioning and for commercial and residential buildings that are granted building permits after January 1, 1987 and January 1, 1989, respectively, and are later converted to electric space heating/conditioning.

The Council's model standard for residential buildings that receive permits prior to January 1, 1989 and that later are converted to electric space heating requires that a dwelling install all conservation measures that are regionally cost effective, as described in the Council's Plan, prior to conversion. The conversion standard for commercial buildings that receive permits prior to January 1, 1987 and are later converted to electric heating/conditioning, requires that, prior to installation of electric space heating or conditioning, the building should undergo a comprehensive energy audit and install all conservation measures that are regionally cost effective and economically feasible, as described in the Council's Plan,<sup>5</sup> prior to conversion.

These conversion standards are at the same level as in the Council's 1983 Plan. The only change is in their timing. Commercial and residential buildings that are granted building permits after January 1, 1987 and January 1, 1989, respectively, will be required to be upgraded to Council's model energy standards for new electrically heated/space conditioned buildings if and when they are converted to electric space heat/space conditioning. These conversion standards will ensure that buildings converted to electric space heat from other fuels will meet minimum electric energy-efficiency requirements.

\* To meet the model conservation standards for commercial and residential buildings that receive building permits prior to January 1, 1987 and January 1, 1989, respectively, and that convert to electric space heating (or

space conditioning, in the case of commercial buildings) a state, local government or utility should, by January 1, 1989, take actions through codes, alternative programs or a combination thereof to achieve electric power savings from such buildings comparable to those savings that would be achieved by compliance with the conversion standards described above. Buildings that receive building permits after January 1, 1987 for commercial and January 1, 1989 for residential buildings must comply with standards for new buildings if they convert to electric heating/conditioning.

#### *B. Acceptable Alternative Programs for Achieving the Model Conservation Standards*

##### 1. Development of Alternative Programs

As alternative programs for achieving savings comparable to those which would be obtained under the MCS, state or local governments or utilities may use marketing programs, provide for financial incentives to buyers or builders of new electrically heated dwellings and/or commercial structures, or use other measures to encourage electric energy-efficient construction achieving savings comparable to those achievable through the MCS. Each alternative plan should specify at least the following:

- Thermal efficiency specifications per building.
- Target market share.
- Marketing plan (e.g. Super Good Cents, Super Good Cents with incentives, etc.).
- Contingency plans for achieving targets with alternative marketing strategy.
- Compliance certification strategy (e.g. utility inspection).

Each alternative will be evaluated by BPA to establish that its implementation will achieve savings comparable to the MCS. BPA is now developing pre-approved alternative plans under its proposed surcharge policy.

##### 2. Time for Declaration of Alternative Programs

By January 1, 1986, utilities should submit to BPA a plan declaring how they intend to meet the 1987 MCS for new residential buildings and MCS for new commercial buildings or declaring how these standards will be met or have been met by state or local governments. By January 1, 1988, utilities should submit to BPA their plans for meeting the 1989 MCS for new residences and the MCS for residences and commercial buildings converting to electric space heat and/or space conditioning.

#### *C. Programs To Assist MCS Implementation*

Even though the benefits of building to the MCS are clear, homebuyers, builders, state and local governments and utilities need technical and financial assistance to make the transition to constructing buildings as efficiently as is required by the standards. Achieving the improved levels of building efficiency envisioned in the MCS is the goal of the Council. This goal can be achieved by a variety of ways, including new building codes, education and training, marketing programs, incentives, or any combination of the above activities.

BPA has a key leadership role in achieving the goal of constructing more efficient buildings in the region. In this role, BPA should offer technical and financial assistance to those entities that can effect a change in current building practice. In particular, BPA's assistance is important to achieve the following four fundamental objectives.

##### 1. Improved Building Codes

BPA should provide assistance to state and local jurisdictions as they make the transition to more efficient building practice through changes in building codes. BPA has offered and should continue to offer two specific programs that will facilitate the adoption of building codes by state and local governments. The first programmatic effort by BPA has been the offering of technical and financial assistance to "early adopters" of the MCS. Communities such as Tacoma, Washington which have taken a leadership role by implementing a local building code to the level of the MCS greatly facilitate the development of the necessary market infrastructure that is ultimately needed to achieve a change in the region's building practice. The second programmatic effort by BPA is financial assistance to reimburse state and local governments for the increased costs of inspection and enforcement associated with more energy efficient buildings.

##### 2. Utility Based Programs

Recognizing that not all jurisdictions within the region will adopt energy efficient building codes to the level of the MCS, the Council has specified other programs to bring about changes in building practice. These programs have focused on two sub-objectives: (1) To provide marketing assistance to homebuilders and buyers of new homes to facilitate consumer decisions to build more efficient housing, and (2) to provide incentives to individual homebuyers who purchase homes built

<sup>5</sup> The Council's 1983 Plan established this level to be a levelized life cycle cost of 4.0 cents per kilowatt hour (in 1983 dollars) for each measure. The Council staff's recommendation for the 1985 Plan is to revise this figure to 5.5 cents per kilowatt hour (in 1985 dollars).

to the degree of efficiency represented by the MCS.

### 3. Model Conservation Standards Research and Development

BPA should continue to provide additional research and development for new building techniques that can reduce the cost to the homeowner of achieving levels of efficiency represented by the MCS and beyond. These research and development programs focus on two specific areas. First, considerable improvements can be made with respect to building techniques and practices. BPA has provided substantial assistance to builders by providing recommendations on the most cost efficient ways to achieve the MCS. Second, BPA should continue with research on technology that at least maintains indoor air quality at the level attained in houses built to current practice.

### 4. Provide Training and Technical Information

BPA should continue activities that will assist homebuyers, state and local governments, homebuilders, utilities, realtors, lenders, and appraisers accurately evaluate building techniques that will achieve improved levels of building efficiency. This training and technical information is fundamental to allowing all of the decisionmakers involved in purchasing new buildings to make an informed decision, one that recognizes the importance of energy efficient buildings in the total costs of owning and heating or cooling the building.

To meet the Council's overall goal and to achieve the specific objectives listed above, BPA should maintain and/or establish several programs. These programs should be developed in consultation with the Council and other interested and affected parties. As BPA gains more experience with implementing the MCS, these programs may be expanded and changed to be more responsive to achieving the Council's overall goal of moving the region to more energy efficient building practices. The BPA programs structured by the four key objectives listed above are listed below.

1. *Programs to Encourage More Efficient Building Codes.* (a) Refine the Code Adoption Demonstration Program which encourages utilities, states and local governments to achieve the 1989 MCS through adoption of equivalent codes prior to January 1, 1989. This "early adopter" program should be available throughout the region and should include the following elements:

i. Financial incentives for homebuyers sufficient to cover the incremental cost of construction between current (October 1, 1985) practice and the 1989 MCS. The Council estimates this cost will range from \$1.50 to \$3.00 per square foot of heated space, and will provide exact estimates to Bonneville.

Continue to provide financial incentives to commercial building owners in "early adopter" jurisdictions.

ii. Reimbursement to utilities, states and local governments for the cost of code adoption and enforcement. Reimbursement for the cost of enforcement of codes should be provided only if such enforcement activities produce at least an 85 percent code compliance rate.

iii. Systematic evaluation of construction cost, fuel share impacts, thermal performance, occupant satisfaction, indoor air quality, and overall compliance with code targets and cost for both residential and commercial buildings.

iv. Education and training programs for builders, consumers, architects, designers, energy code enforcement officials, mechanical ventilation system designers, installers and servicing contractors, realtors, lenders and appraisers, and other appropriate participants in the design, purchase, and construction of new buildings.

v. Shelter industry training which focuses on the most cost efficient means of achieving the MCS.

(b) By January 1, 1986, refine the point system used in the Residential Standards Demonstration Program. The generalized prescriptive paths shown in Table 2 should be used as a basis. At a minimum, component trade-offs should be included to account for variations in building thermal mass, heating system efficiency, solar orientation, envelope thermal efficiency and heating degree days.

(c) Establish and maintain a program to reimburse states or local governments for the costs of enforcing codes. Code enforcement reimbursement should be provided for the cost of one inspection per building for any jurisdiction that substantially improves its residential energy conservation code. This reimbursement should be provided between the time of adoption and January 1, 1989, and should be offered throughout the region.

(d) Continue with the Model Conservation Standards Implementation Program (MCSIP) to reimburse state and local governments throughout the region for the incremental costs of adopting and enforcing all model conservation standards. Reimbursement should

continue as long as enforcement of the standards remains regionally cost effective.

2. *Programs With or For Utilities.* (a) Maintain an aggressive energy efficient new home marketing program (e.g. Super Good Cents). This program should include, as a condition of participation in the program, monitoring of indoor air quality and employment of specific pollutant source control measures in houses constructed under the program, and should be focused on "site-built" residential buildings.

(b) Explore the possibilities and feasibility of an aggressive energy-efficient new commercial buildings marketing program similar to the Super Good Cents program for residential buildings. If a program appears to be desirable, design and implement the program.

(c) Continue development of an implement a procedure to measure compliance with the Council's standards and to review alternative plans for achieving savings comparable to the MCS for new residential and commercial buildings. This procedure should be incorporated into Bonneville's surcharge policy scheduled for completion in January 1986.

(d) Develop and implement a procedure to measure compliance with the Council's standard and to review alternative plans to achieve savings comparable to the MCS for existing residential and commercial buildings converting to electric space heating/space conditioning. This procedure is to be available on or before January 1, 1988, and at that time should be incorporated into Bonneville's surcharge policy.

3. *Model Conservation Standards Research and Development.* (a) Continue the New Commercial Buildings Field Test Demonstration program conducted pursuant to the Council's 1983 plan. This program is designed to achieve approximately 30 new commercial buildings constructed to be about 30% more efficient than the Council's standard.

(b) Continue to collect and analyze data regarding energy use, structural specifications and operation of residences and commercial buildings through the existing End-use Load and Conservation Assessment Project (ELCAP).

(c) Collect and evaluate data on new energy efficient commercial buildings built under the "early adopter" program or elsewhere. These data should be maintained and updated as is necessary so they can be used in future planning

and be used in information brochures on efficient building techniques.

(d) Expand Bonneville's existing Indoor Air Quality Research Program to:

i. Gather information on the distribution of ventilation rates in single family and multifamily dwellings constructed to existing and newly adopted codes and standards by climate zone in the region.

ii. Assess the relative effectiveness of alternative source reduction and mechanical ventilation systems and strategies for minimizing potential pollutant build up, including but not limited to spot ventilation, whole house exhaust-only ventilation, ductless heat recovery ventilation, and whole house heat recovery ventilation.

iii. Evaluate the effectiveness of natural ventilation (i.e., infiltration) compared to mechanical ventilation in maintaining clean air, given the same source strength and whole house ventilation rate.

iv. Identify any indoor pollutants that may be significantly reduced or eliminated through source reduction actions that might be effected through building codes and product standards.

(e) Establish, maintain and disseminate the results of an ongoing research and demonstration effort which focuses on the refinement of new residential and commercial building conservation technologies, construction techniques and products. This program should initially concentrate in the residential sector, identifying and/or developing more cost effective approaches to:

i. Reducing uncontrolled air leakage,  
ii. Providing more reliable ventilation both with and without heat recovery, and  
iii. Constructing highly insulated exterior walls.

#### 4. Training and Technical Assistance.

(a) Develop for commercial buildings an energy efficiency certification program focusing on lighting. This program should be available by January 1, 1987 and be designed to influence the financing terms available to developers of energy efficient commercial buildings.

(b) Continue to provide technical and financial assistance to builders, insulation contractors, architects, designers, real estate appraisers and salespersons and code officials for the implementation of a uniform, regionwide energy efficiency certification and rating system for new residential buildings designed to influence the financing terms available to homebuyers.

(c) Education and training programs for builders, consumers, architects,

designers, energy code enforcement officials, mechanical ventilation system designers, installers and servicing contractors, realtors, lenders and appraisers, and other appropriate participants in the design, purchase, and construction of new buildings. This education and training program should continue beyond 1989 if necessary.

#### D. Public Utility Regulatory Commission Activities

The Council recommends that the region's public utility commissions consider providing appropriate rate treatment for investor-owned utility expenditures (e.g. market program costs, consumer/builder incentives) made to encourage the construction of more electrical energy efficient structures built to achieve savings comparable to those specified for the 1987 and 1989 MCS for new residences and commercial buildings.

#### E. Surcharge Method and Recommendation

The Act requires the Council to provide a method in the Plan which the administrator is to use in imposing surcharges. The Council's method for calculating surcharges is presented in Appendix A.

1. *Timing*—The Council recommends that BPA impose a rate surcharge upon utilities for those portions of their loads within the region that are in jurisdictions which do not, or on utilities which do not:

(a) achieve, by January 1, 1987, electric power savings comparable to 85 percent \* of the savings which would be achieved by the 1987 MCS for new residential buildings;

(b) achieve, by January 1, 1987, electric power savings comparable to 85 percent of the savings which would be achieved by the MCS for new commercial buildings;

(c) achieve, by January 1, 1989, electric power savings comparable to 85 percent of the savings which would be achieved by the 1989 MCS for new residential buildings, unless the Council determines on or before July 1, 1988 that the 1989 MCS is not cost-effective, reliable or commercially available;

(d) achieve, by January 1, 1989, electric power savings comparable to 85 percent of the savings which would be achieved by the MCS for residential buildings which are converted to electric space heating; and

(e) achieve, by January 1, 1989,

savings comparable to 85 percent of the savings which would be achieved by the MCS for existing commercial buildings which are converted to electric space heating and/or conditioning.

A utility meeting the January 1, 1986 and January 1, 1988 filing deadlines described in Section B.2 above will not be subject to surcharge until BPA completes an evaluation of compliance plans submitted by the utility.

After January 1, 1989, achievement of the MCS for new residences should be a joint responsibility of BPA, state and local governments, utilities, and homebuyers. BPA should assume responsibility for dwellings built beyond what is economically optimal for consumers but still regionally cost effective. If a jurisdiction achieves electric energy savings equivalent to what would be saved by buildings built to the consumer optimal level as identified by the Council in Table 1 above, BPA should not surcharge the utility serving that jurisdiction. Instead, BPA should pay an incentive equal to the difference in net present value cost between the consumer optimum and the 1989 MCS. If a jurisdiction does not achieve comparable savings to what would be achieved at the consumer optimum, then the utility serving that jurisdiction should be surcharged. In making its calculation, BPA should use cost data from the Residential Standards Demonstration Program and other cost data systematically collected and evaluated from jurisdictions which adopt the 1989 MCS before January 1, 1989. Such incentives should be paid on the basis of dollars per square foot of a residence's electrically heated floor area. Currently, the Council estimates this cost to be between \$0.25 and \$0.35 per square foot. The Council will provide to BPA an estimate of this life cycle cost difference.

2. *Exemptions*—The MCS are one of the most cost effective resources in the Council's resource portfolio, and failure to adopt them imposes upon the region the cost of ultimately building additional higher-cost generating resources. The availability of alternative programs allows a number of ways for utilities to avoid a surcharge. If BPA believes that existing conditions or hardships excuse specific utilities from achieving savings equivalent to 85 percent of savings which would be achieved by the MCS, then BPA should pay for the cost of attaining the MCS to the 85 percent level in those utilities' service areas, so long

\*The 85 percent requirement represents the compliance rate the Council expects would result from an incentive-based marketing program.

as the MCS remain regionally cost-effective.

Edward Sheets,  
Executive Director.

#### Appendix A

Section 4(f)(2) of the Act provides for Council recommendation for surcharges on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to the model conservation standards. The Council is responsible for drafting a "methodology" for the calculation of surcharges. The Council, in Action 25 of Chapter 10 of this Plan, has recommended to the Administrator that he impose a surcharge on customers serving jurisdictions which do not adopt the model conservation standards or achieve comparable savings. The purpose of the surcharge is twofold: (1) to recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve comparable savings, and (2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and/or enforce the standards or comparable alternatives. The following is the "methodology" for calculating surcharges:

1. The following model conservation standards must be adopted or comparable savings must be achieved in order to avoid surcharges:

- Model Standards for new residential buildings, Action 2;
- Model Standards for new commercial buildings, Action 6;
- Model Standards for conversion to electric space heat in residential buildings, Action 3; and
- Model Standards for conversion to electric space conditioning in commercial buildings, Action 7.

2. The Administrator shall identify those customers, states, or political subdivisions which have not:

- a. implemented each of the model standards listed in paragraph 1; or
- b. achieved comparable savings of electricity through other conservation methods, such as utility electric service requirements, incentive programs or rate designs.

3. The surcharge shall then be calculated by the Bonneville Administrator as follows:

- a. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and is not exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of all firm power purchased from Bonneville under the Power Sales Contract.

- b. If the customer is not purchasing firm power from Bonneville under a Power Sales

Contract, but is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange.

- c. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and also is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be (a) 10 percent of the cost to the customer of firm power purchased under the Power Sales Contract plus, (b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange multiplied by the fraction of the utility's exchange load that is served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource that is purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

- d. If only a portion of a utility's service area has not adopted the model standards or achieved comparable savings, the surcharge calculated under a, b, or c above is to be multiplied by the non-complying jurisdiction's share of the utility's total load.

- e. The surcharge shall be removed when model conservation standards have been adopted and enforced or alternative programs, estimated by the Administrator in consultation with the Council to save an equivalent amount of electricity, have been implemented.

4. A utility electric service requirement that results in construction of electrically space conditioned buildings which are the equivalent of buildings in compliance with the model conservation standards constitutes an alternative plan that achieves comparable electricity savings. The Council intends to continue analyzing alternatives to building codes to achieve the construction of energy-efficient buildings to obtain cost-effective resources for the region.

5. Any entity that chooses not to adopt a particular model conservation standard within the allotted period for adoption and wishes to avoid a surcharge must declare, before that period expires, how it intends to achieve comparable savings. In addition, that entity must indicate how it intends to demonstrate attainment of comparable savings.

To assist Bonneville in estimating comparable electricity savings from alternative plans, the entity should present its best estimate of new residential and commercial building construction in the non-complying jurisdictions within its service territory. Bonneville shall determine, in consultation with the Council, whether the alternative conservation plan of an entity will

achieve comparable savings. When determining electricity savings that would have occurred had the standards been adopted, jurisdiction-specific weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Plan. For residential buildings, Bonneville should assume the following regarding houses built to the model conservation standards: (1) Houses in climate zone 1 would save, on average, 5,130 kWh per year; (2) houses in climate zone 2 would save, on average, 8,508 kWh per year; and (3) houses in climate zone 3 would save, on average, 7,830 kWh per year. For commercial buildings and where good estimates are not available for the number of new houses, the savings should be determined by multiplying total expected regional average megawatt savings by sector from the standards, as shown in the Plan, by the utility's share of total regional load in the applicable sectors. Estimates of savings from conversion standards should be made on a case-by-case basis. The Council recognizes that these estimates will be difficult to make, but also that estimated savings from conversion standards probably will be small relative to savings from building standards. The Council will work with Bonneville on these estimates as requested.

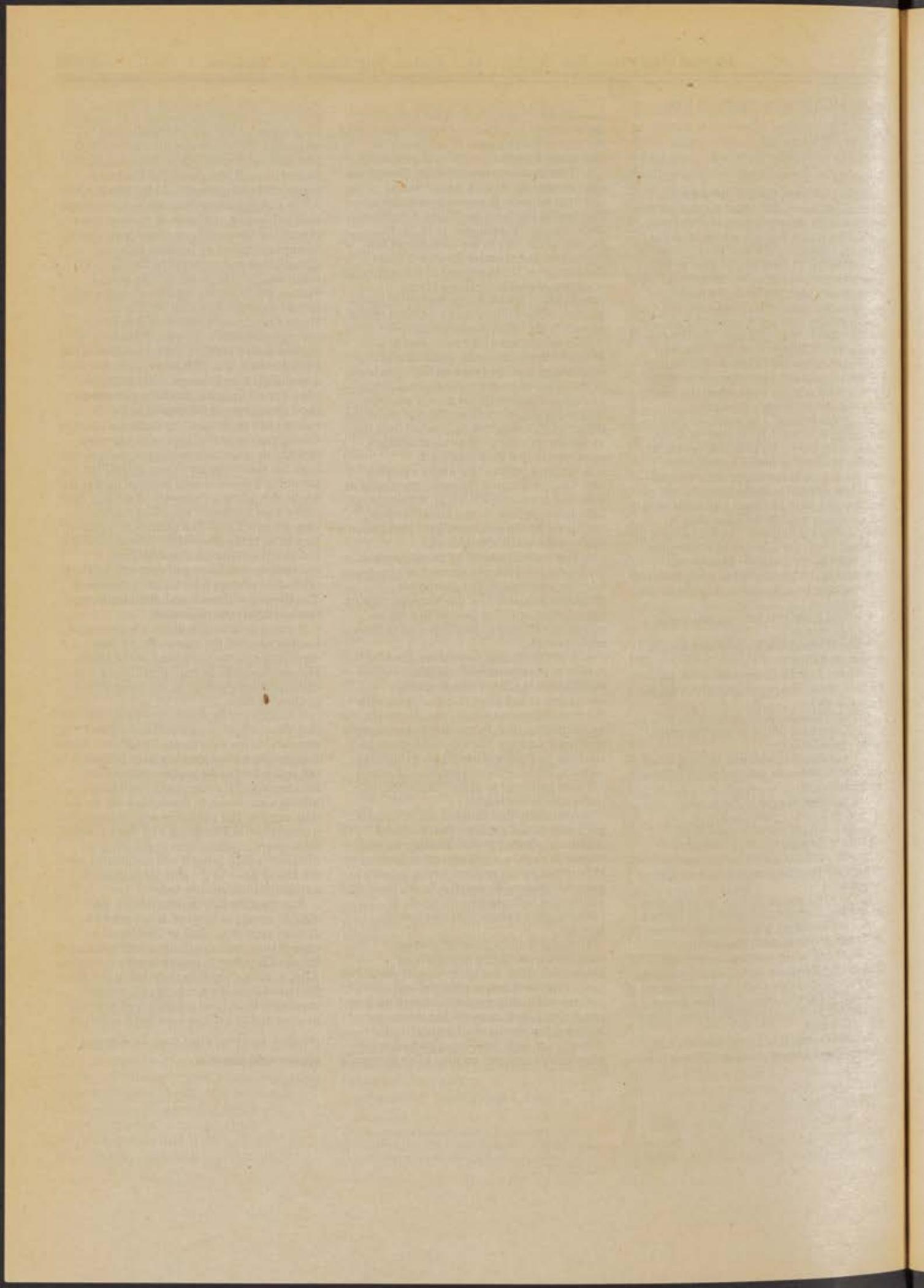
If only a portion of a utility's service area has not adopted the standards, the lost electricity savings calculated in the above paragraph should be multiplied by the non-complying area's share of the utility's total applicable load.

If the Bonneville Administrator determines that the alternative plan will not achieve comparable savings, he shall notify the entity that its alternative plan has been judged to be not equivalent to the model conservation standards and that Bonneville will begin adding a surcharge to the entity's bill on a date certain. The surcharge will be calculated as described in Paragraph 3 of this method. If subsequent modifications to the entity's alternative plan bring it into compliance with the stated goals of the standards, then the surcharge shall be removed.

A general method of determining the electric energy savings of an alternative conservation plan shall be developed in consultation with the Council and included in Bonneville policy to implement the surcharge. Also, a method shall be included in the policy for terminating the surcharge once model standards have been adopted and enforced or comparable savings have been achieved."

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# **federal register**

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Friday  
July 26, 1985

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## **Part VI**

### **Department of Justice**

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**Bureau of Justice Assistance**

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**Criminal Justice Discretionary Grants;  
Final Notice**

## DEPARTMENT OF JUSTICE

## Bureau of Justice Assistance

## Criminal Justice Discretionary Grants

**AGENCY:** Bureau of Justice Assistance, Department of Justice.

**ACTION:** Final notice.

**SUMMARY:** The Bureau of Justice Assistance is publishing a final notice to implement the criminal justice discretionary grant program authorized by the Justice Assistance Act of 1984. This notice describes procedures and requirements for applying for and administering discretionary grant funds.

**EFFECTIVE DATE:** This notice is effective on July 26, 1985.

**FOR FURTHER INFORMATION CONTACT:**

For general questions about the priorities and range of discretionary grant programs and relationship to Block Grants: Eugene Dzikiewicz, Acting Deputy Director, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, D.C. 20531, 202/272-6838.

**ADDRESS FOR APPLICATIONS:** All final applications should be addressed to: Control Desk, Office of Controller, Room 948, Bureau of Justice Assistance, OJP, 633 Indiana Avenue NW., Washington, D.C. 20531.

**SUPPLEMENTARY INFORMATION:** The Justice Assistance Act of 1984 established the Bureau of Justice Assistance within the Office of Justice Programs. The Act authorizes the award of discretionary grants to public and nonprofit agencies. Four purposes are specified for which discretionary grants can be made: (1) Demonstration programs; (2) education and training programs for criminal justice personnel; (3) technical assistance to states and local governments; and (4) national or multistate projects.

The discretionary grant program is intended to complement and enhance the program of criminal justice Block Grants administered by the Bureau of Justice Assistance pursuant to Part D of the Act. These latter grants are designed to carry out state and local programs with a high probability of improving the criminal justice system, with emphasis on violent crime and serious offenders. Of the total amount of funds appropriated for both block and discretionary grants, 20 percent is reserved for the discretionary grant program. For fiscal year 1985, the amount available is \$13.8 million. Because many program activities will begin during the latter part of fiscal year 1985 and because State supported block grant activities will be starting up during the final quarter of calendar year 1985,

the priorities set now will continue into fiscal year 1986. Subject to the availability of actual appropriations (anticipated by the close of the first quarter of FY '86) the plan and priorities encompass approximately one fourth of the FY '86 projected funding. To accommodate the actual funding cycles of the States in this initial year of block grant activity, this notice establishes a range of funding for each portion of the overall discretionary funding priorities.

The Bureau published proposed discretionary grant regulations on March 18, 1985 in the *Federal Register* to provide for public comments. Comments from criminal justice agencies and organizations nationwide have been largely favorable. Respondents taking issue with the priorities have been individually answered. Overall, the comments may be characterized as suggestions for the funding of particular projects or types of projects. For example, information systems were favored, especially automated fingerprint identification systems and basic entry level training. For the present, we are not making provision for these types of projects on the practical ground of overall cost. The decision to fund any of these areas would require more funds than are available.

**Criminal Justice Discretionary Grants****Subpart I—Demonstration Programs**

Purpose  
Due Dates  
Evaluation Component  
Programs:

- Effective Prosecution of Child Physical and Sexual Abuse Cases
- Law Enforcement Crime Prevention
- Family Violence Intervention

**Subpart II—Technical Assistance/Training Priorities**

Purpose  
A. Community Crime Prevention Programs  
B. Corrections Related Programs  
C. Adjudication Related Programs  
D. Law Enforcement Related Programs  
E. Victim Assistance  
F. Other Statutory Purposes  
G. Technical Assistance for Demonstration Programs

**Subpart III—National/Multi-State Programs**

Purpose  
National Victims of Crime Program  
National Crime Prevention Campaigns  
Law Enforcement Accreditation  
Support of Prison Industries Enhancement Program.

**Appendix A—Technical Assistance Format and Training Format****SUBPART I—DEMONSTRATION PROGRAMS****Purpose**

Demonstration programs provide a means of testing state-of-the-art knowledge in priority criminal justice

areas at a variety of sites. The models are based on substantial research and program documentation. All demonstration programs will be independently evaluated. Programs that prove successful may be certified in future years for state Block Grant funding.

Demonstrations will be initiated in the following three areas:

1. Effective Prosecution of Child Sexual Abuse Cases;
2. Law Enforcement Crime Prevention;
3. Family Violence Intervention.

Interested jurisdictions must submit concept papers of no more than 10 pages plus a summary budget. Concept papers will be screened by inter-Bureau panels and rated. The top candidates will be invited to submit formal applications. Estimated total funding for Demonstration Programs will range from 2.3 million to 3 million dollars.

**Due Dates**

Concept papers and application due dates can be summarized as follows:

	Concept papers	Application
Demonstration site applications.	Aug. 30, 1985	Oct. 15, 1985.
Evaluation of Demonstrations.	Sept. 15, 1985	Oct. 30, 1985.

**Evaluation Component**

One evaluation grant in an amount of approximately \$250,000 will be negotiated for all three Demonstration Programs. Nonprofit organizations or public agencies should submit general statements of intent and evaluation experience in related criminal justice fields by September 15, 1985. The proposals should also summarize the proposed staffing pattern, and an eighteen-month workplan for conducting the evaluations. BJA will negotiate a final agreement with the best rated applicant as determined by a review panel. The successful applicant will be notified by September 30th.

Note. Since there will be insufficient funding for independent data collection, each demonstration project will be required to maintain core data elements and to cooperate with the evaluator. The evaluator will assist in selecting the core data elements.

The BJA contact for additional information on this project is: Nicholas Demos, (202) 724-5974

**Effective Prosecution of Child Physical and Sexual Abuse Cases****Goal**

The goal of this program is to develop a range of pilot projects located within

prosecutors offices that effectively prosecute those accused of physically and sexually abusing children, while reducing the trauma to the child victims and their families.

#### Background

Both the President's Task Force on Victims of Crime and the Attorney General's Task Force on Family Violence strongly held that physical and sexual assault of children are very serious crimes that have a profound impact on the child victim. Both task forces also recognized that children who are victims of these crimes are different from adult victims. Children are often revictimized by the insensitivity of a criminal justice system designed for adults. Children are traumatized by having to repeat their story of victimization again and again to social workers, police, prosecutors, probation officers, defense attorneys and judges, who usually have no training in interviewing child victims.

- In many jurisdictions, children are unnecessarily required to present testimony at preliminary hearings with the defendant present. In addition the taking of evidence through depositions can be traumatic to the child if the prosecutor is not sufficiently experienced to protect the child.

- Unnecessary continuances increase the trauma, and prolong the recovery period for the child.

- Children are forced to leave the home (i.e. placed in foster care) while the abuser remains.

- Finally, the adversarial process can make the child feel guilty for his/her actions.

Physical and emotional needs of the child as well as his or her treatment needs may be inconsistent with the traditional legal requirements for prosecution.

The special legal requirements in these cases must be balanced against needs of children from the initial investigation interview through case development and prosecution, and imposition of sentence. To be successful and to reduce trauma to the child victims, prosecutions must be carried out by trained prosecutors who are sensitive to the needs of the child victims, and must be coordinated with the other agencies which have responsibility.

#### Program Description

A range of four to six prosecutorial pilot projects will be funded. Each project will be designed to improve the prosecution of child sexual and physical abuse cases. Emphasis will be on the development of, or expansion of,

prosecutor units which specialize in child physical and sexual abuse cases. However, these units also must develop written guidelines and protocols with mental health, law enforcement and child protective services for the processing of all child abuse cases. The guidelines and protocols should cover all facets of the case from reporting to final disposition. The goal of these guidelines and protocols should be protection of the child from further abuse, reduction of trauma to the child victim caused by the criminal justice system, streamlined investigative processes and improved cooperation and coordination among all interested organizations. Each of the special units should develop and adopt policies and procedures for child victims. These could include, but are not limited to:

- Using legislative reforms that have been passed by state legislatures.

- Presenting hearsay evidence at preliminary hearings.

- Interviewing children in a non-threatening environment.

- Use by trained prosecutors of anatomically correct dolls and drawings to describe abuse.

- Use of special child advocates, to explain court processes to the child and to stay with the child during the entire judicial proceeding.

The special units are also strongly encouraged to use vertical prosecution and to experiment with various techniques such as videotaping, closed-circuit T.V., and one way mirrors to reduce the trauma of confrontation and public trials.

This program will only fund the prosecution of child abuse cases. The prevention and treatment aspects of child abuse should be coordinated with existing community resources. The Bureau of Justice Assistance will provide technical assistance to each site during the planning and implementation phases.

#### Applications

Applicants are requested to submit concept papers on or before August 30, 1985.

#### Grant Period, Award Amounts, and Eligibility Criteria

Projects will be funded for eighteen months, with the expectation that they will go through a three month organization and planning phase, and a fifteen month implementation phase. The planning phase should involve gradual build-up of staff, and coordination with other service agencies. There is a potential for an additional six-twelve months of funding in FY 1987 if funds are available. Four to

six project awards will be made in the range of \$75,000-\$125,000 for the initial eighteen months.

Concept papers should provide detailed descriptions of how the applicant intends to meet the following criteria.

- Provides for specialized training of prosecutors in areas related to child abuse.

- Provides for development of special distinct unit to process child abuse cases.

- Utilizes vertical prosecution.

- Has or has plans for developing and utilizing, special procedures and policies for child victims.

- Has, or has plans for developing, protocols for coordinating and working with:

- victim assistance providers
- child protection workers
- law enforcement community
- social service system
- mental health system
- family and/or juvenile court
- Effectively utilizes its own resources in the development of this unit.

#### References

Many of the issues described above are discussed in the following documents.

- President's Task Force on Victims of Crime (Dec., 1982).

- Attorney General's Task Force on Family Violence (Sept., 1984).

- N.I.J. study, "When the Victim Is a Child: Issues for Judges and Prosecutors" Abt Associates, March, 1985.

- ABA Report, "Innovations in the Prosecution of Child Sexual Abuse Cases" and related reports of the National Legal Resource Center for Child Advocacy and Protection (202) 331-2250.

- For information on Treatment Prevention modules, see NIJ publication: "Exemplary Projects: Assisting Child Victims of Sexual Abuse," May, 1982. Further information on this topic can be obtained from the National Center for Child Abuse and Neglect (HHS) (202) 245-2859.

The BJA contact for additional information on this program is: James Swain, Courts and Victims Assistance Program Team, (202) 724-5974.

#### Law Enforcement Crime Prevention

##### Goal

To demonstrate the importance of crime prevention as a major policy activity of equal professional statute to patrol and investigation activities in the

country's major police and sheriffs department.

#### Background

Although police-managed crime prevention has not been specifically evaluated apart from community crime watch programs, there are significant studies of crime prevention activities in such cities as Seattle, Hartford, and Portland. According to a study of the Police Executive Research Forum, "Solving Crimes," investigators seldom review cases with other investigators to exchange information or detect patterns that could be used for crime prevention.

#### Program Description

Despite the growing evidence of success by neighborhood watch activities, most law enforcement agencies devote minimal resources to the crime prevention function, organizing their resources around patrol and investigation instead. Few command or rank and file staff specialize in crime prevention, opting instead for more traditional career paths. Those cities whose crime prevention programs are the most successful—e.g., Detroit, Seattle, Santa Ana—have defined crime prevention as a major police function for all officers. With improved citizen reporting, better crime data and analysis, crime prevention can play a major role. Police leadership in organizing crime prevention activities is crucial. The Detroit Police Department model is particularly well known. Houston has patterned its approach after that of Detroit, as has Scotland Yard in London. All of these cities are finding new ways to increase the crime control activities of police through citizen involvement.

This program is aimed at integrating crime prevention activities into routine daily operations throughout the department by a combination of command initiatives and restructuring, incentives for line officers, changed manpower allocations and special training.

Applicants are required to discuss specific issues in their proposed approach:

- Willingness to identify crime prevention as a major area of emphasis for patrol and investigation, with case follow-up.
- The redefinition of the crime prevention unit's mission from one of service delivery solely to a new combination of program management and special case follow-up.
- Some effort at integrating crime prevention principles into major zoning, rezoning and construction applications

that will have a long-term impact on crime.

#### Applications

Police departments could expand their crime prevention roles by a combination of the following elements: (i) Increased emphasis on developing or expanding neighborhood or block groups by trained crime prevention specialists, including the training and use of volunteers; (ii) the ongoing maintenance of these community organizations by patrol officers; (iii) extension of the present case screening/case assignment systems to include follow-up by crime prevention specialists; (iv) the use of a department's crime analysis capability to assist patrol in planning crime prevention tactics and to inform neighborhood watch organizations; and (v) expanding officer performance reporting to include efforts at citizen contact and crime prevention activities, either as part of directed patrol or officer-initiated actions.

#### Grant Period, Award Amounts, and Eligibility Criteria

In FY 1985, \$600,000 has been allocated for demonstrations of this program over a 12 month period.

Up to four (4) programs will be awarded as a result of a review of applications from local law enforcement agencies. Interested applicant's should be familiar with the model crime prevention activities being conducted by the Seattle, Santa Ana, and Detroit, Police Departments. Each project will be awarded \$150,000 to \$200,000 to address the specific issues noted.

Concept papers should provide detailed descriptions on how applicant intends to meet the following criteria:

- Departmental organization plan for addressing community crime prevention needs;
- The extent to which uniformed patrol and other officers will be involved in crime prevention activities;
- The extent to which the department has established working arrangements for crime prevention activities with various civic and community groups;
- Existing and proposed reward systems within department for implementing effective crime prevention activities;
- Existing and proposed training programs for uniformed officers in crime prevention techniques.

*References:* "Partnerships for Neighborhood Crime Prevention," National Institute of Justice (June 1983). Available from BJA or from NCJRS through sale or under the interlibrary loan program.

*Submission Deadlines:* Applicants must submit a concept paper by August 30, 1985.

Final applications for jurisdictions selected are due by October 15, 1985.

The BJA contact for additional information on this program is: Ron Steger, Community Crime Prevention Program Team, (202) 724-5974.

#### Family Violence Intervention

##### Background

The Attorney General's Task Force on Family Violence found that family violence is a major problem in this country. Battery is a major cause of injury to women in America. Nearly a third of female homicide victims are killed by their husbands or boyfriends. Almost 20 percent of all murders involve family relationships. These intentional, purposeful acts of physical abuse by one family member against another must be defined and recognized by the criminal justice agencies as serious criminal offenses. A strong commitment by law enforcement officials, prosecutors, and courts in responding to family violence as a crime can aid in deterring, preventing and reducing violence within the family.

##### Goal

To intervene in and reduce battering in adult relationships by instituting an effective law enforcement and criminal justice intervention program in domestic violence cases. The objectives of the program are to test and demonstrate in several jurisdictions methods and techniques for implementing those recommendations of the Attorney General's Task Force on Family Violence that address domestic violence intervention.

##### Program Description

A total of four to five pilot projects will be funded to develop and implement a comprehensive community response to reduce the crime of domestic assault. Emphasis will be on the establishment of a multi-disciplinary approach, i.e., a cooperative effort between law enforcement, prosecutors, shelter providers, social services, and the courts. Each project should establish a model that includes written policy for law enforcement's response to domestic violence cases including reporting requirements, enforcement of restraining or no-contact orders, guidelines for determining misdemeanor vs. felony offenses, assigning a high priority to domestic violence calls by dispatchers, and a provision for training. It should include the protocols between the law enforcement agencies and the

prosecutors office defining how cases are to be identified, charges filed, complaints issued, and cases assigned. The courts should note jurisdictional determinations, arraignment procedures, how no-contact orders are obtained, issued and enforced, and establish sentencing guidelines. The probation department should establish written policy on intake and supervision of domestic violence cases, presentence investigation guidelines, formulation of treatment plans, referral mechanisms, and monitoring requirements. The model should also include the types of services to victims and offenders that are available or planned, including shelter facilities, and how networking and cooperation will be achieved. The chief executive of the jurisdiction must provide a written commitment on behalf of the city or county.

#### *Grant Period, Award Amounts, and Eligibility Criteria*

Projects will initially be funded for eighteen months in two phases: a three month organization and planning phase and a fifteen month implementation phase. There is a potential for an additional six to twelve months funding in FY 1987 if funds are available. Four to five awards will be made in the range of \$125,000 to \$150,000 for the initial 18 months. Jurisdictions with a minimum population of 100,000 will be eligible.

Concept papers should provide detailed descriptions of how applicant intends to meet the following criteria:

- Applicant policy or proposed policy with respect to use of arrest as preferred intervention in domestic violence cases.
- Use of special prosecution unit and established policy for handling domestic violence cases.
- The availability or planned availability of a wide range of dispositional alternatives for use by judges in sentencing.
- Special advocacy for spouse abuse victims that includes coordination with other assistance units in the community especially shelters and victim compensation programs and provision for involvement in and notice of all steps in the processing of the case.
- Existence of strong leadership from appropriate political, community service and criminal justice segments, including written commitments where possible.
- Extent of the potential project scope in terms of total population served, existing domestic violence reporting levels, and projected case loads.

#### *References*

Many of the issues and programmatic components described above are discussed in forthcoming National

Institute of Justice publications describing the criminal justice system's response to spouse abuse in Seattle, Duluth, and San Francisco. In addition, the National Institute of Justice is expected to release soon a publication in its "Issues and Practice" Series entitled, "Improving the Community Response to Spouse Abuse." The final report of the Attorney General's Task Force on Family Violence is available and highly recommended.

These documents will be part of an application kit available from the Bureau of Justice Assistance.

#### *Due Dates*

Concept papers are due by August 30, 1985. Final applications for selected jurisdictions are due by October 15, 1985.

The BJA contact for additional information on this program is: James Swain, Courts and Victims Assistance Program Team, (202) 724-5974.

#### **SUBPART II—TECHNICAL ASSISTANCE/TRAINING PRIORITIES**

##### **Purpose**

Through the provisions of the Justice Assistance Act of 1984, Congress has clearly intended to fund programs that will have a profound and immediate effect on violent crime. To insure that the block grant programs mandated by Congress have every means of successful implementation, technical assistance and training support will be provided. This assistance will be extended to those projects funded under the state Block Grants, as well as those which fit within the Congressional mandate but for which no block funds can be allocated. Fortunately, many jurisdictions have their own resources to dedicate to sound programs if the experience of other communities can be brought to bear through technical assistance and training. We thus view the following programs of assistance as a key element in carrying out the Congressional purposes.

Technical assistance and training will be provided at the lowest cost possible, emphasizing the use of short-term practitioner-consultants from states, and the regional grouping of assistance whenever possible. Technical assistance and training support will involve: (1) The use of staff specialists from the Office of Justice Programs; (2) individual purchase orders for expert services; (3) expansion of current grants and contracts when cost effective to do so; and (4) cooperative agreements to engage nonprofit agencies experienced in technology transfer concepts.

This guideline solicits applications and concept papers from organizations interested in supplying the technical assistance and training in the areas noted. Application deadlines and dollar amounts are noted in the individual criminal justice segments. Estimated total funding for technical assistance and training programs will range from \$6.1 million to \$7.5 million. An important selection criterion will be the relative distribution of funds between delivery of technical assistance and training services on the one hand, and applicant's administrative costs on the other (i.e., fringes, indirect cost rates, etc.). Applicants with the largest proportion of their funding dedicated to the actual delivery of technical assistance will be chosen if other factors among the competitors are considered equal.

Formats for technical assistance and training activities are presented in *Appendix A*

Cooperative Agreements and grants will be at 100 percent of project costs.

*Eligibility:* Public agencies and private non-profit organizations are eligible to apply.

#### *Program Area A: Community Crime Prevention Programs*

Assistance is to be provided in support of programs and projects within the following legislative purpose:

—Community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime.

An approved program is the Community Crime Prevention Program, for which a BJA Program Brief is available. Technical assistance and training will be provided to Block Grant projects and a limited range of non-block grant projects through expansion of the current grant to the National Crime Prevention Council. Council staff will evaluate requests for assistance and recommend the most cost effective method of technical assistance delivery. Resources to be developed will include:

a. A resource library featuring written and media materials from existing and past crime prevention programs, to include implementation guides, brochures, pamphlets and other reproducible documents;

b. Two video tapes describing how to implement crime prevention programs, which will be available to state and local governments;

c. Documentation of four state-of-the-art crime prevention program models,

for distribution to all block grant recipients;

d. A computerized listing of crime prevention projects, to be used to match existing projects with similar new efforts, and to select technical assistance sites in geographic proximity;

e. Updating and translation into Spanish of the thirteen basic crime prevention booklets (under sub-contract to Encyclopedia Britannica);

On-site technical assistance will be provided by a core group of experienced practitioners who will be trained and used as a team to assist state and local governments. All on-site assistance will be approved by the BJA monitor and implemented under established procedures by the director of the National Crime Prevention Council staff.

Two regional project "cluster" conferences will be conducted to distribute the above and other pertinent information, and to exchange experiences on implementing crime prevention projects. A cluster conference will be held for eastern states and another for western states during 1985.

*Evaluation:* The Council will sub-contract with an independent third party to conduct evaluations of the technical assistance and training efforts, and to recommend modifications or elimination of those elements that are not cost effective.

*Funding:* This effort will expand on the current capabilities of the National Crime Prevention Council, which is already heavily involved in a number of the described components. The current Council grant will be supplemented in the amount of \$550,000 on October 1, 1985.

The BJA contact for additional information on this program area is: Ron Steger, Community Crime Prevention Program Team, (202) 724-5974.

#### *Program Area B: Corrections Related Programs*

Assistance is to be provided in support of programs within the following legislative purposes:

- Programs which alleviate prison overcrowding, and which identify existing state and Federal facilities suitable for prison use; and, the Federal Surplus Property Transfer Program;
- Prison industry projects designed to place inmates in a realistic working and training environment, enabling them to acquire marketable skills and make financial contributions to victims, their families, and the correctional institutions; and the Private Sector/Prison Industry Enhancement Certification Program.

B-1: State and local units of government may indicate an interest in obtaining Federal Surplus Real Property suitable for use in support of the care and rehabilitation of offenders and which may alleviate prison overcrowding. To assist state and local governments to achieve this purpose, Bureau staff will assist state and local correctional agencies:

- By disseminating information on the availability of Federal Surplus Real Property;
- By assisting in preparation of state and local correctional agency applications for transfer of federal surplus real property;
- By gathering, analyzing and reporting information data describing the effectiveness of alleviating prison crowding; and,
- By maintaining liaison with the General Service Administration, which controls Federal properties.

B-2: To assist state and local units of government to establish prison industry projects, the Bureau will accept applications for the following technical assistance services.

B-2a: Automated Information System for Prison Industries:

The Bureau will award a 12-month grant, up to \$375,000, for the development/design and implementation of an Automated Information System (AIS) for the Private Sector/Prison Industry Enhancement (PS/PIE) Program which will accumulate, review, categorize, and distribute actual working materials from correctional administrators across the country. Information to be included in the AIS will be in the following areas: (1) *Correction administration*—which will include rules, procedures, administrative guidelines, personnel policies, job descriptions, information processing procedures, forms, evaluation and review criteria related to the administration of prison industries; and (2) *program description*—which will include project descriptions and other special needs for program purposes (i.e., collecting application information which involves formatting data into computer readable information; collecting performance information which involves developing questionnaire and schedule formats; developing coding formats for on-going automated data base update as new entries are received; developing automated capability to analyze the prison industry impact on the states' correctional environment, on related private industry, and on Federal agencies procurement.

Applications are due by September 30, 1985, covering the experience of

applicants in developing automated information systems, and their background in working with corrections and prison industry data. Applications kits detailing specific tasks and application deadlines will be available no later than September 1, 1985.

B-2b: One cooperative agreement will be funded for technical assistance and training to support prison industry projects. The Cooperative Agreement shall provide the use of expert personnel from previously certified projects who have demonstrated skill in achieving administrative, correctional and business objectives. These experienced prison industry officials will help upgrade other project management systems, assist in resolving operational problems, and enhance communication and sharing among project participants. Depending on interest expressed by State and local governments, up to 20 on-site technical assistance visits are anticipated.

The Cooperative Agreement shall also support a series of specialized training sessions (up to six) for state and local corrections agency personnel responsible for the planning, development, operation and administration of prison industry projects. State and local project staff will pay their own per diem costs during training.

*Funding:* Maximum funding for this cooperative agreement will be in the range of \$150,000-\$175,000 for a period of 15 months.

*Application Timetable:* The application deadline for this cooperative agreement will be August 30, 1985. An agency review board will make award recommendations based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds to achieve a maximum delivery of assistance. The BJA Director will announce selections in mid-September, 1985. The terms of the Cooperative Agreements will be negotiated with the winning applicants to insure a mutual understanding of responsibilities. Awards are projected for October 30, 1985.

The BJA contact for additional information on this program area is: Tom Tubbs, Correctional Services Program Team, (202) 724-5974.

The following three program areas will use a uniform format: Adjudication, Law Enforcement, and Victims. These program areas will use cooperative agreements, rather than grants or contracts. A cooperative agreement insures a distribution of responsibilities between BJA staff and the recipient agency, with substantial involvement of

BJA staff in screening and use of resources. (See *Appendix A* for technical assistance and training formats.)

*Program Area C: Adjudication Related Programs*

Assistance is to be provided in support of programs and projects within the following legislative purposes:

- Identifying criminal cases involving persons with a history of serious criminal conduct; expediting case processing and improving court system management and sentencing practices and procedures; also implementing programs which provide assistance to jurors. Examples of approved programs include: Career Criminal Program, and Court Delay Reduction Program;
- Providing programs which alleviate jail overcrowding, and provide alternatives to pretrial detention for persons who pose no danger to the community. An example of an approved program is: Jail Overcrowding/Alternatives to Pretrial Detention.

BJA Program Briefs are available for each of the approved programs.

One cooperative agreement will be funded for technical assistance to the above programs, and one cooperative agreement will be funded for training in program techniques.

**C-1: Adjudication Technical Assistance:**

The major purpose of this Cooperative Agreement shall be to provide expert, consultative services to state agencies, courts, prosecutors, and related local government officials through on-site studies. It is estimated that up to 150 such studies will be undertaken. Assistance shall focus primarily upon statewide court delay reduction, expansion of career criminal prosecution projects, and relieving severe jail crowding.

*Funding:* Maximum funding for technical assistance for Area C-1 will be in the range of \$700,000/\$750,000 for a period of eighteen months. A minimum of fifty percent (50%) of the budget must be reserved for practitioner fees, travel and per diem.

**C-2 Adjudication Training:**

An estimated twelve—thirteen regional or state workshops will be required to assist beginning Block Grant projects in Court Delay Reduction, Jail Overcrowding, and Career Criminal programs. Each of the programs will require between three and six workshops over a period of fifteen months. State and local project staffs will pay their own travel and per diem costs.

*Funding:* Maximum funding for training will be in the range of \$350,000 to \$400,000 for a period of fifteen months.

*Application Timetable:* The application deadline for Adjudication programs will be August 30, 1985. An agency review board will make award recommendations based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds to achieve a maximum delivery of assistance. The BJA Director will announce selections early in September, 1985. The terms of the cooperative agreements will be negotiated with the winning applicants to insure a mutual understanding of responsibilities. Awards are projected for October 30, 1985.

The BJA contact for additional information on this program is: Nicholas Demos, Courts and Victims Assistance Program Team, (202) 724-5974.

*Program Area D: Law Enforcement Related Programs*

Assistance is to be provided in support of programs and projects within the following legislative purposes:

- Disrupting illicit commerce in stolen goods and property;
- Combatting arson;
- Effectively investigating and bringing to trial white collar crime, organized crime, public corruption crimes, and fraud against the Government;
- Improving the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques; and
- Other law enforcement initiatives certified by BJA as successfully addressing critical problems of crime.

Examples of approved programs include the Property Crime (STING) Program, the Arson Prevention and Control Program, and the Integrated Criminal Apprehension Program (ICAP). Program Briefs are available for these programs.

A single cooperative agreement will be funded for combined technical assistance and training for all law enforcement related programs. It is projected that three Implementation Guides and Manuals will be required within a six month period; that up to 250 telephonic inquiries will be handled; that 100 on-site technical assistance visits will be required; and that six regional and state training sessions will be held for programs dealing with Integrated Criminal Apprehension Program, the Property Crime Program, and the Arson Prevention and Control

Program. Local jurisdictions will fund their own travel and per diem costs.

*Funding:* Up to \$1,000,000 is available for delivery of technical assistance and training to law enforcement programs over a period of 18 months.

*Application Timetable:* The application deadline for law enforcement technical assistance and training will be August 30, 1985. An agency review board will make award recommendations based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds to achieve a maximum delivery of assistance. The BJA Director will announce selections early in September, 1985. The terms of the cooperative agreement will be negotiated with the selected applicant to insure a mutual understanding of responsibilities. Award is projected for October 30, 1985. Formats for technical assistance and training activities are presented in Attachment A.

The BJA contact for additional information on this program area is: Jules Tesler, Law Enforcement Services Program Team, (202) 724-5974.

*Program Area E: Victim Assistance*

Assistance is to be provided in support of programs and projects within the following legislative purpose:

- Development and implementing programs which provide assistance to victims of crimes;

The Victim Assistance Program is an approved program and a Program Brief is available. Technical assistance and training will be provided to block grant victims projects and a limited number of national-scope victims technical assistance activities will be conducted through a cooperative agreement.

The Recipients of this technical assistance and training will include:

- State legislative and executive branch officials engaged in law reform on victims issues;
- National, State, and local organizations addressing problems of violence within the family such as abuse of children, spouse and elderly members;
- Law enforcement officers, prosecutors, judges seeking changes in procedures that presently work against the interests and concerns of victims;
- Non-criminal justice agencies such as community based victim service organizations which are pursuing efforts to ameliorate the sufferings of crime victims;

It is estimated that approximately 100 on-site technical assistance visits will

be made in serving the above clients. Approximately eight training sessions clustered on a regional basis will be completed.

**Funding:** Maximum funding for this training and technical assistance program is \$600,000 for a period of 18 months.

**Application Timetable:** The application deadline for this program area will be August 30, 1985.

An agency review board will make award recommendations based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds to achieve a maximum delivery of training and technical assistance.

Selection will be announced by September 15, 1985.

The grant will be processed for award by October 30, 1985 so that technical assistance delivery can begin on November 1, 1985. Interested applicants should be familiar with the recommendations of the President's Task Force on Victims of Crime, and the Attorney General's Task Force on Family Violence. These reports may be obtained from the National Victim Resource Center at 202/724-6234, or by writing the National Victims Resource Center, Office for Victims of Crime, 833 Indiana Avenue, NW., Washington, D.C. 20531.

In addition, a \$400,000 grant to the National Sheriffs' Association (NSA) will provide technical assistance to State sheriffs' associations which assist local law enforcement officials in meeting victims' needs. A \$254,000 grant to the National District Attorneys Association (NDAA) will provide technical assistance to prosecutors to establish or enhance their services to victims. A \$231,000 grant to the National College of District Attorney's will fund five regional workshops for prosecutorial executives and state training directors on key concepts and proven techniques to meet victims needs.

The BJA contact for additional information on this program area is: James Swain, Courts and Victims Assistance Program Team, (202) 724-5974.

#### *Program Area F: Other Statutory Purposes*

Assistance is to be provided in support of programs and projects within the following legislative purposes:

- Programs which identify and meet the needs of drug-dependent offenders;
- Operational information systems and workload management systems which improve the effectiveness of criminal justice agencies;

- Programs which address the problem of serious offenses committed by juveniles; and
- Programs addressing problems of crime committed against the elderly, and which assist State and local law enforcement in rural areas.

The certified programs in this area are: (1) Treatment Alternatives to Street Crime (TASC), which deals with screening and treatment for drug dependency; (2) Prosecution Management Support System, which deals with automated management information; and (3) the Juvenile Restitution Program, which deals with restitution as a basis for offender accountability and victim compensation. BJA Program Briefs are available for these three programs.

A series of cooperative agreements and purchase orders will be utilized to provide technical assistance and training.

**F-1: Treatment Alternatives to Street Crime (TASC)**—Two purchase orders in the range of \$20,000–\$25,000 will be awarded. One purchase order will be to the national organization of TASC directors to develop a resource catalogue which identifies experts in each TASC element. A second purchase order will be issued to a non-profit agency to develop a national data base for TASC activities, clients outcomes, statistics and performance standards. These purchase orders are expected to be awarded by September 15, 1985.

A cooperative agreement in the range of \$240,000–\$250,000 will be issued on a negotiated bid basis to an organization that will provide on-site technical assistance, develop an implementation manual including performance standards for critical elements, design a model training curriculum, and assess the utility of internships as a method for TASC training. General statements of intent and summaries of experience with drug-related projects should be submitted by interested agencies by August 30, 1985. A cooperative agreement award is projected by October 15, 1985.

**F-2: Criminal Justice Information Systems**—BJA will expand the existing SEARCH, Inc. grant to support additional transfers of criminal justice information systems. The grant extensions will be negotiated to involve other appropriate organizations and individuals to accomplish a number of purposes, including: design of additional information systems Program Briefs; design of systems manuals; priority access to software index searches; onsite assistance for systems requirements analysis and software

transfers; and regional or national training sessions. The Prosecutors Management Support System will receive priority in onsite technical assistance. Approximately \$300,000 will be obligated for these purposes by October 30, 1985.

**F-3: Restitution for Juvenile Offenders**—BJA will expand the existing technical assistance and training program of the Office of Juvenile Justice and Delinquency Prevention to support Block Grant projects. The emphasis will be on access to program documentation, technical assistance experts, host sites, and regional training activities. The grantee will also refine critical elements for successful juvenile restitution projects, and recommend performance standards. For this purpose, \$150,000 will be awarded. A negotiated amendment to the current grant is projected by October 1, 1985.

**F-4: Crimes Against the Elderly and Rural Law Enforcement**—A cooperative agreement in the range of \$200,000 is earmarked for these program areas to provide on-site technical assistance, design and training curriculum, and conduct training sessions. General statements of intent and summaries of experience with the subject area should be submitted by interested agencies by August 16, 1985. A cooperative agreement award is projected by September 30, 1985.

The BJA contact for additional information on this program area is: John Gregich, Drug Control and Special Program Team (202) 272-6838.

#### *Program Area G: Technical Assistance for Demonstration Programs*

Three program concepts will be funded as Demonstration Programs at twelve to fourteen local sites around the country. Each site will be required to implement the new concept, test its transferability, and participate in an evaluation.

Technical assistance will be provided to each site to insure a sound start and to make necessary revisions throughout the 18 month life of the test.

The technical assistance provider will need to secure expert advice in the three program areas:

- (1) Effective Prosecution of Child Physical and Sexual Abuse Cases;
- (2) Law Enforcement Crime Prevention; and
- (3) Intervention Strategies in Family Violence Cases.

The critical project elements for introduction of each concept and reference materials to be used by each site can be obtained by writing the Bureau of Justice Assistance.

**Application Timetable:** Applications should be submitted by August 30, 1985. Selections will be made on or before September 30th and awards made on or before October 30, 1985.

**Funding:** A technical assistance cooperative agreement will be awarded in the range of \$350,000 to \$400,000.

The BJA contact for additional information on this project is: Nicholas Demos, (202) 724-5974.

### SUBPART III—NATIONAL/MULTI-STATE PROGRAMS

National/Multi-State programs address national priorities and initiatives that cannot be met through the state Block Grants. They reflect administration priorities or gaps in criminal justice funding that cannot be met from other sources. Many of these projects continue on-going commitments, while others support new national coalitions and support networks. While funding for national scope projects emphasizes four program areas this fiscal year, similar initiatives will be announced from time to time during the next fiscal year. The four program areas of emphasis this fiscal year are:

- (a) National Victims of Crime Program
- (b) National Crime Prevention Campaign
- (c) Law Enforcement Accreditation, and
- (d) Support of Prison Industries Enhancement Program.

The estimated range of total funding for National/Multi-state programs will be approximately 4.8 to 6.7 million dollars through the first quarter of next fiscal year.

#### A. National Victims of Crime Program

Several projects have been funded or will be funded to enhance the capabilities of state and local criminal justice agencies and community-based service organizations to assist crime victims. It is estimated that \$3.4 million will be allocated for projects in this program area. Specific projects include: National Organization for Victim Assistance (NOVA), \$761,000; American Bar Association (ABA) (supplement) \$28,000; and The National Association of Attorneys General, (NAAG) (supplement) \$42,000; the Illinois' Attorney General's Office \$55,000. Up to \$2,500,000 of the above total is earmarked for awards to be made during the next six months for various national scope victim improvement efforts. These additional projects would include activities of the National Victims Resource Center, a child sexual abuse prosecution center, medical/mental health victim protocols (Federal

interagency agreement), and law enforcement and other criminal justice system efforts to improve the service for treatment of crime victims.

#### B. National Crime Prevention Campaigns

OJP will continue to fund the highly successful Citizens Crime Prevention Campaign ("Take a Bite out of Crime"), as well as Crime Stoppers. \$621,000 is being awarded to the National Crime Prevention Council, and \$83,000 is being awarded to the Crime Stoppers campaign.

The National Crime Prevention Council operates on a number of fronts, providing public education through national mass media, operating a computerized information center on crime prevention activities and resources, and producing and distributing crime prevention materials for state and local agencies. The Council works in cooperation with the Advertising Council, Inc., and the Crime Prevention Coalition.

#### C. Law Enforcement Accreditation

One grant of \$499,000 has been awarded to continue the work of the Commission on Accreditation for Law Enforcement Agencies, which provides an assessment process and certification for law enforcement agencies which meet the standards developed by the professional law enforcement community.

#### D. Support of Prison Industries Enhancement Program

One grant of \$211,000 is being provided to Criminal Justice Associates, Inc. to assist applicant state departments of correction to develop joint ventures with private enterprise under the terms of Sec. 319 of the Justice Assistance Act, as well as to work with previously certified projects. Upon expiration of this grant on December 30, 1985, a new cooperative agreement will be awarded on a competitive basis (See Sec. B-2b of the Corrections component, TA and Training).

The BJA contact for additional information on national scope programs is: Eugene H. Dzikiewicz, Acting Deputy Director (202) 272-6838.

#### Appendix A—Technical Assistance Format and Training Format

##### Technical Assistance Format

**Task 1—Staff Organization and Orientation—**Establish an operating staff of three—five persons (no more than five full-time equivalent). The operating staff will serve primarily as technical assistance brokers for individual consultants.

**Task 2—Selection of Consultants—**Select consultants, in consultation with the BJA Grant Monitor, from operational criminal justice agencies which have successfully implemented projects in the approved program areas.

**Task 3—Handling Requests for Technical Assistance—**Receive requests for technical assistance from the BJA Monitor and proceed in the following sequence:

- a. Analyze the technical assistance requests to insure a clear definition of the problem and issues involved;
- b. Review the proposed scope of technical assistance and the proposed consultant with the requesting agency;
- c. Arrange for consultant travel to site and coordination with local agencies;
- d. Review and approve consultant reports, insuring that they meet standards of quality and format;
- e. Evaluate technical assistance quality and impact through questionnaires submitted to recipients; and
- f. On a case by case basis, arrange for revisits by consultants or TA staff to follow-up on initial recommendations and actions required to implement the project.

**Task 4—Performance of Special Tasks at BJA Direction—**Perform tasks to include draft publications and analysis of BJA program activities as requested by the BJA Monitor. Such requests will not surpass ten percent of available technical assistance funding.

Periodic status reports will be required on pending and completed technical assistance assignments, usually on a monthly basis.

##### Training Format

Activities to be accomplished include: The development and validation of curriculum, trainer guides and trainee guides, selection of training sites, selection of trainers, and oversight of training sessions.

**Task 1—Development and Validation of Training Curriculum—**A training curriculum will be developed, validated and adjusted as determined by post-training evaluations.

**Task 2—Development of Trainer and Trainee Guides—**Guides shall include sufficient background materials and step-by-step project activities to serve as a reference tool during the implementation of local projects.

**Task 3—Selection of Training Sites—**Appropriate regional or state training sites will be selected to meet program needs. Model sites within a region will be utilized whenever it is cost effective.

**Task 4—Trainers will be selected from experience operating staffs within**

the region to the maximum extent possible. The grantee will be responsible for screening and orienting trainers, and for evaluating their performance.

Task 5—Oversight of the Delivery of Training—Grantee will be responsible for implementing the training, for evaluating impact, and for periodic reports to BJA.

Richard B. Abell,

*Deputy Assistant Attorney General.*

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# **federal register**

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Friday  
July 26, 1985

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**Part VII**

**Department of  
Education**

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**34 CFR Part 668**

**Student Assistance General Provisions;  
Notice of Proposed Rulemaking**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 668

## Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Student Assistance General Provisions Regulations to implement in the 1986-87 award year an integrated system for the verification of information reported by students, their spouses, and their parents when the students apply to have their expected family contribution calculated for the Pell Grant Program, campus-based programs (National Direct Student Loan [NDSL], College Work-Study [CWS], Supplemental Educational Opportunity Grant [SEOG]), and Guaranteed Student Loan (GSL) Program. The Secretary is proposing these regulations, in part, to respond to the severe and persistent problem, identified in recent quality control studies, of high error rates in data reported by applicants in the Pell Grant Program. The same data are used in the other programs covered by these proposed regulations. The Secretary, therefore, intends that the integrated verification system assure, to the maximum extent possible, that eligible applicants receive the correct amount of student financial assistance.

**DATE:** Comments must be received on or before September 24, 1985.

**ADDRESS:** All comments concerning these proposed regulations should be addressed to Mr. Fred Sellers, Office of Student Financial Assistance, U.S. Department of Education, Room 4318, Regional Office Building 3, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Fred Sellers (202) 472-4300.

**SUPPLEMENTARY INFORMATION:****Background**

Under the Pell Grant, GSL, and campus-based programs, an applicant receives financial assistance, including interest benefits under the GSL Program, if the applicant has financial need for such assistance. In general, financial need is defined as the difference between the applicant's cost of attendance and expected family contribution (EFC). An expected family contribution is an amount that the

applicant and his or her family should reasonably be expected to contribute toward his or her cost of attendance.

In order for an applicant to have his or her expected family contribution calculated, the applicant must apply to the Secretary, to an institution, or to an approved need analysis system. The Secretary, institution, or system calculates an applicant's expected family contribution based upon the information provided in the application.

While verification (validation) of student aid application information for selected applicants has been required in the Pell Grant Program since February 1979, there has been no Departmental requirement for verification of application information under the other need-based student assistance programs. In addition, even though the Student Assistance General Provisions, 34 CFR 668.16, require institutions to use information obtained during the Pell Grant verification when determining campus-based awards, the suggested GSL loan amount, and eligibility for GSL interest benefits, the Department has not required verification for applicants of campus-based or GSL aid who are not eligible for a Pell Grant. The Secretary proposes to require verification for all such applicants and requests comments on whether the verification requirement should apply to applicants for campus-based aid.

The General Accounting Office (GAO), in Report No. 79-16, dated May 1979, entitled "Inconsistencies in Awarding Financial Aid to Students Under Four Federal Programs," reported that no Departmental verification requirement existed for those applicants receiving only campus-based aid. This report recommended requiring verification of applicant- and parent-supplied data for these programs.

Since that time, the Secretary has received three quality control reports from the Office of Student Financial Assistance in 1979, 1981, and 1983 that document in the Pell Grant Program large numbers of applicants and their parents misreporting information regarding their family and financial status. This misreporting, whether intentional or not, significantly and adversely affects the amount of aid available to truly needy students and unjustifiably raises the cost of the program to Federal taxpayers. Based on a 1983 quality control study, an estimated 39 percent of the Pell Grant recipients received an inaccurate award for the 1982-83 award year because of applicant error on the application form.

The majority of applicants applying for campus-based aid or a Guaranteed Student Loan use the same forms as the

forms used to apply for a Pell Grant. Therefore, by definition, the same misreporting of applicant information occurs in the campus-based and Guaranteed Student Loan programs. Consequently, this proposed rule, by extending verification to the campus-based awardees and GSL applicants, helps to assure that applicants receive the correct amount of aid under the campus-based programs and that GSLs are made only to eligible applicants.

Initially, the Secretary consulted with the postsecondary education financial aid community regarding the development of a verification system for the campus-based, GSL, and State Student Incentive Grants (SSIG) programs. The Secretary also sought involvement by requesting comments on a proposed system of verification for these programs. The Secretary has incorporated in these proposed regulations many of the comments received.

On March 15, 1985, the Secretary published final regulations for the Pell Grant Program which specified in 34 CFR 690.77 the information and documentation requirements for that program for applicants selected for verification. These proposed regulations require that selected applicants verify the same items and use similar documentation as provided for in 34 CFR 690.77. When the Secretary publishes final regulations for the integrated verification system, he will amend the Pell Grant Program regulations by deleting § 690.77.

In addition, the Secretary has reviewed other models and techniques for verification of applicant information. One model reviewed by the Secretary is the set of principles adopted by the National Association of Student Financial Aid Administrators (NASFAA) and the NASFAA monograph, "Standards for the Verification of Information to Determine Financial Aid Eligibility." The Secretary believes that these proposed regulations are in accord with most of the NASFAA principles and with many features of the NASFAA monograph. The Secretary also reviewed the verification techniques used in Federal programs of income support for applicability to the student assistance programs.

**Exclusions From Verification**

The Secretary is not including the PLUS and SSIG Programs under these proposed regulations. The PLUS Program does not currently require the use of need analysis to determine applicant eligibility, and, therefore, the provisions of these proposed regulations

are not applicable. Although the SSIG Program is a need-based program, institutions in many States do not know whether an applicant's State grant includes SSIG funds. In those cases where the institution knows or can be reasonably expected to know that an applicant's State grant includes SSIG funds, the provisions of § 668.16(f) of the Student Assistance General Provisions regulations are applicable, and for any such applicant selected for verification under these proposed regulations, the institution must consider the verified data to determine the applicant's SSIG.

The principal source for verification of applicant's information under these proposed regulations is the United States Individual Income Tax Return or a comparable State income tax return. Since foreign institutions participating in the GSL Program do not have the requisite knowledge of U.S. tax laws, it is unreasonable to expect those institutions to comply with the requirements in these proposed regulations. Therefore, the Secretary proposes to exclude participating institutions located outside the United States and its territories from the requirements in these proposed regulations.

#### Institutional Error

Although these proposed regulations are concerned with reducing the error rate in student aid application information, the Secretary is also concerned about institutional error in the administration of the Federal student assistance programs. A 1983 quality control study showed that institutions made errors in awards for a substantial number of recipients in the Pell Grant Program.

The Secretary believes that institutions should include a quality control system in their administration of the student assistance programs to reduce both institutional and student error rates. A quality control system monitors the accuracy of an institution's own administration of its student aid programs. The essential element of any quality control system is its capability to detect, prevent, and correct errors and tendencies toward errors that occur in an operational setting. In a pilot project during the 1985 calendar year, the Secretary with the participation of several institutions is testing different quality control systems and subsequently expects to propose regulations under which institutions will be required to implement a quality control system.

#### Policies and Procedures (§ 668.53)

The Secretary proposes that an institution shall have written policies and procedures for verifying applicant information and that these policies and procedures provide for the proper administration of the verification system used by the institution.

The Secretary is proposing to require that an institution include procedures for reporting to State or local law enforcement agencies for investigation any instance in which it has reason to believe that an applicant has applied for student assistance under false pretenses. This proposed requirement is in furtherance of the Secretary's concern for preventing fraud and abuse in the student assistance programs and is in accordance with § 668.14(g) of the notice of proposed rulemaking to amend the Student Assistance General Provisions regulations published in the Federal Register on December 12, 1984.

#### Selection of Applicants for Verification (§ 668.54)

The Secretary proposes that an institution verify all applications that edits select for verification. These edits are a set of preestablished factors that are used to identify student aid applications for verification based upon indications that the information contained in the application may be erroneous. The edits also select a random sample of applications for verification. The random sample provides an appropriate level of quality assurance and assures an adequate sample for evaluation.

Similar to the current Pell Grant regulations requirement in 34 CFR 690.77(c), applicants under these proposed regulations must verify all of the applicable items specified in § 668.56 if the edits select their applications for verification. In addition, the Secretary propose to continue the current requirement in 34 CFR 690.77(b) of the Pell Grant Program regulations, and extend it to the campus-based and GSL programs, that an institution must require an applicant to verify any application information that the institution believes incorrect.

The edit selection process in these proposed regulations is comparable to the current Pell validation system. With the inclusion of the campus-based and GSL programs, however, the Secretary is proposing to enter into agreements with agencies or organizations with approved need analysis systems for the campus-based programs to provide them with the edits for selecting applicants to verify their application information.

In cooperation with representatives of the financial aid community, the Secretary developed common edits for 1985-86 that are optional for the campus-based and GSL programs for 1985-86 and will cooperatively develop the mandatory edits for use in 1986-87. Each year the Secretary will evaluate and change the edits as necessary. The Secretary will provide these edits to the Pell Grant Program Central Processor and to any State agency, Multiple Data Entry servicer, or other organization that has a need analysis system approved by the Secretary for the award year if that agency, servicer, or organization agrees to use the edits as specified.

While the Pell Grant processing system and organizations that enter into agreements with the Secretary may use the common edits, the Pell Grant processing system may include additional edits that select applicants for verification. Thus, the Pell processing system may supplement the total number of applicants selected for verification.

Some applicants do not apply for a Pell Grant, and their applications for campus-based or GSL assistance may not be submitted to an agency or organization using the edits. The Secretary is proposing that an institution shall require all of these applicants to verify their application information. For an applicant applying *only* for a GSL, an institution must require the applicant to verify the applicable information in accordance with § 668.57(b) if (1) the institution determines the applicant's need by using the GSL Needs Test Tables and the applicant does not apply on the student aid application form of an approved need analysis system to have his or her EFC calculated, or (2) the applicant reports an adjusted gross family income of \$30,000 or less.

The Secretary proposes to exclude categories of applicants from verification. The Secretary bases his decision to exclude these applicants upon the difficulties the individuals would face in attempting to provide the documents necessary for verification. The Secretary also excludes from verification those individuals who apply for, but do not receive, assistance under the programs covered by this subpart.

#### Updating Information (§ 668.55)

If the applicant's household size or the number of family members in the applicant's household enrolled in postsecondary educational institutions changes between the time the applicant applied for assistance and the date that the institution verifies the information, the applicant must update this

information to reflect the change. For Pell Grant applicants not selected for verification, the Secretary is proposing to include in these regulations the current requirement of the Pell Grant Program contained in 34 CFR 690.14(b). Under this provision, these applicants update their household size and number of family members in postsecondary institutions as of the date the first submit their Student Aid Report (SAR) to the institution or the Secretary. Moreover, the Secretary is adding a requirement that these applicants sign the statement on the SAR certifying that this information on the SAR is still accurate. In the case of applicants for campus-based aid or a GSL who are not selected for verification, the Secretary proposes to continue each program's current policy of permitting institutions to require applicants to update this information or any other application information throughout the award year.

Except for the following two exceptions, if a student's dependency status changes at any time after the student has applied for assistance, he or she must revise that status. By definition, a student's dependency status changes whenever a change in the projected dependency criteria for the first calendar year of the award year affects the student's dependency status. One exception is that if the institution has already certified a GSL for the applicant, the applicant is not required to update the dependency status on his or her GSL application. The other exception is that if a student's marital status changes after he or she has applied for assistance, the change in marital status will not be updated and, therefore, will not affect a student's dependency status.

#### Items To Be Verified (§ 668.56)

The Secretary's purpose in publishing these proposed regulations is to ensure that eligible students receive the correct amount of assistance. Therefore, the Secretary's objective is for all students to submit accurate data on their applications for assistance. However, for these proposed regulations, the Secretary is focusing on certain specific requirements as part of the development of a more comprehensive plan to reduce institutional and student error in the student assistance programs.

The Secretary proposes a specific set of items that institutions must verify similar to the set of items published in § 668.77 of the Pell Grant Program regulations. If the Secretary must change any of these items because of the addition or deletion of items in the tax forms, or because of an increase or decrease in the severity of the problems

in reporting accurate information on the application, the Secretary will propose amendments to these regulations revising the list of items that institutions must require applicants to verify in subsequent award years.

The Secretary proposes that an applicant shall verify, if applicable, the following items:

- Adjusted gross income (AGI) and U.S. income tax paid as reported on the U.S. Individual Income Tax Return.
- Household size.
- Number in the household enrolled in postsecondary educational institutions.
- Independent student status.
- Untaxed income and benefits.

If an applicant is applying for a GSL and the applicant's adjusted gross family income is \$30,000 or less, the applicant must verify that income and if an independent student, independent student status. If the applicant's income exceeds \$30,000 and the institution uses the GSL Needs Test Tables, the applicant must verify the adjusted gross family income, the household size, the number in the household in postsecondary educational institutions, and if an independent student, independent student status. If the institution uses an approved system of need analysis to determine an applicant's EFC, the applicant must verify all the items listed above that were used to calculate the applicant's EFC.

Because of the differing methods and information used to determine each applicant's EFC, each applicant may not be verifying the same items.

#### Acceptable Documentation (§ 668.57)

\* The documentation that applicants must provide for the items to be verified under these proposed regulations is similar to the documentation required for those items in the Pell Grant Program regulations. The Secretary seeks comments concerning whether the proposed documentation is adequate and whether other sources of data of comparable or better quality are available that do not place undue burdens on institutions.

The Secretary proposes the U.S. income tax return or comparable State income tax return as the principal source of data for verifying most information on the application form. The Secretary also proposes the use of the IRS transcript of tax account information, that a taxpayer may request and receive from the Internal Revenue Service, as an alternative to a tax return.

Not all State income tax returns are comparable to the U.S. income tax

return. The Secretary has determined that a comparable State income tax return is one that includes the amount of adjusted gross income and U.S. income tax paid as reported on the U.S. Individual Income Tax Return. However, the responsibility for assuring that the State income tax return is comparable to the U.S. Individual Income Tax Return rests with the institution.

For documenting independent student status, the Secretary proposes that institutions shall require that, except as described below, an *unmarried applicant* verify independent student status by relying on the Federal or comparable State income tax return of the applicant's parents for the calendar year preceding the first calendar year of the award year (e.g., 1985 for the 1986-87 award year) and a written statement signed by the parents concerning whether the parents will claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year (e.g., 1986 for the 1986-87 award year) and concerning for both relevant years the amount of assistance provided to the applicant by the parents and the number of days that the applicant lived with the parents. If the applicant is *married*, the parents need to provide only a written statement regarding the income tax exemption, support, and residency in the first calendar year of the award year.

If the institution has conflicting documentation with regard to any of the three factors used to determine independent student status, i.e., tax exemption, the receipt of \$750 worth of support, or six weeks residence, only the documentation described above may verify an applicant's independent student status.

If the institution does not have conflicting documentation with regard to an applicant, the following rules apply:

1. For the Pell Grant Program, the institution shall not require any documentation if the applicant will be 23 or older on May 31 of the award year for which aid is requested (e.g., May 31, 1987 for the 1986-87 award year). If a *married applicant* will not be 23 or older on May 31 of the award year for which aid is requested, the institution shall consider that the applicant has verified his or her independent student status if the institution determines that the applicant's parents are unable or unwilling to provide the required statement.

If an *unmarried applicant* will not be 23 or older on May 31 of the award year for which aid is requested, the institution shall consider that the applicant has verified his or her

independent student status if the institution determines that—

a. The applicant's parents are unable or unwilling to provide the required tax return and statement, and

b. The applicant had sufficient income to support himself or herself and any dependents in the calendar year preceding the first calendar year of the award year.

2. For the campus-based and GSL Programs, the institution has the option of (a) requiring the applicant's parents to provide the requested tax returns and statements unless the institution determines that the parents are unable to do so, or (b) following the rules set forth for the Pell Grant Program.

If an institution needs to determine whether the applicant's parents are unable or unwilling to provide the required tax return statements, the institution shall make a reasonable effort to obtain the tax returns or statements directly from the applicant's parents. The Secretary considers that the parents are "unable" to provide the required documentation if the institution determines that circumstances identical or similar to the following apply: (1) the responsible parents are deceased; (2) it is not possible to contact the responsible parents because the parents are currently absent from the United States and inaccessible and are expected to remain absent and inaccessible beyond a reasonable period of time for completing the verification process; (3) the responsible parents' address cannot be determined; or (4) the responsible parents' physical or mental state prevents them from providing the required documentation. The Secretary considers the parents "unwilling" to provide the required documentation if the parents do not provide the documentation but are not unable to do so.

As in the 1985-86 award year, the Secretary will notify institutions on an unmarried applicant's SAR if he has conflicting documentation concerning the three factors used to determine independent student status. For example, the Secretary will notify the institution concerning whether the applicant was claimed as an exemption by his or her parents in the base year of an award year (i.e., the calendar year preceding an award year, 1985 for the 1986-1987 award year). The Secretary determines if he has this information by comparing the application information filed by an applicant for an award year with the application information filed by

the applicant for the previous award year.

If verification results in a change from independent student status to dependent student status, the applicant must submit a new student aid application providing parental data in order to recalculate the applicant's EFC. As a selected applicant, the applicant must verify the parental data provided on the new application.

The Secretary recognizes that the proposed documentation requirements for verifying independent student status are complex. However, the Secretary believes that the magnitude of the error in awards made on the basis of incorrect dependency status, as found in the quality control reports in the Pell Grant Program, require substantially enhanced verification efforts in this area.

The Secretary further proposes that institutions obtain signed statements from applicants and parents, as appropriate, to verify certain items. However, for number in household, the institution need not obtain a signed statement to resolve a discrepancy between the number of exemptions claimed on the tax return and number in household on the student aid application if the institution has other documentation on file which explains the difference. For the number of family members in postsecondary educational institutions, the institution need not obtain a separate written statement if the applicant's student aid application provides the names of the household members who are or will be attending postsecondary institutions as at least half-time students, their ages, and the names of the institutions that they are planning to attend, and this information is still accurate as of the date of verification. The Secretary is proposing that institutions verify untaxed income and benefits by obtaining, in addition to a tax return, a copy of the student aid application worksheet for untaxed income and benefits which is part of an application package or comparable listing of that information and a signed statement certifying that the information on the worksheet or listing is correct. The institution need not obtain a copy of the worksheet or comparable listing if the applicant's student aid application provides a listing of this information and the applicant, and the applicant's parent in the case of a dependent student, certify that this information is still accurate as of the date of verification.

The Secretary is deleting the requirement in the Pell Grant Program

that institutions must verify veterans educational benefits. Under § 668.16(f) of the Student Assistance General Provisions, institutions shall develop an adequate system to verify the consistency of the information they receive from different sources. This provision applies to all veterans at an institution who receive benefits.

If the institution determines that it has any reason to doubt the information supplied by the student for the number in postsecondary institutions or an untaxed income or benefit, a signed statement is not sufficient documentation to verify the accuracy of the data. In these cases, the institution must require additional documentation. For number in postsecondary institutions, the applicant must provide a statement from the institution the other family member is attending, indicating the individual is enrolled as at least a half-time student, unless the institution the student is attending certifies that such a statement is unavailable or not obtainable in a reasonable period of time. For untaxed income and benefits, the applicant must submit a statement from the agency supplying the untaxed benefit of the amount of the benefits provided unless the institution determines that such a statement is not available.

While the Secretary has received comments suggesting that processing agencies should verify tax return information through an identifiable tape match with the Internal Revenue Service (IRS), the Secretary has determined that this is not a viable option at this time. The Department is currently exploring this issue with the Treasury Department.

#### *Applicable Items To Be Verified*

Generally, four factors determine whether an applicant selected for verification must verify a particular item on his or her application. These factors are—

- The dependency status of the applicant;
- The need analysis system used to calculate the applicant's EFC;
- The item to be verified; and
- The documentation requirements for each item.

Based on these factors, the following charts for dependent and independent students show the applicable items if these proposed regulations applied to the 1985-86 award year:

## REQUIRED VERIFICATION ITEMS FOR DEPENDENT STUDENT

MAJOR NEED ANALYSIS SYSTEMS	PARENTS' DATA									APPLICANT'S (AND SPOUSE'S) DATA		
	BASE YEAR								HOUSEHOLD SIZE	NO. IN POSTHIGH	BASE YEAR	
	AGI	TAX PAID	SOCIAL SECURITY BENEFITS	MARRIED COUPLE DEDUCTION	IRA DEDUCTION	KEOGH DEDUCTION	OTHER UNTAXED INCOME	AGI			TAX PAID	UNWAGED INCOME
SAR SAI	X	X	X	X			X	X	X	X*	X*	X*
SPECIAL CONDITION SAR SAI OR EC								X	X	X*	X*	X*
SAR EC	X	X	X	X	X	X	X	X	X			
ACT	X	X	X	X	X	X	X	X	X			
CSS	X	X	X	X	X	X	X	X	X			
GAPSEAS	X	X	X	X	X	X	X	X	X			
PHEAA	X	X	X	X	X	X	X	X	X			
GSL	NEED TEST TABLES	X						X	X	X		
	AGI \$30,000 OR LESS	X								X		

\* The applicant must verify his or her (and his or her spouse's) AGI, taxes paid, and untaxed income and benefits if base year income is used to calculate his or her SAI.

## REQUIRED VERIFICATION ITEMS FOR INDEPENDENT STUDENT

MAJOR NEED ANALYSIS SYSTEMS	APPLICANT'S (AND SPOUSE'S) DATA							
	BASE YEAR					HOUSEHOLD SIZE	NO. IN POSTHIGH	APPLICANT'S INDEPENDENT STUDENT STATUS
	AGI	TAX PAID	SOCIAL SECURITY BENEFITS	MARRIED COUPLE DEDUCTION	OTHER UNTAXED INCOME			
SAR SAI	X	X	X	X	X	X	X	X
SPECIAL CONDITION SAR SAI OR PC						X	X	X
SAR EC						X		X
ACT						X		X
CSS						X		X
GAPSEAS						X		X
PHEAA						X		X
GSL	NEED TEST TABLES	X				X	X	X
	AGI \$30,000 OR LESS	X						X

**Interim Disbursements (§ 668.58)**

Under 34 CFR 690.77(a)(2) of the Pell Grant Program regulations, the Secretary may require an institution to withhold payment of a student's grant until verification is completed and the institution determines that the information contained on the SAR is correct. In furtherance of this provision, the Secretary has notified institutions in the Pell Grant *Validation Handbook* to withhold payment of an applicant's Pell Grant until the applicant has provided the correct information unless the institution wishes to assume liability for any overpayment.

Under the integrated verification system, verification of applicant information will apply not only to the Pell Grant Program but also to the GSL and campus-based programs. The Secretary, therefore, is proposing that with regard to the Pell Grant and campus-based programs, an institution may, before an applicant completes the verification process, either (1) withhold all payments or (2) make one disbursement to an applicant of a Pell Grant, SEOG, and NDSL in the applicant's first payment period and employ the applicant under CWS for the summer before and for sixty (60) days after the applicant is enrolled in that first payment period. However, if the institution chooses the second approach, it will be liable for any overpayment it makes to a student that is discovered as a result of the verification process. Even though an institution will be liable for any such overpayment, its exposure to liability will be minimal because most overpayments are small and can be adjusted during the award year. If the applicant misreports data and receives an overpayment, the institution must follow the procedures for each program described below in "Recovery of Funds" and contained in § 668.61.

With regard to the GSL Program the institution may not certify a GSL application until the selected applicant completes verification. In some instances, however, an institution may certify a GSL application and later select that applicant for verification in the course of making an award under the campus-based or Pell Grant programs. In these cases, if the GSL check is sent to the institution, the institution may not endorse the check unless verification shows that the applicant is eligible for that loan amount and related benefits. The institution may not hold the check for more than 30 days and must return it to the lender if the applicant has not yet completed the verification process.

The Secretary proposes that when corrections result in a change in the suggested GSL loan amount, an institution use the following procedures:

1. If the difference in the approved loan amount is less than \$200, no adjustment is necessary.
2. If the error in the suggested loan amount is \$200 or more, the institution must notify, within 30 days of its determination of the correct suggested loan amount, the borrower, the lender, and the appropriate guarantee agency of the ineligible loan amount and of the correct amount the borrower is eligible to receive and return any GSL checks in its possession to the lender.

**Consequences of an Inaccurate Application (§ 668.59)**

The Secretary believes that there may be many cases where the difference in the amounts reported on an application and on an income tax return and other documents will not significantly affect the amount of assistance the applicant is eligible to receive. In these cases, the reprocessing of aid applications or the re-packaging of aid awards would be burdensome to applicants, institutions, lenders, and guarantee agencies and would not result in a substantial savings to the Federal government or a major reallocation of funds to applicants. Therefore, the Secretary proposes error levels (tolerances) below which the recalculation of an applicant's EFC will not be required.

The Secretary is proposing for the Pell Grant Program that no recalculation of an applicant's EFC (Student Aid Index) will be required if the net change in the dollar items verified is less than \$100. For the campus-based and GSL Programs the Secretary is proposing that no recalculation of an applicant's applicable EFC will be required if the net change in the dollar items verified is less than \$600 unless the institution uses the Pell Grant Student Aid Index as the applicant's EFC. In that case, no recalculation will be required if the net change in dollar items verified is less than \$100. An institution must recalculate the EFC if nonfinancial data (e.g., the number in the household or in postsecondary educational institutions) are in error.

To determine the net change in dollar items verified, the institution first determines the amount of change in each dollar item by subtracting the amount originally reported from the amount verified. If the amount verified is greater than the amount originally reported, the amount of change has a positive numerical value. If the amount verified is less than the amount originally reported, the amount of

change has a negative numerical value. After making this determination for each item, the numerical value of the change in each item verified that decreases the EFC (e.g., U.S. income tax paid and the married couple deduction) is reversed from positive to negative or negative to positive as appropriate. The institution then adds all the changes in value to arrive at the net change in dollar items verified. If an applicant's net change in dollar items exceeds a positive or negative \$100 for the Pell Grant Program or a positive or negative \$600 for the campus-based and GSL programs, the applicant's EFC is recalculated to determine if his or her award changes.

The following is an example of determining an applicant's net change in dollar items verified. An institution determines under the verification process that an applicant's AGI is \$18,300 instead of \$18,000 reported on the application, that the U.S. income tax paid is \$1,100 instead of \$1,000, and that the applicant's married couple deduction is \$300 instead of \$500. Therefore, the institution determines that the change in value of these items is respectively a positive \$300 for AGI, a positive \$100 for tax paid, and a negative \$200 for the married couple deduction. Before adding these three amounts, the values of the changes in U.S. income tax paid and the married couple deduction are reversed to a negative \$100 and a positive \$200. Thus, the net change in dollar items after adding these three amounts is a positive \$400, and only the applicant's Student Aid Index for the Pell Grant Program must be recalculated as described below.

The Secretary recognizes that the proposed tolerance level of \$100 for the Pell Grant Program is more rigorous than the current tolerances provided for in that program. However, the quality control study in 1983 found that the current tolerances do not require the correction of all consequential errors. 72 percent of the verified applications within those tolerances would have had a Student Aid Index change if corrections had been required. Two-thirds of these Student Aid Index changes would have resulted in overpayments had corrections been required, and the total of the overpayments and underpayments would have yielded an unacceptably high net payment changes estimated to be \$26 million in overpayments.

For the approved need analysis systems based on the Uniform Methodology that are used in the campus-based and GSL programs, the Secretary proposes as a tolerance \$600.

This amount corresponds to a change in EFC that parallels the \$200 overaward exception in the campus-based program regulations, 34 CFR 674.14, 675.14, and 676.14.

When an institution determines that the application dollar errors exceed the tolerance levels or there are errors in nonfinancial data, the institution, or in the case of the Pell Grant Program the institution or Secretary, must determine whether there is any change in the applicant's assistance by recalculating the applicant's EFC. If the applicant has applied for a Pell Grant and the institution either does not recalculate the applicant's EFC (Student Aid Index) or recalculates the applicant's EFC and determines that the applicant's Pell Grant has changed, the applicant must resubmit his or her Student Air Report (SAR) for correction. The institution then adjusts the applicant's aid to reflect the new EFC. If the applicant applied for a GSL and reported an adjusted gross family income of \$30,000 or less and the correction of a misreported item causes the adjusted gross family income to exceed \$30,000, the institution must calculate the applicant's EFC and determine the applicant's need for a loan.

For a Pell Grant applicant whose Student Aid Index (SAI) equals zero on the SAR presented for verification, the Secretary proposes to continue to provide the "Zero SAI Charts" previously published in the Pell Grant Validation Handbook so that the applicant's SAI need not be recalculated. A school may use the charts in those cases where the SAI is zero and the SAI will remain at zero after using verified information. The Zero SAI Charts rely on a simplified version of the Pell Grant eligibility formula that compares income offsets with household size and effective family income. If after calculating the correct effective family income the institution finds that it is less than the amount corresponding to the correct household size, the student's SAI will remain zero and the amount of the scheduled award remains the same. If the student's SAI remains zero, the SAR does not need to be reprocessed. If the institution determines it cannot use the Zero SAI Charts or if the verified effective family income exceeds the effective family income for the correct household size, the school must use the net \$100 tolerance. The Secretary will publish the Zero SAI Charts for each award year in a notice in the *Federal Register*.

If verification results in a change from independent student status to dependent student status, the applicant must

submit a new student aid application providing parental data in order to recalculate the applicant's EFC. The applicant must verify the parental data provided on the new application.

#### **Failure To Provide Documentation (§ 668.60)**

The Secretary proposes that for the campus-based and GSL programs, an institution shall determine what a reasonable period of time is for its applicants to provide documentation for verification. The Secretary believes that this provision allows institutions the flexibility to set a time period that is appropriate for their particular circumstances. Except as described below, if an applicant fails to complete verification within the time period set by the institution, the institution must not disburse any additional assistance to that applicant or certify any GSL for that applicant for that award year, and the applicant is responsible for returning any NDSL or SEOG payments. If the applicant provides the requested documentation after the time set by the institution, the institution may consider the applicant's application for campus-based aid for GSL and the applicant need not return any funds for which he or she is eligible.

For the Pell Grant Program, the Secretary has included the provisions currently in 34 CFR 690.77 of the Pell Grant Program regulations regarding the submission of a verified SAR after deadlines established in 34 CFR 690.61 and in notices in the *Federal Register*.

The Secretary proposes that if the Secretary or an institution is aware that an applicant has not provided requested documentation to the Secretary, the institution, or another institution that the student previously attended, neither the Secretary in the case of a Pell Grant, nor the Secretary or the institution in the case of campus-based aid or a GSL, shall process for the current or any future years any other application for a Pell Grant, campus-based aid, or a GSL until the applicant provides the requested documentation or the Secretary determines that the documentation is no longer needed. This requirement already exists for the Pell Grant Program, and the Secretary is proposing to extend it to the campus-based and GSL programs.

The Secretary is requesting comments on whether he should revise the requirements for the financial aid transcript in Subpart A of these regulations to include information regarding whether an applicant failed to provide documentation for verification of an application for a Pell Grant, campus-based aid, or a GSL. This

revision would assure that institutions would have sufficient information to treat applicants for campus-based or GSL assistance similarly to Pell Grant applicants.

#### **Recovery of Funds (§ 668.61)**

If an institution chooses to make a disbursement before the verification process is complete, it is liable for any overpayments. The Secretary proposes to require an institution to make a reasonable effort to recover any funds to which an applicant is not entitled either by making adjustments to subsequent disbursements in the award year or by requiring applicants to return these funds if the institution cannot make corrections later in the award year. In the latter case, if the institution is unable to recover Pell Grant, NDSL, or SEOG funds after making a reasonable effort, the institution must reimburse the appropriate program account.

The Secretary proposes that if after verifying the applicant's information for an award year, an institution determines that an applicant previously received a GSL of \$200 or more in excess of the applicant's financial need for that award year, the institution must notify the lender of the change in the suggested loan amount and return any GSL check in its possession. The Secretary is publishing separately in proposed regulations for the GSL Program a description of those actions that the lender takes once notified by an institution of a change in a borrower's eligibility for a GSL.

#### **Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

#### **Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. Under these proposed regulations, all institutions of higher education shall require selected applicants to verify student aid application information. All institutions, including small institutions which participate in the Pell Grant Program, already verify applicant information under the Pell validation system.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 4318, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Paperwork Reduction Act of 1980**

Sections 668.53, 668.54, 668.55, 668.56 and 668.57 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of 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 668**

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

**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 proposed regulations.

(Catalog of Federal Domestic Assistance: No. 84.007, Supplemental Educational Opportunity Grants; No. 84.032, Higher Education Act Insured Loans (Guaranteed Student Loans); No. 84.033, College Work-Study Program; No. 84.038, National Direct Student Loans; and No. 84.063, Pell Grant Program)

Dated: July 24, 1985.

William J. Bennett,  
Secretary of Education.

The Secretary proposes to amend Part 668 of Title 34 of the Code of Federal Regulations as follows:

**PART 668—STUDENT ASSISTANCE  
GENERAL PROVISIONS**

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1094.

2. The table of contents of Part 668 is amended by adding a new Subpart E to read as follows:

**Subpart E—Verification of Student Aid  
Application Information**

Sec.	
668.51	General.
668.52	Definitions.
668.53	Policies and procedures.
668.54	Selection of applicants for verification.
668.55	Responsibilities of applicants for updating information.
668.56	Items to be verified.
668.57	Acceptable documentation.
668.58	Interim disbursements.
668.59	Consequences of an inaccurate application.
668.60	Consequences of the failure to provide documentation.
668.61	Recovery of funds.

3. Part 668 is amended by adding a new Subpart E to read as follows:

**Subpart E—Verification of Student Aid  
Application Information****§ 668.51 General.**

(a) *Scope and purpose.* (1) The regulations in this subpart govern the verification by institutions of information submitted by applicants in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, the campus-based, and the Guaranteed Student Loan (GSL) programs.

(2) The regulations also cover the verification by institutions of information submitted under the GSL Program by applicants whose adjusted gross family income is \$30,000 or less.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

(20 U.S.C. 1094)

**§ 668.52 Definitions.**

The following definitions apply to this subpart:

"Approved need analysis system" means a need analysis system which the Secretary has approved for an award year for determining an EFC under the campus-based programs.

"Comparable State income tax return" means a State income tax return which requires the filer to provide the adjusted gross income and the amount of U.S. income tax paid as reported on the U.S. income tax return.

"Edits" means a set of preestablished factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

"GSL Needs Test Tables" means the tables in Appendix B to 34 CFR Part 682 used to calculate a GSL applicant's EFC.

"Student aid application (application)" means the application which a person submits to have his or her EFC determined under the Pell Grant, campus-based, or GSL programs.

(20 U.S.C. 1094)

**§ 668.53 Policies and procedures.**

(a)(1) An institution shall establish and use written policies and procedures for verifying information contained in an application to have an EFC calculated in accordance with the provisions of this subpart. These policies and procedures must include—

(i) The time period within which the applicant shall provide the documentation;

(ii) The consequences of the failure to provide the required documentation within the specified time period;

(iii) The approved need analysis system the institution uses to recalculate an EFC;

(iv) The method by which the institution notifies the applicant of the results of verification;

(v) The procedures the institution requires an applicant to follow to correct application information; and

(vi) The procedures for referring any instance in which the institution has

reason to believe that an applicant has applied for Pell Grant, campus-based, or GSL program funds under false pretenses to State or local law enforcement agencies for investigation as required under § 668.14(g) of this part.

(2) If the institution selects applications for verification in addition to those applications that the Secretary selects, the policies and procedures must include—

(i) The method the institution uses to select those applications;

(ii) The items on the student aid application that the institution requires applicants to verify; and

(iii) The documents the institution requires to verify any items.

(b) The institution's procedures must provide that it furnish, in a timely manner, to each applicant selected for verification—

(1) A clear explanation of the documentation needed to satisfy the verification requirements; and

(2) The applicant's rights and responsibilities with respect to the verification of his or her application information including the deadlines for the applicant's completion of any actions required of the applicant under this subpart and the consequences of failing to complete any required action.

(20 U.S.C. 1094)

**§ 668.54 Selection of applicants for verification.**

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify all of the applicable items specified in § 668.56 if the edits specified by the Secretary select that applicant for verification. The Secretary may enter into agreements with agencies or organizations with approved need analysis systems under which the Secretary provides the edits to the agencies or organizations and the agencies and organizations indicate to institutions the applications that the edits select for verification.

(2) The institution shall require every applicant to verify the applicable items specified in § 668.56 if the applicant—

(i) Is selected by the institution to receive an award under the campus-based programs or requests the institution to certify his or her application for a GSL loan; and

(ii) Does not—

(A) Apply for a Pell Grant;

(B) Submit an "Application for Federal Student Aid" (ED Form 255); or

(C) Submit a student aid application to have an EFC calculated to an agency or organization that has an agreement with the Secretary described under paragraph (a)(1) of this section.

(3) In addition to the applicants selected under paragraphs (a)(1) and (a)(2) of this section, if an institution believes that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it believes is inaccurate.

(b) *Exclusions from verification.*

Unless the institution has documentation that conflicts with information reported by an applicant or believes that the information reported by the applicant is incorrect, it does not have to verify applications of the following applicants:

(1) An applicant who is an independent student and who is a legal resident of the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(2) An applicant who is a dependent student and who is a legal resident of, and whose family are legal residents of, the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(3) An applicant who is incarcerated at the time of verification.

(4) An applicant who is a dependent student whose parents are citizens of, and currently reside in, a country other than the United States.

(5) An applicant who dies during the award year.

(6) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(7) An applicant who does not receive assistance under the programs covered by this subpart.

(20 U.S.C. 1094)

**§ 668.55 Responsibilities of applicants for updating information.**

(a) If an applicant is selected for verification, the applicant shall update the information described in § 668.56(a) (3) and (4) and § 668.56(b)(2) (ii) and (iii) so that this information is accurate as of the date that the institution verifies the information.

(b)(1) If an applicant for a Pell Grant is not selected for verification, the applicant shall update the information described in § 668.56(a) (3) and (4) so that this information is accurate as of the date that the applicant submits his or her first Student Aid Report (SAR) to the institution or the Secretary.

(2) The applicant shall sign the statement, certifying that the applicable information has been updated, that is contained on the SAR.

(c) Except as provided in paragraph (d) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must change that status by filing a new application for that award year reflecting the applicant's new dependency status.

(d)(1) If an applicant's change in dependency status results from a change in marital status, the applicant is not required to update his or her dependency status.

(2) If the institution has previously certified a GSL loan application for an applicant, the applicant is not required to update his or her dependency status on the GSL loan application.

(20 U.S.C. 1094)

**§ 668.56 Items to be verified.**

(a) Except as provided in paragraph (b) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) and (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the calendar year preceding the first year of the award year.

(2) U.S. income tax paid for the calendar year preceding the first year of the award year.

(3) The number of family members in the household of the applicant and his or her spouse, or in the household of the applicant's parents if the applicant is a dependent student.

(4) The number of family members in postsecondary educational institutions as at least half-time students in the household of the applicant and his or her spouse, or in the household of the applicant's parents if the applicant is a dependent student.

(5) The factors relating to an applicant's independent student status.

(6) Untaxed income and benefits for the calendar year preceding the first year of the award year including—

(i) U.S. income tax deduction for a married couple when both work;

(ii) Social security benefits if required by a comment on the applicant's SAR;

(iii) Payment made to an individual retirement account (IRA) or Keogh account; and

(iv) Other untaxed income and benefits included on the student aid application.

(b) For the GSL Program—

(1) If a GSL applicant's adjusted gross family income is \$30,000 or less, the institution shall require the applicant to

submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income; and

(ii) The factors relating to an applicant's independent student status;

(2) If a GSL applicant's adjusted gross family income exceeds \$30,000 and the institution uses the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income;

(ii) The number of family members in the household of the applicant and his or her spouse, or in the household of the applicant's parents if the applicant is a dependent student;

(iii) The number of family members in postsecondary educational institutions as at least half-time students in the household of the applicant and his or her spouse, or in the household of the applicant's parents if the applicant is a dependent student; and

(iv) The factors relating to an applicant's independent student status; or

(3) If the GSL applicant's adjusted gross family income exceeds \$30,000 and the institution does not use the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies the applicable items set forth in paragraph (a) of this section.

(20 U.S.C. 1094)

**§ 668.57 Acceptable documentation.**

(a) *AGI, U.S. income tax paid, and number in household.* (1) An institution shall require an applicant selected for verification to submit to it to verify adjusted gross income (AGI), U.S. income tax paid, and number in household—

(i) A copy of the U.S. income tax return or comparable State income tax return signed by the filer of the return or by one of the filers if a joint return;

(ii) The IRS listing of tax account information from the Internal Revenue Service;

(iii) If the applicant or the applicant's parents filed an income tax return with a central government outside the United States, a copy of that tax return signed by the filer; or

(iv) If no return was filed or will be filed, a statement signed by the applicant and the applicant's parent in the case of a dependent student and by the applicant in the case of an independent student certifying that no tax return was filed or will be filed and providing—

(A) The sources of income earned from work stated on the application;

(B) The amount of income from each source; and

(C) A list of the household members and their relationship in each relevant household.

(2) If the number of exemptions claimed on the U.S. or comparable State income tax return, minus any exemptions for age or blindness, differs from the number in the household on the student aid application, the institution shall require a statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant in the case of an independent student, which—

(i) Lists the names of the household members and their relationship; and

(ii) Explains any difference between the information included on the student aid application and the tax returns unless other information in the institution's records explains that difference.

(b) *Number in postsecondary educational institutions.* An institution shall require an applicant selected for verification to submit to it to verify the number of family members in the household in postsecondary educational institutions, the following:

(1) If the institution does not believe that the information provided is inaccurate, a statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant in the case of an independent student, which lists—

(i) The names of the household members who are or will be attending postsecondary institutions as at least half-time students;

(ii) Their ages; and

(iii) The names of those institutions.

(2) If the institution believes the information is inaccurate—

(i) The information listed in paragraph (b)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (b)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(c) *Independent student status.* (1) *Unmarried applicant.* For an unmarried applicant, except as provided in paragraphs (c)(3) and (c)(4) of this section, an institution shall require an

applicant selected for verification to submit to it—

(i) A copy of the Federal or comparable State income tax return of the applicant's parent(s) signed by the filer, or by one of the filers if a joint return, for the calendar year preceding the first calendar year of an award year, or if the parent(s) did not file and will not file a tax return for that year, a statement to that effect signed by the parent(s); and

(ii) A statement signed by the applicant and the applicant's parent(s) certifying that—

(A) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(B) The parent(s) will not and did not provide the applicant with financial assistance of more than \$750 in the first calendar year of an award year or the preceding calendar year; and

(C) The applicant did not and will not live with the parent(s) for more than forty-two days in either of those years.

(2) *Married applicant.* For a married applicant, except as provided in paragraphs (c)(3) and (c)(4) of this section, an institution shall require an applicant selected for verification to submit to it a written statement signed by the applicant and the applicant's parent(s) certifying that—

(i) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(ii) The parent(s) did not and will not provide the applicant with financial assistance of more than \$750 in the first calendar year of an award year; and

(iii) The applicant did not and will not live with the parent(s) for more than forty-two days in that year.

(3) *Pell Grant Program.* For purposes of the Pell Grant Program, if the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status—

(i) No documentation or statements are required of an applicant who is 23 years of age or older as of May 31 of the award year for which aid is requested to verify his or her independent student status;

(ii) The institution shall consider the independent student status of a married applicant who is under 23 years of age on May 31 of the award year for which aid is requested to be verified if the institution determines that the applicant's parents are unable or unwilling to provide the required statements; or

(iii) The institution shall consider the independent student status of an unmarried applicant who is under 23 years of age on May 31 of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant's parents are unable or willing to provide the required tax returns or statements; and

(B) The applicant had sufficient income to support himself or herself including any dependents for the calendar year preceding the first calendar year of the award year.

(4) *Campus-based and GSL programs.* For purposes of the campus-based and GSL programs—

(i) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are not unable to provide the requested information and documentation, the institution may either—

(A) Require an applicant to provide to it the documents specified in paragraph (c)(1) of this section if the applicant is unmarried, or specified in paragraph (c)(2) of this section if the applicant is married, regardless of the circumstances concerning the age of the applicant or the willingness of the applicant's parents to provide the required tax return and statement; or

(B) Follow the requirements contained in paragraph (c)(3) of this section; or

(ii) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are unable to provide the requested information and documentation, the institution must follow the requirements contained in paragraph (c)(3) of this section.

(d) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to submit to it to verify—

(1) *Untaxed income and benefits* described in § 688.56(a)(6)(i), (iii), and (iv)—

(i) A copy of the U.S. or comparable State income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information from the Internal Revenue Service if collected by the institution to verify adjusted gross income; and

(ii)(A) If the institution does not believe that the information provided is inaccurate—

(1) The worksheet for untaxed income and benefits from the student aid

application, or a comparable listing of the untaxed income and benefits specified in § 688.56(a)(6)(iv) accompanied by a written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant in the case of an independent student, certifying that the information on the worksheet or listing is correct; and

(2) If the applicant is a dependent student whose income for the calendar year preceding the first year of the award year is used to calculate the applicant's EFC (Student Aid Index) for the Pell Grant Program, a separate listing of the applicant's untaxed income and benefits specified in § 688.56(a)(6) for that year accompanied by a written statement signed by the applicant certifying that the information on the listing is correct; or

(B) If the institution believes that the information provided for an untaxed income or benefit is inaccurate—

(1) The documentation required in paragraph (d)(1)(ii)(A) of this section; and

(2) A statement from the agency or provider that supplied the benefits indicating the amount of those benefits, unless the institution determines that such a statement is not available.

(2) *Social security benefits—*

(i) If the applicant's SAR requires that the applicant verify his or her social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant's parents, the applicant, and the parent's children in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR, the document in paragraph (d)(2)(i) of this section or, at the institution's option, a statement signed by the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct.

(20 U.S.C. 1094)

#### § 688.58 Interim disbursements.

(a) Until an applicant selected by the Secretary or the institution verifies or corrects the information on his or her application, the institution or the Secretary—

(1)(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or

SEOG funds for the applicant's first payment period; and

(B) May employ an eligible student under the CWS Program until sixty (60) days after the date the applicant enrolled in that award year; and

(2) Shall not certify the applicant's GSL loan application or endorse a GSL loan check for any previously certified GSL loan application.

(b) If an institution chooses to make disbursement under paragraph (a)(1)(ii) of this section, it shall be liable for any overpayment discovered as a result of the verification process.

(c) An institution may not hold any GSL check under paragraph (a)(2) of this section for more than thirty (30) days. If the applicant does not complete the verification process within the thirty (30) day period, the institution must return the check to the lender.

(20 U.S.C. 1094)

#### § 688.59 Consequences of an inaccurate application.

(a)(1) Except as provided in paragraph (b) of this section, an institution shall follow the procedures set forth in paragraphs (c) and (d) of this section.

(2) For the Pell Grant Program, if the institution uses the Zero SAI Charts published by the Secretary in the *Federal Register* for an applicant who submits a SAR with a Student Aid Index (SAI) of zero and the Zero SAI Charts show that the applicant's SAI remains zero, the institution is not required to follow the procedure in paragraphs (c)(2) and (d)(1) of this section.

(b)(1) An institution need not recalculate an applicant's EFC for the Pell Grant Program or otherwise follow the procedures set forth in paragraphs (c) and (d) of this section for a Pell Grant Program applicant if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) A net change in dollar items of less than \$100.

(2) An institution need not recalculate an applicant's EFC for the campus-based or GSL program or otherwise follow the procedures set forth in paragraphs (c) and (d) of this section for a campus-based or GSL program applicant if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii)(A) A net change in dollar items of less than \$600; or

(B) If the institution uses the Pell Grant Program Student Aid Index as the

applicant's EFC, a net change in dollar items of less than \$100.

(c)(1) For the campus-based and GSL programs, the institution shall recalculate the applicant's EFC.

(2) For the Pell Grant Program, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (Student Aid Index) and determines that the applicant's Pell Grant award has changed; or

(ii) The institution does not recalculate the applicant's EFC.

(d)(1) For purposes of the Pell Grant Program, if the applicant's EFC (Student Aid Index) changes, the institution shall recalculate the applicant's Pell Grant award.

(2) For purposes of the campus-based and GSL programs, if the applicant's applicable EFC changes, the institution shall adjust the applicant's financial aid package for the campus-based and GSL aid to reflect the new EFC.

(e) If a GSL applicant reports an adjusted gross family income of less than \$30,000 and verification shows that the adjusted gross family income is over \$30,000, the institution shall calculate an EFC for the applicant and determine his or her financial need for a loan.

(f) If the institution selects an applicant for verification for an award year who previously received a loan under the GSL Program for that award year, and as a result of verification, the suggested loan amount is reduced by \$200 or more, the institution shall comply with the procedures for notifying the borrower, lender, and appropriate guarantee agency specified in § 668.61(b).

(g) If the student has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the student's name, social security number, and other relevant information to the Secretary.

(20 U.S.C. 1094)

**§ 668.60 Consequences of the failure to provide documentation.**

(a) For purposes of the campus-based and GSL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution shall not—

(A) Disburse any additional NDSL or SEOG funds to the applicant;

(B) Continue to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Endorse a GSL check to the applicant;

(ii) The institution must return to the lender any GSL check payable to the applicant; and

(iii) The applicant must repay to the institution any NDSL or SEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the prescriptions listed in paragraph (a)(1)(i) of this section; and

(3) An institution may not hold any GSL check under paragraph (a)(1) of this section for more than thirty (30) days. If the applicant does not complete verification within the thirty (30) day period, the institution must return the check to the lender.

(b) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the appropriate deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication in the **Federal Register**. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in 34 CFR 690.61, payment must be based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is the same or higher than the student aid index on the original SAR; and

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in

paragraph (b)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any grant payments previously received for that award year to the Secretary.

(c) The Secretary in the case of a Pell Grant, or the Secretary or an institution in the case of campus-based aid or a GSL, shall not process any other application for a Pell Grant, campus-based aid, or a GSL for an applicant who has been requested to provide information until the applicant provides the information or the Secretary decides that there is no longer a need for the documentation.

(20 U.S.C. 1094)

**§ 668.61 Recovery of funds.**

(a) If an institution discovers, as a result of the verification process, that an applicant received more than he or she was eligible to receive under the Pell Grant, NDSL, or SEOG programs, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred;

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

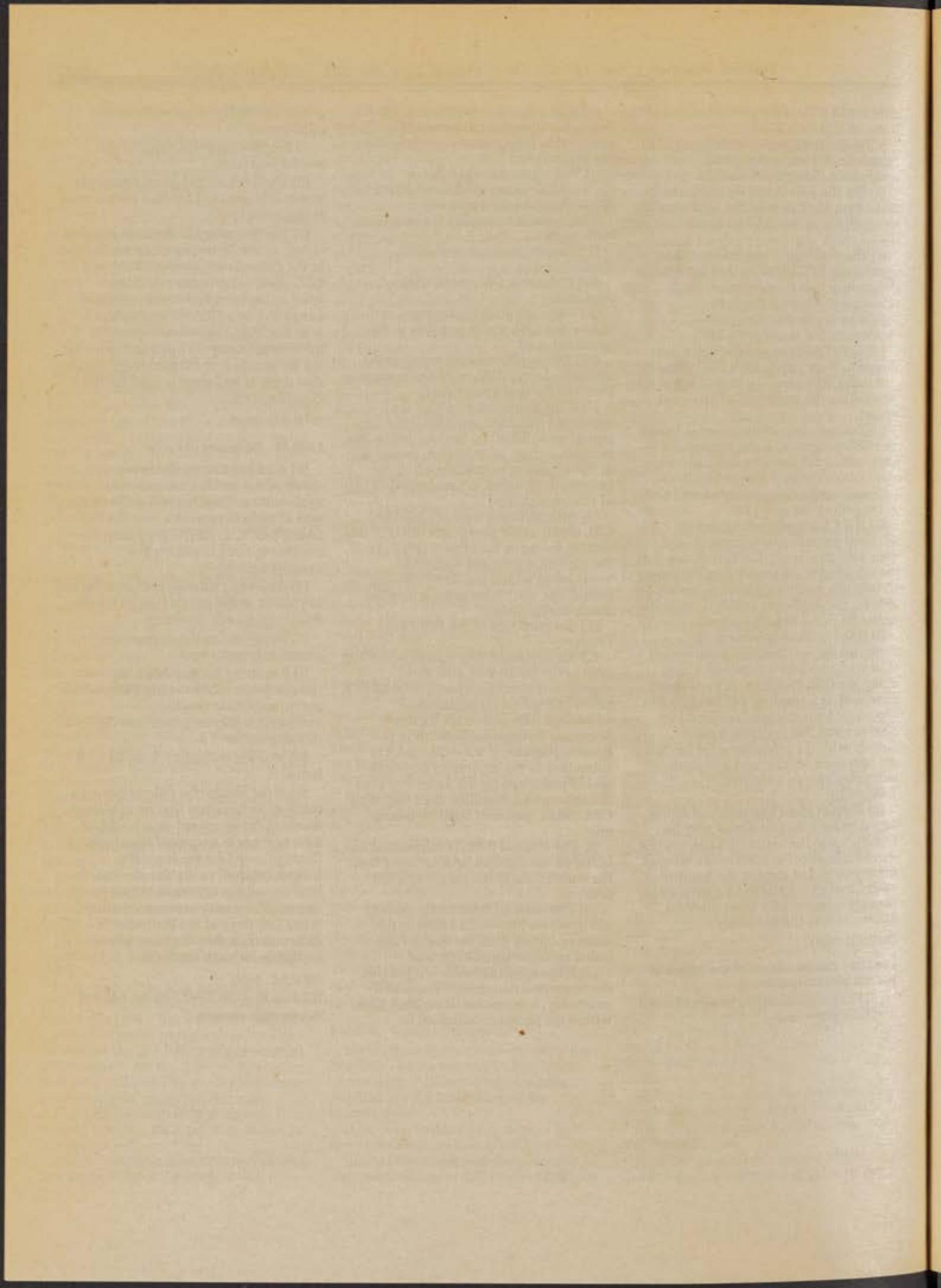
(ii) Making restitution from its own funds.

(b) If the institution determines as a result of verification that an applicant received for an award year a GSL of \$200 or more in excess of the student's financial need for the loan, the institution shall notify the student, the lender, and the appropriate guarantee agency of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for such amounts.

(20 U.S.C. 1094)

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# **federal register**

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Friday  
July 26, 1985

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## **Part VIII**

### **Department of the Interior**

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**Bureau of Indian Affairs**

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**25 CFR Part 20**

**Financial Assistance and Social Services  
Program; Proposed Rule**

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 20

## Financial Assistance and Social Services Program

July 22, 1985.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rule.

**SUMMARY:** The Bureau is amending existing Financial Assistance and Social Services Program regulations in response to a congressional directive in "The Department of the Interior and Related Agencies Appropriations Act," Fiscal Year 1985, Pub. L. 98-473. The Act provides that:

... after September 30, 1985, no part of any appropriation (except trust funds) to the (BIA) may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in regulations of the Secretary or in regulations of the State public welfare agency adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 6(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 . . .

In order to insure that the limitations in the statutory language are applied to the Bureau's general assistance program it is necessary to amend 25 CFR Part 20 to:

- More precisely define key terms within the regulations, i.e., "need", "essential needs", "resources", and "general assistance."
- Further delineate what constitutes a general assistance program and in what circumstances the Bureau provides general assistance payments to Indian citizens.
- Further identify and support a uniform standard for the determination of assistance payments; and,
- Make additional revisions which may support any of the above and which further strengthen the management and effectiveness of the general assistance program.

**DATE:** Comments must be received on or before August 26, 1985.

**ADDRESS:** Comments may be mailed to: Bureau of Indian Affairs, Division of

Social Services, Code 450, Room 312-S, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

**FOR FURTHER INFORMATION CONTACT:** Eddie F. Brown or Larry Blair of the Bureau's Division of Social Services at: 1951 Constitution Avenue, NW., Room 312, Telephone number (202) 343-8434.

**SUPPLEMENTARY INFORMATION:** In proposing these amendments, the Bureau of Indian Affairs seeks to define with greater clarity its program of general assistance to Indian people. Accordingly, it is the Bureau's primary intent in publishing this proposed rule to:

- (1) Identify those instances in which the Bureau will operate a general assistance program.
- (2) Identify those needs essential to the well being and support of Indian individuals and families and for which Bureau general assistance payments will be made.
- (3) Provide for Bureauwide uniformity in the operation of the Bureau general assistance program.

Other amendments are proposed which support and clarify the above three goals and which enhance the Bureau's ability to make accurate payments to eligible Indian individuals and families.

In pursuit of the foregoing objectives, the following changes are proposed:

#### 1. Section 0.1 Definitions.

The Bureau proposes to revise definitions of (m) "General Assistance," (s) "Need," (t) "Public Assistance," and (w) "Resources," and to add definitions (cc) "Essential Needs," (dd) "Household," (ee) "Tribal Work Experience Program (TWEPE)," (ff) "Recipient" and (gg) "Case" to reflect changes to be made in § 20.21.

A. Paragraph 20.1(m) is amended to read, "BIA General Assistance" and makes clear that BIA general assistance is a secondary or residual source of financial assistance available to eligible Indian people. This means that BIA general assistance may be available to eligible Indian individuals and households if all other forms of financial aid are insufficient.

B. Paragraph 20.1(cc) defines, as required by Pub. L. 98-473, those essential needs for which BIA general assistance may be paid. The regulations identify as minimum essential needs shelter, food, clothing, and utilities. These are commonly recognized as basic to individual well-being and have long been utilized by most public welfare agencies to establish maintenance costs at minimum subsistence levels. The definition of

"essential needs" also includes additional need items for which Bureau payments will be made because of the alignment of BIA general assistance with payment standards established under the Aid to Families With Dependent Children Program (AFDC). Most State standards generally include other needs in addition to shelter, food, clothing and utilities, such as transportation and personal care items; other states have "flat grants" that do not identify dollar amounts for the need components of their standards. Therefore, while the Bureau shall not provide general assistance in any State having a general assistance program which meets the four essential needs identified above, in those States where the Bureau provides general assistance, payments will be made to meet the needs identified in the AFDC standard even if that standard includes needs in addition to the minimum four.

C. Paragraph 20.1(ff) and (gg) are added to assure that data is uniformly reported.

#### 2. Section 20.20 General.

Section 20.20(c) is revised to clarify that authorization by the Deputy Assistant Secretary for assistance to Indians, not otherwise eligible for Bureau Social Services under these regulations, refers only to emergency short term assistance.

#### 3. Discussion of Major Provisions

A. *Criteria for determining whether the Bureau will administer a general assistance program in a State.* The rules propose criteria to determine whether or not the Bureau will administer a general assistance program in a State. Pub. L. 98-473 specifically precludes the Bureau from using Bureau funds to provide general assistance for "individuals who are eligible for general public welfare assistance available from a State." The Bureau interprets this to mean that there must be a State law which authorizes a statewide general assistance program and that the State must regularly appropriate funds to make payments under the State program. Therefore, the proposed rules do not recognize county or locally administered and funded general assistance as "assistance available from a State" unless there is a State law requiring all counties to have a general assistance program. The Bureau requires that State programs, as opposed to county programs, be funded with a regular appropriation because certain States' laws, while authorizing a statewide general assistance program, do not appropriate funds to administer the program or actually make payments

to State residents. On the other hand, under a State law requiring counties to have a general assistance program, counties do provide some assistance even though payments may fluctuate subject to the limited availability of funds.

A second criterion used to determine whether or not the Bureau will administer a BIA general assistance program is whether the State general assistance program is one which provides financial assistance on a continuing basis to meet monthly minimum essential needs. A program which only meets emergency needs on a one-time-only basis is not considered a general assistance program which meets the needs of Indians who reside on or near a reservation. In developing these criteria, the Bureau looked to the two primary Federal income maintenance programs—namely, AFDC and Supplemental Security Income (SSI)—for fundamental characteristics that denote the mission and the limitations of effective, equitable income maintenance programming. Each of these programs provides monthly cash payments for food, shelter, clothing and utilities.

Although the Bureau will not operate a BIA general assistance program in any State that has a statewide general assistance program meeting the criteria as described above, the rules provide that where the Bureau provides general assistance on a reservation in one State and that reservation extends into a border State, the Bureau will provide general assistance to eligible members of the tribe in the bordering State.

The rules propose that the Bureau will not provide general assistance to any tribe that formally requests through final governing body action that the Bureau not operate a general assistance program. It further provides that if a Tribe seeks later to revoke such a request, it must also be done formally through final governing body action.

**B. Redeterminations.** The proposed rule codifies existing Bureau practice that eligibility and the amount of the payment must be determined based on the best estimate of income and the circumstances which will exist in the month for which the payment is made. That estimate may be based on income and circumstances in past months if there is reasonable expectation that circumstances have not changed or based on current or future circumstances if there is new information.

The rules also propose that recipients are required to inform the Bureau within 15 days of any changes in status which may affect their eligibility or the amount of assistance. Additionally, the rules

propose that eligibility must be redetermined whenever there is an indication of a change in circumstances, but not less frequently than once every six months for all households. However, this requirement does not preclude redeterminations being conducted at more frequent intervals at the discretion of local program administrators. In order to assure that all individuals who are not exempt under paragraph 20.21 are actively seeking and accepting employment, the Bureau proposes to redetermine eligibility not less frequently than every three months for this category of cases. The Bureau also proposes that a redetermination for all cases include a home visit or other personal contact at least once a year.

**C. Standards of Assistance.** This rule does not change but restates regulations recently published for inclusion in 25 CFR 20.1 in the Federal Register on March 29, 1985 (Vol. 50, No. 61, page 12527). Those regulations implemented changes in the general assistance program to bring payments into conformance with State payments in those States where the standard of need exceeds actual payments.

The rule makes clear that the Bureau adopts as its standard of assistance the AFDC payment standard in the State where the applicant or recipient lives. Thus, whenever there is reference to the Bureau's standard of assistance, it is the AFDC payment standard. The AFDC payment standard reflects the same basic and special need items that are included in the AFDC standard of assistance. In a State that meets 100 percent of the need standard, the payment standard and the need standard are the same. In a State that does not meet need in full and applies a rateable reduction to the need standard, the payment standard is the rateably reduced amount.

This proposed rule does, however, establish a standard for one adult for use in States that do not have a standard for single adult individuals. The rules provide that the Bureau standard for one adult will be the difference between its standard for one child and its standard for a household of two which includes an adult, or one-half the amount of a standard for a household of two, whichever is greater.

**D. Resources.** The rule proposes that the Bureau shall consider all income and liquid assets available for support and maintenance unless otherwise disregarded under regulation or by Federal statute. The regulations distinguish between liquid assets and other resources which include earned income and unearned income.

However, these regulations do not change existing policies which do not require that Indian individuals and families divest themselves of trust, real and personal property holdings. Trust funds, however, subject to the provisions of § 20.21(f) will be considered as part of the individuals' liquid assets.

Liquid assets are defined at § 20.1(w) as properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, etc. This means that the Bureau will count as income available to support an individual or household those assets which can be liquidated for that purpose.

The rules primarily codify current Bureau policy as to what constitutes income. However, two additional categories of unearned income are proposed: the Bureau will count, as income-in-kind, the value of shelter provided at no cost to the individual or household. The Bureau, therefore, will add to other income the amount included in its standard for shelter, if identifiable. If the standard is a flat standard which does not assign values to the components of the standard, the Bureau will count as income-in-kind an amount equal to 25 percent of the Bureau standard of assistance. This percentage is based on regulations of the Department of Housing and Urban Development (HUD) which specify that HUD will charge as rent for public housing, the higher of 10 percent of gross income or 30 percent of adjusted income. Adjusted income for an AFDC family with no other income is the AFDC payment less HUD disregards. The Bureau chooses to reduce the percentage applied for rent rather than apply the disregards.

The rules require that an individual or household apply for assistance from other Federal, State, county or local assistance programs for which they may be eligible concurrent with their application to the Bureau for assistance. The Bureau proposes to count as income any assistance received in determining eligibility for and the amount of the BIA general assistance payment. However, the rules propose that individuals eligible to receive or receiving AFDC or SSI are only eligible for BIA general assistance payments for the period following application and until they begin receiving payments under those programs.

Although current Bureau regulations do not address proration of income, Bureau policy requires that payments be denied to "furloughed employees"

whose annual income, when divided by 12 months, would exceed its monthly standard of assistance. Furloughed employees generally work for school systems and are paid an annual salary even though they may receive that salary only during a 9 or 10 month period. It is the Bureau's position that such individuals should not be eligible for BIA general assistance solely because they do not receive that income during the summer when school is not in session. The rules, therefore, provide that the Bureau will prorate such income over a 12-month period. The monthly amount will be considered as income during the summer months unless the recipient provides evidence that the income will not continue in the future, e.g., a notice of termination of employment. The Bureau will also prorate income received by individuals employed on a contractual basis over the period of the contract, and intermittent income received quarterly, semiannually or yearly shall be prorated over the period covered by the income unless there is evidence that the income will not continue.

**E. Payments.** The proposed rule clarifies that the BIA general assistance payment will equal the difference between the Bureau standard of assistance and the individual's or household's resources limited by a maximum on the payment or limited by a percentage reduction. The rule further provides that the Bureau will round the payment down to the next lower whole dollar. This provision is adopted to conform with other assistance programs funded under the Social Security Act.

**F. Employment.** Consistent with existing Bureau policies, these proposed amendments include language requiring applicants and recipients of BIA general assistance to actively seek employment and to accept available local employment. However, § 20.21(i) of these amendments strengthen that requirement by identifying specific categories of individuals who are exempt from seeking and accepting employment as a condition of general assistance eligibility including exemption for a person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances. The exemptions are based on Federal regulations at 45 CFR 224.20(b) which are used to exempt applicants and recipients from the requirement to register for employment as a condition of eligibility for AFDC.

In order to more effectively promote the use and coordination of available Bureau services, § 20.21(i) also contains

language which requires BIA general assistance applicants and recipients to participate in Bureau-funded employment assistance services and Tribal Work Experience Program when available.

**G. Quality Assurance and Record Keeping.** The Bureau is developing a quality assurance system to provide ongoing evaluation of the administration of the Bureau of Indian Affairs general assistance program in accordance with established Bureau policies and procedures. The quality assurance system will include but not be limited to: (1) The development of a sampling strategy and plan and the determination of an error rate which will measure the degree of overpayment and underpayments which were made; (2) the conduct of field investigations (including personal interviews) in accordance with the sampling strategy and plan; (3) the conduct of field investigations (including personal interviews) in response to unconfirmed perceived errors; (4) the taking of appropriate actions to remedy improper authorization or denied assistance; and (5) the taking of appropriate actions to correct the causes of improper actions. Regulatory requirements and standards for operation of the quality assurance system will be proposed by the Bureau in a future notice of proposed rulemaking.

The Bureau plans to strengthen and update its requirements in 66 BIAM pertaining to the maintenance of records necessary for the proper and efficient operation of the BIA general assistance program. Examples of the kinds of information to be retained are facts about applicants and recipients which would permit the Bureau to draw a recipient profile; date of application; length of time on assistance; number in household; status of recipient, i.e. single, married, employed, exempt from employment, etc.

Given information needs and the complexities of existing processes, requirements and constituents, an in-depth examination of reporting and information requirements is warranted and expected to occur over the next year. Thereafter amendments to record keeping requirements will also be the subject of a proposed rulemaking.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed rule. The Department of the Interior has determined that this document is not a

major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The information collection requirements contained in this part have been submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1983.

The primary author of this document is Eddie F. Brown, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343-6434.

#### List of Subject in 25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians-Social welfare, Public assistance programs.

For reasons set out in the preamble Part 20 of Subchapter D, Chapter I of Title 25, Code of Federal Regulations, is proposed to be amended as follows.

1. The authority for 25 CFR Part 20 is revised to read as follows:

**Authority:** 25 U.S.C. 13; § 20.21 also issued under Pub. L. 98-473.

#### PART 20—[AMENDED]

2. Section 20.1 is amended by revising paragraphs (m) (s), (t), and (w) and adding paragraphs (cc), (dd), (ee), (ff) and (gg) to read as follows:

##### § 20.1 Definitions.

(m) "BIA General assistance" is a secondary, or residual source of assistance for Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs.

(s) "Need" means the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides.

(t) "Public assistance" means those programs of assistance provided under Title IV of the Social Security Act (49 Stat. 620), as amended and includes the Aid to Families with Dependent Children (AFDC) Program provided under Title IV-A.

(w) "Resources" means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties.

(cc) "Essential needs" include at a minimum shelter, food, clothing and utilities, but do not include needs beyond those basic and special needs included in the Bureau standard of assistance for the State where the Indian individual or household lives.

(dd) "Household" means persons living together with the 'head of household' who are related to or accepted by the 'head of household' and who function as members of the family.

(ee) "Tribal Work Experience Program (TWEP)" means a program operated by tribal contract which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills.

(ff) "Recipient" means an individual to whom or for whom a BIA general assistance payment is made for the month.

(gg) "Case" includes all individuals in the household as defined in § 20.1 (dd) whose needs are included in the BIA general assistance payment made for the month.

3. Section § 20.20(c) is revised to read as follows:

#### § 20.20 General.

(c) Upon written request of an appropriate tribal governing body, the Deputy Assistant Secretary may authorize emergency short term assistance and services to Indians, not otherwise eligible in this part, who reside on a reservation or in near reservation designated areas, when necessary to prevent hardship in accordance with findings and exceptions published in the Federal Register.

4. Section § 20.21 is revised in its entirety to read as follows:

#### § 20.21 General Assistance.

The Bureau will not provide general assistance:

(a) to those tribal members of tribes which formally request, through final governing body action, that the Bureau not operate a general assistance program. If a tribe seeks to revoke that request, it must also be done formally through final governing body action. Such request for BIA general assistance should be timed with the Bureau's next fiscal year for the General Assistance program; and,

(b) in any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations; and,

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments; and,

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in § 20.20(a); and the following conditions:

(1) Do not receive financial assistance from AFDC or Supplemental Security Income (SSI);

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance.

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance.

(d) *Redeterminations.* The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to inform the Bureau within 15 days of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(1) Whenever there is an indication of a change in circumstances;

(2) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(3) Not less frequently than once every six (6) months for all households.

The redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) *Standards of Assistance.* (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a ratable reduction to the need standard, the Bureau standard is the ratably reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult or one half the amount of the standard for a household of two, whichever is greater.

(3) The Bureau shall uniformly apply its standard of assistance in determining eligibility for and the amount of the general assistance payment for all applicants and recipients residing in the State.

(f) *Resources.* In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded as provided at § 20.21(g) or specifically excluded by Federal statute. Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) "Earned income" means income in cash or in-kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in

which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, "earned income" means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) "Unearned income" includes but is not limited to:

(i) Income from: interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of land with trust status and real or personal property; Federal and state tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income-in-kind contributions providing shelter at no cost to the individual or household. In establishing the amount of the in-kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the standard unless there is evidence provided that the value of free shelter is less; and,

(iii) General assistance provided by a State, county or local agency.

(3) The Bureau shall prorate: (i) Over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year-round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau will prorate the income unless there is evidence that the income will not continue to be received in the future.

(g) *Disregards.* (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

- (i) Federal, State and local taxes;
- (ii) Social Security (FICA);
- (iii) Health insurance;
- (iv) Work related expenses, including reasonable transportation costs;
- (v) Child care costs except where the other parent in the home is not working and is not disabled; and
- (vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption.

(ii) Resources specifically excluded by Federal statute.

(h) *Payments.* (1) The Bureau shall make assistance payments in the amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in the dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar;

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) An applicant or recipient must actively seek employment, including use of available Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for

general assistance. These requirements do not apply to:

(1) A person under the age of 16 years;

(2) A full-time student under the age of 19 who is attending an elementary or secondary school or vocational or technical school equivalent to a secondary school;

(3) A person suffering from an illness, when determined on the basis of medical evidence or on another sound basis that the individual's illness or injury is serious enough to temporarily prevent entry into employment;

(4) An incapacitated person when verified that a physical or mental impairment, determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(5) A person responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a substantially continuous basis, and there is no other appropriate household member available;

(6) A parent or other individual who personally provides full time care of a child under the age of 6;

(7) A parent of a minor living in the household if the other parent is not exempt from seeking or accepting employment;

(8) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days;

(9) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

Where the tribe administers a Tribal Work Experience Program (TWEPE), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment. Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.  
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675.....	29240

**LIST OF PUBLIC LAWS****Last List July 25, 1985**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.J. Res. 342/Pub. L. 99-71**

Making an urgent supplemental appropriation for the fiscal year ending September 30, 1985, for the Department of Agriculture. (July 24, 1985; 99 Stat. 169)  
Price: \$1.00

**S.J. Res. 40/Pub. L. 99-72**

To designate the month of October 1985 as "National Down's Syndrome Month". (July 24, 1985; 99 Stat. 170)  
Price: \$1.00